

**DESCRIPTION OF THE MODIFICATIONS CONTAINED IN
AN AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO THE CHAIRMAN'S MARK RELATING TO REVENUE PROVISIONS
AS RELEASED TO
MEMBERS OF THE COMMITTEE ON WAYS AND MEANS
ON JUNE 9, 1997**

Scheduled for Markup

Before the

HOUSE COMMITTEE ON WAYS AND MEANS

on June 11, 1997

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

June 11, 1997

JCX-27-97

INTRODUCTION

The House Committee on Ways and Means has scheduled a markup of revenue reconciliation provisions, beginning on June 11, 1997. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the amendment in the nature of a substitute to be offered by Chairman Archer to the Chairman's Mark.²

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Modifications Contained in an Amendment in the Nature of a Substitute to the Chairman's Mark Relating to Revenue Provisions as Released to Members of the Committee on Ways and Means on June 9, 1997* (JCX-27-97), June 11, 1997.

² For descriptions of the revenue provisions contained in the Chairman's mark, see Joint Committee on Taxation, *Description of Chairman's Mark Relating to Revenue Reconciliation Provisions* (JCX-20-97), June 9, 1997; Joint Committee on Taxation, *Description of Chairman's Mark Relating to Tax Simplification Provisions* (JCX-21-97), June 9, 1997; and Joint Committee on Taxation, *Description of Chairman's Mark Relating to Technical Correction Provisions* (JCX-22-97), June 9, 1997.

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The Chairman's mark would be adopted with the following modifications:

1. Modifications to alternative minimum tax applicable to business activities (sec. 403)

The Chairman's mark would make the following modifications to the alternative minimum tax ("AMT") applicable to business activities: (1) repeal the corporate AMT for small corporations, effective for taxable years beginning after December 31, 1997; (2) repeal various adjustments and preferences, generally effective for investments made or transactions entered into after December 31, 2000 (depreciation adjustment repeal effective for property placed in service after December 31, 1997); and (3) repeal the corporate AMT for all other corporations, effective for taxable years beginning after December 31, 2006.

The amendment in the nature of a substitute would modify the Chairman's mark with respect to the AMT applicable to business activities. Under the amendment in the nature of a substitute, the depreciation adjustment would be repealed for property placed in service after December 31, 1998. The corporate AMT would be repealed for small businesses (as under the Chairman's mark). Small businesses that become large would become subject to the AMT with respect to new transactions and investments. No other changes to the present-law AMT applicable to businesses would be made.

2. Estate and gift tax unified credit (sec. 501)

The amendment in the nature of a substitute would modify the phase-in schedule for the increase in the unified credit to provide an effective exemption of \$650,000 for decedents dying, and gifts made, in 1998; \$750,000 in 1999; \$765,000 in 2000; \$775,000 in 2001 through 2004; \$800,000 in 2005; \$825,000 in 2006; and \$1 million in 2007. The effective exemption amount would be indexed for inflation beginning in 2008 (for inflation occurring after 2006).

Indexing of the other estate and gift tax provisions would not be changed.

3. Amendment to extension of research tax credit regarding taxpayers electing alternative incremental research credit regime (sec. 601)

The amendment in the nature of a substitute provides that, notwithstanding the general termination date for the research credit of December 31, 1998, if a taxpayer elects to be subject to the alternative incremental research credit regime for its first taxable year beginning after June 30, 1996, and before July 1, 1997, the alternative incremental research credit would be available during the entire 30-month period beginning with the first month of such taxable year--i.e., the equivalent of the 11-month extension provided for by the Small Business Job Protection Act of 1996 plus an additional 19-month extension. However, to prevent taxpayers from effectively obtaining more than 30-months of research credits, the 30-month period for taxpayers electing the alternative incremental research credit regime would be reduced by the number of months (if any) after June 1996 with respect to which the taxpayer claimed research credit amounts under the regular, 20-percent research credit rules.

4. Vaccine excise tax (secs. 901 and 902)

The provisions contained in the Chairman's mark relating to the vaccine excise tax would be deleted.

5. Nondiscrimination rules for governmental plans (sec. 912)

The amendment in the nature of a substitute would modify the moratorium on the application of nondiscrimination rules to governmental pension plans by making the moratorium permanent.

6. Deferral of gain on certain sales of farm product refiners and processors (sec. 958)

The Chairman's mark would provide for deferral of gain on certain sales of stock of a qualified refiner or processor to an eligible farmers' cooperative. Under the Chairman's mark, the definition of an eligible farmer's cooperative includes a provision that a majority of the board of directors be elected by members on the basis of one person one vote. The amendment in the nature of a substitute would delete this requirement in order to conform to the election processes of most farm cooperatives, which reflects the amount of items contributed to the cooperative.

7. Modifications to the Airport and Airway Trust Fund taxes (sec. 1041)

a. Transfer 4.3 cents per gallon tax to the Airport and Airway Trust Fund

The amendment in the nature of a substitute would provide that the 4.3-cents-per-gallon excise tax on aviation gasoline and jet fuel would be deposited in the Airport and Airway Trust Fund, rather than in the General Fund. The amendment in the nature of a substitute would be effective for fuels removed or sold after September 31, 1997.

b. Modify treatment of domestic segments of international transportation

The amendment in the nature of a substitute would delete the provisions in the Chairman's mark that provide special rules for taxation of the domestic segments of international transportation. Thus, the definition of international transportation would remain as under present law, i.e., international transportation would be defined to include separate domestic flights that connect to international flights, provided that stopover time at any point within the United States does not exceed 12 hours. Such transportation would be subject only to the \$10 excise tax on international departures and arrivals, and would not be subject to the domestic air transportation taxes.

c. Modify air passenger ticket tax deposit rules

The amendment in the nature of a substitute would modify the deposit rules with respect to domestic and international air passenger ticket taxes to provide that any deposits that would be due during the period from August 15, 1997, to September 30, 1997, would not be due until October 10, 1997. The amendment in the nature of a substitute would be effective on the date of enactment.

8. Treatment of computer software as FSC export property (sec. 1101)

The Chairman's mark included a proposal regarding the treatment of computer software as export property for purposes of the foreign sales corporation rules that generally was effective for computer licenses granted after December 31, 1997, with a three year phase-in. The amendment in the nature of a substitute would modify the effective date of the Chairman's mark proposal. Pursuant to the amendment in the nature of a substitute, the proposal generally would apply to gross receipts from computer software licenses attributable to periods after December 31, 1997. In the case of gross receipts attributable to calendar year 1998, the proposal would apply to 1/3 of such gross receipts. In the case of gross receipts attributable to calendar year 1999, the proposal would apply to 2/3 of such gross receipts.

9. Simplify foreign tax credit limitation for dividends from 10/50 companies (sec. 1107)

The amendment in the nature of a substitute would delay the effective date of the proposal included in the Chairman's mark regarding modifications to the foreign tax credit limitations for dividends from 10/50 companies to taxable years beginning after December 31, 2001.

**ADDITIONAL MODIFICATIONS INCLUDED IN THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE**

1. Estimated tax requirements for individuals for 1997

Present Law

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax shown on the return of the individual for the preceding year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax shown on the return for the current year. The 100 percent of last year's liability safe harbor is modified to be a 110 percent of last year's liability safe harbor for any individual with an AGI of more than \$150,000 as shown on the return for the preceding taxable year. If a married individual files a separate return for the year for which an estimated tax installment payment is due, the \$150,000 amount becomes \$75,000.

Description of Proposal

The amendment in the nature of a substitute changes the 110 percent of last year's liability safe harbor to be a 109 percent of last year's liability safe harbor for taxable years beginning in 1997.

Effective Date

The proposal would be effective for estimated tax payments applicable to taxable years beginning in 1997.

2. Offset of past-due, legally enforceable state tax obligations of state residents against Federal overpayments

Present Law

Overpayments of Federal tax may be credited against any liability in respect of an internal revenue tax on the part of the person who made the overpayment. Any overpayment not so credited may be offset against any past-due support payments and past-due legally enforceable debts owed to Federal agencies of the person making the overpayment. Any remaining overpayment is required to be refunded.

Description of Proposal

The amendment in the nature of a substitute would allow any overpayment of Federal tax to be offset by the amount of any past-due, legally enforceable State tax obligation, provided the person making the overpayment has shown on the return establishing the overpayment an

address that is within the State seeking the offset. For this purpose, a past-due, legally enforceable State tax obligation is a debt which resulted from a judgement rendered by a court of competent jurisdiction, or a determination after an administrative hearing, which determined an amount of State tax to be due and which is no longer subject to judicial review, as well as from an assessment the time for which redetermination has expired that has not been delinquent for more than 10 years.

The offset for a past-due, legally enforceable state tax obligation of a state resident would apply after the offsets provided in present law for internal revenue tax liabilities, past-due support, and past-due, legally enforceable obligations owed a Federal agency. The Secretary of the Treasury would be authorized to issue regulations establishing procedures for the implementation of this proposal.

Effective Date

The proposal would be effective for refunds payable after December 31, 1998.

3. Treatment of consolidation of certain mutual savings bank life insurance departments

Present Law

Special rules for mutual savings banks with life insurance business

Present law provides for special treatment of a mutual savings bank conducting a life insurance business in a separate life insurance department (Code sec. 594). Under the special rule, the insurance and noninsurance businesses of such banks are bifurcated, and the tax imposed is the sum of the partial taxes computed on (a) the taxable income of the mutual savings bank determined without regard to items properly allocable to the life insurance business, and (b) the income of the life insurance department, calculated in accordance with the rules applicable to life insurance companies (subchapter L of the Code). This special treatment applies so long as the mutual savings bank is authorized under State law to engage in the business of issuing life insurance contracts, the life insurance business is conducted in a separate department the accounts of which are maintained separately from the other accounts of the mutual savings bank, and the life insurance department would qualify as a life insurance company under Code section 816 if it were treated as a separate corporation.

Rules for corporate reorganizations

Present law provides that certain corporate reorganization transactions, including recapitalizations, generally are treated as tax-free transactions (sec. 368(a)(1)(E)). No gain or loss is recognized if stock or securities in a corporation that is a party to a reorganization are (in pursuance of the plan of reorganization) exchanged solely for stock or securities in that corporation or in another corporation that is a party to the reorganization, except that gain (if any) to the recipient is recognized to the extent the principal amount of securities received

exceeds the principal amount of the securities surrendered (secs. 354, 356(a)(1)). If such an exchange has the effect of distribution of a dividend, then the portion of the distributee's gain that does not exceed his ratable share of the corporation's earnings and profits is treated as a dividend (sec. 356(a)(2)).

Rules for life insurance companies

A life insurance company generally is permitted to deduct the amount of policyholder dividends paid or accrued during the taxable year (sec. 808). In the case of a mutual life insurance company, the amount of the deduction for policyholder dividends is reduced (but not below zero) by the differential earnings amount (sec. 809). The term policyholder dividend includes (1) any amount paid or credited (including as an increase in benefits) if the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management; (2) excess interest; (3) premium adjustments; and (4) experience-rated refunds.

Description of Proposal

The amendment in the nature of a substitute would provide that the consolidation of two or more life insurance departments of mutual savings banks into a single life insurance company by requirement of State law would be treated as a tax-free reorganization described in section 368(a)(1)(E) (i.e., a recapitalization). Any payments required to be made to policyholders in connection with the consolidation would be treated as policyholder dividends deductible by the company under section 808, provided that certain requirements are met. The requirements would be: (a) the payments are only with respect to policies in effect immediately before the consolidation; (b) the payments are only with respect to policies that are participating (i.e., on which policyholder dividends are paid) before and after the consolidation; (c) the payments cease with respect to any policy if the policy lapses after the consolidation; (d) the policyholders before the consolidation had no divisible right to the surplus of any life insurance department and had no right to vote; and (e) the approval of the policyholders was not required for the consolidation.

Effective Date

The proposal would be take effect on December 31, 1991.

4. Liberalize qualified mortgage bond eligibility rules for financing in Presidentially declared disaster areas

Present Law

Qualified mortgage bonds are private activity tax-exempt bonds issued by States and local governments acting as conduits to provide mortgage loans to first-time homebuyers who satisfy specified income limits and who purchase homes that cost less than statutory maximums.

Present law waives the three buyer targeting requirements for a portion of the loans made with proceeds of a qualified mortgage bond issue if the loans are made to finance homes in statutorily prescribed economically distressed areas.

Description of Proposal

The amendment in the nature of a substitute would waive the first time homebuyer requirement, the income limits, and the purchase price limits for loans to finance homes in certain Presidentially declared disaster areas. The waiver would apply only during the one-year period following the date of the disaster declaration.

Effective Date

The proposal would apply to loans financed with bonds issued after December 31, 1996, and before January 1, 2000.

5. Suspension of duty on certain shipbuilding repairs

The amendment in the nature of a substitute would suspend, for a one-year period beginning on the date of enactment, the current 50-percent duty, established under section 466 of the Tariff Act of 1930, on repairs to U.S. flag vessels made in countries that are signatories to the OECD Shipbuilding Agreement.