

**COMPARISON OF TAX TECHNICAL CORRECTIONS  
CONTAINED IN H.R. 2676 AS PASSED BY THE HOUSE AND THE SENATE**

Title VI of H.R. 2676, as passed by the House on November 5, 1997,<sup>1</sup> contains technical corrections to the Taxpayer Relief Act of 1997 (the "1997 Act") and other legislation. Except for one instance noted below, the Senate amendment to H.R. 2676 (as passed on May 7, 1998) generally contains the provisions of Title VI of the House bill. Some of these provisions are modified by the Senate amendment. In addition, the Senate amendment contains additional technical corrections. The differences between the technical corrections in the Senate amendment and in the House bill are briefly described below.

**1. Child Tax Credit Provisions of the 1997 Act**

Treatment of a portion of the child credit as a supplemental child credit.-- The Senate amendment modifies the provision of the House bill intended to clarify the treatment of a portion of the child credit as a supplemental child credit under the earned income credit and an offsetting reduction of the child credit. Specifically, the Senate amendment clarifies the computation of the amount of the child credit that is treated as a supplemental child credit. Both the House bill and the Senate amendment clarify that such treatment does not affect the total tax credits allowed to the taxpayer or any other tax credit available to the taxpayer.

**2. Education Incentives of the 1997 Act**

Education IRAs.--The Senate amendment adds provisions to: (1) provide that the excise tax of section 4973 applies to each year that an excess contribution remains in an education IRA; (2) clarify that a beneficiary of an education IRA must be a life-in-being; (3) clarify that the 10-percent excise tax provided under section 530(d)(4) will not be imposed in cases where a distribution from an education IRA is includible in gross income solely because the taxpayer elects the HOPE or Lifetime Learning credit with respect to the beneficiary; (4) clarify that, in the event of the death of the designated beneficiary, the balance remaining in an education IRA may be distributed to any other beneficiary or to the estate of the deceased designated beneficiary, and a tax-free rollover of the account will be allowed if any member of the family

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<sup>1</sup> The "Tax Technical Corrections Act of 1997" was added as an amendment to H.R. 2676 (Title VI) on the House floor. The provisions were previously reported by the House Committee on Ways and Means in H.R. 2645 (H. Rept. 105-356, October 29, 1997).

becomes the new beneficiary; and (5) provide that if expenses are taken into account in determining the amount of the exclusion under section 530 for a distribution from an education IRA, then no deduction, exclusion, or credit is allowed under the Code with respect to such expenses.

Student loan interest.--The Senate amendment adds a provision to clarify that only a taxpayer who is required to make interest payments under the terms of the loan may deduct such payments as student loan interest.

Enhanced deduction for corporate donations of computers.--The Senate amendment adds a provision to clarify the requirements applicable to entities and organizations to which computers may be donated for purposes of the enhanced deduction.

Qualified State tuition programs.--The Senate amendment adds a provision that includes the original beneficiary's spouse within the definition of "member of the family."

Qualified zone academy bonds.--The Senate amendment adds a provision that clarifies the treatment of the credit for purposes of the estimated tax and overpayment rules.

### **3. Savings Incentives of the 1997 Act**

Conversion of IRAs into Roth IRAs.--Under the Senate amendment, in the case of conversions of IRAs into Roth IRAs, the taxpayer is able to elect to have the amount converted includible in income in the year of the conversion (or the year of withdrawal if the conversion is accomplished through a rollover) rather than ratably over 4 years. The Senate amendment does not include the additional 10-percent recapture tax applicable to premature withdrawals of amounts to which the 4-year spread applies. Instead, under the Senate amendment, if an individual elects application of the 4-year spread and withdraws amounts before the entire amount of the conversion has been included in income, the amount withdrawn is includible in income (in addition to any amount required to be included under the 4-year spread). In no case will the amount includible under this provision exceed the amount converted. The Senate amendment does not include the rules in the House bill regarding separate accounts for converted amounts and instead includes ordering rules for determining the character of withdrawals from Roth IRAs.

Under the Senate amendment, a new 5-year holding period for determining whether distributions from a Roth IRA are qualified distributions does not apply to converted amounts. Thus, the 5-year holding period begins with the year for which a contribution (including a rollover contribution) was made.

The Senate amendment also clarifies calculation of adjusted gross income for purposes of applying the \$100,000 adjusted gross income ("AGI") limit on individuals eligible to convert IRAs to Roth IRAs. Under the Senate amendment, the applicable AGI is AGI for the year of the

distribution to which the conversion relates. In addition, under the Senate amendment, it is intended that in determining AGI, the conversion amount (to the extent otherwise includible in AGI) is subtracted from AGI for the year of the distribution.

Penalty-free distributions for education expenses and purchase of first homes.--The Senate amendment modifies the provision in the House bill intended to prevent avoidance of the 10-percent early withdrawal tax by providing that hardship distributions from qualified cash or deferred arrangements and tax-sheltered annuities are not eligible rollover distributions (and not subject to 20-percent withholding). The Senate amendment also modifies the effective date of the House bill provision. The Senate amendment is effective for distributions after December 31, 1998.

#### **4. Capital Gains Provisions of the 1997 Act**

The Senate amendment modifies two provisions of the House bill to: (1) clarify the provision relating to the holding period of positions in certain short sales and straddles; and (2) provide that new section 1045 (relating to rollovers of small business stock) applies to stock held by certain partnerships with trusts as partners. The Senate amendment adds a provision to clarify the amount of exclusion applicable to the sale of a principal residence by a married couple filing a joint return who do not qualify for the full \$500,000 exclusion.

#### **5. Alternative Minimum Tax Provisions of the 1997 Act**

The Senate amendment adds provisions that: (1) conform the regular-tax election to use AMT depreciation to the changes made to AMT depreciation by the 1997 Act; and (2) clarify the eligibility of the small corporation exemption.

#### **6. Estate and Gift Tax Provisions of the 1997 Act**

The Senate amendment modifies the provisions of the House bill to: (1) clarify the effective date for the generation-skipping exemption; (2) coordinate the unified credit and the qualified family-owned business exclusion; and (3) clarify the rules governing revaluation of gifts. The Senate amendment also adds provisions that: (1) clarify the phaseout range for the 5-percent surtax to phase out the benefits of the unified credit and graduated rates; (2) clarify that interests eligible for the family-owned business exclusion must be passed to a qualified heir; (3) clarify the "trade or business" requirement for the family-owned business exclusion; (4) convert the family-owned business exclusion into a deduction; (5) make other technical changes to items cross-referenced in the family-owned business provision; and (6) clarify the treatment of post-mortem conservation contributions.

## **7. D.C. Zone Incentives of the 1997 Act**

The Senate amendment adds provisions that clarify the definitions of businesses and property eligible for special incentives available with respect to the D.C. Zone. In addition, the Senate amendment provides that the income phase-out rules applicable to the D.C. first-time homebuyer credit apply only in the year the credit is generated and not in subsequent carryover years.

## **8. Miscellaneous Provisions of the 1997 Act**

The Senate amendment adds provisions that: (1) clarify the qualification of the reduced rate of tax on hard ciders; (2) clarify the treatment of the tax paid by electing publicly treated partnerships; (3) modify the depreciation limitation of electric vehicles; and (4) modify the definition of "non-Amtrak State" for purposes of the Amtrak net operating loss provision.

## **9. Revenue-Increase Provisions of the 1997 Act**

The Senate amendment adds provisions that: (1) clarify that the exception to the constructive sales rules for positions with respect to straight debt instruments does not apply to positions that are convertible into stock; (2) provide coordination between the basis adjustment rules relating to extraordinary dividends and similar rules applicable to consolidated returns; (3) clarify the interaction of section 355 and rules relating to certain divisive transactions involving asset contributions to a subsidiary; (4) clarify the application of section 304 to certain international transactions; (5) clarify the treatment of prepaid telephone cards for telephone excise tax purposes; (6) modify the unrelated business income tax rules applicable to second-tier subsidiaries; (7) modify the interaction between section 901(k) and the foreign tax credit flow-through rules for RICs; (8) clarify the treatment of additional covered lives under a master contract for purposes of the effective date of the provision relating to company owned life insurance; (9) make a clerical amendment to the definition of wages under the earned income credit; and (10) clarify the allocation of basis of properties distributed by a partnership.

## **10. Foreign Provisions of the 1997 Act**

The Senate amendment adds provisions that: (1) clarify the treatment of PFIC option holders; (2) clarify the application of PFIC mark-to-market rules to RICs; and (3) clarify the interaction between the PFIC and other mark-to-market regimes.

## **11. Simplification Provisions of the 1997 Act**

The Senate amendment adds a provision that provides that distributions from a REIT are deemed to first come from any non-REIT earnings.

## **12. Estate, Gift, and Trust Simplification Provisions of the 1997 Act**

The Senate amendment adds provisions that: (1) clarify the treatment of revocable trusts for purposes of the generation-skipping transfer tax; and (2) provide regulatory authority for simplified reporting of funeral trusts terminated during the taxable year.

## **13. Excise Tax Simplification Provisions of the 1997 Act**

The Senate amendment clarifies that the 1997 Act's provision liberalizing rules for bulk importation of wine applies only to alcohol that would qualify as a natural wine if produced in the United States.

## **14. Pension and Employee Benefits Provisions of the 1997 Act**

The Senate amendment adds a clarification to the scope of the provision relating to the treatment of disability payments made to public safety employees.

## **15. Technical Corrections Relating to Other Legislation**

Adoption credit.--The Senate amendment adds a provision that provides that the phase-out rules applicable to the adoption credit are not applicable to credit carryovers.

Disclosure requirements of apostolic organizations.--The Senate amendment adds a provision that provides that section 501(d) apostolic organizations are not required to disclose Schedules K-1.

Earned income credit qualification.--The Senate amendment adds provisions that clarify the application of the taxpayer identification number rules for purposes of determining eligibility for the earned income credit.

Stapled REIT grandfather rule.--The Senate amendment does not include the provision of the House bill relating to the grandfather rule applicable to stapled REITs.