[JOINT COMMITTEE PRINT]

OVERVIEW OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993 (H.R. 2264)

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

AUGUST 23, 1993

U.S. GOVERNMENT PRINTING OFFICE

70-916 WASHINGTON : 1993 JCS-10-93

For sale by the U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328
ISBN 0-16-041352-4

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CONTENTS

	Page
Introduction	1
Overview of Revenue Provisions	2
I. TRAINING AND INVESTMENT PROVISIONS	2
A. Education and Training Provisions	2
1. Extension of employer-provided educational assistance (sec. 14101 of the House bill, sec. 8101 of the Senate amendment, and sec. 13101 of the conference agreement)	2
2. Extension of targeted jobs tax credit (sec. 14102 of the House bill, sec. 8102 of the Senate amendment, and sec. 13102 of the conference agreement)	2
B. Investment Incentives	2
1. Extension of research tax credit; Modification of fixed base percentage for startup companies (secs. 14111-14112 of the House bill, secs. 8111-8112 of the Senate amendment, and secs. 13111(a) and (c) and 13112 of the conference agreement)	2
2. Capital gains exclusion for certain small business stock (sec. 14113 of the House bill and sec. 13113 of the conference agreement)	2
3. Rollover of gain from sale of publicly traded securities into specialized small business investment companies (sec. 14114 of the House bill and sec. 13114 of the conference agreement)	3
4. Modification of minimum tax depreciation rules (sec. 14115 of the House bill, sec. 8115 of the Senate amendment, and sec. 13115 of the conference agreement)	3
5. Increase expensing deduction for small business (sec. 14116 of the House bill, sec. 8119 of the Senate amendment, and sec. 13116 of the conference agreement)	3

Page

6. Bonds for high-speed intercity rail facilities (sec. 14121 of the House bill and sec. 13121 of the conference agreement) 3
7. Extension of qualified small-issue bonds (sec. 14122 of the House bill, sec. 8121 of the Senate amendment, and sec. 13122 of the conference agreement) 4
8. Extension of the tax credit for orphan drug clinical testing expenses (sec. 13111(b) of the conference agreement) 4

C. Expansion and Simplification of Earned Income Tax Credit (sec. 14131 of the House bill, sec. 8131 of the Senate amendment, and sec. 13131 of the conference agreement) 4

D. Real Estate Investment Provisions 5

1. Extension and modification of qualified mortgage bonds and mortgage credit certificates (sec. 14141 of the House bill, secs. 8141 and 8141A of the Senate amendment, and sec. 13141 of the conference agreement) 5
2. Extension and modification of the tax credit for low-income rental housing (sec. 14142 of the House bill, sec. 8142 of the Senate amendment, and sec. 13142 of the conference agreement) 5
3. Modification of passive loss rules for certain real estate persons (sec. 14143 of the House bill, sec. 8143 of the Senate amendment, and sec. 13143 of the conference agreement) 5
4. Changes relating to real estate investments by pension funds and others 5
    a. Modification of the rules related to debt-financed income (sec. 14144 of the House bill, sec. 8144 of the Senate amendment, and sec. 13144 of the conference agreement) 5
    b. Repeal of the automatic UBTI rule for publicly traded partnerships (sec. 14145 of the House bill, sec. 8145 of the Senate amendment, and sec. 13145 of the conference agreement) ... 6
    c. Permit title-holding companies to receive small amounts of UBTI (sec. 14146 of the House bill, sec. 8146 of the Senate amendment, and sec. 13146 of the conference agreement) ... 6

Page

d. Exclusion from UBTI of gains from the disposition of real property acquired from financial institutions in conservatorship or receivership (sec. 14147 of the House bill, sec. 8147 of the Senate amendment, and sec. 13147 of the conference agreement) ... 6

e. Exclusion of certain option premiums and loan commitment fees from UBTI (sec. 14148 of the House bill, sec. 8148 of the Senate amendment, and sec. 13148 of the conference agreement) ... 7

f. Relaxation of limitations on investments in real estate investment trusts by pension funds (sec. 14149 of the House bill, sec. 8149 of the Senate amendment, and sec. 13149 of the conference agreement) ... 7

5. Treatment of certain real property business debt of individuals (sec. 14150 of the House bill and sec. 13150 of the conference agreement) ... 7

6. Increase recovery period for depreciation of nonresidential real property (sec. 14151 of the House bill, sec. 8151 of the Senate amendment, and sec. 13151 of the conference agreement) ... 8

E. Luxury Excise Tax; Diesel Fuel Tax for Motorboats ... 8

1. Repeal of luxury excise tax on boats, aircraft, jewelry, and furs; Index and modify luxury excise tax on automobiles ... 8

a. Repeal luxury tax on boats, aircraft, jewelry, and furs; Index threshold for automobiles (sec. 14161 of the House bill, sec. 8161 of the Senate amendment, and sec. 13161 of the conference agreement) ... 8

b. Exemption from luxury excise tax for certain equipment installed on passenger vehicles for use by disabled individuals (sec. 14162 of the House bill, sec. 8162 of the Senate amendment, and sec. 13162 of the conference agreement) ... 8

2. Impose excise tax on diesel fuel used in noncommercial motorboats (sec. 14163 of the House bill, sec. 8163 of the Senate amendment, and sec. 13163 of the conference agreement) ... 9

Page

F. Other Provisions 9

1. Alternative minimum tax treatment for contributions of appreciated property (sec. 14171 of the House bill, sec. 8171 of the Senate amendment, and sec. 13171 of the conference agreement) 9
2. Substantiation and disclosure requirements for charitable contributions (secs. 14271-14272 of the House bill, secs. 8172-8173 of the Senate amendment, and secs. 13172-13173 of the conference agreement) 9
3. Extension of General Fund transfer to Railroad Retirement Tier 2 Fund (sec. 14172 of the House bill and sec. 8174 of the Senate amendment) 10
4. Extension of health insurance deduction for self-employed individuals (sec. 14173 of the House bill, sec. 8175 of the Senate amendment, and sec. 13174 of the conference agreement) 10

II. REVENUE-RAISING PROVISIONS 11

A. Individual Income and Estate and Gift Tax Provisions 11

1. Increased tax rates for higher-income individuals 11
   a. Individual tax rates (secs. 14201-14203 of the House bill, secs. 8201-8203A of the Senate amendment, and secs. 13201-13203 of the conference agreement) 11
   b. Overall limitations on itemized deductions for high-income taxpayers made permanent (sec. 14204 of the House bill, sec. 8204 of the Senate amendment, and sec. 13204 of the conference agreement) 11
   c. Phaseout of personal exemption of high-income taxpayers made permanent (sec. 14205 of the House bill, sec. 8205 of the Senate amendment, and sec. 13205 of the conference agreement) 12
2. Provisions to prevent conversion of ordinary income to capital gain (sec. 14206 of the House bill, sec. 8206 of the Senate amendment, and sec. 13206 of the conference agreement) 12
   a. Recharacterization of capital gain as ordinary income for certain financial transactions 12

Page

b. Repeal of certain exceptions to the market discount rules 12
c. Accrual of income by holders of stripped preferred stock 12
d. Treatment of net capital gain as investment income 12
e. Definition of substantially appreciated inventory 13
3. Repeal health insurance wage base cap (sec. 14207 of the House bill, sec. 8207 of the Senate amendment, and sec. 13207 of the conference agreement) 13
4. Reinstate top estate and gift tax rates (sec. 14208 of the House bill, sec. 8208 of the Senate amendment, and sec. 13208 of the conference agreement) 13
5. Reduce deductible portion of business meals and entertainment expenses (sec. 14209 of the House bill, secs. 8209 and 8209A of the Senate amendment, and sec. 13209 of the conference agreement) 13
6. Deny deduction for club dues (sec. 14210 of the House bill, sec. 8210 of the Senate amendment, and sec. 13210 of the conference agreement) 14
7. Deny deduction for executive pay over $1 million (sec. 14211 of the House bill, sec. 8211 of the Senate amendment, and sec. 13211 of the conference agreement) 14
8. Reduce compensation taken into account for qualified retirement plan purposes (sec. 14212 of the House bill, sec. 8212 of the Senate amendment, and sec. 13212 of the conference agreement) 14
9. Modify deduction for moving expenses (sec. 14213 of the House bill, sec. 8213 of the Senate amendment, and sec. 13213 of the conference agreement) 15
10. Modify estimated tax requirements for individuals (sec. 14214 of the House bill, sec. 8214 of the Senate amendment, and sec. 13214 of the conference agreement) 15
11. Increase taxable portion of Social Security and Railroad Retirement Tier 1 benefits (sec. 14215 of the House bill, sec. 8215 of the Senate amendment, and sec. 13215 of the conference agreement) 15

B. Business Provisions 16

1. Increase corporate tax rate (sec. 14221 of the House bill, sec. 8221 of the Senate amendment, and sec. 13221 of the conference agreement) 16

Page

2. Disallowance of deduction for certain lobbying expenses (sec. 14222 of the House bill, sec. 8222 of the Senate amendment, and sec. 13222 of the conference agreement) 16
3. Mark-to-market accounting method for dealers in securities (sec. 14223 of the House bill, sec. 8223 of the Senate amendment, and sec. 13223 of the conference agreement) 17
4. Tax treatment of certain FSLIC financial assistance (sec. 14224 of the House bill, sec. 8224 of the Senate amendment, and sec. 13224 of the conference agreement) 17
5. Modify corporate estimated tax rules (sec. 14225 of the House bill, sec. 8225 of the Senate amendment, and sec. 13225 of the conference agreement) 18
6. Repeal stock-for-debt exception to cancellation of indebtedness income (sec. 8226(a) of the Senate amendment and sec. 13226(a) of the conference agreement) 18
7. Treatment of passive activity losses and credits and alternative minimum tax credits in certain discharges of indebtedness (sec. 8226(b) of the Senate amendment and sec. 13226(b) of the conference agreement) 18
8. Limitation on section 936 credit (sec. 14226 of the House bill, sec. 8227 of the Senate amendment, and sec. 13227 of the conference agreement) 18
9. Enhance earnings stripping rules (sec. 14227 of the House bill, sec. 8228 of the Senate amendment, and sec. 13228 of the conference agreement) 19

C. Foreign Provisions 19

1. Current taxation of certain earnings of controlled foreign corporations (secs. 14231-14233 of the House bill, secs. 8231-8233 of the Senate amendment, and secs. 13231-13233 of the conference agreement) 19
2. Allocation of research expenditures (sec. 14234 of the House bill, sec. 8234 of the Senate amendment, and sec. 13234 of the conference agreement) 20
3. Eliminate working capital exception for foreign tax credit for foreign oil and gas and shipping income (sec. 14235 of the House bill, sec. 8235 of the Senate amendment, and sec. 13235 of the conference agreement) 20

Page

4. Transfer pricing initiative (sec. 14236 of the House bill, sec. 8236 of the Senate amendment, and sec. 13236 of the conference agreement) 20
5. Deny portfolio interest exemption for contingent interest (sec. 14237 of the House bill, sec. 8237 of the Senate amendment, and sec. 13237 of the conference agreement) 21
6. Regulatory authority to address multiple-party financing arrangements (sec. 14238 of the House bill, sec. 8238 of the Senate amendment, and sec. 13238 of the conference agreement) 21
7. Exports of certain unprocessed softwood timber (sec. 8239 of the Senate amendment and sec. 13239 of the conference agreement) 22

D. Energy and Motor Fuels Tax Provisions 22

1. Energy Btu tax (sec. 14241 of the House bill) 22
2. Transportation fuels tax increase (sec. 8241 of the Senate amendment and sec. 13241 of the conference agreement) 22
3. Modification of the collection of the diesel fuel excise tax (secs. 14242-14243 of the House bill, secs. 8242-8243 of the Senate amendment, and secs. 13242-13243 of the conference agreement) 23
4. Extend the current 2.5-cents-per-gallon motor fuels excise tax rate; Transfer of revenues (sec. 14244 of the House bill, sec. 8244 of the Senate amendment, and sec. 13244 of the conference agreement) 24
5. Increase inland waterways fuel excise tax (secs. 14413 and 8002 of the House bill) 24

E. Compliance Provisions 24

1. Reporting rule for service payments to corporations (sec. 14251 of the House bill) 24
2. Raise standard for accuracy-related and preparer penalties (sec. 14252 of the House bill, sec. 8251(a) of the Senate amendment, and sec. 13251 of the conference agreement) 24
3. Information returns relating to the discharge of indebtedness by certain financial entities (sec. 14253 of the House bill, 8252 of the Senate amendment, and sec. 13252 of the conference agreement) 25

F. Treatment of Intangibles 25

Page

1. Amortization of goodwill and certain other intangible assets (sec. 14261 of the House bill, sec. 8261 of the Senate amendment, and sec. 13261 of the conference agreement) 25
2. Modify special treatment of certain liquidation payments (sec. 14262 of the House bill, sec. 8262 of the Senate amendment, and sec. 13262 of the conference agreement) 25

G. Miscellaneous Revenue-Raising Provisions 26

1. Expansion of 45-day interest-free period for certain refunds (sec. 14273 of the House bill, sec. 7950 of the Senate amendment, and sec. 13271 of the conference agreement) 26
2. Deny deductions relating to travel expenses paid or incurred in connection with travel of taxpayer's spouse or dependents (sec. 14274 of the House bill, sec. 8271 of the Senate amendment, and sec. 13272 of the conference agreement) 26
3. Increase withholding rate on supplemental wage payments (sec. 14275 of the House bill, sec. 8272 of the Senate amendment, and sec. 13273 of the conference agreement) 26

III. Empowerment Zones and Enterprise Communities 27

1. Tax benefits for empowerment zones and enterprise communities (secs. 14301-14304 of the House bill, sec. 15001 of the Senate amendment, and secs. 13301-13303 of the conference agreement) 27
2. Tax credit for contributions to certain community development corporations (sec. 14311 of the House bill, and sec. 13311 of the conference agreement) 27
3. Tax incentives for businesses on Indian reservations (secs. 8181-8182 of the Senate amendment, and secs. 13321-13322 of the conference agreement) 28

IV. Other Revenue Provisions 29

A. Disclosure Provisions 29

1. Extend access to tax information for the Department of Veterans Affairs (sec. 14401 of the House bill, secs. 7901 and 13008 of the Senate amendment, and sec. 13401 of the conference agreement) 29

Page

2. Access to tax information by the Department of Education (secs. 14402, 4032, and 4033 of the House bill, secs. 7902, 12011, and 12055 of the Senate amendment, and sec. 13402 of the conference agreement) 29
3. Access to tax information by the Department of Housing and Urban Development (sec. 14403 of the House bill, secs. 7903 and 3003 of the Senate amendment, and sec. 13403 of the conference agreement) 29

B. Increase in Public Debt Limit (sec. 14421 of the House bill, sec. 7955 of the Senate amendment, and sec. 13411 of the conference agreement) 30

C. Vaccine Provisions 30

1. Extension of vaccine excise tax (sec. 14431 of the House bill, sec. 8273 of the Senate amendment, and sec. 13421 of the conference agreement) 30
2. Childhood Immunization Trust Fund and pediatric vaccine coverage (secs. 14432-14433 of the House bill and sec. 13422 of the conference agreement) 30

D. Other Revenue-Related Provisions 31

1. Disaster relief for individuals whose principal residences were damaged by Presidentially declared disasters (sec. 13431 of the conference agreement) 31
2. Increase amount of Presidential Election Campaign Fund checkoff (sec. 7953 of the Senate amendment and sec. 13441 of the conference agreement) 31
3. Disallowance of deduction for amounts paid or incurred in connection with certain noncomplying group health plans (sec. 13442 of the conference agreement) 31
4. Employer tax credit for FICA taxes paid on tip income (sec. 13443 of the conference agreement) 31
5. Availability and use of death information (sec. 13020 of the House bill and sec. 13444 of the conference agreement) 32
6. BATF user fees for processing applications for alcohol certificates of label approval (sec. 14411 of the House bill and sec. 7951 of the Senate amendment) 32
7. Use of Harbor Maintenance Trust Fund for administrative expenses (sec. 14412 of the House bill and sec. 7952 of the Senate amendment) 32

Page

8. Federal and State income tax refund offset for medical assistance (sec. 7433 of the Senate amendment) 32
9. Annual report to taxpayers on Federal finances (sec. 15002 of the Senate amendment) 32
10. Aircraft registration fees (sec. 11001 of the House bill) 32

INTRODUCTION

This pamphlet,[1] prepared by the staff of the Joint Committee on Taxation, provides an overview of the conference agreement on the revenue provisions of the Omnibus Budget Reconciliation Act of 1993 (Chapter 1 of Title XIII of H.R. 2264).

This pamphlet is prepared as a convenient overview of the conference decisions on the revenue provisions of H.R. 2264 for the Members of Congress and the public. A reference is provided to the statutory sections of the applicable House bill provision, the Senate amendment, and the conference agreement for each revenue provision included in the Statement of Managers for Chapter 1 of Title XIII of the Conference Report. The official legislative statement regarding the conference agreement on the revenue provisions of H.R. 2264 is the Conference Report on the bill (H. Rept. 103-213, filed on August 4, 1993).[2]

[1] This pamphlet may be cited as follows: Joint Committee on Taxation, *Overview of the Conference Agreement on the Revenue Provisions of the Omnibus Budget Reconciliation Act of 1993 (H.R. 2264)* (JCS-10-93), August 23, 1993.

[2] See also House Committee on the Budget, *Report on the Omnibus Budget Reconcilitation Act of 1993 (H.R. 2264)* (H. Rept. 103-111, May 25, 1993); Senate Committee on Finance, *Fiscal Year 1994 Budget Reconciliation Recommendations of the Committee on Finance* (S. Prt. 103-37, June 1993).

OVERVIEW OF REVENUE PROVISIONS

I. TRAINING AND INVESTMENT PROVISIONS

A. Education and Training Provisions

1. Extension of employer-provided educational assistance (sec. 14101 of the House bill, sec. 8101 of the Senate amendment, and sec. 13101 of the conference agreement)

The conference agreement generally follows the Senate amendment, which extends the exclusion for employer-provided educational assistance. The conference agreement modifies the Senate amendment by extending the provision for 30 months, from July 1, 1992, through December 31, 1994.

2. Extension of targeted jobs tax credit (sec. 14102 of the House bill, sec. 8102 of the Senate amendment, and sec. 13102 of the conference agreement)

The conference agreement generally follows the Senate amendment, which extends the targeted jobs tax credit for individuals who begin work for an employer after June 30, 1992. The conference agreement modifies the Senate amendment by extending the provision for 30 months, from July 1, 1992, through December 31, 1994.

B. Investment Incentives

1. Extension of research tax credit; Modification of fixed base percentage for startup companies (secs. 14111-14112 of the House bill, secs. 8111-8112 of the Senate amendment, and secs. 13111(a) and (c) and 13112 of the conference agreement)

The conference agreement extends the research tax credit for three years, from July 1, 1992, through June 30, 1995. The conference agreement follows the identical provision in the House bill and Senate amendment that provides a special rule for start-up firms, so that the fixed-base percentage for these firms eventually will be computed based on actual research experience.

2. Capital gains exclusion for certain small business stock (sec. 14113 of the House bill and sec. 13113 of the conference agreement)

The conference agreement generally follows the House bill, which generally permits a noncorporate taxpayer who holds qualified small business stock for more than five years to exclude from income 50 percent of any gain on the sale or exchange of the stock. The amount of gain eligible for the 50-percent exclusion is limited

to the greater of (1) 10 times the taxpayer's basis in the stock or (2) $10 million of gain from stock in that corporation. One-half of any exclusion claimed is treated as an alternative minimum tax preference item. The conference agreement modifies the House bill by basing the $50 million qualified small business size limitation on the issuer's gross assets (i.e., the sum of the cash and the adjusted bases of other assets held by the small business) without subtracting short-term indebtedness. In addition, for purposes of the size limitation, the conference agreement provides that corporations that are part of a parent-subsidiary controlled group are treated as a single corporation. Under the conference agreement, the provision applies to stock issued after the date of enactment.

3. Rollover of gain from sale of publicly traded securities into specialized small business investment companies (sec. 14114 of the House bill and sec. 13114 of the conference agreement)

The conference agreement follows the House bill, which permits any corporation or individual to elect to defer the recognition of any capital gain realized upon the sale of publicly traded securities to the extent that the proceeds from the sale are used to buy an equity interest in a specialized small business investment company within 60 days of the sale of the securities. The provision is limited, in the case of an individual, to $50,000 of gain per year and $500,000 of gain over a lifetime. In the case of a corporation, these limits are $250,000 and $1,000,000. The provision is effective for sales of publicly traded securities on or after the date of enactment.

4. Modification of minimum tax depreciation rules (sec. 14115 of the House bill, sec. 8115 of the Senate amendment, and sec. 13115 of the conference agreement)

The conference agreement follows the Senate amendment, which eliminates the depreciation component of the adjusted current earnings adjustment of the corporate alternative minimum tax (AMT) for tangible personal property placed in service after December 31, 1993. Thus, corporations are to compute AMT depreciation by using the rules generally applicable to individuals (generally, for tangible personal property, using the 150-percent declining-balance method over the class life of the property).

5. Increase expensing deduction for small business (sec. 14116 of the House bill, sec. 8119 of the Senate amendment, and sec. 13116 of the conference agreement)

The conference agreement increases the amount allowed to be expensed annually under section 179 from $10,000 to $17,500 for property placed in service in taxable years beginning after December 31, 1992.

6. Bonds for high-speed intercity rail facilities (sec. 14121 of the House bill and sec. 13121 of the conference agreement)

The conference agreement generally follows the House bill, which exempts private activity bonds issued to provide high-speed intercity rail facilities from State private activity bond volume limita-

tions. The conference agreement modifies the House bill by providing that the provision applies only to government-owned rail facilities. The provision is effective for bonds issued after December 31, 1993.

7. Extension of qualified small-issue bonds (sec. 14122 of the House bill, sec. 8121 of the Senate amendment, and sec. 13122 of the conference agreement)

The conference agreement follows the House bill, which permanently extends the authority to issue qualified small-issue bonds, effective for bonds issued after June 30, 1992. The conference agreement modifies the House bill by providing a rule for qualified small-issue bonds that could not be issued within the regulatory one-year placed-in-service period due to the lapse of the program.

8. Extension of the tax credit for orphan drug clinical testing expenses (sec. 13111(b) of the conference agreement)

The conference agreement extends the credit for orphan drug clinical testing expenses for 30 months, from July 1, 1992, through December 31, 1994.

C. Expansion and Simplification of Earned Income Tax Credit (sec. 14131 of the House bill, sec. 8131 of the Senate amendment, and sec. 13131 of the conference agreement)

The conference agreement generally follows the House bill and the Senate amendment. The earned income tax credit (EITC) is expanded by (1) increasing the maximum credit available to taxpayers with one qualifying child; (2) increasing, over a three-year period, the maximum credit available to taxpayers with two or more qualifying children and lengthening the phaseout range so that in 1996, when the EITC changes are fully phased in, taxpayers with two or more qualifying children with income up to approximately $27,000 (determined in 1994 dollars) will be eligible for a partial EITC (under present law, the credit completely phases out at approximately $23,760 in 1994); and (3) extending the EITC to childless taxpayers over the age of 25 and under the age of 65 (a 7.65-percent credit on the first $4,000 of earned income). The EITC is simplified by repealing the two supplemental tax credits (the credit for children under one year of age and the credit for health insurance expenses for qualifying children). In addition, the conference agreement requires the Internal Revenue Service to provide notice to taxpayers who receive a refund attributate to the EITC that they may be eligible to receive the credit on an advance payment basis (i.e., at the time wages are paid). The provision is effective for taxable years beginning after December 31, 1993.

D. Real Estate Investment Provisions

1. Extension and modification of qualified mortgage bonds and mortgage credit certificates (sec. 14141 of the House bill, secs. 3141 and 8141A of the Senate amendment, and sec. 13141 of the conference agreement)

The conference agreement generally follows the House bill, which permanently extends the authority to issue qualified mortgage bonds and to elect to trade in private activity bond volume limit for authority to issue mortgage credit certificates. The conference agreement also makes certain modifications to the qualified mortgage bond and mortgage credit certificate programs relating to the treatment of certain housing affordability programs, contracts for deed, and two-family housing. The provision generally is effective after June 30, 1992.

2. Extension and modification of the tax credit for low-income rental housing (sec. 14142 of the House bill, sec. 8142 of the Senate amendment, and sec. 13142 of the conference agreement)

The conference agreement generally follows the identical provision in the House bill and the Senate amendment, which permanently extends the low-income housing tax credit. The conference agreement also makes several modifications to the low income housing credit. The provision is generally effective after June 30, 1992.

3. Modification of passive loss rules for certain real estate persons (sec. 14143 of the House bill, sec. 8143 of the Senate amendment, and sec. 13143 of the conference agreement)

The conference agreement generally follows the House bill, which provides that deductions and credits from an eligible taxpayer's rental real estate activities in which he materially participates are not subject to limitation under the passive loss rules. An individual taxpayer is eligible under the House bill if more than half the business services the taxpayer performs for a taxable year are performed in real property trades or businesses in which he materially participates. The conference agreement adds a requirement that the taxpayer annually perform more than 750 hours of services in such real property trades or businesses to be eligible. The provision is effective for taxable years beginning on or after January 1, 1993.

4. Changes relating to real estate investments by pension funds and others

a. Modification of the rules related to debt-financed income (sec. 14144 of the House bill, sec. 8144 of the Senate amendment, and sec. 13144 of the conference agreement)

Under present law, certain types of income, including rents, royalties, dividends, and interest are excluded from unrelated business taxable income (UBTI), except when such income is derived from

70-916 O - 93 - 2

"debt-financed property." Income from debt-financed property also is excluded from UBTI if earned by pension trusts, educational institutions, and certain other exempt organizations that make debt-financed investments in real property, subject to certain limitations.

The conference agreement follows the identical provision in the House bill and the Senate amendment, which relaxes certain of these limitations and thereby excludes from UBTI income a wider range of debt-financed investments in real estate. The provision is effective for acquisitions (and leases entered into) on or after January 1, 1994.

b. Repeal of the automatic UBTI rule for publicly traded partnerships (sec. 14145 of the House bill, sec. 8145 of the Senate amendment, and sec. 13145 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which repeals the rule that automatically treats income from publicly traded partnerships as UBTI. Thus, investments in publicly traded partnerships are treated the same as investments in other partnerships for purposes of the UBTI rules. The provision is effective for partnership years beginning on or after January 1, 1994.

c. Permit title-holding companies to receive small amounts of UBTI (sec. 14146 of the House bill, sec. 8146 of the Senate amendment, and sec. 13146 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which permits a title-holding company that is exempt from tax under section 501(c)(2) or 501(c)(25) to receive UBTI (that otherwise would terminate the exempt status of such a company) of up to 10 percent of its gross income for the taxable year, provided that the UBTI is incidentally derived from the holding of real property. The provision is effective for taxable years beginning on or after January 1, 1994.

d. Exclusion from UBTI of gains from the disposition of real property acquired from financial institutions in conservatorship or receivership (sec. 14147 of the House bill, sec. 8147 of the Senate amendment, and sec. 13147 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which provides an exclusion from UBTI for income from sales of property held for sale in the ordinary course of a trade or business by excluding gains and losses from the sale, exchange, or other disposition of certain real property and mortgages acquired from financial institutions that are in conservatorship or receivership. The exclusion is limited to properties designated as "disposal property" within nine months of acquisition and disposed of within two-and-a-half years of acquisition. The provision is effective for property acquired on or after January 1, 1994.

e. Exclusion of certain option premiums and loan commitment fees from UBTI (sec. 14148 of the House bill, sec. 8148 of the Senate amendment, and sec. 13148 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which expands the exception from UBTI for gains on the lapse or termination of options on securities to include gains or losses from such options (without regard to whether they are written by the organization), from options on real property, and from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale or lease of real property. In addition, the provision excludes loan commitment fees from UBTI. The provision is effective for amounts received on or after January 1, 1994.

f. Relaxation of limitations on investments in real estate investment trusts by pension funds (sec. 14149 of the House bill, sec. 8149 of the Senate amendment, and sec. 13149 of the conference agreement)

Under present law, a corporation does not qualify as a real estate investment trust (REIT) if, at any time during the last half of its taxable year, more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by five or fewer individuals (the "five or fewer rule"). A domestic pension trust is treated as a single individual for purposes of this rule.

The conference agreement follows the identical provision in the House bill and the Senate amendment, which provides that a pension trust generally is not treated as a single individual for purposes of the five-or-fewer rule. Rather, the beneficiaries of the pension trust are treated as holding stock in the REIT in proportion to their actuarial interests in the trust. The provision applies to taxable years beginning on or after January 1, 1994.

5. Treatment of certain real property business debt of individuals (sec. 14150 of the House bill and sec. 13150 of the conference agreement)

The conference agreement follows the House bill, which provides an election to taxpayers other than C corporations to exclude income from the discharge of qualified real property business debt from gross income. The amount excluded cannot exceed the taxpayer's basis in depreciable real property and is applied to reduce the basis of that real property. The amount excluded also cannot exceed the excess of the principal amount of the debt just before the discharge, over the fair market value (reduced by certain other debt) of the business real property that is security for the debt. Real property business debt generally is debt incurred or assumed in connection with real property used in a trade or business, and that is secured by that real property. Debt incurred or assumed on or after January 1, 1993, must be incurred to acquire, construct or substantially improve real property secured by the debt. The provision applies to debt discharged after December 31, 1992.

6. Increase recovery period for depreciation of nonresidential real property (sec. 14151 of the House bill, sec. 8151 of the Senate amendment, and sec. 13151 of the conference agreement)

The conference agreement generally follows the House bill, which extends the recovery period for determining the depreciation deduction with respect to nonresidential real property from 31.5 years to 39 years, with a modification to the effective date. The provision generally applies to property placed in service on or after May 13, 1993.

E. Luxury Excise Tax; Diesel Fuel Tax for Motorboats

1. Repeal of luxury excise tax on boats, aircraft, jewelry, and furs; Index and modify luxury excise tax on automobiles

a. Repeal luxury tax on boats, aircraft, jewelry, and furs; Index threshold for automobiles (sec. 14161 of the House bill, sec. 8161 of the Senate amendment, and sec. 13161 of the conference agreement)

The conference agreement generally follows the identical provision in the House bill and the Senate amendment, which repeals the luxury excise tax imposed on boats, aircraft, jewelry, and furs, effective for sales on or after January 1, 1993. The provision also exempts passenger vehicle dealers from paying the luxury tax on vehicles used as demonstrators for potential customers, effective for vehicles used after December 31, 1992. The provision indexes the $30,000 threshold for the luxury excise tax on automobiles for inflation occurring after 1990. The conference agreement modifies the indexing rules of the House bill and the Senate amendment to provide that the indexation is made in $2000 increments. For 1993 sales, the applicable threshold continues to be $30,000; for 1994 sales, the applicable threshold will be $32,000.[3]

b. Exemption from luxury excise tax for certain equipment installed on passenger vehicles for use by disabled individuals (sec. 14162 of the House bill, sec. 8162 of the Senate amendment, and sec. 13162 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which repeals the luxury excise tax on any part or accessory installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, effective for purchases after December 31, 1990.

[3] The Congress intended that the applicable threshold be $32,000 for 1993 sales on or after the date of enactment. A technical correction will be needed so that the statute reflects this intent.

2. Impose excise tax on diesel fuel used in noncommercial motorboats (sec. 14163 of the House bill, sec. 8163 of the Senate amendment, and sec. 13163 of the conference agreement)

The conference agreement generally follows the Senate amendment, which temporarily imposes the 20.1-cents-per-gallon diesel fuel excise taxes on diesel fuel used by recreational motorboats, effective after December 31, 1993, and before January 1, 2000.[4] The conference agreement modifies the Senate amendment by retaining the proceeds of the taxes in the General Fund.

F. Other Provisions

1. Alternative minimum tax treatment for contributions of appreciated property (sec. 14171 of the House bill, sec. 8171 of the Senate amendment, and sec. 13171 of the conference agreement)

The conference agreement generally follows the provision in the House bill and the Senate amendment that provides that contributions of appreciated property are not treated as a tax preference item for alternative minimum tax (AMT) purposes. Thus, donors may claim the same charitable contribution deduction for both regular tax and AMT purposes. The provision is effective for gifts of tangible personal property made after June 30, 1992, and contributions of other property made after December 31, 1992.

The conference agreement modifies the House bill by eliminating the statutory requirement that the Treasury Department report to the Congress within one year on the development of a procedure under which taxpayers may seek an advance valuation from the Internal Revenue Service for certain property prior to its donation to charity. The Statement of Managers includes a direction to the Treasury Department to provide such a report to the Congress.

2. Substantiation and disclosure requirements for charitable contributions (secs. 14271-14272 of the House bill, secs. 8172-8173 of the Senate amendment, and secs. 13172-13173 of the conference agreement)

The conference agreement generally follows the Senate amendment, which requires taxpayers who make a separate charitable contribution of $250 or more for which they claim a deduction to obtain written substantiation from the charity, rather than relying solely on a canceled check. In addition, any charity that receives a *quid pro quo* contribution exceeding $75 (meaning a payment in excess of $75 made partly as a gift and partly as consideration for goods or services furnished by the charity) is required to inform the contributor in writing of the value of the goods or services furnished by the charity; only the portion of the payment exceeding the value of the goods and services is deductible as a charitable contribution. The conference agreement modifies the Senate amendment by requiring substantiation to include a general acknowledgement of intangible religious benefits not sold in commer-

[4] The 4.3-cents-per-gallon transportation fuels excise tax also applies to fuels used for noncommercial motorboats, effective January 1, 1994 (See item II.D.2., below).

cial contexts, but such benefits need not be valued or described in detail. A charity is not required to value contributions of non-cash property claimed by the donor to be worth $250 or more. The provisions are effective for contributions made after December 31, 1993.

3. Extension of General Fund transfer to Railroad Retirement Tier 2 Fund (sec. 14172 of the House bill and sec. 8174 of the Senate amendment)

The conference agreement does not include the provision in the House bill or the Senate amendment.

4. Extension of health insurance deduction for self-employed individuals (sec. 14173 of the House bill, sec. 8175 of the Senate amendment, and sec. 13174 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment. The provision extends the 25-percent deduction for health insurance expenses of self-employed individuals. The extension is effective for taxable years ending after June 30, 1992, and before January 1, 1994. In addition, under the provision, the determination of whether a self-employed individual or his or her spouse is eligible for employer-paid health benefits (and is thus ineligible for the 25-percent deduction) is made on a monthly basis. This provision applies to taxable years beginning after December 31, 1992.

II. REVENUE-RAISING PROVISIONS

A. Individual Income and Estate and Gift Tax Provisions

1. Increased tax rates for higher-income individuals

a. Individual tax rates (secs. 14201-14203 of the House bill, secs. 8201-8203A of the Senate amendment, and secs. 13201-13203 of the conference agreement)

The conference agreement follows the House bill, which adds two new marginal tax rates. A 36-percent rate applies to taxpayers with taxable incomes in excess of $140,000 (married individuals filing joint returns), $127,500 (unmarried individuals filing as head of household), and $115,000 (unmarried individuals filing as single). A 10-percent surtax applies for individual taxpayers with taxable incomes in excess of $250,000. The surtax is computed by applying a 39.6-percent rate to taxable income in excess of the threshold.[5] Net capital gains remain subject to a maximum 28-percent tax rate.

The provision also establishes a two-tiered alternative minimum tax system for individuals, with a 26-percent rate applying to the first $175,000 of alternative minimum taxable income in excess of the exemption amount, and a 28-percent rate applying to alternative minimum taxable income more than $175,000 in excess of the exemption amount. The exemption amount is increased from $40,000 for married taxpayers filing joint returns and $30,000 for unmarried taxpayers to $45,000 and $33,750, respectively.

Under the provision, the increased rates are effective for taxable years beginning after December 31, 1992. The conference agreement permits individuals who are subject to the new marginal regular income tax rates to elect to pay the increased tax liability for taxable years beginning in 1993 over a three-year period (without payment of interest or penalties). Beginning in 1995, the income thresholds for the 36- and 39.6-percent rate brackets under the regular income tax are indexed for inflation.

b. Overall limitations on itemized deductions for high-income taxpayers made permanent (sec. 14204 of the House bill, sec. 8204 of the Senate amendment, and sec. 13204 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which permanently extends the present-law limitation on itemized deductions.

[5] The 36- and 39.6-percent rates also apply to estates and trusts with taxable incomes in excess of $5,500 and $7,500, respectively. In addition, the provision adjusts the rate brackets applicable to estates and trusts, so that a 15-percent rate applies to income up to $1,500, a 28-percent rate applies to income between $1,500 and $3,500, and a 31-percent rate applies to income between $3,500 and $5,500.

c. Phaseout of personal exemption of high-income taxpayers made permanent (sec. 14205 of the House bill, sec. 8205 of the Senate amendment, and sec. 13205 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which permanently extends the present-law phaseout of personal exemptions.

2. Provisions to prevent conversion of ordinary income to capital gain (sec. 14206 of the House bill, sec. 8206 of the Senate amendment, and sec. 13206 of the conference agreement)

a. Recharacterization of capital gain as ordinary income for certain financial transactions

The conference agreement generally follows the Senate amendment, which requires that a portion of income derived from certain "conversion transactions" be taxed as ordinary income rather than as capital gain. The Senate amendment provides that transactions of options dealers and commodities traders in the normal course of their trades or businesses are not treated as conversion transactions (subject to certain specific exceptions). The conference agreement expands the definition of "commodities trader", and provides for clarification in the Statement of Managers to allow Treasury to provide for a lower short-term interest rate. The provision is effective for conversion transactions entered into after April 30, 1993.

b. Repeal of certain exceptions to the market discount rules

The conference agreement generally follows the identical provision in the House bill and the Senate amendment, which provides that tax-exempt obligations and taxable bonds issued on or before July 18, 1984, are subject to the market discount rules. The conference agreement makes a technical modification to the provision by altering the definition of "revised issue price." The provision is effective for bonds purchased after April 30, 1993.

c. Accrual of income by holders of stripped preferred stock

The conference agreement follows the identical provision in the House bill and the Senate amendment, which provides that certain holders of "stripped preferred stock" generally are treated in the same manner as are purchasers of stripped bonds under the original issue discount rules. The provision is effective for stripped preferred stock purchased after April 30, 1993.

d. Treatment of net capital gain as investment income

The conference agreement follows the identical provision in the House bill and the Senate amendment, which excludes net capital gain from the definition of investment income for purposes of computing the investment interest limitation unless the taxpayer elects to include net capital gain in investment income and forgoes the benefit of the 28-percent maximum capital gains rate. The provi-

sion is effective for taxable years beginning after December 31, 1992.

e. Definition of substantially appreciated inventory

Under present law, amounts received by a partner in exchange for the partner's interest in a partnership are treated as ordinary income to the extent they are attributable to "substantially appreciated inventory" of the partnership. This rule generally only applies if the value of a partnership's inventory exceeds 120 percent of its adjusted basis and 10 percent of the value of all partnership property (other than money). The conference agreement follows the identical provision in the House bill and the Senate amendment, which eliminates the 10-percent threshold and removes the basis of certain property from the denominator in the 120-percent test. The provision applies to exchanges occurring after April 30, 1993.

3. Repeal health insurance wage base cap (sec. 14207 of the House bill, sec. 8207 of the Senate amendment, and sec. 13207 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which repeals the dollar limit on wages and self-employment income subject to the Medicare hospital insurance (HI) tax. The provision is effective for wages and self-employment income received after December 31, 1993.

4. Reinstate top estate and gift tax rates (sec. 14208 of the House bill, sec. 8208 of the Senate amendment, and sec. 13208 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which reinstates the two highest estate and gift tax rates that expired at the end of 1992. Thus, for taxable transfers over $2.5 million but not over $3 million, the marginal estate and gift tax rate is 53 percent. For taxable transfers over $3 million, the marginal estate and gift tax rate is 55 percent. Also, since the generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate, the rate of tax on generation-skipping transfers under the provision is 55 percent. The provision is effective for decedents dying, gifts made, and generation-skipping transfers occurring after December 31, 1992.

5. Reduce deductible portion of business meals and entertainment expenses (sec. 14209 of the House bill, secs. 8209 and 8209A of the Senate amendment, and sec. 13209 of the conference agreement)

The conference agreement follows the provision in the House bill and the Senate amendment that reduces the deductible portion of otherwise allowable business meals and entertainment expenses from 80 percent to 50 percent. The conference agreement does not include the change to the substantiation threshold for business meals made by the Senate amendment. The provision is effective for taxable years beginning after December 31, 1993.

6. Deny deduction for club dues (sec. 14210 of the House bill, sec. 8210 of the Senate amendment, and sec. 13210 of the conference agreement)

The conference agreement follows the Senate amendment, which provides that no deduction is permitted for club dues. This rule applies to all types of clubs (including hotel and airline clubs). Specific business expenses (e.g., meal expenses) incurred at a club are deductible to the extent they otherwise satisfy the standards for deductibility. The provision is effective for amounts paid or incurred after December 31, 1993.

7. Deny deduction for executive pay over $1 million (sec. 14211 of the House bill, sec. 8211 of the Senate amendment, and sec. 13211 of the conference agreement)

The conference agreement follows the Senate amendment, with modifications and clarifications in the Statement of Managers, including modifications relating to the definition of performance-based compensation and what constitutes adequate disclosure. Under the provision, for purposes of the regular income tax and the alternative minimum tax, the otherwise allowable deduction for compensation paid or accrued with respect to a covered employee of a publicly held corporation is limited to no more than $1 million per year. Unless specifically excluded, this limitation applies to all remuneration for services, including cash and the cash value of all non-cash remuneration (including benefits). The following types of compensation are not taken into account: (1) remuneration payable on a commission basis; (2) remuneration payable solely on account of the attainment of one or more performance goals if certain outside director and shareholder approval requirements are met; (3) payments to a tax-qualified retirement plan (including salary reduction contributions); (4) amounts that are excludable from the executive's gross income (such as employer-provided health benefits and miscellaneous fringe benefits (sec. 132)); and (5) any remuneration payable under a written binding contract that was in effect on February 17, 1993, and all times thereafter before such remuneration was paid and that was not modified thereafter in any material respect before such remuneration was paid. The provision applies to compensation that is otherwise deductible by the corporation in a taxable year beginning after December 31, 1993.

8. Reduce compensation taken into account for qualified retirement plan purposes (sec. 14212 of the House bill, sec. 8212 of the Senate amendment, and sec. 13212 of the conference agreement)

The conference agreement follows the Senate amendment, which provides that the limit on compensation taken into account under a qualified plan (sec. 401(a)(17)) is reduced to $150,000. This limit is indexed for inflation in $10,000 increments. The provision is effective for benefits accruing in plan years beginning after December 31, 1993. A delayed effective date applies to collectively bargained plans. A special grandfather rule applies to eligible participants in governmental plans.

9. Modify deduction for moving expenses (sec. 14213 of the House bill, sec. 8213 of the Senate amendment, and sec. 13213 of the conference agreement)

The conference agreement follows the House bill, with modifications. Under the House bill, the cost of meals consumed while traveling and while living in temporary quarters near a new work place, and the cost of selling (or settling an unexpired lease on) an old residence and buying (or acquiring a lease on) a new residence are not deductible moving expenses. Under the modifications made by the conference agreement, deductible moving expenses include only the expenses of moving household goods and effects and of traveling (including lodging, but excluding meals) from the former residence to the new place of residence. The conference agreement also modifies the House bill by increasing the mileage threshold, below which moving expenses are not deductible, from 35 to 50 miles. The conference agreement also modifies the House bill to provide that moving expenses paid by the employer (whether directly or by reimbursement) are excludable from gross income. Allowable moving expenses not paid by an employer are deductible by the taxpayer in calculating adjusted gross income. The provision is generally effective for expenses incurred after December 31, 1993.

10. Modify estimated tax requirements for individuals (sec. 14214 of the House bill, sec. 8214 of the Senate amendment, and sec. 13214 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which repeals the special rule that denies the use of the 100-percent of last year's liability safe harbor for taxable years beginning after December 31, 1993. The provision changes the 100-percent of last year's liability safe harbor into a 110-percent of last year's liability safe harbor for any individual with an adjusted gross income (AGI) of more than $150,000, as shown on the individual's income tax return for the preceding taxable year. Individuals with a preceding-year AGI of $150,000 or less retain the availability of the 100-percent of last year's liability safe harbor under the conference agreement. The present-law ability to pay estimated taxes based on 90 percent of the taxpayer's current year tax liability remains available to all individuals.

11. Increase taxable portion of Social Security and Railroad Retirement Tier 1 benefits (sec. 14215 of the House bill, sec. 8215 of the Senate amendment, and sec. 13215 of the conference agreement)

Under present law, taxpayers are required to include in gross income a portion of their Social Security benefits when their provisional income (defined for this purpose as adjusted gross income, plus tax-exempt interest, plus certain foreign source income, plus one-half of Social Security benefits) exceeds a threshold amount. The threshold amount is $32,000 for married taxpayers filing joint returns and $25,000 for unmarried taxpayers. For persons whose provisional income exceeds the applicable threshold amount, the amount of Social Security benefits includible in income is the lesser

of 50 percent of Social Security benefits, or 50 percent of the amount by which provisional income exceeds the applicable threshold. A similar rule applies to Railroad Retirement Tier 1 benefits.

The conference agreement follows the Senate amendment, which creates a second tier of Social Security benefit inclusion in gross income. Under the conference agreement modification of the Senate amendment, the second tier threshold applies to taxpayers with provisional income greater than $34,000 for unmarried taxpayers or $44,000 for married taxpayers filing joint returns. For these taxpayers, gross income includes the lesser of: (1) 85 percent of the taxpayer's Social Security benefit; or (2) the sum of: (a) the smaller of (i) the amount included under present law; or (ii) $4,500 (for unmarried taxpayers) or $6,000 (for married taxpayers filing joint returns), and (b) 85 percent of the excess of the taxpayer's provisional income over the applicable new threshold amounts. For married taxpayers filing separate returns, gross income includes the lesser of 85 percent of the taxpayer's Social Security benefit or 85 percent of the taxpayer's provisional income. A corresponding change applies to the taxation of Railroad Retirement Tier 1 benefits.

Revenues from the income taxation of Social Security and Railroad Retirement Tier 1 benefits attributable to the increased portion of benefits included in gross income are to be transferred to the Medicare Hospital Insurance Trust Fund.

The provision is effective for taxable years beginning after December 31, 1993.

B. Business Provisions

1. Increase corporate tax rate (sec. 14221 of the House bill, sec. 8221 of the Senate amendment, and sec. 13221 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which establishes a new 35-percent marginal tax rate on corporate taxable income (including net capital gains) in excess of $10 million, effective for taxable years beginning on or after January 1, 1993. A fiscal year corporation is required to use a "blended rate" for its fiscal year that includes January 1, 1993.

2. Disallowance of deduction for certain lobbying expenses (sec. 14222 of the House bill, sec. 8222 of the Senate amendment, and sec. 13222 of the conference agreement)

The conference agreement provides that taxpayers may not deduct as a business expense amounts incurred in an attempt to influence Federal or State (but not local) legislation through communication with members or employees of legislative bodies or other government officials who may participate in the formulation of legislation. The conference agreement also disallows a deduction for costs of contacting certain high-ranking Federal executive branch officials in an attempt to influence their official actions or positions. The provision contains a flow-through rule to disallow a business deduction for a portion of membership dues paid to a trade organization or other non-charitable organization that engages in lobby-

ing, unless the organization pays a 35-percent proxy tax on its lobbying expenditures.

The conference agreement also provides an anti-avoidance rule for contributions to charities (but no reporting by charities is required) and a $2,000-per-taxpayer de minimis exception for in-house lobbying expenditures.

The provision is effective for amounts paid after December 31, 1993.

3. Mark-to-market accounting method for dealers in securities (sec. 14223 of the House bill, sec. 8223 of the Senate amendment, and sec. 13223 of the conference agreement)

The conference agreement follows the House bill, which applies two general rules (the "mark-to-market rules") to certain securities that are held by a dealer in securities. First, any such security that is inventory in the hands of the dealer is included in inventory at its fair market value. Second, any such security that is not inventory in the hands of the dealer and that is held as of the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account by the dealer in determining gross income for that taxable year. Gain or loss taken into account under the mark-to-market rules generally is treated as ordinary gain or loss.

The provision applies to taxable years ending on or after December 31, 1993. The net amount of the section 481(a) adjustment that arises from this change in the taxpayer's method of accounting is to be taken into account ratably over a five-taxable year period beginning with the first taxable year ending on or after December 31, 1993. The conference agreement modifies the provision to allow certain floor specialists and market makers that used the LIFO method of accounting for their inventories of securities for at least five years to use a 15-year period over which to take the portion of the section 481(a) adjustment attributable to the use of the LIFO method into account.

4. Tax treatment of certain FSLIC financial assistance (sec. 14224 of the House bill, sec. 8224 of the Senate amendment, and sec. 13224 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which treats FSLIC assistance that reimburses an acquiror's loss on disposition or writedown of an asset as compensation for such loss. Thus, such reimbursed losses are not deductible. This follows the position stated in a March 4, 1991, report by the Treasury Department. As in H.R. 11, as passed by the 102d Congress, the provision is effective for FSLIC assistance credited on or after March 4, 1991, for taxable years ending on or after March 4, 1991 (including the computation of losses carried forward to such years). No inference is intended as to prior law.

5. Modify corporate estimated tax rules (sec. 14225 of the House bill, sec. 8225 of the Senate amendment, and sec. 113225 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which provides that for taxable years beginning after December 31, 1993, a corporation that does not use the 100-percent of last year's liability safe harbor for its estimated tax payments is required to base its estimated tax payments on 100 percent (rather than 97 percent or 91 percent) of the tax shown on its income tax return for the current year, whether such tax is determined on an actual or annualized basis. In addition, the provision modifies the rules relating to income annualization for corporate estimated tax purposes by: (1) adding a new, third set of periods over which corporations may elect to annualize income and (2) requiring corporations to elect annually which of the three periods they will use to annualize income for the year.

6. Repeal stock-for-debt exception to cancellation of indebtedness income (sec. 8226(a) of the Senate amendment and sec. 13226(a) of the conference agreement)

The conference agreement generally follows the Senate amendment, which repeals the stock-for-debt exception applicable to corporations that are insolvent or in bankruptcy. Thus, after the effective date, the transfer of stock by a bankrupt or insolvent corporation in satisfaction of its indebtedness will give rise to cancellation of indebtedness income to the extent the amount of debt forgiven exceeds the fair market value of the stock. The corporation may defer the recognition of this income by reducing its tax attributes. The conference agreement modifies the Senate amendment by repealing the exception generally for stock transferred after December 31, 1994, except in a title 11 bankruptcy case filed on or before December 31, 1993. The conference agreement also clarifies the scope of the provision.

7. Treatment of passive activity losses and credits and alternative minimum tax credits in certain discharges of indebtedness (sec. 8226(b) of the Senate amendment and sec. 13226(b) of the conference agreement)

The conference agreement follows the Senate amendment, which adds (1) alternative minimum tax credits and (2) passive activity loss and credit carryovers to the attributes that are reduced in the case of a discharge of indebtedness of the taxpayer that is excludable under Internal Revenue Code section 108(a). The provision is effective for discharges of debt in taxable years beginning after December 31, 1993.

8. Limitation on section 936 credit (sec. 14226 of the House bill, sec. 8227 of the Senate amendment, and sec. 13227 of the conference agreement)

The conference agreement generally follows the Senate amendment (with simplifying changes and clarifications) without the amendments made on the Senate floor. In general, the conference agreement provides that the section 936 credit allowed to a posses-

sion corporation for a taxable year against U.S. tax on its active business income is determined as under present law, but is subject to either of two alternative limitations. The taxpayer may choose which limitation to apply. One limitation is based on factors that reflect the corporation's economic activity in the possessions (i.e., compensation, depreciation, and certain taxes paid). The other limitation is based on a statutorily defined percentage of the credit that would be allowable under present-law rules. The provision is effective for taxable years beginning after December 31, 1993.

The present-law limitation on the cover over of rum excise taxes to Puerto Rico and the Virgin Islands also is temporarily raised from $10.50 per proof gallon to $11.30 per proof gallon. This provision applies in the case of rum brought into the United States during the five-year period beginning on October 1, 1993.

9. Enhance earnings stripping rules (sec. 14227 of the House bill, sec. 8228 of the Senate amendment, and sec. 13228 of the conference agreement)

Under present law, the earnings stripping rules prohibit a thinly capitalized corporation from taking a current deduction for certain excessive interest paid to a related party if the interest income is exempt from U.S. taxation. The conference agreement follows the identical provision in the House bill and the Senate amendment, which modifies the earnings stripping rules to cover interest paid or accrued in any taxable year beginning after December 31, 1993, on any loan from an unrelated lender that is guaranteed by a related party who is exempt from Federal income tax and the interest on which is not subject to a gross-basis tax imposed by the United States.

C. Foreign Provisions

1. Current taxation of certain earnings of controlled foreign corporations (secs. 14231-14233 of the House bill, secs. 8231-8233 of the Senate amendment, and secs. 13231-13233 of the conference agreement)

The conference agreement generally follows the Senate amendment, which limits the availability of deferral of U.S. tax on certain earnings of controlled foreign corporations attributable to taxable years beginning after September 30, 1993. The Senate amendment generally requires income inclusions for U.S. shareholders of a controlled foreign corporation to the extent of the corporation's post-effective date accumulated earnings invested in excess passive assets. The Senate amendment also conforms the treatment of earnings of controlled foreign corporations invested in U.S. property to the new rules for earnings invested in excess passive assets, and makes related modifications to other rules applicable to controlled foreign corporations and passive foreign investment companies (including special rules applicable to R&E expenditures and payments for the use of certain property).

The conference agreement clarifies the operation of the aggregation rule that applies under the Senate amendment to a group of related controlled foreign corporations. The conference agreement also clarifies the House bill and Senate amendment provisions re-

garding investments in U.S. property in cases where a foreign corporation becomes a controlled foreign corporation (e.g., upon its acquisition by a U.S. person from a foreign person) after it has invested accumulated earnings in U.S. property.

2. Allocation of research expenditures (sec. 14234 of the House bill, sec. 8234 of the Senate amendment, and sec. 13234 of the conference agreement)

The conference agreement follows the Senate amendment, which provides a temporary rule for allocation of research expenses between U.S. and foreign income for taxable years (beginning on or before August 1, 1994) beginning immediately after the taxpayer's last taxable year to which Rev. Proc. 92-56 applies, or would have applied had the taxpayer elected the benefits of the Revenue Procedure. The rule generally is identical to existing temporary rules for allocating research expenses, except that the percentage of U.S.-incurred research expenses that is allocated to U.S. source income (and the percentage of foreign-incurred research expenses that is allocated to foreign source income) is 50 instead of 64.

3. Eliminate working capital exception for foreign tax credit for foreign oil and gas and shipping income (sec. 14235 of the House bill, 8235 of the Senate amendment, and sec. 13235 of the conference agreement)

The conference agreement generally follows the identical provision in the House bill and the Senate amendment. The provision limits taxpayers' ability to cross-credit foreign taxes on foreign oil and gas extraction income (FOGEI), foreign oil related income (FORI), and shipping income for taxable years beginning after December 31, 1992, by placing certain passive income related to oil and gas and shipping operations in the separate foreign tax credit limitation basket for passive income. In addition, the provision excludes certain passive income related to foreign oil and gas activities from the computation of the special FOGEI and FORI foreign tax credit limitations. The conference agreement clarifies the interaction of the new rule with existing law provisions defining shipping income.

4. Transfer pricing initiative (sec. 14236 of the House bill, 8236 of the Senate amendment, and sec. 13236 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which strengthens penalties for substantial and gross valuation misstatements in connection with transactions that result in section 482 transfer price adjustments for taxable years beginning after December 31, 1993. This is accomplished by lowering the threshold amount of adjustment that triggers the penalties, and by imposing documentation requirements that must be met in order to avoid application of the penalties in cases where the thresholds are otherwise exceeded. The Statement of Managers includes language clarifying the House Ways and Means and Senate Finance Committee report discussions of the burden on taxpayers applying an unspecified pricing method to a type of transaction that generally is not the subject of any pric-

ing methods specified in the section 482 regulations. The language indicates that when no specified method would be likely to lead to a clear reflection of income, the taxpayer need simply establish that the transaction is of a type for which no method is specified.

5. Deny portfolio interest exemption for contingent interest (sec. 14237 of the House bill, sec. 8237 of the Senate amendment, and sec. 13237 of the conference agreement)

The conference agreement generally follows the identical provision in the House bill and the Senate amendment. The provision makes the exemption from income for the receipt of interest on portfolio debt obligations inapplicable to certain contingent interest income received by foreign persons after December 31, 1993. Subject to certain exceptions, contingent interest includes interest determined by reference to any of the following attributes of the debtor or any related person: receipts, sales, or other cash flow; income or profits; or changes in the value of property. In addition, contingent interest generally includes interest determined by reference to any dividend, partnership distribution, or similar payment made by the debtor or a related person. The provision does not override existing tax treaties that reduce or eliminate U.S. withholding tax on interest paid to foreign persons. The provision does not apply to interest with respect to any indebtedness with a fixed term that was issued on or before April 7, 1993.

In addition, the conference agreement modifies the provision to include a rule to determine the estate tax treatment of debt instruments that provide for both interest described as contingent under the provision and interest not so described. Under the conference agreement, an appropriate portion (determined in a manner prescribed by the Treasury) of the value of the instrument is treated as property within the United States and, thus, is included in the gross estate of a nonresident noncitizen decedent. The Statement of Managers indicates that, until Treasury issues guidance for determining the appropriate portion, taxpayers are permitted to use any reasonable method of apportionment.

6. Regulatory authority to address multiple-party financing arrangements (sec. 14238 of the House bill, sec. 8238 of the Senate amendment, and sec. 13238 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which authorizes the Treasury Secretary to promulgate regulations that set forth rules for recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by the Internal Revenue Code. The provision applies to back-to-back loan transactions and other financing transactions as well. The provision is effective on the date of enactment.

7. Exports of certain unprocessed softwood timber (sec. 8239 of the Senate amendment and sec. 13239 of the conference agreement)

The conference agreement follows the provision in the Senate amendment, which modifies certain provisions of the Internal Revenue Code as they apply to exporters of unprocessed timber that is a softwood. For this purpose, the term "unprocessed timber" means any log, cant, or similar form of timber.

For purposes of both the foreign sales corporation rules and the domestic international sales corporation rules, the provision excludes from the definition of "export property" any unprocessed timber that is a softwood.

The provision also amends the sales source rules as they apply to inventory property. Under the provision, any income from the sale of any unprocessed timber that is a softwood and that was cut from an area located in the United States is domestic source income.

Finally, the provision treats as subpart F foreign base company sales income any income derived by a controlled foreign corporation in connection with the sale of any unprocessed timber that is a softwood and was cut from an area located in the United States. In addition, the provision treats as subpart F foreign base company sales income any income derived by a controlled foreign corporation from the milling of any such timber outside the United States. Any income treated as subpart F income under the Senate amendment that is earned by an export trade corporation is not subject to reduction by the export trade income of the corporation.

The provision is effective for transactions occurring after date of enactment.

D. Energy and Motor Fuels Tax Provisions

1. Energy Btu tax (sec. 14241 of the House bill)

The conference agreement does not include the provision in the House bill.

2. Transportation fuels tax increase (sec. 8241 of the Senate amendment and sec. 13241 of the conference agreement)

The conference agreement generally follows the Senate amendment, which imposes an excise tax of 4.3 cents per gallon on: (1) all transportation fuels currently subject to the Leaking Underground Storage Tank Trust Fund (LUST) excise tax, except jet fuels used in aviation; (2) liquefied petroleum gases currently taxable as special motor fuels; and (3) diesel fuel used in noncommercial motorboats. Taxable fuels include motor fuels (gasoline, diesel fuel and special motor fuels) used for highway transportation or in motorboats; gasoline used in aviation; gasoline used in off-highway non-business uses; diesel fuel used in trains; and fuels used in inland waterways transportation.

The conference agreement modifies the Senate amendment to include noncommercial aviation fuels and compressed natural gas used in highway vehicles and motor boats as taxable fuels, and to provide that fuels used in commercial aviation are subject to the tax after September 30, 1995.

The new excise tax generally is collected in the same manner as the existing excise taxes on these fuels (i.e., the tax on gasoline and diesel fuel (see item I.D.3., below) is collected on removal of these fuels from registered terminal facilities, the tax on special motor fuels is collected upon the retail sale of these fuels, and the tax on fuels used in inland waterways is collected on the use of these fuels). Under the conference agreement, the tax on compressed natural gas is collected on the retail sale (or use) of the fuel.

Fuel uses that are exempt from the LUST tax generally are exempt from the new tax. Exempt uses include, for example, number two distillate used as heating oil, gasoline and diesel fuel used on farms for farming purposes, fuels used for off-highway business uses (such as to operate stationary pumps or compressors or in construction vehicles or fishing vessels), diesel fuel used in commercial motor boats, fuels used by State and local governments and nonprofit schools, exported fuels, fuels used in international aviation, and fuels used in international and domestic shipping (other than shipping on the inland waterways system).

The conference agreement modifies the Senate amendment by providing that the 4.3-cent-per-gallon tax is to be retained in the General Fund.

The provision generally is effective on October 1, 1993, with appropriate floor stocks taxes being imposed on that date.

3. Modification of the collection of the diesel fuel excise tax (secs. 14242-14243 of the House bill, secs. 8242-8243 of the Senate amendment, and secs. 13242-13243 of the conference agreement)

The conference agreement follows the portions of the provision in the House bill and the Senate amendment that are identical, which provide that the 20.1-cents-per-gallon diesel fuel excise tax is to be collected on removal from a terminal (i.e., at the terminal rack) under generally the same rules as the gasoline tax currently is collected. Unlike the gasoline tax, however, diesel fuel destined for an exempt use is not taxed as the fuel is removed from the terminal if certain dyeing requirements are met. The conference agreement follows the provision in the Senate amendment that provides for Treasury Department designation of colors. The conference agreement follows the provision in the House bill relating to supplemental markers.

The conference agreement follows the provision in the Senate amendment that allows refunds, as under current law, for tax-paid fuel used in an exempt use. However, vendors to farmers and State and local governments are required to apply for refunds for these exempt users if the vendors sell tax-paid fuel to these persons for use in an exempt use. The conference agreement follows the effective date of the Senate amendment, which applies the tax to diesel fuel removed from terminals after December 31, 1993, with appropriate floor stocks taxes being imposed on that date.

4. Extend the current 2.5-cents-per-gallon motor fuels excise tax rate; Transfer of revenues (sec. 14244 of the House bill, sec. 8244 of the Senate amendment, and sec. 13244 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which extends the 2.5-cents-per-gallon motor fuels excise tax rate. The conference agreement modifies the provision to extend the excise tax from October 1, 1995, through December 31, 1999. The conference agreement also modifies the provision by reducing the excise tax rate on railroads to 1.25 cents per gallon during the extension period. Under the conference agreement, revenues from the 2.5-cents-per-gallon tax from highway uses of gasoline, diesel fuel, and special motor fuels are to be deposited in the Highway Trust Fund, with revenues equivalent to 2 cents per gallon of the tax being deposited in the Highway Account of that Trust Fund, and revenues equivalent to 0.5 cents per gallon of the tax being deposited in the Mass Transit Account. Revenues from the full tax on all other fuel uses are to be retained in the General Fund.

5. Increase inland waterways fuel excise tax (secs. 14413 and 8002 of the House bill)

The conference agreement does not include the provision in the House bill.

E. Compliance Provisions

1. Reporting rule for service payments to corporations (sec. 14251 of the House bill)

The conference agreement does not include the provision in the House bill.

2. Raise standard for accuracy-related and preparer penalties (sec. 14252 of the House bill, sec. 8251(a) of the Senate amendment, and sec. 13251 of the conference agreement)

Under present law, a taxpayer must pay a penalty on any portion of an underpayment of tax that is attributable either to a substantial understatement of income tax on a return, or to negligence or disregard of rules or regulations. This penalty generally may be avoided where the position taken on the return or claim for refund is adequately disclosed and is not "frivolous." (To avoid the negligence penalty, the taxpayer must also have adequate books and records and have substantiated items properly.)

The conference agreement follows the Senate amendment, which replaces the "not frivolous" standard with a "reasonable basis" standard for purposes of the accuracy-related penalty. Thus, under the conference agreement, the penalty may be avoided by adequately disclosing a return position only if the position has at least a reasonable basis. The provision applies to tax returns due (without regard to extensions) after December 31, 1993.

The conference agreement does not include the provisions in the House bill that apply to return preparers and tax shelters.

3. Information returns relating to the discharge of indebtedness by certain financial entities (sec. 14253 of the House bill, 8252 of the Senate amendment, and sec. 13252 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which requires the Federal Deposit Insurance Corporation and Resolution Trust Corporation, certain Federal executive agencies, and certain other financial institutions to file information returns with the Internal Revenue Service regarding any discharge of indebtedness of $600 or more. The information return must set forth the name, address, and taxpayer identification number of the person whose debt was discharged, the amount of debt discharged, and the date on which the debt was discharged. The same information also must be provided to the person whose debt is discharged. The conference agreement modifies the provision generally to apply to discharges of indebtedness occurring on or after January 1, 1994. The provision applies to discharges of indebtedness by government entities after the date of enactment.

F. Treatment of Intangibles

1. Amortization of goodwill and certain other intangible assets (sec. 14261 of the House bill, sec. 8261 of the Senate amendment, and sec. 13261 of the conference agreement)

The conference agreement generally follows the House bill, which provides a uniform straight-line amortization method for certain acquired intangible assets, including goodwill. Under the conference agreement, the amortization period is 15 years. The conference agreement adds a special nine-year amortization period for purchased mortgage servicing rights. The conference agreement modifies the House bill by eliminating the requirement that the Treasury Department provide reports to the Congress with respect to the treatment of intangible assets. The Statement of Managers includes a direction to the Treasury Department to provide such reports to the Congress. The provision generally applies to acquisitions after the date of enactment, and, on an elective basis, to acquisitions after July 25, 1991.

2. Modify special treatment of certain liquidation payments (sec. 14262 of the House bill, sec. 8262 of the Senate amendment, and sec. 13262 of the conference agreement)

The conference agreement follows the House bill in modifying the partnership treatment of certain payments to withdrawing partners for goodwill by treating liquidation payments with respect to goodwill or unrealized receivables as made in exchange for the partner's interest in the partnership, rather than as payments that could give rise to an immediate partnership deduction. The provision generally applies to partners retiring or dying after January 5, 1993.

G. Miscellaneous Revenue-Raising Provisions

1. Expansion of 45-day interest-free period for certain refunds (sec. 14273 of the House bill, sec. 7950 of the Senate amendment, and sec. 13271 of the conference agreement)

Under present law, no interest is paid by the Federal government on a refund arising from an original income tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed. The conference agreement follows the identical provision in the House bill and Senate amendment, which provides similar treatment (i.e., a 45-day, interest-free processing period) with respect to taxes other than income taxes (i.e., employment, excise, and estate and gift taxes), for refunds of any type of tax arising from amended returns, for claims for refunds of any type of tax, and for Internal Revenue Service-initiated adjustments. The provision is effective with respect to returns required to be filed (without regard to extensions) on or after January 1, 1994, with respect to amended returns and claims for refunds filed on or after January 1, 1995 (regardless of the taxable period to which they relate), and with respect to refunds relating to Internal Revenue Service-initiated adjustments paid on or after January 1, 1995 (regardless of the taxable period to which they relate).

2. Deny deductions relating to travel expenses paid or incurred in connection with travel of taxpayer's spouse or dependents (sec. 14274 of the House bill, sec. 8271 of the Senate amendment, and sec. 13272 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which denies a deduction for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying a person on business travel, unless that travel companion is a bona fide employee of the person paying or reimbursing the expenses, the companion's travel is for a bona fide business purpose, and the companion's expenses would otherwise be deductible. The denial of the deduction does not apply to expenses that would otherwise qualify as deductible moving expenses. The provision is effective for amounts paid or incurred after December 31, 1993.

3. Increase withholding rate on supplemental wage payments (sec. 14275 of the House bill, sec. 8272 of the Senate amendment, and sec. 13273 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which increases the applicable withholding rate on supplemental wage payments (such as bonuses, commissions, and overtime pay) from 20 percent to 28 percent. The provision is effective for payments made after December 31, 1993.

III. EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

1. Tax benefits for empowerment zones and enterprise communities (secs. 14301-14304 of the House bill, sec. 15001 of the Senate amendment, and secs. 13301-13303 of the conference agreement)

The conference agreement generally follows the House bill, with certain modifications regarding the designation of areas as empowerment zones and enterprise communities as well as in the extent and nature of tax incentives available in such areas. Under the agreement, nine empowerment zones and 95 enterprise communities will be designated in 1994 and 1995. The Secretary of Housing and Urban Development will designate six empowerment zones and 65 enterprise communities in urban areas; the Secretary of Agriculture will designate three empowerment zones and 30 enterprise communities in rural areas. Indian reservations are not eligible for designation as empowerment zones or enterprise communities, but will receive separate tax incentives (see item III.3, below).

Designated empowerment zones and enterprise communities will be subject to certain eligibility criteria, including poverty rates and population and geographic size limitations.

The provision makes available the following tax incentives in empowerment zones: (1) a 20-percent employer's wage credit for the first $15,000 of wages paid to a zone resident who works in the zone; (2) increased section 179 expensing for certain zone business property (an additional $20,000 in expensing under the conference agreement, with certain modifications); and (3) expanded tax-exempt financing for certain zone facilities (with certain dollar limits imposed under the conference agreement).

Under the conference agreement, the 95 enterprise communities will be eligible for expanded tax-exempt financing benefits, described above, but not for the other tax incentives available in empowerment zones.

The tax incentives for empowerment zones and enterprise communities will be available during the period that the designation remains in effect, which generally will be 10 years.

2. Tax credit for contributions to certain community development corporations (sec. 14311 of the House bill, and sec. 13311 of the conference agreement)

The conference agreement generally follows the House bill, which provides a tax credit for certain contributions to community development corporations (CDCs) selected by the Secretary of Housing and Urban Development (HUD) to provide assistance in economically distressed areas. However, under the conference agreement, the aggregate amount of contributions that may be designated by

a CDC as eligible for the credit may not exceed $2 million and the Secretary of HUD may select up to 20 CDCs to participate in the program (at least eight of which must operate in rural areas).

3. Tax incentives for businesses on Indian reservations (secs. 8181-8182 of the Senate amendment and secs. 13321-13322 of the conference agreement)

The conference agreement provides two tax incentives for all Indian reservations: (1) enhanced accelerated depreciation for certain property used in the conduct of a trade or business on a reservation (and certain connecting infrastructure property); and (2) a 20-percent incremental wage credit for wages and health insurance costs (up to $20,000 per employee) paid to tribal members and spouses who work on, and live on or near, a reservation. The credit is available only to the extent that the sum of current-year qualified wages and health costs exceeds the sum of comparable costs for 1993. These incentives are not available with respect to gambling activities. The enhanced accelerated depreciation for Indian reservations is available with respect to property placed in service on or after January 1, 1994, and before December 31, 2003. The wage credit is available for wages paid or incurred on or after January 1, 1994, in a taxable year that begins before December 31, 2003.

IV. OTHER REVENUE PROVISIONS

A. Disclosure Provisions

1. Extend access to tax information for the Department of Veterans Affairs (sec. 14401 of the House bill, secs. 7901 and 13008 of the Senate amendment, and sec. 13401 of the conference agreement)

Present law permits disclosure to the Department of Veterans Affairs (DVA) of self-employment tax information and certain other tax information to assist DVA in establishing eligibility for, and the correct benefit amounts under, certain needs-based pension and other programs. The DVA disclosure provision is scheduled to expire after September 30, 1997. The conference agreement follows the identical provision in the House bill and section 7901 of the Senate amendment, which extends the authority to disclose tax information to the DVA for one year, through September 30, 1998.

2. Access to tax information by the Department of Education (secs. 14402, 4032, and 4033 of the House bill, secs. 7902, 12011, and 12055 of the Senate amendment, and sec. 13402 of the conference agreement)

The conference agreement follows section 7902 of the Senate amendment, which gives the Department of Education access to certain tax return information in order to implement an income-contingent student loan repayment program. The only information the Department of Education is permitted to obtain is the name, address, taxpayer identification number, filing status, and adjusted gross income of the former student. Disclosure of this information may be made only to Department of Education employees and may only be used by these employees in establishing the appropriate income-contingent repayment amount. This authority to disclose tax information to the Department of Education expires after September 30, 1998. The provision also gives permanent authorization to the Department of Education to obtain the mailing address of any taxpayer who owes an overpayment (i.e., has received more than the proper amount) on a Federal Pell Grant or who has defaulted on certain additional student loans administered by the Department of Education.

3. Access to tax information by the Department of Housing and Urban Development (sec. 14403 of the House bill, secs. 7903 and 3003 of the Senate amendment, and sec. 13403 of the conference agreement)

The conference agreement follows section 7903 of the Senate amendment, which permits disclosure of certain tax information to employees of the Department of Housing and Urban Development (HUD) for their use in verifying eligibility for, and the correct

amount of benefits under, HUD programs. The authority to disclose tax information to HUD under the bill expires after September 30, 1998.

B. Increase in Public Debt Limit (sec. 14421 of the House bill, sec. 7955 of the Senate amendment, and sec. 13411 of the conference agreement)

The conference agreement follows the identical provision in the House bill and the Senate amendment, which increases the statutory limit on the public debt to $4.9 trillion, to comply with the budget reconciliation instructions. This replaces the current temporary debt limit of $4.37 trillion, which is scheduled to expire on October 1, 1993.

C. Vaccine Provisions

1. Extension of vaccine excise tax (sec. 14431 of the House bill, sec. 8273 of the Senate amendment, and sec. 13421 of the conference agreement)

The conference agreement generally follows the provision in the House bill and Senate amendment that permanently extends the excise taxes on certain vaccines (that expired after December 31, 1992), effective on the date of enactment, with appropriate floor stocks taxes being imposed on that date. Authorization for compensation to be paid from the Vaccine Injury Compensation Trust Fund (Vaccine Trust Fund) under the National Vaccination Compensation Program also is permanently extended, effective for vaccines administered on or after October 1, 1992. The conference agreement modifies the House bill by eliminating the requirement that the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, perform a study of the Vaccine Trust Fund, vaccine taxes, and related matters. The study is requested in the Statement of Managers and is due within one year after the date of enactment.

2. Childhood Immunization Trust Fund and pediatric vaccine coverage (secs. 14432-14433 of the House bill and sec. 13422 of the conference agreement)

The conference agreement generally follows the House bill, which makes the failure by health plans that provide coverage for the cost of pediatric vaccines as of May 1, 1993, to continue that coverage subject to the excise tax penalty (under sec. 4980B(f)) applicable to plans that fail to provide COBRA continuation coverage. The conference agreement does not include the provision of the House bill that establishes a new Childhood Immunization Trust Fund in the Internal Revenue Code.

D. Other Revenue-Related Provisions

1. Disaster relief for individuals whose principal residences were damaged by Presidentially declared disasters (sec. 13431 of the conference agreement)

The conference agreement contains provisions applicable to taxpayers whose principal residence[5] (or any of its contents) is involuntarily converted as a result of a Presidentially-declared disaster. In such cases, no gain is recognized by reason of the receipt of insurance proceeds for unscheduled personal property that was part of the contents of such residence. In the case of any other insurance proceeds for such residence or its contents, the proceeds may be treated as a common pool of funds. If such pool of funds is used to purchase any property similar or related in service or use to the converted residence (or its contents), the taxpayer may elect to recognize gain only to the extent that the amount of the pool of funds exceeds the cost of the replacement property.

In addition, the conference agreement extends the ending of the applicable period for the replacement of property involuntarily converted as a result of a Presidentially declared disaster to four years after the close of the first taxable year in which any part of the gain upon conversion is realized.

The provisions are effective for property involuntarily converted as a result of disasters for which a Presidential declaration is made on or after September 1, 1991, and to taxable years ending on or after such date.

2. Increase amount of Presidential Election Campaign Fund checkoff (sec. 7953 of the Senate amendment and sec. 13441 of the conference agreement)

The conference agreement follows the Senate amendment, which increases the amount of the Presidential Election Campaign Fund voluntary designation on individual income tax returns from $1 to $3, effective for tax returns due to be filed after December 31, 1993.

3. Disallowance of deduction for amounts paid or incurred in connection with certain noncomplying group health plans (sec. 13442 of the conference agreement)

The conference agreement disallows employer deductions in connection with a group health plan if the plan fails to reimburse hospitals for inpatient services as provided under the laws of the State of New York. The provision is effective with respect to inpatient hospital services provided to participants after February 2, 1993, and on or before May 12, 1995.

4. Employer tax credit for FICA taxes paid on tip income (sec. 13443 of the conference agreement)

The conference agreement provides a business tax credit for food or beverage establishments in an amount equal to the employer's

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[5] Principal residence is defined as under section 1034, except that renters receiving insurance proceeds as a result of the involuntary conversion of their property in a rented residence also qualify for relief under this provision to the extent the rented residence would constitute their principal residence if they owned it.

FICA tax obligation attributable to reported tips in excess of those treated as wages for purposes of satisfying the minimum wage laws. A food or beverage establishment is any trade or business (or portion thereof) that provides food or beverages for consumption on the premises and with respect to which the tipping of employees serving food or beverages by customers is customary. The provision is effective for FICA taxes paid with respect to services performed after December 31, 1993.

5. Availability and use of death information (sec. 13020 of the House bill and sec. 13444 of the conference agreement)

The conference agreement prohibits the disclosure of Federal tax returns or return information to any State in connection with the administration of State tax laws where the State has not entered into a contract to provide death certificate information to the Secretary of Health and Human Services, or where the State is a party to a contract with the Secretary that includes any restrictions on the use of the death information provided to the Secretary by the State, except that such contract may provide that such information is only to be used for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals. The conference agreement is effective one year after the date of enactment, except that it is effective two years after the date of enactment with respect to a State if it is established to the satisfaction of the Secretary that it is legally impossible under existing State law for such a contract to be signed.

6. BATF user fees for processing applications for alcohol certificates of label approval (sec. 14411 of the House bill and sec. 7951 of the Senate amendment)

The conference agreement does not include the provision in the House bill or the Senate amendment.

7. Use of Harbor Maintenance Trust Fund for administrative expenses (sec. 14412 of the House bill and sec. 7952 of the Senate amendment)

The conference agreement does not include the provision in the House bill or the Senate amendment.

8. Federal and State income tax refund offset for medical assistance (sec. 7433 of the Senate amendment)

The conference agreement does not include the Senate amendment.

9. Annual report to taxpayers on Federal finances (sec. 15002 of the Senate amendment)

The conference agreement does not include the Senate amendment.

10. Aircraft registration fees (sec. 11001 of the House bill)

The conference agreement does not include the provision in the House bill.

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