MARKUP OF REVENUE-RELATED PROVISIONS OF H.R. 776 ("COMPREHENSIVE NATIONAL ENERGY POLICY ACT") AND ADDITIONAL ENERGY TAX PROVISIONS

Scheduled for a Markup

by the

HOUSE COMMITTEE ON WAYS AND MEANS

on April 29, 1992

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The House Committee on Ways and Means has scheduled a markup on April 29, 1992, on the revenue-related provisions of H.R. 776 ("Comprehensive National Energy Policy Act"), as reported by the House Committee on Energy and Commerce on March 30, 1992. The revenue-related provisions of the bill as reported (sec. 732, and Titles X, XI, and XIV) have been sequentially referred to the Committee on Ways and Means for a period ending May 1, 1992. Also, the Committee on Ways and Means will consider a provision added to H.R. 776 by the Committee on Interior and Insular Affairs relating to the coal reclamation fee and the Abandoned Mine Reclamation Fund. Further, the Committee on Ways and Means will consider possible additional energy tax provisions in its markup of H.R. 776.

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the revenue-related provisions of H.R. 776, and certain additional energy tax provisions for markup. Part I of the document is a legislative background on H.R. 776. Part II is a description of the revenue-related provisions of the bill as reported by the Committee on Energy and Commerce, including present-law rules and possible options with respect to the provisions referred to the Committee on Ways and Means. Part III is a description of the provision added by the Committee on Interior and Insular Affairs relating to the coal reclamation fee and the Abandoned Mine Reclamation Fund. Finally, Part IV describes certain possible additional energy tax provisions for markup by the Committee on Ways and Means.

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[1] This document may be cited as follows: Joint Committee on Taxation, Markup of Revenue-Related Provisions of H.R. 776 ("Comprehensive National Energy Policy Act") and Additional Energy Tax Provisions (JCX-16-92), April 28, 1992.

I. LEGISLATIVE BACKGROUND

H.R. 776 ("Comprehensive National Energy Policy Act") was reported by the House Committee on Energy and Commerce on March 30, 1992 (H. Rept. 102-474, Part 1). Revenue-related provisions of the bill as reported (sec. 732, and Titles X, XI, and XIV) were sequentially referred to the Committee on Ways and Means for a period ending May 1, 1992.

Provisions of H.R. 776 were also referred to other committees through May 1, 1992, as follows: Committee on Foreign Affairs (Titles XII and XIII); Committee on Government Operations (Title III); Committee on the Judiciary (Titles VI and VII); Committee on Interior and Insular Affairs (Titles VIII, IX, X, XI, and XIX); Committee on Merchant Marine and Fisheries (Titles II, XVI, and XVII); Committee on Public Works and Transportation (Titles I, IV, and XVIII); and Committee on Science, Space, and Technology (Titles VI, IX, XII, and XIII).

On April 8, 1992, the Committee on Interior and Insular Affairs ordered reported H.R. 776 with amendments, including an extension of the coal reclamation fee.

II. REVENUE-RELATED PROVISIONS OF H.R. 776 AS REPORTED BY COMMITTEE ON ENERGY AND COMMERCE

A. Tax-Exempt Bond Financing of Facilities for Local Furnishing of Electricity or Gas (sec. 732 of the Bill)

Present Law

In general

Interest on State and local government bonds generally is excluded from income for purposes of the regular individual and corporate income taxes if the proceeds of the bonds are used to finance direct activities of these governmental units (Code sec. 103). Present law also excludes the interest on certain State and local government bonds ("private activity bonds") when a governmental unit incurs debt as a conduit to provide capital financing for private parties if the financed activities are specified in the Code. Tax-exempt private activity bonds may not be issued to finance activities not specified in the Code.

Private activity bonds are bonds (1) more than 10 percent of the proceeds of which satisfy a private business use and payment test, or (2) more than five percent ($5 million, if less) of the proceeds of which are used to finance loans to persons other than State or local governmental units. A special restriction reduces the private business use and payment limits to five percent in the case of private business activities that are unrelated to direct governmental activities also being financed with a bond issue.

Interest on the following private activity bonds qualifies for the above-mentioned exclusions from income:

(1) Exempt-facility bonds;
(2) Qualified mortgage and qualified veterans' mortgage bonds;
(3) Qualified small-issue bonds;
(4) Qualified student loan bonds;
(5) Qualified redevelopment bonds; and
(6) Qualified 501(c)(3) bonds.

Exempt-facility bonds are bonds the proceeds of which are used to finance the following: airports, docks and wharves, mass commuting facilities or high-speed intercity rail facilities; water, sewage, solid waste, or hazardous waste disposal facilities; facilities for the local furnishing of electricity or gas; local district heating or cooling facilities; and certain low-income rental housing projects.

Exempt-facility bonds for the local furnishing of electricity or gas

The exempt-facility bond exception for facilities for the local furnishing of electricity or gas is limited to bonds used by electric or gas systems the service area of which does not exceed either (1) two contiguous counties or (2) a city and a contiguous county.[2] Property eligible for financing under the exception includes depreciable property and land used to "produce, collect, generate, transmit, store, distribute, or convey electric energy" in a qualified service area. (Treas. reg. sec. 1.103-8(f)(2)(iii).)

The local furnishing exception does not apply to facilities that are an integral part of the regional supplying of electricity, e.g., long-line transmission. (See, H. Rept. 90-1533, 90th Cong., 2d Sess., at 38.) The Treasury Department's regulations interpreting this exception provide, however, that an otherwise qualifying facility will not be ineligible solely because the system of which it is a part is interconnected with other utility systems for the emergency transfer of power.

The Internal Revenue Service ("IRS"), in a series of ruling letters, has provided specific, nonprecedential guidance to several utilities regarding the extent to which nonemergency interconnections with other utility systems are permitted. (See, e.g., Ltrs. 8915021, 8508051, and 8319017 (supplemented by Ltrs. 8322009 and 8429091).) These ruling letters make three significant factual points regarding the extent to which local furnishing utilities may be interconnected with other utilities.

First, each of these ruling letters specified that, despite limited outbound electricity transfers, the systems involved were, even after taking into account certain transmission activities for the benefit of other utilities ("wheeling"), net importers of electricity. Second, in Ltr. 8915021, wheeling activities on dedicated facilities were held not to disqualify a local furnishing system because the cost of the facilities used were borne by the recipient of the wheeled electricity, not the local furnishing utility or its ratepayers. Third, in holding that certain incidental interconnections not involving dedicated facilities such as those described in Ltr. 8915021 did not violate the local furnishing requirement, the IRS stressed that the facilities

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[2] Section 644 of the Tax Reform Act of 1984 (P. L. 98-369) expanded the exception further to include the Long Island Lighting Company and the Bradley Lake hydroelectric facility system in Alaska, based on activities engaged in by those systems as of the date of that Act's enactment.

"have not been designed differently, sized larger, built sooner, or constructed in a more costly fashion than is reasonably required solely for serving" the local furnishing service area. (See, Ltr. 8319017.)

Finally, the IRS has addressed in one ruling letter the effect on outstanding bonds for local furnishing of electricity if a local furnishing utility were to merge with another utility and no longer qualify as a local furnisher. (See, Ltr. 9124030.) In that letter, the IRS held that interest on the bonds would not become taxable if the bonds were defeased within 90 days of the merger and redeemed on the first possible redemption date.

Description of the Bill

As reported by the Committee on Energy and Commerce ("Energy and Commerce"), section 732 of H.R. 776 authorizes the Federal Energy Regulatory Commission ("FERC") to order electric utilities (including those qualifying under the local furnishing exception) to provide wheeling services to independent power producers ("IPPs"). These FERC orders also may require the utilities to enlarge their transmission systems to comply.

If wheeling activities pursuant to these orders were conducted using bond-financed facilities, or if the utility (viewed in light of both its wheeling and other activities) became a net exporter of electricity, the local furnishing exception could be violated. To prevent such an occurrence, the bill modifies present law to provide that no disqualification will result from wheeling activities conducted pursuant to a FERC order authorized under the bill.

Possible Option

Substitute for section 732 of the bill, as reported by Energy and Commerce, Internal Revenue Code amendments that preserve access to tax-exempt financing for regulated public utilities that qualify as local furnishers of electricity except for being ordered by FERC to wheel electricity generated by IPPs for use outside their service area. The option provides that--

(1) In determining whether such a utility is a net importer of electricity (as required under current IRS ruling letters), electricity generated within the utility's service area by an IPP and wheeled pursuant to the FERC order for use outside the area is not considered;

(2) Such a utility will continue to be eligible for bond-financing of its local furnishing facilities, including facilities used for both local furnishing activities and FERC-ordered wheeling (to the extent those facilities are to

be used for local furnishing activities); and

(3) Interest on bonds issued before the date of the FERC order that are used to finance facilities the use of which changes (in whole or in part) due to the order will remain tax-exempt (and no change in use penalty will be imposed under Code section 150) if the bonds (or an appropriate portion thereof) are (a) defeased within 90 days following the FERC order and (b) redeemed no later than the earliest date on which the bonds may be redeemed. A bond is defeased when monies sufficient to release liens created on bond-financed property under the bond indenture are deposited in an irrevocable escrow account.

B. Uranium Enrichment Fund and Assessment (Titles X and XI of the Bill)

Present Law

Under special tax rules (Internal Revenue Code secs. 468 and 468A), certain costs of coal mine and waste disposal site reclamation and nuclear power plant decommissioning may be deducted prior to the time that the reclamation or decommissioning work is performed. These provisions are an exception to the general rule which prohibits the accrual of an expense prior to the time economic performance occurs (sec. 461(h)).

A taxpayer that is required to decommission a nuclear power plant may elect to deduct certain contributions that are made to a nuclear decommissioning fund. A nuclear decommissioning fund is a segregated fund the assets of which are to be used exclusively to pay nuclear decommissioning costs, taxes on fund income, and certain administrative costs. The assets of a nuclear decommissioning fund that are not currently required for these purposes must be invested in (1) public debt securities of the United States, (2) obligations of a State or local government that are not in default as to principal or interest, or (3) time or demand deposits in a bank or an insured credit union located in the United States. These investment restrictions are the same restrictions which apply to black lung trusts that are established under Code section 501(c)(21).

Owners of coal mines are assessed a fee to help pay for the reclamation of abandoned mines. These fees provide the amounts available for appropriation from the Abandoned Mine Reclamation Fund. The current rates are 35 cents per ton for surface mined coal and 15 cents per ton for underground mined coal. These fees are scheduled to expire after September 30, 1995.

Under present law, four different Superfund taxes are imposed: (1) a tax on petroleum; (2) a tax on listed hazardous chemicals; (3) a tax on imported substances that contain or use chemical derivatives of one or more of the specified hazardous chemicals; and (4) an environmental tax based on the amount of modified alternative minimum taxable income of a corporation that exceeds $2 million. The receipts from these taxes are deposited in the Hazardous Substance Superfund. Amounts in this trust fund generally are available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment.

Under present law, there is no general Federal excise tax or user fee imposed on the generation or sale of

electricity. However, to support the Nuclear Waste Fund, there is a specific fee of 0.1 cent per kilowatt hour (kwh) imposed by the Nuclear Waste Policy Act of 1982 on generation of electricity from nuclear power.

The Nuclear Regulatory Commission currently assesses other fees on the owners of nuclear power plants. Operators of nuclear power plants are charged fees based upon the number of staff hours required to inspect the facilities. The fees recover the costs incurred in inspecting the facilities, but do not recover all of the costs involved in regulating nuclear power plants.

Description of the Bill

Uranium enrichment fund

Title XI of H.R. 776 as reported by the Committee on Energy and Commerce establishes a new trust fund in the Treasury, the Uranium Enrichment Decontamination and Decommissioning Fund ("UEDD Fund"). Annual deposits of $500 million are to be made into the UEDD Fund until such time as the balances in the UEDD Fund are sufficient to finance the decommissioning and decontamination of DOE's uranium enrichment facilities. The annual $500 million contribution is to be indexed for future inflation, by an index to be determined by the Energy Secretary.[3]

Financing of the uranium enrichment fund

The source of annual deposits to the UEDD Fund generally will come from certain primary sources specified under the bill. Included among those primary sources are funds received by the Treasury as proceeds from the leasing of gaseous diffusion uranium enrichment facilities and related property, royalty payments from licensing atomic vapor laser isotope separation technology (AVLIS), contributions to the Fund by foreign utilities that purchase enriched uranium from the Energy Department, or by their governments, and interest earnings and proceeds from the disposition of debt instruments held by the Fund. However, in the event that funding from these primary sources is insufficient to provide the annual mandated contribution to the UEDD Fund, the bill authorizes the Energy Secretary to make a special assessment on the owners of certain domestic utilities to fund the required balance of the annual deposit. Owners subject to the special assessment are those owners who in the past have

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[3] The bill (Title X) provides for separate use of assets in the UEDD Fund to cover costs of decontamination, decommissioning, and reclamation of active uranium and thorium processing sites.

purchased fuel from the DOE.[4]

The rate of assessment is to be determined by dividing the remaining required balance of the annual deposit by the total purchase of separative work units (the service of enriching uranium) purchased by domestic utilities from the DOE prior to the date of enactment. The total tax assessment of each utility is then computed as the amount of separative work units purchased from the DOE in the past by a domestic utility multiplied by the rate of assessment determined as described above.

The bill also directs the Energy Secretary to periodically review and determine the adequacy of revenue for the UEDD Fund and alter collections of the special assessment if necessary.

Possible Option

The proposal would limit collections of the special assessment to collections made during the first 15 years following the date of enactment or the collection of $2.5 billion in special assessments, whichever occurs first. The $500 million annual deposit would be indexed for future inflation as measured by changes in the Consumer Price Index. The Federal tax exemption provided to the Uranium Enrichment Corporation ("Corporation") would be placed in the Internal Revenue Code. The exemption would be limited to income taxes only and would cease on the day the Corporation becomes privately owned in whole or in part. Further, the $364 million loan from the Treasury Department to the Corporation, as provided for in the bill, would be specifically authorized under Chapter 31, Title 31 of the U.S. Code.

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[4] The special assessment applies to the past purchases by public power corporations or authorities as well as to the purchases by investor-owned utilities.

C. Strategic Petroleum Reserve (Title XIV of the Bill)

Present Law

There is no requirement under present law that specified persons lend certain amounts of their crude oil or other petroleum products to the Federal Government for the Strategic Petroleum Reserve.[5] In addition, there is no provision under present law which assesses specified persons for storage costs related to the Strategic Petroleum Reserve.

The Internal Revenue Code establishes an excise tax of 5 cents per barrel on domestic crude oil and imported petroleum products (including imported crude oil) for the purpose of funding the Oil Spill Liability Trust Fund. In addition, a 9.7 cents per barrel excise tax is imposed on domestic crude oil and imported petroleum products for the purpose of funding the Hazardous Substance Superfund. The excise taxes on domestic crude oil are imposed on the operator of any United States refinery receiving such crude oil, while the taxes on imported petroleum products are imposed on the person entering the product into the United States for consumption, use, or warehousing. If domestic crude oil is used in, or exported from, the United States before imposition of the taxes on the operator of a refinery, the taxes are imposed on the user or exporter of the oil.

Description of the Bill

Title XIV of H.R. 776 establishes a mechanism for increasing the capacity of the nation's Strategic Petroleum Reserve ("Reserve") by requiring importers and purchasers of petroleum products to lend specified amounts of crude oil and other petroleum products to the Federal Government until the target quantity of the Reserve is reached. Under the bill, importers and purchasers are required to provide for the storage in the Reserve of an amount of petroleum product equal to a specified percentage of the amount of their crude oil or petroleum product. A person providing petroleum product to the Reserve as a result of the bill's requirements retains and may freely transfer title to the product stored in the Reserve. An importer or purchaser may elect to

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[5] The Strategic Petroleum Reserve is a Federal Government-owned stockpile of oil stored in Louisiana and Texas. Its purpose is to provide a short-term supply of oil to protect American consumers against the shock to the economy resulting from crises such as the 1990 Iraqi invasion of Kuwait and subsequent oil embargo. (Report of the Committee on Energy and Commerce, H. Rept. No. 102-474, Part 1, 102d Cong., 2d Sess., at 148).

provide, in lieu of petroleum product, an amount equal to the cash equivalent of the amount of petroleum product required to be stored by it in the Reserve. The bill also authorizes the Energy Department to assess and collect storage charges, beginning in the 1993 fiscal year, from each importer and purchaser who has petroleum product stored in the Reserve.

When the petroleum product stored in the Reserve under the bill is sold as a result of a drawdown on the Reserve, the Energy Department is required to provide for the payment of the amount received for the sale to the importer or purchaser, or to such person's assignee, who held title to the petroleum product that was sold. In carrying out this requirement, the Energy Department will consider the first amount of petroleum product withdrawn from the Reserve to be the petroleum product stored in the Reserve under this provision of the bill (to the extent thereof). The Energy Department also must provide for the payments to importers and purchasers to be made on the basis of the order in which such persons provided for the storage of petroleum product in the Reserve.

Possible Option

The proposal would make several technical amendments to this provision of the bill.

First, the proposal would alter the bill's point of imposition of the set-aside requirement. Under the proposal, the point of collection of petroleum product for the Reserve (or cash-equivalent payments) would be as follows: (1) for imported crude oil and products, removal from customs custody, unless transferred to a registered and bonded refinery; (2) for domestic crude oil and imported oil and products (transferred to a refinery without payment of tax), on receipt at the refinery. In addition, the proposal would provide credits for crude oil and products on which the set-aside has already been made and which are transferred from one refinery to another for further processing and for certain exports.

Second, the operation of the bill's cash-equivalent payment regime would be clarified by requiring that all funds received in the form of cash-equivalent payments be used by the Federal Government specifically for the purchase of crude oil or refined petroleum product for the Reserve. Moreover, the proposal provides that title to any such oil or refined product so purchased would be passed to the persons making cash-equivalent payments.

Third, the proposal would require all in-kind contributions under the bill in a given fiscal year to consist of crude oil and refined petroleum product in the proportion specified in the bill for filling the Reserve for

that particular year.

Fourth, the proposal would require the Energy Secretary to establish a minimum standard or grade of crude oil to be stored in the Reserve under the bill.

III. REVENUE-RELATED PROVISION OF H.R. 776 AS REPORTED BY COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Abandoned Mine Reclamation Fund

Present Law

The Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1232(b)), imposes a reclamation fee on coal mining operators, payable quarterly to the Secretary of the Interior for deposit in the Abandoned Mine Reclamation Fund ("Reclamation Fund"). The fee generally is the lesser of (1) 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining, or (2) 10 percent of the value of the coal at the mine. The fee for lignite is the lesser of 2 percent of the value of the coal at the mine or 10 cents per ton.

The reclamation fee is scheduled to expire after September 30, 1995 (as extended in the Omnibus Budget Reconciliation Act of 1990).

Description of the Bill

As reported by the Committee on Interior and Insular Affairs, the bill extends the coal reclamation fee through September 30, 2010, and provides that $50 million of the amounts available in the Reclamation Fund in each fiscal year be deposited into a new "Coal Industry Retiree Benefit Fund" (yet to be established).

Possible Option

The proposal would request the Rules Committee to exclude the provision.

IV. ADDITIONAL ENERGY TAX PROVISIONS

A. Exclusion for Employer-Provided Transportation Benefits

Present Law

Under Treasury regulations, transit passes, tokens, fare cards, vouchers, and cash reimbursements provided by an employer to defray an employee's commuting costs are excludable from the employee's income (for both income and payroll tax purposes) as a de minimis fringe benefit if the total value of the benefit does not exceed $21. If the total value of the benefits exceeds $21 per month, the full value of the benefits is includible in income.

Parking at or near the employer's business premises that is paid for by the employer is excludable from the gross income of the employee (for both income and payroll tax purposes) as a working condition fringe benefit, regardless of the value of the parking. This exclusion does not apply to parking at the employee's residence.

Possible Option

The proposal would include the provision in the conference agreement on H.R. 4210 (sec. 1006) relating to the treatment of employer-provided transportation benefits.

Under the proposal, gross income and wages (for both income and payroll tax purposes) would not include qualified transportation fringe benefits. In general, a qualified transportation fringe would be (1) transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment, (2) a transit pass, or (3) qualified parking. The maximum amount of qualified parking that would be excludable from an employee's gross income and wages would be $160 per month (regardless of the total value of the parking). Other qualified transportation fringes would be excludable from gross income to the extent that the aggregate value of the benefits does not exceed $60 per month (regardless of the total value of the benefits). The $60 and $160 limits would be indexed for inflation, rounded down to the next whole dollar.

A commuter highway vehicle would be a highway vehicle the seating capacity of which is at least 6 adults (not including the driver) and at least 80 percent of the mileage use of which can reasonably be expected to be for purposes of transporting employees between their residences and their place of employment on trips during which the number of employees transported for such purpose is at least one-half

of the adult seating capacity of the vehicle (not including the driver). Transportation furnished in a commuter highway vehicle operated by or for the employer would be considered provided by the employer. Cash reimbursements made by an employer to an employee to cover the cost of commuting in a commuter highway vehicle also would qualify for the exclusion, provided the reimbursements were made under a bona fide reimbursement arrangement.

A transit pass would include any pass, token, fare card, voucher, or similar item entitling a person to transportation on mass transit facilities (whether publicly or privately owned). Types of transit facilities that could qualify for the exclusion would include, for example, rail, bus, and ferry. As under present law, cash reimbursements made by an employer to an employee to cover the cost of purchasing a transit pass would qualify for the exclusion, provided the reimbursements were made under a bona fide reimbursement arrangement.

Qualified parking would be parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by mass transit, in a commuter highway vehicle, or by carpool. However, as under present law, the exclusion would not apply to any parking facility or space located on property owned or leased by the employee for residential purposes. Cash reimbursements made by an employer to an employee to cover the cost of qualified parking would qualify for the exclusion, provided the reimbursements were made under a bona fide reimbursement arrangement.

Effective date.--The proposal would apply to benefits provided by the employer on or after January 1, 1993.

B. Business Energy Tax Credits for Solar and Geothermal Property

Present Law

Nonrefundable business energy tax credits are allowed for 10 percent of the cost of qualified solar and geothermal energy property (Code sec. 48(a)). Solar energy property that qualifies for the credit includes any equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat. Qualifying geothermal property includes equipment that produces, distributes, or uses energy derived from a geothermal deposit, but, in the case of electricity generated by geothermal power, only up to (but not including) the electrical transmission stage.[6]

The business energy tax credits currently are scheduled to expire with respect to property placed in service after June 30, 1992.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. An unused general business credit generally may be carried back 3 years and carried forward 15 years.

Possible Option

The proposal would permanently extend the business credits for solar and geothermal property.

Effective date.--The proposal would be effective for qualifying solar and geothermal property placed in service after June 30, 1992.

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[6] For purposes of the credit, a geothermal deposit is defined as a domestic geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor, whether or not under pressure (sec. 613(e)(2)).

C. Increase Excise Tax on Certain Ozone-Depleting Chemicals

Present Law

An excise tax is imposed on certain ozone-depleting chemicals. The amount of tax generally is determined by multiplying the base tax rate applicable for the calendar year by an ozone-depleting factor assigned to the chemical. Certain chemicals are subject to a reduced rate of tax for years prior to 1994.

Between 1992 and 1995 there are two base tax rates applicable, depending upon whether the chemicals were initially listed in the Omnibus Budget Reconciliation Act of 1989 or whether they were newly listed in the Omnibus Budget Reconciliation Act of 1990. The base tax rate applicable to initially listed chemicals is $1.67 per pound for 1992, $2.65 per pound for 1993 and 1994, and an additional 45 cents per pound per year for each year thereafter. The base tax rate applicable to newly listed chemicals is $1.37 per pound for 1992, $1.67 per pound for 1993, $3.00 per pound for 1994, $3.10 per pound for 1995, and an additional 45 cents per pound per year for each year thereafter.

Possible Option

The proposal would adopt the provision contained in the conference agreement on H.R. 4210 (sec. 3205). Specifically, the proposal would increase and apply the same base tax rate to both initially listed chemicals and newly listed chemicals. The new base tax rate would be $1.85 per pound for 1992, $2.75 per pound in 1993, $3.65 per pound in 1994, and $4.55 per pound in 1995. For years after 1995, the base tax amount would increase (as under present law) by 45 cents per pound per year. In addition, the proposal would reduce the applicable percentage used in the computation of the tax applied to chemicals used in rigid foam insulation in 1992 and 1993. The provision would reduce the applicable percentage from 15 percent to 13.5 percent for 1992 and would reduce the applicable percentage from 10 percent to 9.6 percent for 1993. The effect of this provision is to continue present-law rates on these chemicals for 1992 and 1993.

Effective date.--The provision would be effective for taxable chemicals sold or used on or after July 31, 1992. Floor stocks taxes are imposed on taxed chemicals held on the effective dates of changes in the base tax rate.

D. Repeal of Investment Restrictions Applicable to Nuclear Decommissioning Funds

Present Law

A taxpayer that is required to decommission a nuclear power plant may elect to deduct certain contributions that are made to a nuclear decommissioning fund. A nuclear decommissioning fund is a segregated fund the assets of which are to be used exclusively to pay nuclear decommissioning costs, taxes on fund income, and certain administrative costs. The assets of a nuclear decommissioning fund that are not currently required for these purposes must be invested in (1) public debt securities of the United States, (2) obligations of a State or local government that are not in default as to principal or interest, or (3) time or demand deposits in a bank or an insured credit union located in the United States. These investment restrictions are the same restrictions which apply to Black Lung trusts that are established under section 501(c)(21) of the Code.

Possible Option

Include the proposal in section 4673 of H.R. 4210 as passed by Congress. Under this proposal, the present-law investment restrictions applicable to nuclear decommissioning funds would be repealed.

Effective date.--The proposal would be effective for taxable years beginning after December 31, 1992.

E. Exclusion for Certain Utility Rebates

Present Law

Section 8217(i) of the National Energy Conservation Policy Act provided that the value of any subsidy provided by a utility to a residential customer for the purchase or installation of a residential energy conservation measure was excluded from gross income. That exclusion expired on June 30, 1989.

In Technical Advice Memorandum 8924002, the IRS ruled that cash payments by a utility to induce customers to encourage the installation of alternative heating systems were includible in the gross income of the recipients. The heating systems were installed by third-party vendors. In the ruling, the IRS distinguished the taxable utility rebates from nontaxable automobile manufacturer rebates (which are treated as adjustments to the purchase price of the automobile). However, in Rev. Rul. 91-36, 1991-26 I.R.B. 14, the IRS held that if a customer of an electric utility company participates in an energy conservation program for which the customer receives a rate reduction or nonrefundable credit on the customer's bill, the amount of the rate reduction or nonrefundable credit is not included in the customer's gross income. In the ruling, the IRS reasoned that the rate reduction or nonrefundable credit represented a reduction in the purchase price of electricity and, therefore, did not constitute taxable income.

Possible Option

For taxable years beginning after 1992, the proposal would provide an exclusion from the gross income of a residential customer of a public utility for the value of any subsidy provided by the utility for the purchase or installation of an energy conservation measure. In addition, for taxable years beginning after 1993, the proposal would provide an exclusion from the gross income of a commercial or industrial customer of a public utility for 65 percent of the value of any subsidy provided by the utility for the purchase or installation of an energy conservation measure. The proposal would not apply to payments made to or from a cogeneration facility or a small power production facility.

The proposal would deny a deduction or credit, or in appropriate cases require a reduction in adjusted basis of property, for any expenditure to the extent that a subsidy related to that expenditure was excluded from the gross income of the recipient.

Effective date.--The proposal would be effective with respect to amounts received after December 31, 1992.

F. Tax Credit for Certain Clean-Burning Motor Vehicles and Property Used to Refuel Such Vehicles

Present Law

Present law does not provide an income tax credit or any other income tax benefit for investing in a motor vehicle that is propelled by a clean-burning fuel or for investing in property that is used to refuel a motor vehicle that is propelled by a clean-burning fuel.

Possible Option

In general

An income tax credit would be provided to taxpayers that invest in certain motor vehicles that are propelled by clean-burning fuels and in certain property that is used to refuel such motor vehicles. The amount of the credit for any taxable year would equal a specified percentage of the basis of the qualified property that is placed in service during the taxable year. The specified percentage would vary based on when the qualified property is placed in service as follows: (1) 20 percent for the period July 1, 1993, through December 31, 2001; (2) 15 percent for the period January 1, 2002, through December 31, 2002; (3) 10 percent for the period January 1, 2003, through December 31, 2003; and (4) 5 percent for the period January 1, 2004, though December 31, 2004.

Definition of qualified property

Property would qualify for the credit only if: (1) the original use of the property commences with the taxpayer; and (2) the property is either: (a) equipment that modifies a motor vehicle that was propelled by a fuel that is not a clean-burning fuel so that the vehicle may be propelled by a clean-burning fuel; (b) a motor vehicle that is propelled only by a clean-burning fuel but only to the extent of the portion of the basis of the vehicle that is attributable to the storage or delivery to the engine of the fuel or the exhaust of gases from combustion of the fuel (in the case of a motor vehicle that is propelled by electricity, however, the portion of the basis of the vehicle that is attributable to the engine would also qualify); or (c) depreciable property that is used to store any clean-burning fuel at the location where the fuel is to be delivered into the fuel tank of a motor vehicle propelled by such fuel or that is used to deliver any clean-burning fuel from such storage into the fuel tank of a motor vehicle propelled by such fuel.

The credit generally would not be allowed with respect to property that is used predominantly outside the United

States or property that is used by governmental units or certain tax-exempt organizations.

Clean-burning fuel would be defined as natural gas, liquefied petroleum gas, liquefied natural gas, hydrogen, electricity, and any other fuel if at least 85 percent of the fuel is methanol, ethanol, any other alcohol, or ether.

Other rules

The basis of any qualified property would be reduced by the full amount of the credit allowed with respect to the property. In addition, the credit would be recaptured if the property ceases to be qualified property or the property is prematurely disposed of.

The credit would be included as a general business credit even though the credit would be available to taxpayers that use the qualified property for non-business purposes. In the case of qualified property that is not used predominantly in a trade or business, however, any excess credit would not be allowed to be carried back or carried forward to other taxable years. In addition, the credit would not be allowed to be carried back to any taxable year ending before July 1, 1993.

Effective date.--The proposal would apply to qualified property that is placed in service after June 30, 1993, and before January 1, 2005.