DESCRIPTION OF A PROPOSAL TO EXTEND CERTAIN EXPIRING TAX PROVISIONS, REPEAL THE LUXURY EXCISE TAX ON CERTAIN ITEMS, AND ADOPT REVENUE-RAISING PROVISIONS

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of a proposal to extend certain tax provisions scheduled to expire after June 30, 1992,[2] repeal the luxury excise tax on certain items, and provide revenue offsets.

The Senate Committee on Finance has scheduled a markup on the proposal on June 16, 1992.

The document includes a reference to whether the proposal described was also in H.R. 4210 ("Tax Fairness and Economic Growth Act of 1992") as passed by the House and the Senate and vetoed by the President.

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[1] This document may be cited as follows: Joint Committee on Taxation, Description of a Proposal to Extend Certain Expiring Tax Provisions, Repeal the Luxury Excise Tax on Certain Items, and Adopt Revenue-Raising Provisions (JCX-23-92), June 16, 1992.

[2] The expiring tax provisions are also described in Joint Committee on Taxation, Description and Analysis of Tax Provisions Expiring in 1992 (JCS-2-92), January 27, 1992.

DESCRIPTION OF TAX PROVISIONS

A. Certain Expiring Tax Provisions

1. Exclusion for Employer-Provided Educational Assistance

Present Law

An employee's gross income and wages for income and employment tax purposes do not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts are paid or incurred pursuant to an educational assistance program that meets certain requirements. This exclusion, which expires with respect to amounts paid after June 30, 1992, is limited to $5,250 of educational assistance with respect to an individual during a calendar year.

In the absence of this exclusion, an employee generally would be required to include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to the employee, unless the cost of such assistance qualified as a deductible job-related expense of the employee.

Description of Proposal

The exclusion for employer-provided educational assistance would be extended for 18 months, through December 31, 1993.

A similar proposal was included in H.R. 4210 as passed by the House and Senate, except that in H.R. 4210 the exclusion was extended for 12 months rather than 18 months.

Effective Date

The proposal would be effective for taxable years ending after June 30, 1992.

2. Exclusion for Employer-Provided Group Legal Services; Tax Exemption for Qualified Group Legal Services Organizations

Present Law

Certain amounts contributed by an employer to and benefits provided under a qualified group legal services plan are excluded from an employee's gross income and wages for income and employment tax purposes. The exclusion is limited to an annual premium value of $70. The exclusion expires after June 30, 1992.

Present law provides tax-exempt status for an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan. The tax exemption for such an organization expires after June 30, 1992.

Description of Proposal

The proposal would extend the exclusion from income for employer-provided group legal services and the tax exemption for group legal services organizations for 18 months, through December 31, 1993.

A similar proposal was included in H.R. 4210 as passed by the House and Senate, except that in H.R. 4210 the exclusion and exemption were extended for 12 months rather than 18 months.

Effective Date

The proposal would be effective for taxable years ending after June 30, 1992.

3. Deduction for Health Insurance Costs of Self-Employed Individuals

Present Law

Under present law, the tax treatment of health insurance expenses depends on whether the taxpayer is an employee and whether the taxpayer is covered under a health plan paid for by the taxpayer's employer. An employer's contribution to a plan providing accident or health coverage for the employee and the employee's spouse and dependents is excludable from an employee's income and wages for income and employment tax purposes. In addition, businesses can generally deduct, as an employee compensation expense, the full cost of any health insurance coverage provided for their employees. The exclusion and deduction are generally available in the case of owners of the business who are also employees.

In the case of self-employed individuals (i.e., sole proprietors or partners in a partnership) no equivalent exclusion applies. However, present law provides a deduction for 25 percent of the amount paid for health insurance for a self-employed individual and the individual's spouse and dependents. The 25-percent deduction is also available to more than 2-percent shareholders of S corporations. The amount of expenses in excess of the deductible amount can be taken into account in determining whether the individual is entitled to deduct medical expenses as an itemized deduction (sec. 213). Thus, such amounts are deductible to the extent that, when combined with other unreimbursed medical expenses, they exceed 7.5 percent of adjusted gross income.

The 25-percent deduction expires for taxable years beginning after June 30, 1992. In the case of years beginning in 1992, only amounts paid before July 1, 1992, for coverage before July 1, 1992, are taken into account in determining the amount of the deduction.

Description of Proposal

The proposal would extend the 25-percent deduction for health insurance expenses of self-employed individuals for 18 months, through December 31, 1993.

A similar proposal was included in H.R. 4210 as passed by the House and Senate, except that in H.R. 4210 the deduction was extended for 12 months rather than 18 months.

Effective Date

The proposal would be effective for taxable years ending after June 30, 1992.

4. Qualified Mortgage Bonds and Mortgage Credit Certificates

Present Law

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used to finance the purchase, or qualifying rehabilitation or improvement of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds. Persons receiving QMB loans must satisfy principal residence, purchase price, borrower income, first-time homebuyer, and other requirements. Part or all of the interest subsidy provided by QMBs is recaptured if the borrower experiences substantial increases in income and disposes of the subsidized residence within nine years after it was purchased.

The volume of QMBs that a State may issue is limited by an annual State private activity bond volume limit.

Mortgage credit certificates

Qualified governmental units may elect to exchange private activity bond volume authority for authority to issue mortgage credit certificates ("MCCs"). MCCs entitle home-buyers to nonrefundable income tax credits for a specified percentage of the interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the loan remains outstanding and the residence being financed continues to be the MCC-recipient's principal residence. MCCs are subject to the same targeting requirements and recapture rules as QMBS.

Expiration

Authority to issue QMBs and to elect to trade in private activity bond volume authority to issue MCCs is scheduled to expire after June 30, 1992.

Description of Proposal

The proposal would extend the authority to issue QMBs and to elect to trade in bond volume authority to issue MCCs for 18 months (through December 31, 1993).

The proposal also would provide that certain contracts for deed do not violate the requirement that QMB- and MCC-financed homebuyers be first-time homebuyers in the case of homebuyers whose income does not exceed $15,000. Thus, loans would be allowed to these homebuyers to repay the contract for deed and to construct a new residence on the property. (Qualified home improvement loans would continue to be allowed for renovation of existing residences on this property.)

A similar proposal was included in H.R. 4210 as passed by the House and Senate, except that in H.R. 4210 the program was extended for 12 months rather than 18 months and did not include the program change.

Effective Date

The proposal would be effective for bonds issued and elections made to trade-in QMB authority to issue MCCs after June 30, 1992.

5. Qualified Small-Issue Bonds

Present Law

Interest on small issues of private activity bonds issued by States or local governments ("qualified small-issue bonds") is excluded from gross income if certain conditions are met. First, at least 95 percent of the bond proceeds must be used to finance manufacturing facilities or certain agricultural land or equipment. Second, the bond issue must have an aggregate face amount of $1 million or less, or alternatively the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, must not exceed $10 million.

Issuance of qualified small-issue bonds, like most other private activity bonds, is subject to annual State volume limitations and to other rules.

Authority to issue qualified small-issue bonds is scheduled to expire after June 30, 1992.

Description of Proposal

The proposal would extend the authority to issue qualified small-issue bonds for 18 months (through December 31, 1993).

A similar proposal was included in H.R 4210 as passed by the House and Senate, except that in H.R. 4210 the program was extended for 12 months rather than 18 months.

Effective Date

The proposal would be effective for bonds issued after June 30, 1992.

6. Research and Experimentation Tax Credit

Present Law

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit will not apply to amounts paid or incurred after June 30, 1992.

The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984-1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (such as "start-up" firms) are assigned a fixed-base percentage of .03. A taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Qualified research expenditures eligible for the credit consist of: (1) "in-house" expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf. Expenditures attributable to research that is conducted outside the United States, or research in the social sciences, arts, or humanities, do not enter into the credit computation.

In addition, the 20-percent tax credit also applies to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for university basic research over (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period.

Description of Proposal

The research tax credit would be extended for 18 months (i.e., for qualified research and university basic research expenditures incurred through December 31, 1993). A 12-month extension of the research credit was included in H.R. 4210 as passed by the House and Senate.

Effective Date

The proposal would apply to expenditures incurred during the period July 1, 1992, through December 31, 1993.

7. Tax Credit for Low-Income Rental Housing

Present Law

In general

A tax credit is allowed in annual installments over 10 years for qualifying newly constructed or substantially rehabilitated low-income rental housing. For most qualifying housing, the maximum credit is an amount having a present value of 70 percent of the eligible basis of the low-income housing units. For housing receiving other Federal subsidies (e.g., tax-exempt bond financing) and for the acquisition cost of existing housing that is substantially rehabilitated (e.g., costs other than rehabilitation expenditures), the maximum credit is an amount having a present value of 30 percent of qualified basis. Generally, that part of the building for which the credit is claimed must be rented to qualified low-income tenants at restricted rents for 15 years after the building is placed in service. In addition, a subsequent additional 15-year period of low-income use generally is required.

Eligible basis

The basis on which the credit is computed is determined as a percentage of the eligible basis of a qualified low-income building that is attributable to low-income rental housing units. This percentage is the lesser of (1) the percentage of low-income units to all residential units or (2) the percentage of the floor space of the low-income units to the floor space of all residential rental units. Generally, eligible basis is limited to the adjusted basis of the residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. There is no per-housing unit limit on the amount of eligible basis.

Ten-year anti-churning rule

The credit is not allowed on buildings, or substantial improvements to buildings, that have been previously placed in service within ten years of placement in service for credit purposes. Waivers from the ten-year rule may be granted by the Treasury Department under certain circumstances.

Minimum set-aside requirement for low-income individuals

Under the general low-income tenant occupancy requirement a residential rental project qualifies for the credit only if: (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 50 percent or less of area median income or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of area median income. Also, a special set-aside may be elected

for projects that satisfy a stricter requirement and that significantly restrict the rents on the low-income units relative to the other residential units in the building.

Students

A housing unit generally is not eligible for the low-income housing tax credit if the tenants are full-time students who are not married individuals filing joint returns. Exceptions to this rule allow the credit to be claimed on housing units occupied by persons who are enrolled in certain job training programs or students who are receiving AFDC payments.

State low-income housing credit authority limitation

Each State receives an annual low-income housing credit volume ceiling of $1.25 per resident. To qualify for the credit, a building owner generally must receive a credit allocation from the appropriate State credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation.

That portion of a State's credit authority which is unallocated in the year in which it originally arises may be carried forward and added to the State's credit authority for the subsequent calendar year. If allocations in the subsequent year exceed that year's annual credit authority, but do not exhaust the sum of that year's annual credit authority plus any credit authority carried forward from the preceding year, any remaining carried-forward credit authority is allocated in the next subsequent year to a national pool.

Expiration

The low-income housing credit is scheduled to expire after June 30, 1992.

Description of Proposal

The proposal would extend the low-income housing tax credit for 18 months (through December 31, 1993), with several modifications.

Eligible basis

The proposal would make two changes to the eligible basis rules:

First, the eligible basis of each building in a credit project would be limited to an amount equal to the maximum FHA single family insurance amount (currently $124,875). This amount would be indexed for inflation. In high-cost areas this maximum basis amount would be increased to 130 percent of the otherwise allowable maximum amount.

Second, the community service buildings in projects in qualified census tracts would be included in eligible basis as functionally related and subordinate facilities if (a) the size of the facilities is commensurate with tenant needs, (b) the use of the facilities is predominantly (although not exclusively) by the tenants and employees of the project owner, and (c) no more than 20 percent of the credit project's eligible basis is attributable to such facilities.

Ten-year anti-churning rule

The Treasury Department would be authorized to grant waivers from the credit's ten-year anti-churning rule for certain projects substantially assisted, financed, or operated under sec. 221(d)(4) of the National Housing Act.

Minimum set-aside requirement for low-income individuals

The Treasury Department would be authorized to: (1) provide a waiver of penalties for de minimis errors in the application of the low-income tenant occupancy requirement and (2) grant a waiver from the annual recertification of tenant income, for tenants in a building, if the population of a building is composed entirely of low-income tenants.

Students

Housing units occupied entirely by full-time students could qualify for the credit if the full-time students were a single parent and his or her minor children and none of the tenants was a dependent of a third party.

State low-income housing credit authority limitation

For purposes of the carryforward rule, credits carried forward from previous years would be treated as used before current year credits.

The proposal was included in H.R. 4210 as passed by the Senate, and is similar to the provisions of that bill as passed by the House and Senate except that in that version of H.R. 4210

the credit was extended permanently rather than for 12 months.

Effective Date

Generally, the proposal would be effective for allocations of low-income credit volume limitation (and bond-financed buildings financed with tax-exempt bonds issued) after June 30, 1992. The provisions relating to the Treasury Department's authority to grant waivers would be effective on date of enactment. The provision relating to the credit carryforward rules would be effective on and after January 1, 1992.

8. Targeted Jobs Tax Credit

Present Law

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. These targeted groups consist of individuals who are either recipients of payments under means-tested programs, economically disadvantaged (as measured by family income), or disabled.

The credit generally is equal to 40 percent of up to $6,000 of qualified first-year wages. A credit equal to 40 percent of up to $3,000 of wages paid to qualified summer youth employees is also allowed. Thus, the maximum credit is generally $2,400 per qualified employee, with a $1,200 maximum credit per summer youth employee. The employer's deduction for wages is reduced by the amount of the credit claimed.

The credit is scheduled to expire for individuals who begin work for an employee after June 30, 1992.

Authorization of appropriations

Present law authorizes appropriations for administration and publicity expenses relating to the credit through June 30, 1992. These monies are to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

Description of Proposal

The proposal would extend the targeted jobs tax credit and the authorization for appropriations for 18 months (through December 31, 1993). The proposal would also restore individuals aged 23 and 24 to the category of economically disadvantaged youth.

A similar proposal without the change to the category of economically disadvantaged youth was included in H.R. 4210 as passed by the House and Senate, except that in H.R. 4210 the credit was extended for 12 months rather than 18 months.

Effective Date

The proposal would be effective for individuals who begin work for an employer after June 30, 1992.

9. Tax Credit for Orphan Drug Clinical Testing Expenses

Present Law

A 50-percent nonrefundable tax credit is allowed for a taxpayer's qualified clinical testing expenses paid or incurred in the testing of certain drugs for rare diseases, generally referred to as "orphan drugs." Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. Present law defines a rare disease or condition as one that (1) affects less than 200,000 persons in the United States or (2) affects more than 200,000 persons, but there is no reasonable expectation that businesses could recoup the costs of developing a drug for it from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

The orphan drug tax credit is scheduled to expire after June 30, 1992.

Description of Proposal

The proposal would extend the orphan drug tax credit for 18 months (i.e., for qualified clinical testing expenses incurred through December 31, 1993). A 12-month extension of the orphan drug tax credit was included in H.R. 4210 as passed by the House and Senate.

Effective Date

The proposal would be effective for expenses incurred during the period July 1, 1992, through December 31, 1993.

10. Contributions of Appreciated Property

Present Law

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair-market value of property contributed to a charitable organization. However, in the case of a charitable contribution of inventory or other ordinary-income property, short-term capital gain property, or certain gifts to private foundations, the amount of the deduction generally is limited to the taxpayer's adjusted basis in the property. In the case of a charitable contribution of tangible personal property, a taxpayer's deduction is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair-market value of the property exceeds its adjusted basis (sec. 57(a)(6)). However, in the case of a contribution made in a taxable year beginning in 1991 or made before July 1, 1992, in a taxable year beginning in 1992, this rule does not apply to contributions of tangible personal property.

Description of Proposal

The proposal provides that all charitable contributions of appreciated property (real, personal, or intangible property) made during the period January 1, 1992, through December 31, 1993, would not be treated as a tax preference item for alternative minimum tax (AMT) purposes.

In addition, the Treasury Department is directed to report to Congress not later than one year after enactment on the development of a procedure under which taxpayers could elect to seek an agreement with the IRS as to the value of tangible personal property prior to the donation of such property to a qualifying charitable organization, including the setting of possible threshold amounts for claimed value (and the payment of fees by taxpayers), possible limitations on applying the procedure only to items with significant artistic or cultural value, and recommendations for legislative action needed to implement the proposed procedure.

The proposal was included in H.R. 4210 as passed by the House and Senate (except that the provision in H.R. 4210 applied to charitable contributions made during the period January 1, 1992, through June 30, 1993, and the Treasury Department report on an advance valuation procedure was required to be submitted to Congress by December 31, 1992).

Effective Date

The proposal would be effective for contributions made during the period January 1, 1992, through December 31, 1993. The Secretary of the Treasury would be required to report on the development of an advance valuation procedure not later than one year after date of enactment.

11. Excise Tax on Certain Vaccines for the Vaccine Injury Compensation Trust Fund

Present Law

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of revenue to compensate individuals who are injured (or die) as a result of the administration of certain vaccines: diphtheria, pertussis, and tetanus ("DPT"); diphtheria and tetanus ("DT"); measles, mumps, and rubella ("MMR"); and polio. The Vaccine Trust Fund provides the funding source for the National Vaccine Injury Compensation Program ("Program"), which provides a substitute, Federal "no-fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers.

The Vaccine Trust Fund is funded by a manufacturer's excise tax on DPT, DT, MMR, and polio vaccines (and any other vaccines used to prevent these diseases). The excise tax per dose is $4.56 for DPT, $0.06 for DT, $4.44 for MMR, and $0.29 for polio vaccines.

The vaccine excise tax will expire after the later of: (1) December 31, 1992; or (2) the date on which the Vaccine Trust Fund revenues exceed the projected liabilities with respect to compensable injuries from vaccines administered before October 1, 1992. Amounts in the Vaccine Trust Fund are available for the payment of compensation under the Program with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

Description of Proposal

The present-law excise taxes imposed on certain vaccines and the Vaccine Trust Fund would be extended for two years (through December 31, 1994, and October 1, 1994, respectively).

The Treasury and Health and Human Services Departments would be required to study and report to the Committees on Finance and Ways and Means by January 1, 1994, certain issues regarding Vaccine Trust Fund funding needs, appropriateness of imposition and rate of tax on covered vaccines, new vaccines and immunization practices, and the treatment of vaccines produced by State governmental entities.

The proposal was included in H.R. 4210 as passed by the House and Senate.

Effective Date

The proposal would be effective on the date of enactment.

12. Permanent Extension of General Fund Transfer to Railroad Retirement Tier 2 Fund

Present Law

The proceeds from the income taxation of railroad retirement tier 2 benefits are transferred from the general fund of the Treasury to the Railroad Retirement Account. This transfer applies only to proceeds from the taxation of benefits which have been received prior to October 1, 1992. Proceeds from the taxation of benefits received after this date remain in the general fund.

Description of Proposal

Under the proposal, the transfer of proceeds from the income taxation of railroad retirement tier 2 benefits from the general fund of the Treasury to the Railroad Retirement Account would be made permanent.

The proposal was included in H.R. 4210 as passed by the House and Senate.

Effective Date

The proposal would be effective beginning September 30, 1992.

13. Allocation and Apportionment of Research Expenses

Present Law

U.S. persons are taxable on their worldwide income, including their foreign income. Foreign source taxable income equals foreign source gross income less the expenses, losses and other deductions properly apportioned or allocated to that income. The Internal Revenue Code generally articulates only the broad principles of how expenses reduce U.S. and foreign source gross income, leaving the Treasury Department to provide detailed rules for the task of allocating and apportioning expenses.

Treasury regulations issued in 1977 described methods for allocating expenses between U.S. and foreign source income, including rules for the allocation of research and development (R&D) expenses. Upon issuance of these regulations, a significant dispute regarding the appropriate allocation of R&D expenses developed between taxpayers and the Treasury Department. This unresolved dispute between taxpayers and the Treasury Department precipitated Congressional involvement on this issue, and since 1981, the R&D allocation regulations have been subject to a series of eight suspensions and temporary modifications. The current temporary provision is applicable generally for the first six months of the first taxable year beginning after August 1, 1991, and among other rules, automatically allocates 64 percent of U.S. performed R&D to U.S. source income, and generally permits a greater amount of taxable income to be classified as foreign source than under the 1977 regulations. This will increase the benefits of the foreign tax credit to many taxpayers.

Description of Proposal

The report of the Senate Finance Committee on the bill would contain language indicating that it believes that the Administration has broad authority under current law to revise the current R&D allocation regulations. The report would state that since the Administration has indicated its support of an allocation system that provides incentives to increase the performance of U.S.-based research activities, the committee expects, and in the strongest terms, urges the Treasury Department to revise its permanent regulations in a manner consistent with the Administration's stated objectives and proposals. The report would state that the committee believes that such a revision would be consistent both with current law regulatory authority and with the stated goals of the Administration.

The report would state that the committee further urges the Treasury Department, when revising its regulations, to take into consideration that taxpayers, in appropriate circumstances, are required for business purposes to conduct significant amounts of

R&D at foreign sites and should not be penalized by the allocation rules. Similar language appeared in the Technical Explanation of the Senate Finance Committee amendment to H.R. 4210 (March 6, 1992), and was approved by the conferees on H.R. 4210.

Effective Date

The report would state that the committee expects and requests the Treasury Department to issue regulations as soon as possible, to be effective after the termination of the current temporary rules.

B. Luxury Excise Tax and Diesel Fuel Excise Tax on Motorboats

1. Repeal of Luxury Excise Tax on Boats, Aircraft, Jewelry, and Furs; Index Luxury Excise Tax on Vehicles

Present Law

Present law imposes ten-percent excise taxes on the portion of the retail price of the following items that exceeds the thresholds specified: automobiles above $30,000; boats above $100,000; aircraft above $250,000; jewelry above $10,000; and furs above $10,000.

The tax generally applies only to the first retail sale after manufacture, production or importation of items subject to the tax. It does not apply to subsequent sales of these items.

The tax applies to sales before January 1, 2000.

Description of Proposal

The proposal would repeal the excise taxes imposed on boats, airplanes, jewelry, and furs.

The proposal also would modify the tax on automobiles to provide that the $30,000 threshold is indexed for inflation occurring after 1990.

The proposal further would modify the tax on automobiles to provide that the tax does not apply to a 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, in order to compensate for the effect of the disability.

The proposals to repeal of the luxury excise tax on boats, furs, airplanes, and jewelry, to index the threshold of the tax with respect to automobiles, and to exclude from tax accessories to assist handicapped individuals were included in H.R. 4210 as passed by the House of Representatives and Senate.

Effective Date

The proposal generally would be effective for sales on or after January 1, 1992. The indexation of the threshold applicable to automobiles would be effective for sales on or after July 1, 1992.

2. Impose Excise Tax on Diesel Fuel Used in Noncommercial Motorboats

Present Law

Federal excise taxes generally are imposed on gasoline and special motor fuels used in highway transportation and by certain off-highway recreational trail vehicles and by motorboats (14 cents per gallon). A Federal excise tax also is imposed on diesel fuel (20 cents per gallon) used in highway transportation. Diesel fuel used in trains generally is taxed at 2.5 cents per gallon.

The revenues from these taxes, minus 2.5 cents per gallon, are deposited in the Highway Trust Fund, the National Recreational Trails Trust Fund, or the Aquatic Resources Trust Fund through September 30, 1999. Revenues from the remaining 2.5 cents per gallon are retained in the General Fund through September 30, 1995, after which time the 2.5-cents-per-gallon portion of the taxes (including the tax on diesel fuel used in trains) is scheduled to expire.

An additional 0.1-cent-per-gallon tax applies to these fuels to finance the Leaking Underground Storage Trust Fund, generally through December 31, 1995.

Description of Proposal

The provision would extend the current 20.1-cents-per-gallon diesel fuels excise taxes to diesel fuel used by recreational motorboats. Fuel used by motorboats for commercial fishing, transportation for compensation or hire, or for business use other than predominantly for entertainment, amusement, or recreation, would remain exempt.

As under the President's budget proposal, the tax is collected at the same point in the distribution chain as the highway diesel fuel tax (i.e., on sale to a retailer). However, to prevent unnecessary tax-paid sales followed by refunds, retailers that sell diesel fuel exclusively to commercial (i.e., nonpleasure) boats are permitted to buy the fuel tax-free.

The revenues from the entire 20.1-cents-per-gallon tax on diesel fuel used by motorboats would be retained in the General Fund.

This proposal was included in H.R. 4210 as passed by the House and Senate.

Effective Date

The proposal would be effective after September 30, 1992.

C. Other Revenue-Raising Provisions

1. Modify Estimated Tax Payment Rules for Large Corporations

Present Law

A corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning in 1993, 1994, 1995, and 1996, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least 95 percent of the tax liability shown on the return for the current taxable year. In addition, a corporation may annualize its taxable income and make estimated tax payments based on 95 percent of the tax liability attributable to such annualized income.

For taxable years beginning in 1992, the 95-percent requirement is a 93-percent requirement; the 95-percent requirement becomes a 90-percent requirement for taxable years beginning in 1997 and thereafter (P.L. 102-44, Feb. 7, 1992).

On June 11, 1992, the Senate Finance Committee voted to provide that for taxable years beginning after June 30, 1992, and before 1997, the present-law 93-percent and 95-percent requirements would become 96-percent requirements. Also under the provision, for taxable years beginning after 1996, the present-law 90-percent requirement would become a 91-percent requirement.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of the tax liability shown on its return for the preceding taxable year (the "100 percent of last year's liability safe harbor"). A large corporation may use this rule with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

Description of Proposal

For taxable years beginning after 1996, the percentage of current-year tax liability upon which a corporation is required to base its estimated tax payments would be increased by five percentage points, whether such liability is determined on an actual or annualized basis.

The proposal would not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations.

Effective Date

The proposal would be effective for estimated tax payments applicable to taxable years beginning after December 31, 1996.

2. Amortization of Goodwill and Certain Other Intangibles

Present Law

In determining taxable income for Federal income tax purposes, a taxpayer is allowed depreciation or amortization deductions for the cost or other basis of intangible property that is used in a trade or business or held for the production of income if the property has a limited useful life that may be determined with reasonable accuracy. No depreciation or amortization deductions are allowed with respect to goodwill or going concern value.

Description of Proposal

In general

An amortization deduction would be allowed with respect to certain intangible property (defined as a "section 197 intangible") that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction would be determined by amortizing the adjusted basis of the intangible ratably over a 16-year period.

The proposal generally would apply to a section 197 intangible whether it is acquired as part of a trade or business or as a single asset. The proposal generally would not change the Federal income tax treatment of self-created intangible property, such as goodwill that is created through advertising or other similar expenditures.

Definition of section 197 intangible

The term "section 197 intangible" would be defined as any property that is included in any one or more of the following categories: (1) goodwill and going concern value; (2) certain specified types of intangible property that generally relate to workforce, information base, know-how, customers, suppliers, or other similar items; (3) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof; (4) any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (5) any franchise, trademark, or trade name.

The term "section 197 intangible" would not include: (1) any interest in a corporation, partnership, trust, or estate; (2) any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate

swap or other similar financial contract; (3) any interest in land; (4) computer software[3] that is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified;[4] (5) other computer software that is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof); (6) any interest in a film, sound recording, video tape, book, or other similar property (including the right to broadcast or transmit television or radio programming that includes live events) that is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof); (7) certain rights to receive tangible property or services; (8) certain interests in patents or copyrights; (9) any interest under an existing lease of tangible property; (10) any interest under an existing indebtedness (except for the deposit base and similar items of a financial institution); and (11) a franchise to engage in any professional sport and any item acquired in connection with such a franchise.

In addition, the term "section 197 intangible" would not include any right to service indebtedness that is secured by residential real property (a "purchased mortgage servicing right") but only if the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of other assets that constitute a trade or business or a substantial portion of a trade or business.

Further, the term "section 197 intangible" would not include any intangible property that is acquired from another entity if the following requirements are satisfied: (1) the fair market value of the entity as of the date of the acquisition does not exceed $50 million (for this purpose, fair market value includes the adjusted issue price of debt that has a maturity of more than one year at the time of issuance and that is issued by the seller or to which the sold assets are subject); (2) the entity did not have gross

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[3] Computer software would be defined as any program that is designed to cause a computer to perform a desired function but does not include any data base other than a data base that is in the public domain and that is incidental to the software (e.g., a dictionary).

[4] If a depreciation deduction is allowed with respect to any computer software that is not a section 197 intangible because of this clause (4) or the following clause (5), the amount of such deduction would be determined by amortizing the adjusted basis of the computer software ratably over a 36-month period that begins with the month that the computer software is placed in service.

receipts (other than earnings on short-term investments) more than five years prior to the transaction; (3) the aggregate research and experimental expenditures (as defined in section 174 of the Code) of the entity during its entire existence are at least $500,000 and at least 30 percent of its aggregate gross receipts; (4) at all times at least 50 percent of the equity of the entity is directly owned by five or fewer non-corporate entities; (5) at all times at least 50 percent of the equity of the entity is owned by individuals on a look-through basis (other than ownership attributed through a corporation); and (6) no material part of the acquired assets were in turn acquired by the seller from another person in a transaction which would not have qualified under this provision.

Finally, the Treasury Department would be authorized to issue regulations that exclude from the definition of a section 197 intangible a right received under a contract (or any right granted by a governmental unit or an agency or instrumentality thereof) if (1) the right is fixed in duration or amount, and (2) the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof).

Other rules

Special rules would apply if a taxpayer disposes of a section 197 intangible that was acquired in a transaction or series of related transactions and, after the disposition, the taxpayer retains other section 197 intangibles that were acquired in such transaction or series or related transactions. First, no loss would be recognized by reason of such a disposition. Second, the adjusted bases of the retained section 197 intangibles that were acquired in connection with such transaction or series of related transactions would be increased by the amount of any loss that is not recognized.

An acquisition of (or distribution with respect to) an interest in a partnership would not be treated as an acquisition of the section 197 intangibles of the partnership except to the extent of any positive adjustment to the basis of the section 197 intangibles that occurs in connection with such acquisition (or distribution). Furthermore, the special treatment of liquidation payments made to a retiring or deceased partner, under which payments for goodwill and certain "unrealized receivables" may be treated as a distributive share of partnership income, would no longer be available except in the case of a general partner of a partnership in which capital is not a material income-producing factor.

Prior action

A similar proposal was included in H.R. 4210 as passed by the House and the Senate, but with a 14-year amortization

period.

Effective Date

In general

The proposal generally would apply to property acquired after the date of enactment. A taxpayer would be allowed to elect to apply the proposal to all property acquired after July 25, 1991, by the taxpayer and any other person under common control with the electing taxpayer (within the meaning of sections 52(a) and (b) of the Internal Revenue Code).

In addition, a taxpayer would be allowed to elect to apply present law (rather than the proposal) to property that is acquired after the date of enactment if the property is acquired pursuant to a binding written contract in effect on the date of enactment and at all times thereafter until the property is acquired. A taxpayer would not be allowed to make this election if (1) the taxpayer makes the election described above that applies the proposal to all property acquired after July 25, 1991, or (2) the taxpayer makes the election described below to amortize 75 percent of the basis of the section 197 intangibles identified on a Federal income tax return as amortizable.

Special election to amortize 75 percent of the basis of the section 197 intangibles identified on return as amortizable

A taxpayer that acquired a section 197 intangible on or before July 25, 1991, would be allowed to elect to amortize 75 percent of the basis of all section 197 intangibles that (1) were acquired on or before the date of enactment and during an "open taxable year"[5] for which a Federal income tax return has been filed as of June 16, 1992, and (2) were claimed as amortizable on the Federal income tax return for the taxable year of acquisition. The 25 percent of the basis of any section 197 intangible that is not amortizable under this election would be treated as goodwill and would only be recovered at the time that the trade or business to which the goodwill relates is disposed of (or becomes worthless).

The allocation of purchase price between amortizable

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5 An open taxable year would be defined as any taxable year for which either (1) the statute of limitations on the assessment of tax has not expired as of June 16, 1992, or (2) a refund claim is pending as of June 16, 1992, but only if the refund claim involves the issue of the proper Federal income tax treatment of intangibles, acquired in such year, that are defined as section 197 intangibles under the proposal. An open taxable year, however, would not include any taxable year that occurs before a taxable year that is not an open taxable year.

intangibles and non-amortizable intangibles as reflected on the Federal income tax return for the taxable year of acquisition would be binding on the electing taxpayer and the IRS. In addition, the amortization deduction for any taxable year would be determined based on the amortization method and period used by the taxpayer in determining the amortization deduction for the taxable year of acquisition.

Interest would be payable by the taxpayer with respect to any underpayment of tax that is attributable to the election. The election would be required to be made before January 1, 1993, and any additional tax and interest that is due by reason of the election would be required to be paid before January 1, 1993.

A special rule would apply to an electing taxpayer with respect to section 197 intangibles that are acquired on or before the date of enactment and during an "open taxable year" for which a Federal income tax return has not been filed as of June 16, 1992. Under this rule, 75 percent of the basis of the section 197 intangibles would be amortized ratably over a 16-year period and the remaining basis would be treated as goodwill that is not amortizable.

Treatment of certain payments to retired or deceased partners

The portion of the proposal relating to the treatment of certain payments to retired or deceased partners generally would apply to partners retiring or dying after February 12, 1992.

Anti-churning rules

Special rules would be provided to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation deduction would not have been allowable under present law into amortizable property to which the proposal applies. These "anti-churning" rules would not apply to any section 197 intangible that is acquired from a person with less than a 50-percent relationship to the acquirer if: (1) the seller recognizes gain on the transaction with respect to such intangible; and (2) the seller agrees, notwithstanding any other provision of the Code, to pay a tax on such gain equal to the highest rate of tax imposed by section 1 or 11 of the Code, whichever is applicable. The seller would be treated as satisfying the second requirement if the excess of (1) the total tax liability for the year of the transaction over (2) what its tax liability for such year would have been had the sale of the intangible (but not the remainder of the transaction) been excluded from the computation equals or exceeds the product of the gain on that asset times the relevant maximum rate.

3. Require Reporting of Taxpayer Identification Numbers of Parties in Seller-Financed Mortgage Transactions

Present Law

Taxpayers are generally allowed an itemized deduction from adjusted gross income for the amount of qualified residence interest paid. If qualified residence interest is paid to an individual, the name and address (but not the taxpayer identification number[6]) of the interest recipient must be reported on Schedule A of the payor's tax return.

Individuals receiving taxable interest in excess of $400 are required to report the amounts received and the names (but not the addresses or taxpayer identification numbers) of the payors on Schedule B of the payee's tax return.

Description of Proposal

If any taxpayer claims a deduction for qualified residence interest on any seller-provided financing, such taxpayer (the buyer) would be required to include on his or her tax return the name, address, and taxpayer identification number of the person (the seller) to whom the interest is paid or accrued. In general, this information would be required to be furnished on Schedule A of the buyer's tax return for every year in which the buyer deducts this interest.

If any person receives or accrues interest from seller-provided financing, such person (the seller) would be required to include on his or her tax return the name, address, and taxpayer identification number of the person (the buyer) from whom the interest is received or accrued. In general, this information would be required to be furnished on Schedule B of the seller's tax return for every year in which the seller is required to include this interest in income.

If any person involved in seller-provided financing is required to include on his or her tax return the taxpayer identification number of another person, such other person would be required to furnish his or her taxpayer identification number to such person. Information would not be required to be reported under this provision to the extent it would be duplicative of existing information reporting requirements.

Failure to meet the requirements for information reporting described above would be subject to information reporting penalties under sec. 6723. In general, these penalties are $50 for each failure.

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6 An individual's taxpayer identification number is generally that individual's Social Security number.

The proposal is included in H.R. 776 as passed by the House and was also included in H.R. 4210 as passed by the House and the Senate.

Effective Date

The proposal would be effective for taxable years beginning after December 31, 1991.

4. Increase in Base Tax Rate of Excise Tax on 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.

Description of Proposal

The proposal would increase the base tax rate of both initially listed chemicals and newly listed chemicals. For both originally listed chemicals and newly listed chemicals, the base tax rate would be increased by $0.15 per pound in 1992, by $0.25 per pound in 1993, by $0.35 per pound in 1994, and by $0.45 per pound in 1995 and thereafter. These increases in the base tax rates of originally listed and newly listed chemicals would be in addition to those currently scheduled to occur under present law.

Effective Date

The proposal would be effective for taxable chemicals sold or used on or after October 1, 1992. Floor stocks taxes are imposed on taxed chemicals held on the effective dates of changes in the base tax rate.