[JOINT COMMITTEE PRINT]

SUMMARY OF MINOR AND MISCELLANEOUS TAX BILLS ENACTED IN THE 95TH CONGRESS

PREPARED FOR THE USE OF THE

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AND THE

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JOINT COMMITTEE ON TAXATION

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INTRODUCTION

This pamphlet provides a summary of tax legislation enacted in the 95th Congress other than social security taxes and the four Acts previously summarized in the Joint Committee staff pamphlet dated November 27, 1978,[1] and other than the Tax Reduction and Simplification Act of 1977 (P.L. 95–30).[2]

The tax bills summarized in this pamphlet cover various excise tax amendments (including the waterway user excise tax, the 5-year extension of the Highway Trust Fund excise taxes, and the coal excise tax for black lung benefits), pension plan provisions (including New York City pension plans), and various other minor and technical tax bills. The summary includes a reference in each case to the House and Senate Committee reports to assist in following the legislative history of each bill. The tax bills are summarized in numerical order.

The limits of attempting to describe the details of tax legislation in a summary form should be kept in mind. The official reports of the respective House and Senate committees, and the House and Senate floor action recorded in the *Congressional Record*, are the ultimate legislative and interpretative authorities with respect to the Acts summarized in this pamphlet.

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[1] *Section-by-Section Summary of the Revenue Act of 1978* (*P.L. 95–600, H.R. 13511*), *Energy Tax Act of 1978* (*P.L. 95–618, H.R. 5263*), *Foreign Earned Income Act of 1978* (*P.L. 95–615, H.R. 9251*), *and Fringe Benefits Act* (*P.L. 95–427, H.R. 12841*).

[2] See *Summary of H.R. 3477—The Tax Reduction and Simplification Act of 1977*, May 9, 1977, prepared by the staff of the Joint Committee on Taxation.

SUMMARY OF TAX BILLS

1. H.R. 1337 (P.L. 95-458)[1]

Excise Tax on Certain Trucks; Home Production of Beer and Wine; Fuels Tax Refund to Aerial Applicators; Rollovers of Lump Sum Distributions

Sec. 1. Constructive sale price for excise tax on certain trucks, trailers, tractors, etc.[2]

The tax law provides statutory rules under which constructive sales prices are used to determine the base for manufacturers excise taxes where taxable articles are sold at different levels in the distribution system. In cases where manufacturers sell trucks, trailers and similar articles at retail, the Internal Revenue Service had developed constructive prices as a specified percentage of the retail selling price. The Service had also ruled that if a manufacturer's actual costs of making and selling an article exceeded the percentage constructive price, these costs instead would be used as the base for computing the excise tax.

The Act provides that percentage constructive prices are to be used in cases where manufacturers sell trucks, trailers and similar articles at retail, and prohibits the use of a manufacturer's costs as an alternative tax base in such situations.[3] This provision was effective for articles sold by a manufacturer or producer on or after January 1, 1979.[4]

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[1] This bill as reported by the House Ways and Means Committee on March 16, 1978 (H. Rept. 95-976) and passed the House on May 16, 1978, contained only the provision regarding the constructive sale price for the excise tax on certain trucks, etc. As indicated below in footnotes 2 and 4-6, the Senate Finance Committee reported H.R. 1337, with amendments, on August 21, 1978 (S. Rept. 95-1127). The bill was passed by the Senate on August 25, 1978; the House agreed to the Senate amendments with amendments on September 12, 1978; and the Senate agreed to the House amendments on September 28, 1978. H.R. 1337 was signed by the President on October 14, 1978.

[2] This provision was reported by the House Ways and Means Committee on March 16, 1978 (H.Rept. 95-976) and passed the House on May 16, 1978. As section one of H.R. 1337, it was reported by the Senate Finance Committee on August 21, 1978 (S. Rept. 95-1127), and passed the Senate on August 25, 1978.

[3] In Rev. Rul. 79-32, 1979-4 Int. Rev. Bull. 12, and Rev. Rul. 79-33, 1979-4 Int. Rev. Bull. 12, the Internal Revenue Service announced that the percentage used for constructive sales price purposes generally would be 90 percent of the retail selling price for trucks, trailers and similar articles sold on or after January 1, 1979. This percentage previously had been set at 75 percent of the retail selling price.

[4] This provision, as enacted, would have also applied to the manufacturers excise tax on buses. However, the Energy Tax Act of 1978 (H.R. 5263, P.L. 95-618) repealed the manufacturers excise tax imposed on buses, effective generally for sales of buses by manufacturers after April 19, 1977.

Sec. 2. Home production of beer and wine [5]

Prior law permitted the "head of any family," after registering with the Treasury Department, to produce tax-free up to 200 gallons of wine a year for family use. However, a single individual could not produce tax-free wine at home. Beer could not be brewed at home for family use without incurring the beer tax, and the Bureau of Alcohol, Tobacco, and Firearms interpreted prior law as also prohibiting the brewing of beer outside a brewery, whether tax was paid or not.

The Act allows an adult to produce up to 200 gallons of wine and 200 gallons of beer in one year for family use without penalty or tax in any household in which there are two or more adults. If there is only one adult in the household, the limit in one year is 100 gallons of wine and 100 gallons of beer. For this purpose, an adult is an individual who has attained 18 years of age, or the minimum age (if any) established by local law at which wine or beer may be sold, whichever is greater. There is no requirement of registration with the Treasury prior to making either beer or wine in the permitted amounts. Further, the applicability of criminal penalties to persons whose home production of beer exceeds the permitted amount is made more specific.

These provisions were effective on February 1, 1979 (the first day of the first calendar month beginning more than 90 days after enactment).

Sec. 3. Refund of excise tax on fuels to aerial applicators [6]

Present law provides a refund (or credit) of the excise tax on gasoline, and a comparable exemption or refund (or credit) of the excise tax on special motor fuels, if such fuels are used for farming purposes (including use by custom operators, such as cropdusters, in performing services for a farmer). Where fuel is used by a custom operator, the farmer is entitled to claim the refund or credit for the taxes paid on the fuel.

The Act provides that a cropduster who uses tax-paid fuel for farming purposes is authorized to claim the applicable excise tax repayment or credit directly, in place of the farmer, if the farmer waives his right to the refund or credit. The provision takes effect on April 1, 1979 (the first day of the first calendar quarter beginning more than 90 days after the date of enactment).

Sec. 4. Partial rollovers of lump sum distributions [7]

Under present law, an individual who is eligible to make a tax-free rollover contribution of amounts distributed from a qualified retirement plan is required to contribute the entire amount of the distribution to an IRA or to another qualified plan in order to make a tax-free rollover.

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[5] This provision was reported by the House Ways and Means Committee as H.R. 2028 on March 1, 1978 (H. Rept. 95–915), and passed the House on March 14, 1978. As section two of H.R. 1337, this provision was reported by the Senate Finance Committee on August 21, 1978 (S. Rept. 95–1127), and passed the Senate with floor amendments on August 25, 1978.

[6] This provision was reported by the House Ways and Means Committee as H.R. 2852 on March 21, 1978 (H. Rept. 95–998), and passed the House on May 8, 1978. As section 3 of H.R. 1337, it was reported by the Senate Finance Committee on August 21, 1978 (S. Rept. 95–1127), and passed the Senate on August 25, 1978.

[7] This provision was added to H.R. 1337 by the Senate Finance Committee and reported on August 21, 1978 (S. Rept. 95–1127). It was passed by the Senate on August 25, 1978, modified by the House on September 12, 1978, and agreed to by the Senate (as amended by the House) on September 28, 1978.

The Act, for taxable years beginning after December 31, 1974, allows an individual to make a rollover contribution of any portion of the distribution. In addition, the Act provides a special "makeup" rule for individuals who, prior to its enactment, attempted to make a rollover contribution but failed to transfer the entire amount of the distribution. Such persons are allowed to make a rollover contribution of any portion of the distribution to an IRA or to a qualified retirement plan on or before December 31, 1978.[8]

[8] See also the IRA changes made by section 157 of the Revenue Act of 1978.

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2. H.R. 1920 (P.L. 95–423)[1]

Refund of Alcohol Taxes and Duties After Loss Due to Disaster or Damage

Under prior law, if alcoholic products were lost, made unmarketable, or officially condemned while held for sale in marketing channels, the Treasury could make payments to wholesalers or retailers of the amounts of the alcohol taxes and duties previously paid or determined only if the cause of the loss was a Presidentially declared "major disaster." The tax, which becomes due upon the making of the product, represents a high proportion of the loss since, in some instances of distilled spirits, more than half the cost consists of Federal excise taxes which were passed on to the wholesaler or retailer holding the alcoholic products at the time of the loss.

The Act provides for payments by the Treasury of the previously paid or determined taxes or duties whenever distilled spirits, wines, rectified products, or beer held for sale is lost or ruined by fire, flood, casualty, or other disaster, or by damage (not including theft) resulting from vandalism or malicious mischief. It is not necessary that the President declare the cause of the loss a "major disaster." However, the amount of tax or duty claimed on account of any single disaster or damage must be at least $250 and the claimant cannot have been indemnified by insurance. The $250 minimum does not apply in the case of a "major disaster." In addition, the claim generally must be filed within six months after the loss.

This provision applies to disasters (or other specified causes of loss) occurring on or after February 1, 1979 (the first day of the first calendar month beginning more than 90 days after enactment).

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[1] This provision was reported by the House Ways and Means Committee on April 5, 1978 (H. Rept. 95–1038), and passed by the House on May 8, 1978. It was reported by the Senate Finance Committee on August 11, 1978 (S. Rept. 95–1112), and passed by the Senate on August 25, 1978. H.R. 1920 was signed by the President on October 6, 1978.

3. H.R. 2849 (P.L. 95–170)

Private Foundation Self-Dealing Rules (Sec. 3)[1]

Under present law (sec. 4941 of the Code), private foundations are generally prohibited from engaging in transactions with disqualified persons. The prohibited acts (referred to as acts of "self-dealing") include the "sale or exchange, or leasing, of property between a private foundation and a "disqualified person". A "disqualified person" is defined to include anyone who is a "substantial contributor" to the foundation. A "substantial contributor" includes any person who has contributed more than $5,000 to the foundation, if the total contributions from the person exceeds 2 percent of the total contributions received by the foundation. A person who becomes a substantial contributor at any time retains that status in subsequent years.

The Act provides that, for purposes of determining who is a "substantial contributor" to a private foundation for purposes of applying the section 4941 "self-dealing" rules, contributions made before October 9, 1969, which were made on account of, or in lieu of, payments required under a lease in effect before that date and which were made by reason of a reduction in the rental payments required under the lease, are not to be treated as contributions to the foundation. In addition, if a person is a "disqualified person" merely because of ownership of a corporation that made these "contributions," then that person no longer is to be treated as a disqualified person.

As a result, the effect of the Act is to modify the private foundation provisions so as not to require the termination of the leases of certain assets. Also, the Act permits the sale of these assets to the persons who would otherwise be "disqualified persons."[2]

The provision was effective on the date of enactment (November 12, 1977).

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[1] This provision was reported by the House Ways and Means Committee as H.R. 7003 on October 25, 1977 (H. Rept. 95–741). It was added to H.R. 2849 as an amendment by the Senate Finance Committee and reported on September 15, 1977 (S. Rept. 95–433). H.R. 2849 was passed by the Senate on September 21, 1977; the House substituted the language of H.R. 7003 for the Senate amendment; and the Senate agreed to the House amendment on October 27, 1977. The President signed H.R. 2849 on November 12, 1977.

[2] The provision applies to the Public Welfare Foundation, Inc., which owns all of the stock of three corporations: The Gadsden Times, Inc.; The Tuscaloosa News, Inc.; and the Spartanburg Herald and Journal, Inc. These three wholly owned subsidiaries have, for a substantial period of time, leased all of the assets of three newspapers to operating companies. Apparently, after the Internal Revenue Service suggested that the original rentals specified in the lease agreement exceeded fair market value rentals, the operating companies decided to make charitable donations to the foundation in exchange for reduced rentals.

Since each of the operators contributed more than $5,000 and more than 2 percent of the total contributions to the foundation as of October 31, 1969—the end of the fiscal year which includes October 9, 1969—each operator was considered to be a "substantial contributor" to the foundation, within the meaning of Code section 4946(a)(1)(A). Therefore, the operators were "disqualified persons" and their leasing arrangements with the private foundation—through its subsidiaries—fell within the statutory definition of "self-dealing."

The three newspaper operators are Newspaper Management-Production, Inc., Gadsden Times Publishing Corp., and Tuscaloosa Newspapers, Inc. The newspapers operate in South Carolina and Alabama.

4. H.R. 3373 (P.L. 95-172)

Elimination of State-Local Telephone Taxes From Federal Excise Tax Base (Sec. 2)[1]

The Federal excise tax on communications services (such as telephone calls) is determined as a percentage of the communication company's charge for the service. Under prior law, this amount by which the Federal tax is computed included amounts attributable to State or local sales or excise taxes imposed on the company (typically a telephone company) for the same communications service upon which the Federal tax is imposed. As a result, the Federal tax was higher in a State or locality which imposed its own communications tax on the telephone company than in a State or locality which imposed no tax, or imposed its tax upon the customer rather than upon the telephone company.

The Act reduced the amount of the Federal tax on these communications services by eliminating the State and local taxes from the Federal tax base, if those taxes are separately stated on the customer's bill. This provision was effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1978, which was the first day of the first month beginning more than 20 days after the enactment. However, State and local taxes were not excluded from the Federal tax base in the case of services rendered before November 1, 1977, even if the bill for those services was not rendered until January 1, 1978, or thereafter.

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[1] This provision was reported by the Senate Finance Committee as an amendment to H.R. 3373 on September 15, 1977 (S. Rept. 95-434), and passed the Senate on September 21, 1977. The House amended the Senate amendment on October 25, 1977, and the Senate agreed to the House amendment on October 27, 1977. H.R. 3373 was signed by the President on November 12, 1977.

5. H.R. 3387 (P.L. 95–171)

Amortization for Low-Income Rental Housing; Health Professions Scholarship Exclusion; Companion Sitting Placement Services [1]

Sec. 4. Five-year amortization for low-income rental housing

Under the Code (sec. 167(k)), special depreciation rules are provided for expenditures to rehabilitate low-income rental housing. Under the special depreciation rules for low-income rental property, taxpayers can elect to compute depreciation on certain rehabilitation expenditures under a straight-line method over a period of 60 months, if the additions or improvements have a useful life of 5 years or more. The prior law provision would have expired after 1977.

The Act provided a one-year extension of the special 5-year amortization rule for expenditures to rehabilitate low-income rental housing. The one-year extension applied to expenditures paid or incurred with respect to low- and moderate-income rental housing after December 31, 1977, and before January 1, 1979 (including expenditures made pursuant to a binding contract entered into before January 1, 1979).

(*Note:* The Revenue Act of 1978 (P.L. 95–600) further extended the special 5-year amortization rule for low-income rental housing for 3 additional years, or through 1981 (including expenditures made pursuant to a binding contract entered into before January 1, 1982).)

Sec. 5. Extension of health professions scholarship exclusion for members of the Uniformed Services

Prior law contained a temporary exclusion for amounts received under the Armed Forces Health Professions Scholarship Program (or similar programs). Amounts received as a scholarship (including the value of contributed services and accommodations) by a member of a uniformed service who was receiving training under the Armed Forces Health Professions Scholarship Program (or similar program), and was participating in a program in 1976, were specifically excluded from gross income through calendar year 1979.

The Act extended the exclusion from income of a member of the uniformed services receiving training after 1975 and before 1979 in the Armed Forces Health Professions Scholarship Program (and similar programs), amounts received after 1975 and before 1983. Thus, under this provision, participants entering such programs through calendar year 1978 shall receive these awards tax-free through 1982.

(*Note:* The Revenue Act of 1978 (P.L. 95–600) further extended the time for the exclusion to students entering the program during 1979, for amounts received through 1983.

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[1] These provisions (secs. 4, 5, and 10 of H.R. 3387) were added as Senate floor amendments to H.R. 3387 on October 17, 1977. The bill was amended by the House on October 25, 1977, and the House amendments were agreed to and passed by the Senate on October 27, 1977. H.R. 3387 was signed by the President on November 12, 1977.

Sec. 10. Employment tax status for individuals providing companion sitting placement services

In Revenue Ruling 74–414, 1974–2 C.B. 334, the Internal Revenue Service held that individuals performing babysitting services for clients of a babysitting agency were common law employees of such agency for purposes of Federal income tax withholding, social security (FICA) taxes and unemployment (FUTA) taxes. The ruling was interpreted as applicable also to companion sitter agencies.

The Act provides that a person acting as a placement agent for babysitters or companion sitters shall not be treated as the sitters' employer (and that such sitters shall not be treated as the employees of such person) provided that the placement agent does not pay nor receive the salary or wages of the sitters and is compensated by the sitters, or the persons who employ the sitters, on a fee basis.

This provision applies to remuneration received after December 31, 1974.

6. H.R. 4458 (P.L. 95–176)[1]

Distilled Spirits Tax Amendments

The Act consists of a series of technical and administrative provisions which—

(1) extend to distilled spirits that are imported and then packaged or bottled in the United States for export the same tax drawback benefits given under prior law to domestically produced spirits that are packaged or bottled for export;

(2) allow distilled spirits to be returned to bonded premises of distilled spirits plants or to export storage facilities, with benefit of tax credit or refund, etc., for storage pending exportation and certain other preferred dispositions (e.g., use on vessels and aircraft or for transfer to foreign-trade zones);

(3) allow distilled spirits bottled in bond, or returned to an export storage facility for export, to be transferred without payment of tax to customs bonded warehouses for storage pending exportation;

(4) allow distilled spirits to be withdrawn from bonded premises without payment of tax for purposes of research, development, or testing;

(5) relax the conditions under which bonded distilled spirits may be mingled; and

(6) allow gin to be made with the extracted oils of juniper berries and other aromatics, as well as with the juniper berries or other aromatics themselves, without payment of the rectification tax.

These provisions were effective on March 1, 1978, which was the first day of the first calendar month beginning more than 90 days after enactment.

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[1] The House Ways and Means Committee reported this bill on October 27, 1977 (H. Rept. 95–761), and it was passed by the House on October 31, 1977. It was considered and passed by the Senate, without amendment, on November 14, 1977. H.R. 4458 was signed by the President on November 14, 1977.

7. H.R. 5322 (P.L. 95–227)[1]

"Black Lung Benefits Revenue Act of 1977"

Prior law

Under prior law, there was no Federal excise tax on the sale or use of coal. To the extent that no particular coal mine operator was held responsible for the payment of Federal black lung benefits, the costs of benefits were financed out of Federal general revenues. A coal mine operator responsible for paying certain black lung benefits could not fund its liabilities in advance through deductible contributions to a self-insurance trust or reserve account, and income on assets set aside to satisfy such liabilities was not exempt from tax.

Explanation of Act[2]

Excise tax on coal

The Act imposes a manufacturers excise tax on coal (other than lignite) from domestic mines sold or used by the producer after March 31, 1978. The tax is imposed at the rate of 50 cents a ton on underground-mined coal and 25 cents a ton on surface-mined coal. However, in no event is the tax to be more than 2 percent of the sales price.

Most of the rules generally applicable to manufacturers excise taxes, including collection provisions, apply to the coal tax. However, various exemptions which apply to other manufacturers excise taxes do not apply to the tax on coal.

Trust fund

The Act establishes a trust fund (the "Black Lung Disability Trust Fund") and automatically appropriates to it amounts equal to the revenues from the coal tax, plus any revenues from the penalty taxes applicable to coal mine operator self-insurance trusts. The trustees of the Fund are the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, with the Secretary of the Treasury as the managing trustee.

Amounts in the Fund are available, pursuant to appropriation Acts, to pay black lung benefits under the "part C" Federal program if there is no "responsible operator" or if the operator is in default, and for

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[1] The tax provisions enacted by P.L. 95–227 were added on December 15, 1977 by Senate floor amendment in the nature of a substitute to a tariff bill (H.R. 5322), and passed the House on January 24, 1978. These provisions represent a conference compromise between the revenue provisions of another bill, H.R. 4544, as passed by the House on September 19, 1977, and the tax provisions of S. 1538 as reported by the Senate Finance Committee on July 12, 1977 (S. Rept. 95–336).

[2] See also later summary description of H.R. 13167 (P.L. 95–488) in this pamphlet H.R. 13167 provides certain amendments to the Black Lung Benefits Act of 1977 regarding black lung benefit trusts.

all claims in which the miner's last coal mine employment was before January 1, 1970. In cases in which the Federal Government already has paid benefits for periods of eligibility since December 31, 1973, the Fund must reimburse the Government for these payments.

The expenses of the Department of Labor and the Treasury Department (and, to a limited extent, where appropriate, the Department of Health, Education, and Welfare) in operating and administering the claims program to be financed through the Fund are to be paid by the Fund. The Fund also bears the costs of its own administration, as well as the costs incurred by the Treasury Department in collecting the coal tax and administering the provisions of the Internal Revenue Code with respect to that tax.

These trus ıfund provisions were effective on April 1, 1978.

Self-insurance trusts

The Act provides that a responsible operator may fund its black lung liabilities through deductible contributions to a qualified tax-exempt trust. In order to qualify, the trust must be established for the sole purpose of satisfying all or part of the operator's liabilities (including trust administrative expenses) under black lung acts. Trust assets that are not needed to satisfy current black lung liabilities generally may be invested only in government securities or insured savings deposits. Misuse of trust funds triggers certain excise taxes, assessable against the trust assets, the trustee, and certain other persons (such as the operator funding the trust) if involved in any misuse. Trust funds may in no event revert directly or indirectly to the operator. Any excess trust assets on termination of the trust must be paid over to the Federal Government, generally for use in the black lung program.

The amount that may be contributed during a year to the trust and claimed as a deduction by the operator is subject to limitation. Amounts contributed in excess of the limitation may be carried over and deducted in future years, but, until allowed as a deduction (or withdrawn), result in imposition each year of a five-percent excise tax payable by the operator.

The operator self-insurance trust provisions apply with respect to contributions made after December 31, 1977.

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8. H.R. 5675 (P.L. 95-147)[1]

Tax and Loan Accounts

Sec. 3. To authorize the Secretary of the Treasury to invest public moneys

Depositories included in the Treasury tax and loan system receive deposits from businesses of income tax withholding, social security taxes, other taxes, and proceeds from the sale of U.S. savings bonds. These funds are held by the bank until withdrawn by the Treasury Department. Under prior law, the depositories had free use of the moneys before they were withdrawn and were able to use them to earn income, and in return, the depositories performed certain services for the Treasury Department free of charge. Since 1974, the Treasury Department has tried to reduce deposits to a level at which the depositaries may earn enough to offset the costs of the services. The institutions which were eligible to be depositaries under prior law were commercial banks, mutual savings banks and federally chartered credit unions.

Under the Act, the Treasury Department is authorized to invest any portion of its excess operating cash balance for periods up to ninety days in (1) obligations of tax and loan account depositaries that are secured by a pledge of collateral acceptable to the Secretary of the Treasury as security for these loans, and (2) obligations of the United States and of agencies of the United States. In addition, the Treasury will reimburse depositaries for expenses they incur in handling tax and loan accounts. The rate of interest to be paid on obligations of depositaries shall be prescribed by the Secretary of the Treasury, after considering prevailing market rates of interest.

The Act also authorizes the inclusion of domestic building and loan associations (including those insured by either a Federal or a State agency) and nonfederally chartered credit unions as fiscal agents and as depositaries in the tax and loan account system. The Secretary of the Treasury is authorized to prescribe the regulations he believes are necessary for these purposes.

The Act amends two sections of the Internal Revenue Code to provide that timely deposits of income tax withholding and other tax payments may be made to domestic building and loan associations and credit unions in general. A timely deposit in these depositaries is considered as a timely filing and payment of tax.

This provision was effective for amounts deposited after October 28, 1977 (the date of enactment).

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[1] H.R. 5675 was reported by the House Banking, Finance and Urban Affairs Committee on April 4, 1977 (H. Rept. 95-159, Part 1), with the tax-related amendments reported by the Ways and Means Committee on April 4, 1977 (H. Rept. 95-159, Part 2). The bill passed the House on April 25, 1977, was reported in the Senate on September 23, 1977 (S. Rept. 95-450), and was passed by the Senate as amended on October 11, 1977. The House agreed to the Senate amendment on October 14, 1977, and the President signed H.R. 5675 on October 28, 1977.

9. H.R. 7320 (P.L. 95-628)[1]

Miscellaneous Timing Requirements

Sec. 2. Period for payment to qualify for deductibility of certain expenses paid to related taxpayers

Under the tax law (sec. 267(a)), an accrual basis taxpayer is denied a deduction for certain accrued expenses or interest owed to certain related persons who are on the cash basis. The disallowed interest and expenses are those which are not paid to the related person, or are not constructively received by the related person, within the taxable year in which the expenses are accruable, or within 2½ months thereafter. This provision prevents an accrual-basis taxpayer from claiming a deduction for an accrued expense which the related cash-basis payee is not required to take into income until some subsequent time, if at all.

Because an accrued expense is deductible by a taxpayer under the accrual method of accounting only in the taxable year in which it accrues, a deduction disallowed under section 267(a) is permanently lost. It cannot be deducted at some subsequent time when payment is made.

In determining whether certain acts are performed timely, present law (sec. 7503) generally provides that when the last day for performing any act falls on a Saturday, Sunday, or legal holiday, the act is timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. However, the Internal Revenue Service had ruled that this provision applied only to procedural steps in connection with the determination, collection, or refund of taxes, and thus did not extend the 1½-month period (under section 267(a) during which accrued expenses owed to a related person must be paid by the taxpayer, or constructively received by the related person.[2]

The Act applies the timely performance rule relating to holidays in determining the period within which accrued expenses owed to a related taxpayer must be paid. As a result, the 2½-month period (under section 267(a)) during which payments must be made (or constructively received) in order to be deductible is to be extended if the period ends on a Saturday, Sunday, or legal holiday.

Under the Act, the determination of what constitutes a "legal holiday" is to be made under section 7503. For this purpose, a legal holiday must be a holiday recognized throughout the State where the payor is considered to reside for purposes of filing the payor's income tax return for the preceding taxable year.

This provision applies with respect to payments made after the date of enactment (November 10, 1978).

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[1] This bill was reported by the House Ways and Means Committee on September 29, 1977 (H. Rept. 95-645), and passed the House on November 1, 1977. It was reported by the Senate Finance Committee, with amendments, on May 10, 1978 (S. Rept. 95-797), and passed the Senate on August 23, 1978. The Senate amendments were considered and amended by the House on October 10, 1978, and the bill was passed by the Senate, as amended by the House, on October 14, 1978. H.R. 7320 was signed by the President on November 10, 1978.

[2] Rev. Rul. 72-541, 1972-2 CB 645.

Sec. 3. Increase in basis for amount of gain recognized to the distributing corporation

Under the tax law (sec. 301(b)(1)(B)), if property is distributed by a domestic corporation to a shareholder which is a domestic corporation, the amount of the distribution treated as a dividend to the distributee corporation is an amount equal to the lesser of (1) the fair market value of the property received, or (2) the adjusted basis of the property to the distributing corporation, plus any income or gain recognized by the distributing corporation upon the distribution pursuant to certain designated Code sections. These designated Code sections provide for recognition of gain upon the disposition of certain types of property, such as LIFO inventory, properties subject to indebtedness in excess of basis, appreciated property used to redeem stock, real and personal property on which depreciation was claimed, farmland, and interests in oil or gas properties. Corresponding rules apply in determining the reduction in the earnings and profits of the distributing corporation (sec. 312(c)).

The same rule is provided with respect to the computation of the basis of the property received by a domestic distributee-corporation (sec. 301(d)(2)).

The Act provides that the amount of an in-kind property distribution, and the basis of the property to a distributee corporation, is to be increased by any gain recognized to the distributing corporation on the distribution. The Act also provides that the earnings and profits account of the distributing corporation is to be adjusted for any gain recognized by it upon the distribution (rather than just the gain recognized pursuant to specified Code sections).

This provision applies to distributions made after the date of enactment (November 10, 1978).

Sec. 4. 60-Day extension of 12-month period for nonrecognition of gain in connection with certain liquidations where there is an involuntary conversion

Under the tax law, a corporation, which adopts a plan of complete liquidation and within 12 months thereafter distributes all of its assets to its shareholders, does not recognize gain or loss on the sale of property during the 12-month period. Prior to the enactment of this provision of the Code (sec. 337), a sale of property by a corporation which subsequently liquidated generally resulted in two taxes—one tax on the corporation on the gain realized on the sale, and a second tax on the shareholders on the gain realized by them when they received the proceeds from the corporation in complete liquidation of their stock. Prior to enactment of section 337, the tax on the sale generally could be avoided only by a distribution of assets to the shareholders in a taxable liquidation followed by a sale under which gain was not realized because the bases of the assets were equal to the sales price. The Congress changed the law in 1954 because these differences accorded undue weight to the formalities of the transaction and they, therefore, represented merely a trap for the unwary.

Congress chose to eliminate the tax at the corporate level. Section 337 generally eliminates the distinction between (1) a distribution of assets followed by a sale and (2) a sale followed by a distribution of sale proceeds to shareholders. Under prior law, the three major requirements of section 337 were: (1) that a plan of complete liquidation be adopted on or before the date of the sale or exchange, (2) that the sale or exchange occur within the 12-month period beginning on the date of adoption of the plan, and (3) that all proceeds (less assets retained to meet claims) be distributed in complete liquidation within the 12-month period.

Under section 337, an involuntary conversion of property which results from a fire or condemnation proceeding has constituted a "sale or exchange" eligible for non-recognition of gain or loss under this provision. In the case of a fire, the Supreme Court has held that the sale or exchange occurs at the time of the fire even if the insurance proceeds are not determinable at that time, *Central Tablet Manufacturing Co.* v. *U.S.*, 417 U.S. 673 (1974). Similarly, the transfer of ownership to the State in the case of condemnation constitutes a "sale or exchange," even if the owner did not have notice of the action. In some States, filing of documents in court is sufficient to transfer ownership of the condemned property, and subsequent litigation as to the amount of the condemnation award does not change the date of "sale" for purposes of the 12-month liquidation provision.

In the case of destruction of property by fire or other casualty, it is difficult, if not impossible, to take action to adopt a plan of liquidation on the date the fire or other casualty occurs. If a corporation decides after an involuntary conversion to liquidate, any gain arising from the involuntary conversion is subject to two incidences of taxation if the corporation did not adopt a plan on the date of the involuntary conversion or did not happen to have a plan in existence before the date of the conversion. Similar considerations arise in connection with condemnations. If the taxpayer has little knowledge of an impending condemnation, then the corporation may be unable to adopt a plan of liquidation on or before the date of the condemnation.

The Act extends nonrecognition treatment to gain or loss resulting from the destruction, theft, seizure, requisition, or condemnation of property, or from the sale or exchange of property under the threat or imminence of requisition or condemnation, if a plan of liquidation is adopted within 60 days after the date the involuntary conversion occurs, and the liquidation otherwise qualifies under the 12-month liquidation provision (sec. 337). However, this additional nonrecognition provision will apply only if the liquidating corporation so elects, at such time and in such manner as may be prescribed in Treasury regulations. If the nonrecognition election is made, it will apply to all gains and losses from all involuntary conversions occurring during the 60-day period.

The provision applies to involuntary conversions occurring after the date of enactment (November 10, 1978).

Sec. 5. Extension of period for making subchapter S elections

Prior law required that in order for a subchapter S election to be effective for a taxable year, it must be filed during a 2-month period which begins 1 month before the start of the taxable year. An election was not valid for either the intended year or any future year if it was not filed within this period. Extensions of time for filing the election were not granted. If an election were found to be untimely upon audit several years later, the corporation was taxed as a regular corporation for all the intervening years.

In effect, the period of time during which an election could be made by a newly-formed corporation for its first taxable year was only one month since a new corporation could not make the election until it was in existence under State law, which generally occurs at the same time as the beginning of its first taxable year. In other situations, it has been difficult to determine when the 1-month period began for a new corporation because of several alternative rules used to determine when its first taxable year begins.

Under the Act, the period of time to make the subchapter S election is expanded to include the entire preceding taxable year of the corporation. In addition, the Act will permit all subchapter S corporations to make the election during the first 75 days of the taxable year for which the election is effective.

This provision is effective for subchapter S elections made after January 10, 1979, for taxable years which begin after that date. (However, the same rule applies to all taxable years beginning after December 31, 1978, as a result of section 334 of the Revenue Act of 1978.)

In addition, if certain conditions are satisfied, the perfection of a prior election which was not timely filed is permitted as to the corporation's taxable year following the taxable year in which the original election was filed.

Sec. 6. Time for filing income tax returns in the case of organizations exempt from taxation under section 501(a)

Under prior law, income tax returns on the unrelated business taxable income of calendar year corporations exempt from tax under section 501(a) of the Code must have been filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year must have been filed on or before the 15th day of the third month following the close of the fiscal year. Similarly, trusts exempt from tax under section 501(a) must file income tax returns on their unrelated business taxable income on or before the 15th day of April in the case of returns made on the basis of the calendar year, or, in the case of returns made on the basis of the fiscal year, on or before the 15th day of the fourth month following the close of the fiscal year. However, annual information returns of these exempt organizations (other than certain religious or apostolic organizations) must be filed on or before the 15th day of the fifth calendar month following the close of the taxable year. Thus, the due date for an exempt organization's information return was different from the due date for the organization's income tax return.

The Act generally conforms the due date for an exempt organization to file a return of unrelated business income to the due date for filing an annual information return. Under this provision, an organization exempt from tax under section 501(a), other than an employees' trust described in section 401(a), must file its income tax return on or before the 15th day of the fifth month following the close of the taxable year. For a calendar year organization, the return has to be filed by May 15.

This provision applies to returns for taxable years beginning after November 10, 1978.

Sec. 7. Period for determining whether the taxpayer is a farmer or a fisherman for purposes of the estimated tax

Under the tax law, an individual generally is required to file quarterly declarations of estimated income tax if his tax liability not covered by withholding is expected to be $100 or more and he has a certain amount of gross income or nonsalary income not subject to withholding (secs. 6015 and 6073). An addition to tax generally is imposed on an underpayment of estimated tax. The rate of this addition to tax is equal to the interest rate on underpayments of tax and is based on the amount of underpayment for the time between the due date of the estimated tax payment and the due date of the tax return unless one of several exceptions apply (sec. 6654).

However, special provisions apply to farmers and fishermen. Under these provisions, an individual may postpone the filing of an estimated tax return (and the payment of estimated taxes) for a taxable year until January 15th of the succeeding taxable year if his estimated gross income from farming or fishing for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year.

The Act extends the exception from quarterly declarations of estimated tax so that the special rule for farmers and fishermen also applies when at least two-thirds of the gross income shown on an individual's tax return for the preceding taxable year was gross income from farming or fishing.

This provision applies to declarations of estimated tax for taxable years beginning after November 10, 1978.

Sec. 8. Period of limitations for credit or refund with respect to certain carrybacks of losses and credits

Under prior law (sec. 6511(d)(2)(A)), a claim for refund or credit attributable to a carryback of a net operating loss or capital loss must have been filed within 3 years of the due date of the corporate or individual tax return for the taxable year of the loss, without regard to any extensions of time which may be granted for filing the return (including automatic extensions) unless a written extension of the period of limitations on assessment was obtained. Similar rules applied with respect to the carryback of the investment credit, work incentive credit and new jobs credit. In contrast, the period of limitation for assessment of tax deficiencies began on the later of the due date of the return or the date the return was filed.

Since under prior law a claim for refund attributable to a carryback of a net operating loss, capital loss or the previously mentioned credits must have been filed within 3 years of the return due date determined without regard to any extension of time, it was possible for a carryback claim to be barred by the statute of limitations at a time when deficiencies attributable to the carryback could still be assessed, or when a claim for refund of the current year's tax was not barred by the statute of limitations.

The Act amends section 6511(d)(2)(A) to provide that a claim for credit or refund relating to an overpayment attributable to a net operating loss carryback or a capital loss carryback may be filed within 3 years after the time for filing the return, including extensions, for the loss year. The Act applies a similar rule to the carrybacks of the investment credit, the work incentive program credit and the new jobs credit.

The provision applies to carrybacks arising in taxable years beginning after November 10, 1978.

Sec. 9. Stay of collection of penalty under section 6672 when bond is filed

The tax law (sec. 6672) imposes a civil penalty upon any person who willfully fails to collect or pay over any tax imposed by the Internal Revenue Code. The penalty is equal to the amount of tax which has not been collected or paid over. This penalty, commonly called the 100-percent penalty for failure to pay over, applies not with regard to the personal tax liability of the person potentially subject to the penalty but rather to tax for which another person is primarily liable, e.g., an employer's liability for employees' income taxes withheld from payroll.

In the case of Tax Court litigation, a taxpayer need not pay a deficiency assessed by the Government until the final adjudication of his case, and the Government may not levy on his property or begin any other collection procedure in the meantime. However, the 100-percent penalty is not subject to Tax Court jurisdiction. Instead, the person subject to the penalty generally is restricted to filing with the Internal Revenue Service a claim for refund for the penalty after it has been paid or collected. If the Service denies the claim (or fails to respond within 6 months), a suit for refund can be filed in either a U.S. district court or the Court of Claims.

Thus, under prior law, there generally was no procedure whereby the person subject to penalty could stay enforcement of the 100-percent penalty pending a judicial determination. The Internal Revenue Service could assess the penalty immediately after its determination and, 10 days after notice and demand for payment was made, enforce the assessment by various collection procedures, including a seizure of the property of the person assessed with the penalty.

The Act provides a stay of collection proceeding against a person assessed with the 100-percent penalty if, within 30 days after the date of notice and demand for payment of the penalty, he posts a bond equal to one and one-half times the amount of the assessed penalty. The stay of collection will not apply if it is determined that collection of the penalty will be jeopardized by delay. In addition, the person posting the bond must pay an amount sufficient to initiate refund litigation (in the case of a penalty resulting from nonpayment of employment taxes, this would be the withholding taxes attributable to one individual), file a refund claim, and begin court proceedings within 30 days after a denial of the refund claim.

After the posting of a bond under this provision, collection proceedings will be stayed until the final resolution of the court proceedings in favor of the Government. While the collection proceedings are stayed, the running of the period of limitations during which the penalty may be collected will be suspended for the period of the stay of collection proceedings.

This provision applies to penalties assessed after January 9, 1979.

Sec. 10. Temporary suspension of duty on imports of insulation

The Act permits duty-free imports of basic acid, mineral wool and glass fibers from November 10, 1978, through June 30, 1979.

Sec. 11. Foundation Joseé et René de Chambrun

The Act allows a gift and estate tax deduction to Joseé or René Chambrun, citizens of France, and their estates, for contributions to the Foundation Joseé et René de Chambrun, a French charity created to preserve the home of General Lafayette, near Paris.

10. H.R. 7581 (P.L. 95-345)[1]

Cooperative Telephone Companies; Lending of Securities; Completed Crop Pool Accounting Method

Sec. 1. Treatment of mutual or cooperative telephone company income from nonmember telephone company

The Act clarifies the income-source requirement which must be satisfied by a mutual or cooperative telephone company as a condition for exemption from Federal income taxation. Prior law provided that such a company could qualify for tax-exempt status only if at least 85 percent of its income consisted of amounts collected from members to meet expenses. The Internal Revenue Service ruled, (in 1974) that when a mutual or cooperative telephone company completes telephone calls to its members made by customers of another company under a reciprocal call-completion arrangement, the mutual or cooperative company receives payments or credits which constitute nonmenber income. The Act provides, for post-1974 taxable years, that such payments or credits are to be disregarded in determining whether the company satisfies the 85-percent member-income test.

Sec. 2. Treatment of lender of securities

Under prior law, uncertainty had developed as to the correct income tax treatment of certain securities lending transactions.

The Act clarifies prior law by providing that the lending of securities to a broker and the return of identical securities does not constitute a taxable sale or exchange of the securities and thus does not interrupt the lender's holding period or affect the lender's basis. The Act also provides that payments on these securities loans are not to be treated as unrelated business taxable income for tax-exempt organizations. Furthermore, the Act provides that these payments are to be treated in the same manner as dividends and interest for purposes of the excise tax imposed on the net investment income of private foundations, for the 90-percent income test for regulated investment companies, and for the support test limitations on investment income in determining whether a charitable organization is a publicly supported organization rather than a private foundation. With respect to exempt organizations and regulated investment companies, the Act provides this treatment only for payments on security loans which are fully collateralized and which may be terminated on 5 business days' notice by the lending organization.

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[1] H.R. 7581, as reported by the House Ways and Means Committee on October 25, 1977 (H.Rept. 95-742) and passed by the House on January 24, 1978, contained only the provision dealing with cooperative telephone companies. The provisions regarding lending of securities and the completed crop pool accounting method were added as amendments by the Senate Finance Committee on April 25, 1978 (S. Rept. 95-762), and passed the Senate on April 27, 1978. The House agreed to the Senate amendments, with amendments, on June 14, 1978, and the Senate agreed to the House amendments on August 2, 1978. H.R. 7581 was signed by the President on August 15, 1978.

These provisions apply to amounts received after December 31, 1976, regardless of whether the recipient is a calendar year taxpayer or a fiscal year taxpayer.

Sec. 3. Completed crop pool method of accounting

In 1969, the Internal Revenue Service ruled that a completed crop pool method of accounting employed by a farmers' cooperative operating under a pooling arrangement is not an acceptable accounting method for income tax purposes. However, certain tobacco growers cooperatives have used this method of accounting for income tax purposes for over 30 years.

The Act allows certain tobacco cooperatives to use the completed crop pool method of accounting for crop pools currently open and for crop pools opened prior to March 1, 1978. Only crop pools which are subject to an agreement with Commodity Credit Corporation qualify for this special treatment. Furthermore, this provision is limited to cooperatives which have been using this method for at least 10 years and whose operations consist of working with the administration o government farm price support systems.

11. H.R. 8533 (P.L. 95-502)

Waterway User Tax [1] and Bingo Games [2]

TITLE II—"INLAND WATERWAYS REVENUE ACT OF 1978"

Sec. 202. Excise tax on fuel in commercial use of inland waterways

Presently, there is no Federal excise tax on fuels used in commercial transportation on inland waterways. Federal expenditures on the inland waterway system have been financed from general revenues rather than from user charges. The Act imposes a retailers excise tax on diesel and other liquid fuels used by commercial cargo vessels on those inland or intracoastal waterways of the United States which are specified by name and description in section 206 of the Act. [3]

The tax will not apply to deep-draft, ocean-going vessels, to recreational vessels, or to noncargo vessels such as passenger vessels and fishing boats. In addition, the Act exempts from the tax the use of fuel by tugs in moving "LASH" and "SEABEE" ocean-going barges carrying international cargoes.

The tax begins October 1, 1980, at 4 cents per gallon for one year, and then increases to 6 cents per gallon beginning October 1, 1981. After two years at the 6-cent rate, the tax rises to 8 cents per gallon beginning October 1, 1983. Two years later, beginning October 1,1985, the tax increases to 10 cents per gallon.

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[1] Waterway user tax legislation was reported in the House as Title II of H.R. 8309 by the House Ways and Means Committee on July 28, 1977 (H. Rept. 95-545, Part 2), and passed the House on October 13, 1977. H.R. 8309 passed the Senate, with amendments, on May 4, 1978. A modified version of H.R. 8309, including waterway user tax provisions, was added as a Senate floor amendment to H.R. 8533 on October 10, 1978, and was agreed to by the House (as amended by the Senate) on October 13, 1978.

[2] H.R. 8533, as passed the House, contained only the bingo provisions. This bill was reported by the House Ways and Means Committee on September 22, 1978 (H. Rept. 95-1608), and passed the House on September 25, 1978. The Senate passed H.R. 8533 on October 10, 1978 with a floor amendment adding the waterway user tax and related provisions (Titles I and II of P.L. 95-502); this amendment technically resulted in deletion of the House-passed bingo provisions. The House agreed to H.R. 8533 (as amended by the Senate) on October 13, 1978. On October 14, 1978, the House and Senate agreed to H. Con. Res. 754, directing that corrections be made in the enrollment of H.R. 8533 to include the provisions as to proceeds from bingo games (Title III of P.L. 95-502).

[3] The 26 waterways listed in section 206 of the Act include the Mississippi River upstream from Baton Rouge, the Mississippi's tributaries, and the Gulf and Atlantic Intracoastal Waterways.

Secs. 203–204. Inland Waterways Trust Fund

The Act also establishes an Inland Waterways Trust Fund, to be managed by the Secretary of the Treasury. Revenues from the new waterway fuels excise tax will be transferred periodically to the Trust Fund. Amounts in the Trust Fund will be available, to the extent provided by authorization and appropriation Acts, for making construction and rehabilitation expenditures for navigation on the inland and intracoastal waterways the commercial use of which are the subject of the waterway fuels tax.

Sec. 205. Study of inland waterway user taxes and charges

The Act requires the Secretaries of Transportation and Commerce, in consultation with the heads of other specified agencies, to conduct a comprehensive study with respect to inland waterway user taxes and charges. The report is to include findings and policy recommendations regarding the mechanism of such taxes and charges, the coverage of user taxes and charges, and which waterways should be included, as well as considerations of economic effects of such taxes and charges. The report also is to include consideration of economic feasibility of waterway improvement projects and the level of benefits from Federal waterway expenditures. In addition, the report is to include consideration of Federal assistance to all modes of freight transporation and the competitive effects of such assistance. Finally, the report is to include consideration of the effects of inland waterway user taxes and charges on national transportation policy objectives and future development of inland waterways.

The final report of the study is to be submitted to the Congress by September 30, 1981. The Act authorizes appropriations of up to $8 million to carry out the study.

Sec. 206. Inland and intracoastal waterways defined

Section 206 lists 26 specific inland and intracoastal waterways of the United States for purposes of the waterway fuels tax and the waterways eligible for trust fund financing.

TITLE III—PROCEEDS FROM BINGO GAMES

Sec. 301. Bingo proceeds of certain tax-exempt organizations

Most organizations which are generally tax-exempt under the Internal Revenue Code nonetheless are subject to tax on unrelated business taxable income (sec. 511). Thus, unless a specific exception applies, an organization which is tax-exempt (under sec. 501(a)) is subject to tax with respect to income derived from any trade or business the conduct of which is not substantially related (aside from the need of the organization for income or funds) to the exercise or performance of its exempt function. However, an exception is provided for activities in which substantially all of the work is performed without compensation.

Two court cases had held that tax-exempt organizations are subject to unrelated business income tax on the proceeds of bingo games regularly carried on by the organizations with paid labor even though the organizations involved were not in competition with for-profit businesses.

The Act provides that tax-exempt organizations are not subject to income taxation on the proceeds of certain bingo games if State or local law permits such games to be carried on by nonprofit organizations and these organizations do not compete with taxable entities. This exception applies to bingo games even though they are regularly carried on and are carried on with paid workers.

These provisions apply to taxable years beginning after December 31,1969.

Sec. 302. Bingo proceeds of political organizations

For political organizations, "exempt function income" is tax exempt, but all other income is subject to tax. Under prior law, exempt function income included only (1) contributions, (2) membership dues, fees, and assessments, and (3) proceeds from a political fund-raising or entertainment event, or the proceeds from the sale of political campaign materials, which are not received in the ordinary course of a trade or business (sec. 527).

Thus, for political organizations, the proceeds of bingo games which were regularly carried on with paid labor did not qualify as "proceeds from a political fund-raising or entertainment event, which are not received in the ordinary course of any trade or business," and, consequently, these proceeds were subject to tax under prior law.

The Act provides that political organizations are not subject to income taxation on the proceeds of certain bingo games if State or local law permits such games to be carried on by nonprofit organizations and these organizations do not compete with taxable entities. This exception applies to bingo games even though they are regularly carried on and are carried on with paid woikers.

The provisions of the Act relating to political organizations generally apply to taxable years beginning after December 31, 1974 (the effective date of sec. 527 of the Code, which provides rules for the taxation of political organizations).[4]

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[4] This provision also contained a transitional rule which provided that no amounts which represent proceeds of bingo games and which were held by a political organization (in escrow, in separate accounts for the payment of Federal taxes, or otherwise) could be used to make a campaign contribution or a campaign expenditure in connection with any election held before January 1, 1979. Also, such amounts are not to be used as collateral for a loan.

12. H.R. 8811 (P.L. 95–472)[1]

Retired Pay of Tax Court Judges; Group Legal Services Plans; Involuntary Conversion of Specially Valued Farm Property

Secs. 1–2. Revocability of election to receive retired pay of judge of Tax Court

If a judge of the United States Tax Court elects to come under the Tax Court retirement system, all civil service retirement benefits are waived, even though the minimum requirement of 10 years of Tax Court service necessary to qualify for Tax Court judge retired pay never may be met, and notwithstanding the fact that the individual otherwise might qualify for civil service retirement benefits. Under prior law, an election to receive retired pay as a Tax Court judge could not be revoked. Thus, an individual who had creditable civil service time before and after Tax Court service, and who elected Tax Court retirement pay while a judge but served in that capacity for less than 10 years, was precluded from receiving benefits under either system.

The Act allows an individual who has filed an election to receive retired pay as a Tax Court judge to revoke that election at any time before the first day on which retired pay would begin to accrue with respect to that individual, thereby enabling that individual to seek to qualify for benefits under the civil service retirement system (but not under both retirement systems).

Under the Act, no civil service retirement credit is to be allowed for any service as a Tax Court judge, unless with respect to that service the amount required by the civil service retirement laws has been deposited, with interest, in the Civil Service Retirement and Disability Fund. The Act also provides that if an individual revokes an election to receive retired pay and thereafter deposits the required amount with the Civil Service Retirement and Disability Fund, service on the Tax Court is to be treated as service with respect to which deductions and contributions had been made during the period of service. Therefore, such a revocation will allow service on the Tax Court to satisfy the civil service rule that an individual must have current covered employment in order to be permitted to revive his or her credits for prior covered employment.

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[1] H.R. 8811, as passed the House and reported by the Senate Finance Committee, contained only the provision relating to retired pay of Tax Court judges. The bill was reported by the House Ways and Means Committee on October 25, 1977 (H. Rept. 95–744), and passed the House on January 24, 1978. The bill was reported, without amendment, by the Finance Committee on August 11, 1978 (S. Rept. 95–1113). The provisions relating to group legal services plans and specially valued farm property were added as amendments on the Senate floor on August 23, 1978. The House agreed to the Senate amendments with amendments on September 19, 1978, and the Senate agreed to the House amendments on September 28, 1978. H.R. 8811 was signed by the President on October 17, 1978.

This provision applies to any Tax Court judge who has elected the Tax Court retirement system and has not yet retired.[2]

The provision applies to revocations made after the date of enactment (October 17, 1978).[3]

Sec. 3. Treatment of group legal services plan contributions for purposes of Social Security and unemployment taxes

The Tax Reform Act of 1976 excluded from employees' income contributions made by an employer on behalf of employees to, and benefits received by employees under, a qualified prepaid legal services plan. Such amounts were excluded from employees' income for purposes of the Federal income tax through taxable years ending before 1982. Thus, an employer has no Federal income tax withholding liability with respect to such contributions and benefits.

H.R. 8811 excludes such contributions and benefits from the definition of wages for purposes of the social security (FICA) and unemployment (FUTA) payroll taxes for taxable years beginning after December 31, 1976.

Sec. 4. Involuntary conversion of specially valued farm, etc., real property

Under the Code, real property used as a farm for farming purposes or in a closely held business may be valued for Federal estate tax purposes by reference to its actual use, rather than at its fair market value determined on the basis of highest and best use.

To assure that such special use valuation property continues to be used for farming or for other closely held business uses, a recapture rule is provided. In general, this rule results in recapture of the estate tax benefit of the special valuation if the heir disposes of the property or changes its use within 15 years of the death of the decedent.

Under prior law, this recapture rule applied to special use valuation property which was involuntarily converted, such as by condemnation, even if the proceeds of the conversion were reinvested in property used for the same special use.

The Act provides that if an involuntary conversion of qualified real property takes place, no recapture of the estate tax benefit will occur if the property is replaced by other real property of at least equal value to be used for the same use. If qualified real property is replaced by property of lesser value, the recapture will apply only in the proportion that the excess of the amount realized in the conversion

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[2] The provision also applies to a former Tax Court judge, Russell E. Train, who did not serve on the Tax Court long enough to qualify for Tax Court retirement, but had been ruled by the Civil Service Commission to be ineligible for civil service retirement benefits because of his Tax Court election, and to any other former Tax Court judge who may be in a similar position.

[3] Also, if anyone revokes his or her Tax Court retirement system election within one year after the date of enactment, that individual automatically is treated as satisfying the civil service rule that an individual must have current covered employment in order to be permitted to revive his or her credits for prior covered employment. This provision is expected to apply to Mr. Train's situation (note 2). After leaving the Tax Court, Mr. Train served in covered employment under the civil service retirement system from 1969 until early in 1977. If this provision had been enacted before the end of that 8-year period, Mr. Train could have complied with the regular civil service rules regarding current covered employment. This effective date provision gives Mr. Train, and anyone else similarly situated, one year to "catch up" to the change in the law.

over the amount reinvested bears to the amount realized on the conversion.

These rules generally give the heir the same time to make a qualified replacement as is permitted under the income tax involuntary conversion rules—i.e., two years from the date of the conversion. The Act also provides that the recapture period ((generally 15 years) will be extended for an additional period equal to the period of any discretionary extensions of time, beyond the normal 2-year period, granted by the Internal Revenue Service for reinvestment. However, any such extension of the recapture period applies only to the replacement property.

The Code also provides that the basis of "carryover basis property" generally is adjusted by the amount of Federal and State estate and inheritance taxes attributable to appreciation. Although the purpose of the recapture tax generally is to place the estate (and the heir) in essentially the same position as if special use valuation had not been elected, no adjustment was provided under prior law for any portion of the recapture tax imposed upon the disposition of special use valuation property.

The Act also provides that, to the extent involuntarily converted property is not replaced, the recapture tax will be taken into account as a basis adjustment in determining gain or loss for income tax purposes in a manner similar to the adjustment made on account of estate taxes.

This provision was to have applied to involuntary conversions after December 31, 1976. (However, this basis adjustment only applies to carryover basis property, and section 515 of the Revenue Act of 1978 (P.L. 95-600) deferred the application of the carryover basis rules, including this rule, so that they only apply to the estates of decedents dying after December 31, 1979.)

13. H.R. 9378 (P.L. 95-214)[1]

Multiemployer Defined Benefit Pension Plans

Under the Employee Retirement Income Security Act of 1974 (ERISA), benefits under terminated private multiemployer defined pension plans generally were to be guaranteed by the Pension Benefit Guaranty Corporation automatically after December 31, 1977. Also, the annual premium for termination insurance under private defined benefit plans, other than multiemployer plans, was limited to $1.00 per plan participant.

Under P.L. 95-214, automatic coverage of benefits under terminated private multiemployer defined benefit pension plans was postponed until July 1, 1979. Also, effective for plan years beginning after 1977, the annual insurance premium for private defined benefit plans, other than multiemployer plans, was increased to $2.60 per plan participant.

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[1] H.R. 9378 was reported by the House Education and Labor Committee on October 13, 1977 (H. Rept. 95-706), and passed the House on November 1, 1977. The bill passed the Senate, with an amendment, on November 3, 1977, and the House accepted the Senate amendment on December 3, 1977. H.R. 9378 was signed by the President on December 19, 1977.

14. H.R. 11055 (P.L. 95–258)[1]

Crop Disaster Payments; State Legislator Travel Expenses

Sec. 1. Inclusion in income of certain crop payments received in 1978

A taxpayer on the cash method of accounting generally is required to include in income the proceeds from the sale of crops, and payments (other than commodity credit loans) from the Department of Agriculture, in the year such amounts are actually or constructively received. However, under prior law, insurance proceeds received by a taxpayer as a result of destruction or damage to crops and crop disaster payments received pursuant to the Agricultural Act of 1949, as amended, could be included in income in the year following the year of their receipt, if it could be established that the income from the crops which were destroyed or damaged (or which could not be planted) would otherwise have been properly included in income in the following taxable year (sec. 451(d)). In the case of disaster payments, this election to defer inclusion in income applied only to payments received as a result of (1) destruction or damage to crops caused by drought, flood, or any other natural disaster, or (2) the inability to plant crops because of such a natural disaster.

There was no provision under prior law to allow a taxpayer on the cash method of accounting to elect to treat crop disaster payments or deficiency (or "target price") payments [2] as income in a year earlier than the year in which the payments were actually or constructively received.

The Act allows a farmer to elect to treat disaster payments attributable to the 1977 crop as 1977 income if he can establish that, under his usual business practice, income from his crop could have been reported in 1977.[3] Similarly, the Act allows a farmer to elect

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[1] H.R. 11055 was reported by the House Ways and Means Committee on March 7, 1978 (H. Rept. 95–929), and passed the House on March 13, 1978. The bill was considered and passed by the Senate on March 22, 1978. H.R. 11055 was signed by the President on April 7, 1978.

[2] Deficiency (or "target price") payments are payments made by the Department of Agriculture to producers of certain crops (including wheat, feed grains, cotton, and rice) as a means of providing that producers realize a minimum per unit price (the "target price" or "established price") for their products. In general, the target prices (or established prices) are set by statute or by the Secretary of Agriculture.

[3] Many farmers who were entitled to crop disaster payments for crops which they harvested (or would have harvested) in 1977 did not receive these payments from the Department of Agriculture until 1978. Under prior law, farmers on the cash method of accounting would have had to include these payments in income in 1978. Since income from crops sold in 1978 would also be reported in 1978, the income of these farmers would have been bunched in 1978 rather than spread over 1977 and 1978, as would be the normal situation.

to treat the deficiency payments with respect to his 1977 crop as 1977 income if, under normal circumstances, the farmer could expect to receive crop deficiency payments from a particular crop in the same year the crop was harvested, rather than in a subsequent year.[4] If an election is made to accelerate payments under this provision, the farmer must accelerate all of the disaster payments and deficiency payments for which he is eligible to make an election.

[4] A great many farmers who were entitled to deficiency payments on their 1977 crops because of low crop prices did not receive these payments from the Department of Agriculture until 1978, although, under normal circumstances, these payments would have been received in 1977.

Sec. 2. State legislator travel expenses

Under present law, an individual is allowed a deduction for traveling expenses (including amounts expended for meals and lodging) while away from home in the pursuit of a trade or business (sec. 162 a)). These expenses are deductible only if they are reasonable and necessary in the taxpayer's business and directly attributable to it. "Lavish or extravagant" expenses are not allowable deductions. In addition, no deductions are allowed for personal, living, and family expenses except as expressly allowed under the Code (sec. 262).

Generally, under section 262, expenses and losses attributable to a dwelling unit which is occupied by a taxpayer as his personal residence are not deductible. However, deductions for interest, certain taxes, and casualty losses attributable to a personal residence are expressly allowed under other provisions of the Code (secs. 163, 164, and 165).

A taxpayer's "home" for purposes of the deduction of traveling expenses generally means his principal place of business or employment. Where a taxpayer has more than one trade or business, or a single trade or business which requires him to spend a substantial amount of time at two or more localities, his "home" is held to be at his principal place of business. A taxpayer's principal place of business is determined on an objective basis taking into account the facts and circumstances in each case. The more important factors to be considered in determining the taxpayer's principal place of business (or tax home) are: (1) the total time ordinarily spent by the taxpayer at each of his business posts, (2) the degree of business activity at each location, (3) the amount of income derived from each location, and (4) other significant contacts of the taxpayer at each location. No one factor is determinative.

The Tax Reform Act of 1976 provided an election for the tax treatment of State legislators for taxable years beginning before January 1, 1976. This was extended for one year by the Tax Reduction and Simplification Act of 1977, to taxable years beginning before January 1, 1977.

Under this election, a State legislator may, for any such taxable year, treat his place of residence within his legislative district as his tax home for purposes of computing the deduction for living expenses. If this election is made, the legislator is treated as having expended for living expenses an amount equal to the sum of the daily amount of per diem generally allowed to employees of the U.S. Government for traveling away from home, multiplied by the number of days during that year that the State legislature was in session, including any day in which the legislature was in recess for a period of four or less consecutive days. In addition, if the State legislature was in recess for more than four consecutive days, a State legislator may count each day in which his physical presence was formally recorded at a meeting of a committee of the State legislature. For this purpose, the rate of per diem to be used is the rate that was in effect during the period for which the deduction was claimed.

H.R. 11055 further extended the effective date of the provision adopted by the Tax Reform Act of 1976 (and extended for one year by the Tax Reduction and Simplification Act of 1977) for one more year, or to taxable years beginning before January 1, 1978.

15. H.R. 11733 (P.L. 95-599)[1]

Title V—"Highway Revenue Act of 1978"

Sec. 502. 5-Year Extension of Highway Trust Fund and highway excise taxes

The Act extends the Highway Trust Fund for 5 years, from September 30, 1979 through September 30, 1984. The Act also postpones the scheduled rate reductions of the highway excise taxes allocated to the trust fund for 5 years, from October 1, 1979 to October 1, 1984. (See the following table for the specific excise taxes and rates.)

EXCISE TAXES ALLOCATED TO THE HIGHWAY TRUST FUND AND PRESENT LAW TAX RATES*

Excise tax (and section of the Code)	Present tax rate	Tax rates scheduled as of Oct. 1, 1984 [1]
Retailers: Diesel and special motor fuels (sec. 4041).	4 cents per gallon	1½ cents per gallon.
Manufacturers:		
Gasoline (sec. 4081)	4 cents per gallon	1½ cents per gallon.
Lubricating oil (sec. 4091)	6 cents per gallon	6 cents per gallon.
Trucks, trailers (sec. 4061 (a)).	10 percent of manufacturers price.	5 percent of manufac-Turers price.
Truck parts (sec. 4061(b))	8 percent of manufacturers price.	5 percent of manufacturers price.
Tires for highway use (sec. 4071(a)(1)).[2]	10 cents per pound	5 cents per pound.
Tubes (sec. 4071(a)(3))	10 cents per pound	9 cents per pound.
Tread rubber (sec. 4071(a) (4)).	5 cents per pound	None.
Other: Use tax on highway vehicles in excess of 26,000 pounds gross weight (sec. 4481).	Annual tax of $3 per 1,000 pounds.	None.

*NOTE.—Under the Energy Tax Act of 1978 (H.R. 5263, Public Law 95-618), the 10-percent excise tax on buses and the 8-percent excise tax on bus parts and accessories were repealed. In addition the other excise taxes (except for the use tax on heavy highway vehicles) applicable to buses used in public transportation and school buses were repealed (either directly or through refund or credit of the tax); that is, the taxes on gasoline, diesel and other motor fuels; the tax on lubricating oil; and the taxes on tires, tubes and tread rubber.

[1] At that time, revenues would go into the general fund, absent legislation to further extend the trust fund.

[2] Sec. 4071 also imposes a tax of 5 cents per pound for nonhighway tires, except for a tax of 1 cent per pound on "laminated tires" (not used on highway vehicles). Revenues from these two taxes also go into the trust fund but are not scheduled for a change in rate on Oct. 1, 1984.

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[1] H.R. 11733 (The Surface Transportation Assistance Act of 1978), including the Ways and Means Committee report on title V, was reported by the House Committee on Public Works and Transportation on August 11, 1978 (H. Rept. 95-1485), and passed the House on September 28, 1978. The bill passed the Senate, as amended, on October 3, 1978. The conference report was filed on October 14, 1978 (H. Rept. 95-1797), and was agreed to by the Senate and the House on October 15, 1978. H.R. 11733 was signed by the President on November 6, 1978.

Sec. 503. Modification of the trust fund "Byrd Amendment"

The operation of the trust fund "Byrd Amendment" which previously provided for reductions in apportionments only for the Interstate System when anticipated trust fund revenues were estimated to be inadequate to cover existing expenditures, is modified so that any reductions will be made on a *pro rata* busis from all apportioned highway trust fund programs. This is effective for fiscal years beginning after September 30, 1978.

Sec. 504. Fuels tax exemption for taxicabs

An exemption is provided (via a credit or refund) from the 4-cents-per-gallon Federal motor fuel taxes for fuel used in taxicabs for qualified taxicab services. The exemption applies only to fuel used for business purposes and where the taxicabs are not prevented from implementing a shared-ride program by either government regulation or company policy; however, the exemption does not apply for taxicabs of 1978 or later model years purchased after 1978 not meeting the fuel economy standard under the Motor Vehicle Information and Cost Savings Act (MVICSA). As under MVICSA, there is an exception to meeting those fuel economy standards for small automobile manufacturers—that is, those that produce less than 10,000 vehicles per year.

The fuels tax exemption applies only for calendar years 1979 and 1980. An operator generally may file for a refund if the refund of tax due is $50 or more during any of the first three quarters of the operator's taxable year. Otherwise, a credit can be claimed on the operator's Federal income tax return for the year.

Sec. 505. Highway cost allocation study

The Act contains a requirement for a highway cost allocation study by the Secretary of Transportation, which is to determine the costs of Federal-aid highways occasioned by the use of different types of vehicles and the proportionate share of such highway costs attributable to each category of users and vehicles. A final report is due to the Congress on or before January 15, 1982.

Sec. 506. Study of highway excise tax structure

The Act also directs the Secretary of the Treasury, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, to review and analyze each excise tax now dedicated to the Highway Trust Fund with respect to such factors as the ease or difficulty of administration and compliance burdens. This study is to be conducted in conjunction with the cost allocation study. A final report (to the House Ways and Means and Senate Finance Committees) is due on or before April 15, 1982.

16. H.R. 12051 (P.L. 95–497)[1]

New York City Pension Plans

Prior and present law

The tax code provides substantial tax benefits to employees covered by tax-qualified pension plans.[2] The tax benefits provided for governmental employees under qualified plans are sufficient to encourage many governmental units to establish such plans.[3]

A qualified plan must be for the exclusive benefit of employees or their beneficiaries. A plan or trust which breaches the exclusive benefit rule of the Code is disqualified. If a governmental plan is disqualified, the special tax treatment for employees under qualified plans is denied.

Certain sanctions also are applied where a trust engages in a self-dealing transaction. Under the rules applicable to governmental plans, a pension trust which engages in prohibited self-dealing loses its tax exemption. For this purpose, a trust violates the self-dealing rules if it engages in any transaction in which the trust lends any part of its income or corpus, without the receipt of adequate security and without receipt of a reasonable rate of interest, to the creator of the trust, to a person who has made a substantial contribution to the trust, or to certain other persons.

Generally, the Internal Revenue Service has treated a transaction which violates the self-dealing rules as a violation of the exclusive benefit rule. As indicated above, failure to meet the exclusive benefit rule also can cause the disqualification of the trust and the plan of which the trust is a part.

On November 26, 1975, five New York City pension funds, 11 commercial banks, and several other parties agreed to acquire and hold obligations of the City and of the Muncipal Assistance Corporation for the City of New York (MAC). A bill then was enacted to enable the plans to participate. Under Public Law 94–236, a pension plan or trust which, on December 5, 1975, was a party to the agreement of November 26, 1975 (and any trust forming a part of such a plan), was not considered in violation of the exclusive benefit rule or the self-dealing rules of the Code merely because it: (1) entered into the

[1] H.R. 12051 was reported by the House Ways and Means Committee on September 21, 1978 (H. Rept. 95–1605), and passed the House on October 3, 1978. The bill passed the Senate on October 7, 1978. The provisions also were reported by the Senate Finance Committee on September 13, 1978, as an amendment to H.R. 4007 (S. Rept. 95–956). H.R. 12051 was signed by the President on October 21, 1978.

[2] Covered employees defer payment of tax on employer contributions made on their behalf until they receive plan benefits, generally after retirement when their incomes, and as a result applicable tax rates, tend to be lower. Special 10-year income averaging is allowed for lump-sum distributions, and certain estate tax and gift tax exclusions are provided.

[3] Governmental employers are exempt from tax and do not benefit from tax deductions for contributions to plans or the special tax-exempt status accorded to trusts under qualified plans.

November 26, 1975, agreement or agreed to an amendment to the agreement, (2) forbore from any act prohibited by that agreement, (3) acquired or held any obligation which was provided for by the agreement, (4) made any election provided for by the agreement, (5) executed a waiver of any requirement of the agreement, or (6) performed any other act provided for by the agreement. In addition, these plans or trusts can continue to hold any obligation acquired or held under the agreement after the expiration of the agreement. As a result, the law ended uncertainty as to whether these acts (or forbearances) violated the exclusive benefit rule or the self-dealing rules.

The law provided special rules with respect to amendments of the agreement and waivers of requirements of the agreement. These amendments were not to be inconsistent with the policies of (1) maintaining the ability of the City to make future contributions to the plans and trusts and to satisfy the City's future obligations to pay pension and retirement benefits to members and beneficiaries of the plans and trusts, and (2) protecting the sources of funds to provide retirement benefits for members and beneficiaries of the plans and trusts.

Explanation of Act

The Act provides that a participating city plan or State plan [4] will not be considered to be in violation of the exclusive benefit rule or the prohibited self-dealing rules of the Code merely because (1) during the four-year period beginning on July 1, 1978, and ending June 30, 1982, the plan, pursuant to an agreement, acquires city obligations or agency obligations (obligations of the Municipal Assistance Corporation or a similar New York State fiscal agent) if the agreement is not disapproved by the Secretary of the Treasury, or (2) the plan holds city or agency obligations acquired under the Act, under Public Law 94–236, or under prior law. If an acquistion of city or agency obligations by a plan does not meet the requirements of the Act, the status of the plan or trust is to be determined by applying the exclusive benefit rule and the self-dealing prohibitions without regard to the protection provided by the Act. If a plan acquires city or agency obligations under an agreement which has not been disapproved, and the acquisition fails to meet a requirement of the Act, the tax status of the plan (or a trust forming a part of the plan) will not be adversely affected; however, the protection of the Act will not be available to the plan for acquisitions in subsequent years until the requirements of the Act are satisfied.

Although the Act allows the participating pension plans to acquire city and agency obligations, it is not the intention of the Congress that the participating plans be required to purchase such obligations. In addition, the Congress does not intend that this Act be considered a precedent for other State or local pension plans to acquire obligations of their sponsoring employers.

[4] The Act limits participating plans to (1) the New York City Employees' Retirement System (city employees), (2) the Teachers Retirement System for the City of New York (city teachers), (3) the New York City Police Pension Fund, article 2 (city policemen), (3) the New York City Fire Department Pension Fund, article 1–B (city firemen), (5) the Board of Education Retirement System for the City of New York (City Board of Education), (6) the New York State Employees' Retirement System, (7) the New York State Policemen's and Firemen's Retirement System, and (8) the New York State Teachers Retirement System.

A participating plan may acquire city or agency obligations pursuant to an agreement if (1) the agreement satisfies the requirements of the overall and specific standards provided by the Act and (2) the specific standards are satisfied at the time of the acquisition. The Act provides that an agreement meets the requirements of the overall standards if it is not disapproved by the Secretary within a period of 60 days or less, as established by the Secretary, after it is submitted to him as a proposal. The Act also requires that each participating city plan certify to the Secretary of the Treasury that (1) each acquisition of city or agency obligations is made under an agreement which has not been disapproved by the Secretary, (2) after taking the acquisition into account, the plan does not have a projected negative cash flow for the plan year in which the acquisition takes place, (3) the 50-percent limit contained in the specific standards is satisfied at the time of any acquisition, and (4) the certification is accompanied by supporting documentation. Each State plan is required to certify that the 10-percent limit contained in the specific standards is satisfied at the time of any acquisition.

A change in an agreement, or in the rights of any party under an agreement, is treated as a new agreement to which the submission, disapproval, and certification procedures apply. For example, an acquisition pursuant to an amendment of an agreement, or a waiver of a requirement of an agreement, would not be protected under the Act unless the agreement as amended, or the agreement to waive, is submitted to the Secretary and not disapproved by him.

The Act also treats an agreement to exchange city or agency obligations held by a participating plan for other city or agency obligations (a rollover) as an agreement to acquire city or agency obligations to which the submission, disapproval, and certification procedures apply. Similarly, except as provided under regulations prescribed by the Secretary, any modification of the terms of a city or agency obligation held by a participating plan, or the participating plan's rights under such an obligation, is treated as an agreement to which the submission, disapproval, and certification procedures apply.

The Congress expects that an agreement by a participating plan to acquire city or agency obligations will be disapproved by the Secretary unless the performance of the pension plans under the agreement is conditioned upon the applicable standards being satisfied at the time of any such acquisition. Consequently, an agreement is not expected to require a plan to acquire obligations if the acquisition could adversely affect the participating plan's tax status.

17. H.R. 12426 (P.L. 95-339)[1]

"New York City Loan Guarantee Act of 1978"

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954

Sec. 201. Taxability of certain federally guaranteed obligations

The tax code provides, with certain specific exceptions, that gross income does not include interest on the obligations of a State, Territory, United States possession, or of the District of Columbia.

The Act provides an additional exception to the general rule of nontaxability of such interest income. In general, the Act provides that interest on obligations which are guaranteed under Title I of the New York City Loan Guarantee Act of 1978 are to be included in gross income. In addition, the Act provides that nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire any obligation which has at any time been guaranteed, in whole or in part, under Title I of the New York City Loan Guarantee Act of 1978.

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[1] H.R. 12426 was reported by the House Banking, Finance and Urban Affairs Committee on May 10, 1978 (H. Rept. 95-1129, Part I). Title II of the bill was reported by the Ways and Means Committee on May 22, 1978 (H. Rept. 95-1129, Part II). H.R. 12426 was passed by the House on June 8, 1978. It was reported in the Senate on June 23, 1978 (S. Rept. 95-952), and passed the Senate as amended on June 29, 1978. The conference report was filed on July 18, 1978 (H. Rept. 95-1369); the House agreed to the conference report on July 25, 1978, and the Senate agreed to the conference report on July 27, 1978. H.R. 12426 was signed by the President on August 8, 1978.

18. H.R. 13167 (P.L. 95–488)[1]

Black Lung Benefit Trusts

The Black Lung Benefits Revenue Act of 1977 (P.L. 95–227) provides that a coal mine operator may fund its liabilities under Federal and State black lung benefits laws through deductible contributions to a qualified tax-exempt trust. Under that statute, the amount deductible was based on actual benefit claims approved or filed during the taxable year. Also under that statute, black lung benefit trusts are exempt from Federal income tax under section 501(c) of the Code, but were excepted from the public disclosure requirements applicable to other tax-exempt organizations.

Under H.R. 13167, an operator generally may deduct contributions to a black lung benefit trust that do not exceed the amount necessary to fund, on a sound actuarial basis, the operator's remaining unfunded liability for black lung claims filed, or expected to be filed in the future, by (or with respect to) past and present employees. The deduction limitation for the taxable year is determined by using reasonable actuarial methods and assumptions which are not inconsistent with Treasury regulations. Also, the Act requires the use of a level method of funding the taxpayer's remaining estimated unfunded black lung liability. Generally, the funding period is the greater of (1) the average remaining working life of miners who are present employees of the taxpayer or (2) 10 taxable years of the taxpayer.

The Act makes black lung benefit trusts subject to the same public disclosure requirements as apply to other tax-exempt trusts described in section 501(c) of the Code. Generally, this means that the exemption application for the trust and the trust's annual returns are subject to public inspection.

The Act also provides that, with respect to the same black lung liability, an operator may not both fund a black lung trust and pay or accrue the cost of a benefit directly. Thus, for example, if the expected benefits due to a given miner (or group of miners) are taken into account in determining the limitation on contributions to the trust, the coal mine operator may not claim a deduction with respect to those same benefits by paying the miner (or miners within the group) directly rather than through the trust and may not accrue deductions with respect to those same benefits.

These provisions were effective for taxable years beginning after December 31, 1977.

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[1] This bill was reported by the House Ways and Means Committee on September 29, 1978 (H. Rept. 95–1656), passed the House on October 3, 1978, and passed the Senate on October 10, 1978. H.R. 13167 was signed by the President on October 20, 1978.

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