[JOINT COMMITTEE PRINT]

DESCRIPTION OF TAX PROVISIONS EXPIRING IN 1991 AND 1992

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

FEBRUARY 28, 1991

U.S. GOVERNMENT PRINTING OFFICE

39-941 WASHINGTON : 1991 JCS-2-91

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, DC 20402

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102D CONGRESS, 1ST SESSION

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CONTENTS

INTRODUCTION

This pamphlet,[1] prepared by the staff of the Joint Committee on Taxation, provides a brief description of tax provisions scheduled to expire in 1991 and 1992 (102d Congress), including a reference to the legislative background of each provision and any related Administration budget proposal.[2]

The first part of the pamphlet is a summary listing of tax provisions scheduled to expire in 1991 and 1992. The second part is a description of: (A) the 1991 expiring tax provisions; and (B) the 1992 expiring tax provisions. The Appendix presents the estimated revenue effects for fiscal years 1991-1996 of permanently extending the 1991 and 1992 expiring tax provisions.

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[1] This pamphlet may be cited as follows: Joint Committee on Taxation, *Description of Tax Provisions Expiring in 1991 and 1992* (JCS–2–91), February 28, 1991.

[2] Several of the expiring tax provisions are also described in Joint Committee on Taxation, *Summary of Revenue Provisions in the President's Fiscal Year 1992 Budget Proposal* (JCS-1-91), February 25, 1991.

I. SUMMARY

The following is a summary listing of tax provisions scheduled to expire in 1991 and 1992 (102nd Congress).

1991 expiring tax provisions

The following tax provisions are generally scheduled to expire after December 31, 1991, except for item (6): [3]

(1) Exclusion for employer-provided educational assistance benefits (Code sec. 127);

(2) Exclusion for group legal services benefits and the tax exemption for an organization providing group legal services as part of a qualified group legal services plan (secs. 120 and 501(c)(20));

(3) Deduction for health insurance costs of self-employed individuals (sec. 162(l));

(4) Tax exemption for qualified mortgage bonds and election to issue mortgage credit certificates (secs. 143 and 25);

(5) Tax exemption for qualified small-issue manufacturing bonds (sec. 144(a));

(6) Rules for allocation and apportionment of research expenses (secs. 861(b)), 862(b), 863(b), and 864(f)); [4]

(7) Tax credit for qualified research expenditures (sec. 41);

(8) Tax credit for low-income rental housing (sec. 42);

(9) Targeted jobs tax credit (sec. 51);

(10) Business energy tax credits for solar and geothermal property (sec. 48(a));

(11) Tax credit for orphan drug clinical testing expenses (sec. 28); and

(12) Minimum tax exception for gifts of appreciated tangible property (sec. 57).

1992 expiring tax provisions

The following tax provisions are scheduled to expire in 1992:

(1) Access to tax information by the Department of Veterans Affairs (sec. 6103); [5]

(2) Placed-in-service date for the nonconventional fuels production credit (sec. 29); [6] and

(3) Excise tax on certain vaccines for the Vaccine Injury Compensation Trust Fund (secs. 4131 and 9510).[7]

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[3] These tax provisions, except for (12), were last extended in the Revenue Reconciliation Act of 1990 ("1990 Act") (Title XI of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508). Item (12) was enacted in the 1990 Act as a one-year exception.

[4] Scheduled to expire on August 1, 1991.

[5] This provision was enacted in the 1990 Act, and is scheduled to expire after September 30, 1992.

[6] This provision was last extended in the 1990 Act, and is scheduled to expire after December 31, 1992.

[7] These provisions were enacted in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), and are scheduled to expire after December 31, 1992, under certain circumstances.

II. DESCRIPTION OF EXPIRING TAX PROVISIONS

A. 1991 Expiring Tax Provisions

1. Exclusion for employer-provided educational assistance

Present Law

Under present law, an employee generally must include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to the employee, unless the cost of such assistance qualifies as a deductible job-related expense of the employee. Amounts expended for education qualify as deductible job-related expenses if the education (1) maintains or improves skills required for the employee's current job, or (2) meets the express requirements of the individual's employer that are imposed as a condition of continued employment (Treas. Reg. sec. 1.162-5(a)). In the case of an employee, such expenses (if not reimbursed by the employer) are deductible only to the extent that, when aggregated with other miscellaneous itemized deductions, they exceed 2 percent of the taxpayer's adjusted gross income. No deduction is allowed for expenses incurred to qualify for a new trade or business (e.g., for law school tuition paid by a paralegal or accountant).

Under present law, an employee's gross income and wages for income and employment tax purposes do not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts are paid or incurred pursuant to an educational assistance program that meets certain requirements (sec. 127). One such requirement is that the educational assistance provided may not discriminate in favor of highly compensated employees in certain respects. This exclusion, which expires for taxable years beginning after December 31, 1991, is limited to $5,250 of educational assistance with respect to an individual during a calendar year.

To the extent that employer-provided educational assistance is not excludable from income because it exceeds the maximum dollar limitation it may be excludable from income as a working condition fringe benefit (sec. 132(d)), provided the requirements of that section are otherwise satisfied (e.g., the education is job related as defined under sec. 162).

Beginning in 1985, the Congress required that employers file information returns with respect to educational assistance programs (sec. 6039D). This requirement was intended to collect data with respect to the use of such programs so that the Congress could evaluate the effectiveness of the exclusion.

Legislative Background

The section 127 exclusion was first established on a temporary basis by the Revenue Act of 1978 (through 1983). It subsequently was extended, again on a temporary basis, by Public Law 98-611 (through 1985), by the Tax Reform Act of 1986 (through 1987), by the Technical and Miscellaneous Revenue Act of 1988 (through 1988), by the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), and by the Omnibus Reconciliation Act of 1990 (through 1991). Public Law 98-611 adopted a $5,000 annual limit on the exclusion; this limit was subsequently raised to $5,250 in the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 made the exclusion inapplicable to graduate-level courses. The restriction on graduate-level courses was repealed by the Omnibus Reconciliation Act of 1990, effective for taxable years beginning after December 31, 1990.

2. Exclusion for employer-provided group legal services; tax exemption for qualified group legal services organizations (secs. 120 and 501(c)(20) of the Code)

Present Law

Under present law, certain amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) are excluded from the employee's gross income for income and employment tax purposes (sec. 120). The exclusion also applies to any services received by an employee (or the employee's spouse or dependents) or any amounts paid to an employee under such a plan as reimbursement for the cost of legal services for the employee (or the employee's spouse or dependents). The exclusion is limited to an annual premium value of $70. In order to be a plan under which employees are entitled to tax-free benefits, a group legal services plan is required to fulfill certain requirements. One such requirement is that group legal services benefits may not discriminate in favor of highly compensated employees in certain respects.

The exclusion for group legal services benefits expires for taxable years beginning after December 31, 1991.

In addition, present law provides tax-exempt status for an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan (sec. 501(c)(20)). The tax exemption for such an organization expires for taxable years beginning after December 31, 1991.

Beginning in 1985, the Congress required that employers file information returns with respect to qualified group legal services plans (sec. 6039D). This requirement was intended to collect data with respect to the use of such plans so that the Congress could evaluate the effectiveness of the exclusion.

Legislative Background

The section 120 exclusion and the section 501(c)(20) exemption were enacted initially on a temporary basis by the Tax Reform Act of 1976 (through 1981). They subsequently were extended, again on

a temporary basis, by the Economic Recovery Act of 1981 (through 1984), Public Law 98-612 (through 1985), the Tax Reform Act of 1986 (through 1987), the Technical and Miscellaneous Revenue Act of 1988 (through 1988), the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), and the Omnibus Reconciliation Act of 1990 (through 1991). The Technical and Miscellaneous Revenue Act of 1988 imposed the $70 annual limit on the amount of premium that may be excluded by the employee.

3. Deduction for health insurance costs of self-employed individuals (sec. 162(l) of the Code)

Present Law

Under present law, an employer's contribution to a plan providing accident or health coverage is excludable from an employee's income (sec. 106). No equivalent exclusion is provided for self-employed individuals (i.e., sole proprietors or partners in a partnership).

However, present law provides a deduction for 25 percent of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents. This deduction is allowable in calculating adjusted gross income. A self-employed individual is an individual who has earned income for the taxable year (sec. 401(c)(1)). No deduction is allowable to the extent the deduction exceeds the self-employed individual's earned income for the taxable year from the trade or business with respect to which the plan providing the medical care coverage is established.

The 25-percent deduction is also available to a more than 2-percent shareholder of an S corporation. For purposes of the deduction, the shareholder's wages from the S corporation are treated as his or her earned income. In addition, the Secretary is authorized to prescribe necessary adjustments relating to the application of the deduction in the case of S corporation shareholders.

No deduction is allowable for any taxable year in which the self-employed individual or eligible S corporation shareholder is eligible to participate (on a subsidized basis) in a health plan of an employer of the self-employed individual (or of such individual's spouse).

The amount deductible under this provision is not taken into account in computing net earnings from self-employment (sec. 1402(a)). Therefore, the amounts deductible under this provision do not reduce the income base for determining the self-employed individual's taxes under the Self-Employment Contributions Act (e.g., social security taxes).

The 25-percent deduction expires for taxable years beginning after December 31, 1991.

Legislative Background

The 25-percent deduction for the health insurance costs of self-employed individuals was enacted on a temporary basis by the Tax Reform Act of 1986 (for taxable years beginning before January 1, 1990). Certain technical corrections to the provision were made by the Technical and Miscellaneous Revenue Act of 1988. The Omni-

bus Budget Reconciliation Act of 1989 extended the deduction for 9 months (for taxable years beginning before October 1, 1990) and clarified that the deduction is available to certain S corporation shareholders. The Omnibus Reconciliation Act of 1990 extended the deduction through 1991.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend for one year the 25-percent deduction for health insurance costs of self-employed individuals.

4. Qualified mortgage bonds and mortgage credit certificates (secs. 143 and 25 of the Code)

Present Law

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used (net of costs of issuance and a reasonably required reserve fund) to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied homes located within the jurisdiction of the issuer of the bonds.

First-time homebuyer requirement

An issue is a QMB only if at least 95 percent of the net proceeds of the issue are used to finance residences for mortgagors who had no present ownership interests in their principal residences during the three-year period before their respective mortgages are executed. This first-time homebuyer requirement does not apply to mortgagors of residences located in targeted areas (as described below), mortgagors who receive qualified home improvement loans, or mortgagors who receive qualified rehabilitation loans.

Income limitations

QMB financing is available only to mortgagors whose family incomes do not exceed 115 percent (100 percent for families of fewer than three persons) of the higher of (1) the median gross income for the area in which the residence is located, or (2) the Statewide median gross income. An adjustment to the mortgagor's qualifying income limitation is made for certain high housing cost areas.

In targeted areas, two-thirds of the mortgage financing provided with the proceeds of each issue must be provided to mortgagors who have family incomes not exceeding 140 percent (120 percent for families of fewer than three persons) of the higher of (1) the median gross income for the area in which the residence is located, or (2) the Statewide median gross income. The remaining one-third of the mortgage financing of each issue may be used to provide mortgage loans without regard to income limitations. A targeted area is defined as (1) a census tract in which at least 70 percent of the families have incomes that are 80 percent or less of the Statewide median family income, or (2) an area of chronic economic distress designated by the Secretary of the Treasury and the Secretary of Housing and Urban Development.

Purchase price limitations

The acquisition cost of a residence financed with QMBs may not exceed 90 percent (110 percent in targeted areas) of the average area purchase price applicable to the residence. The determination of average area purchase prices is made separately (1) with respect to new residences and existing, previously occupied residences, and (2) with respect to one-, two-, three-, and four-family residences.

Loan origination and loan prepayment rules

All unspent proceeds remaining 3 years after the date of issuance of QMBs must be used to redeem bonds within the next succeeding six month period. The amount of any loans originated during that 6-month period will reduce the amount of bonds to be redeemed by the amount of such loans. Further, all loan repayments received ten years or more after the date the bonds are issued must be used to redeem bonds. A *de minimis* exemption of $250,000 is allowed from these redemption requirements. Repayments received during the 10-year period following original issuance may be used to make new loans.

Recapture

All or part of the subsidy provided by qualified QMB financing is recaptured on disposition of assisted housing within 9 years of purchase by mortgagors whose incomes have increased substantially since purchase of their homes. This recapture provision does not apply to home improvement loans.

Mortgage credit certificates

Qualified governmental units may elect to exchange qualified mortgage bond authority for authority to issue mortgage credit certificates (MCCs) (sec. 25). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the residence being financed continues to be the certificate-recipient's principal residence. MCCs are subject to the same eligibility, targeted area, and recapture requirements as QMBs.

Each MCC must represent a credit for 10 to 50 percent of interest on qualifying mortgage indebtedness. The actual dollar amount of an MCC depends on the amount of qualifying interest paid during any particular year and the applicable certificate credit percentage. If the credit percentage exceeds 20 percent, however, the dollar amount of the credit received by the taxpayer for any year may not exceed $2,000.

The aggregate amount of MCCs distributed by an electing issuer may not exceed 25 percent of the volume of QMB exchanged by the State or local government for authority to issue MCCs. For example, a State that is authorized to issue $200 million of qualified mortgage bonds and that elects to exchange $100 million of that bond authority can distribute an aggregate amount of MCCs equal to $25 million.

Legislative Background

The Mortgage Subsidy Bond Tax Act of 1980 first imposed restrictions on the ability of State and local governments to issue tax-exempt bonds to finance mortgage loans on single-family, owner-occupied residences. These restrictions included many of the rules applicable under present law.

The authority of State and local governments to issue tax-exempt qualified mortgage bonds under the 1980 Act expired on December 31, 1983. The Deficit Reduction Act of 1984 extended this authority (with modifications) through December 31, 1987, and enacted the MCC alternative to QMBs.

Authority to issue QMBs and the election to trade in bond volume authority to issue MCCs were extended for one year (through December 31, 1988) by the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 extended the authority to issue QMBs and the election to trade in bond volume authority to issue MCCs for another year (through December 31, 1989), with substantial modifications. The Omnibus Budget Reconciliation of 1989 extended the expiration date of this authority 9 months (through September 30, 1990).

Authority to issue QMBs and the election to trade in bond volume authority to issue MCCs were extended for 15 months, (through December 31, 1991) by the Omnibus Budget Reconciliation Act of 1990. The 1990 Act also made several modifications to the recapture provisions. These modifications were effective as if enacted in the Technical and Miscellaneous Revenue Act of 1988 (the Act which originally enacted the recapture provisions).

5. Qualified small-issue manufacturing bonds (sec. 144(a) of the Code)

Present Law

Interest on certain small issues of private activity bonds is exempt from tax if at least 95 percent of the bond proceeds is used to finance manufacturing facilities or certain land or property for first-time farmers ("qualified small-issue bonds"). For this purpose, manufacturing is defined as the production (including certain processing) of tangible personal property.

Qualified small-issue bonds are issues having an aggregate authorized face amount of $1 million or less. Special limits apply to bonds for first-time farmers. Alternatively, the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the 6-year period beginning three years before the date of the issue and ending three years after that date, may not exceed $10 million.

In determining whether an issue meets the requirements of the small-issue exception, previous qualified small issues (and in the case of the $10-million limitation, capital expenditures during a 6-year period) are taken into account if (1) they are used with respect to a facility located in the same incorporated municipality or the same county (but not in any incorporated municipality) as the facility being financed with the qualified small-issue bonds, and (2) the

principal users of both facilities are either the same person, or are two or more related persons.

No principal user of facilities financed with qualified small-issue bonds may benefit from more than $40 million of outstanding private activity bonds (including exempt-facility bonds, qualified redevelopment bonds, and qualified small-issue bonds). For purposes of the $40 million limitation, the face amount of any issue is allocated among persons who are owners or principal users of the bond-financed property during a 3-year test period. Once an allocation to a test-period beneficiary is made, that allocation remains in effect as long as the bonds are outstanding, even if the beneficiary no longer owns or uses the bond-financed property.

If the $40 million limit is exceeded for any owner or principal user as a result of a change during the test period, interest on the issue of qualified small-issue bonds that caused the limit to be exceeded is taxable from the date of issue. The tax-exempt status of interest on other previously issued qualified small-issue bonds is not affected.

Additionally, the aggregate amount of qualified small-issue bond financing for all types of depreciable farm property (including both new and used property) is limited to $250,000 for any person or related persons. The $250,000 is a lifetime limit.

Issuers of qualified small-issue bonds, must receive an allocation from the State private activity volume limitation.

Authority to issue qualified small-issue bonds expires December 31, 1991.

Legislative Background

Substantial modifications to the tax treatment of exempt small-issue industrial development bonds (IDBs) were made by the Tax Equity and Fiscal Responsibility Act of 1982. The 1982 Act also provided that the authority to issue exempt small-issue IDBs would expire after December 31, 1986. The Deficit Reduction Act of 1984 extended the expiration date for qualified small-issue bonds for manufacturing (including farming) facilities to December 31, 1988. The Tax Reform Act of 1986 extended that date to December 31, 1989, while permitting authority to issue these bonds for nonmanufacturing facilities to expire as scheduled.

The Technical and Miscellaneous Revenue Act of 1988 clarified the definition of manufacturing to provide that up to 25 percent of the proceeds of qualified small issue bonds may be used to finance ancillary activities which are carried out at the manufacturing site. The Omnibus Budget Reconciliation Act of 1989 extended the expiration date to September 30, 1990. The Omnibus Budget Reconciliation Act of 1990 extended that date to December 31, 1991.

6. Allocation and apportionment of research expenses (secs. 861(b), 862(b), 863(b), and 864(f) of the Code)

Present Law [8]

In general

U.S. persons are taxable on their worldwide income, including their foreign income. A U.S. person that earns foreign income may incur foreign income tax. Subject to the applicable foreign tax credit limitations, such a person may credit foreign income taxes against its U.S. tax liability. The purpose of the foreign tax credit and the foreign tax credit limitations is to yield primary taxing jurisdiction over U.S. persons' foreign income to foreign governments, while retaining residual taxing jurisdiction over such income for the United States and ensuring that the full U.S. tax is paid on domestic income.

The foreign tax credit limitations operate by separating the taxpayer's total U.S. tax liability before tax credits ("pre-credit U.S. tax") into 2 categories: tax on U.S. source taxable income and tax on foreign source taxable income. Pre-credit U.S. tax on foreign source taxable income is further subdivided by limitation categories, or "baskets," of income. The pre-credit U.S. tax on any particular limitation category of foreign source income serves as the upper limit on credits for foreign taxes on that type of income.

Each foreign tax credit limitation equals total pre-credit U.S. tax times the ratio of the foreign source taxable income in that limitation category to worldwide taxable income. Foreign source taxable income equals foreign source gross income less the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any deductions which cannot definitely be allocated to some item or class of gross income (Code sec. 862(b)). Deductions allocated and apportioned to foreign source gross income must be further allocated or apportioned among the separate limitation categories of foreign source gross income in order to arrive at foreign source taxable income in any one limitation category. Finally, allocation and apportionment of deductions to U.S. source gross income determines the amount of taxpayer's U.S. source taxable income (sec. 861(b)).

The Code generally articulates only the broad principles of how expenses reduce U.S. and foreign source gross income, leaving the Treasury Department to provide detailed rules for the generally fact-specific task of allocating and apportioning expenses. The application of regulations to particular facts and circumstances, therefore, has a significant role in determining the proportions of taxpayers' worldwide taxable income that are treated as derived from foreign sources. These proportions, in turn, control the level of taxpayers' foreign tax credit limitations.

A taxpayer that has paid less foreign tax in each limitation category than the foreign tax credit limitation with respect to that cat-

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[8] Some of the provisions discussed in this section were described more comprehensively in Part III of the April 2, 1987 pamphlet, prepared by the staff of the Joint Committee on Taxation for the Senate Committee on Finance, entitled *Description of Proposals Relating to Research and Development Incentive Act of 1987 (S. 58) and Allocation of R&D Expenses to U.S. and Foreign Income (S. 716)* (JCS-6-87).

egory credits all of its foreign income tax against pre-credit U.S. tax (such a taxpayer is said to have "excess limit" in each of its limitation categories). If the rules for allocating and apportioning deductions are then changed to permit foreign source deductions to be converted to U.S. source deductions, with the result that a greater proportion of the taxpayer's worldwide taxable income is deemed to come from foreign sources, the change cannot decrease the taxpayer's U.S. tax liability on its worldwide income. A taxpayer that has paid foreign taxes in excess of one or more of its foreign tax credit limitations (that is, a taxpayer with "excess credits") cannot currently use all of its foreign income taxes as credits. In this case, a change in the allocation and apportionment rules may result in additional use of foreign tax credits, as follows: The conversion of a foreign source deduction to a U.S. source deduction converts an amount of U.S. source taxable income to foreign source taxable income, thus increasing the foreign tax credit limitation and reducing the taxpayer's current U.S. tax liability by approximately 34 cents for each dollar of deduction that is converted from foreign to U.S. source. Conversely, upon a change in the allocation rules that shifts deductions from U.S. to foreign income, a taxpayer with excess credits (or a taxpayer that previously had excess limit and finds itself, as a result of the rule change, with excess credits) may experience an increase in U.S. tax liability due to a reduction in the amount of its foreign income taxes that remain creditable, thereby increasing its overall worldwide tax liability.

Treasury Regulation sec. 1.861-8(e)(3)

Treasury Regulations promulgated in 1977 prescribe detailed rules for allocating and apportioning research and experimental expenses for purposes of computing the foreign tax credit limitation of a U.S. person, as well as for other purposes (Treas. Reg. sec. 1.861-8(e)(3)).[9]

This R&D allocation regulation contemplates that taxpayers will sometimes undertake R&D solely to meet legal requirements. In some such cases, the R&D cannot reasonably be expected to generate income (beyond *de minimis* amounts) outside a single geographic source. If so, those deductible R&D expenses reduce gross income only from the geographic source that includes that jurisdiction.

After allocating deductions to meet legal requirements, the regulation generally allows 30 percent of deductible R&D expenses to reduce gross income from the source where over half of the taxpayer's total deductible R&D expenses are incurred. A taxpayer has the opportunity to apportion more than 30 percent of its R&D deduction exclusively to the source where R&D is performed if it can establish that a significantly higher percentage is warranted because the R&D is reasonably expected to have a very limited or long-delayed application outside that geographic source.

After a taxpayer makes a place-of-performance apportionment, it must apportion the amount of its R&D deduction remaining, if any,

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[9] By its terms, this R&D allocation regulation would also apply, for example, in determining the U.S. source taxable income of a foreign person, and the taxable income effectively connected with a U.S. trade or business conducted by a foreign person, insofar as those determinations are necessary under other "operative" Code sections. The operative section for the foreign tax credit limitation is section 904(a).

on the basis of relative amounts of domestic and foreign sales receipts. Subject to certain limitations, a taxpayer may elect to apportion its R&D deduction under an optional gross income method instead of the sales method. Under a gross income method, a taxpayer generally apportions its R&D deduction (after allocation under the legal requirements test but not the place-of-performance test) on the basis of relative amounts of gross income from domestic and foreign sources. The basic limitation on the use of optional gross income methods is that the respective portions of a taxpayer's R&D deduction apportioned to U.S. and foreign source income using a gross income method may not be less than 50 percent of the respective portions that would be apportioned to each such income grouping using the sales apportionment method (with the latter's exclusive place-of-performance allocation, typically 30 percent).

Treasury Regulation secs. 1.861-8T(e)(3) and 1.861-14T(e)(2)

In 1988, Treasury issued temporary regulations regarding the allocation and apportionment of various expenses other than interest. These regulations are generally applicable to taxable years beginning after December 31, 1986 (Treas. Reg. secs. 1.861-8T(h) and 1.861-14T(a)). Section 1.861-8T(e)(3) of the temporary regulation is expected to cover R&D expenses (Treas. Reg. sec. 1.861-14T(e)(2)). To date, however, substantive R&D allocation rules under 1.861-8T(e)(3) have not been issued or proposed. When those rules are issued, they generally are to be applied (except with respect to R&D expenses allocated under the statutory rules, described below, of DEFRA) as if all members of the affiliated group are a single taxpayer (Treas. Reg. sec. 1.861-14T(e)(2)).

Legislative Background

Beginning in 1981, Congress enacted a series of statutory R&D allocation rules to substitute, in part, for the R&D allocation regulation. The first statutory R&D allocation rule was contained in the Economic Recovery Tax Act of 1981 (ERTA), covering any taxpayer's first 2 taxable years beginning within 2 years after August 13, 1981. In the taxable years governed by this aspect of ERTA, all U.S.-incurred R&D expenses were allocated to U.S. source income. This provision was extended by the Deficit Reduction Act of 1984 (DEFRA) and the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) through taxable years beginning on or before August 1, 1986.

For taxable years beginning after August 1, 1986, and on or before August 1, 1987, the Tax Reform Act of 1986 (TRA) provided that 50 percent of research expenses (other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source) were allocated to U.S. source income, with the remainder allocated and apportioned either on the basis of sales or gross income. In contrast with the R&D allocation regulation, the temporary rule of TRA (1) gave taxpayers using the gross sales method of apportionment an automatic place-of-performance allocation, for U.S.-incurred R&D, of 50 (rather than 30) percent; (2) allowed taxpayers using the gross income apportionment method to

use the automatic place-of-performance rule; and (3) imposed no limit on the extent to which use of the gross income method could result in decreasing the amount of R&D expenses that would otherwise be allocated to foreign source income using the gross sales method.

The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) effectively extended statutory allocation rules for an additional four months. The rules in effect for these four months, however, were different than those contained in previous statutes. Expenses incurred during the taxable year governed by TAMRA (for any taxpayer, its first taxable year beginning after August 1, 1987) were deemed to be incurred ratably throughout the year. For expenses deemed to have been incurred in the first four months of the year (other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source), 64 percent of U.S.-incurred R&D expenses were allocated to U.S. source income, 64 percent of foreign-incurred R&D expenses were allocated to foreign source income, and the remainder of R&D expenses were allocated and apportioned either on the basis of sales or gross income, but subject to the condition that if income-based apportionment was used, the amount apportioned to foreign source income could be no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used. For expenses deemed to have been incurred during the remaining eight (or fewer) months of the year governed by TAMRA, the R&D allocation regulation applied.

The Omnibus Budget Reconciliation Act of 1989 (OBRA89) and the Omnibus Budget Reconciliation Act of 1990 (OBRA90) apply a statutory allocation rule to the taxpayer's first two taxable years beginning after August 1, 1989, and on or before August 1, 1991. In taxable years governed by OBRA89 and OBRA90, the same statutory allocation rule applies as was applicable to expenses deemed incurred in the first four months of the year governed by TAMRA. That allocation rule is codified as section 864(f) of the Internal Revenue Code.

President's Budget Proposal

Under the President's fiscal year 1992 budget proposal, the statutory R&D allocation rules of section 864(f) would be extended for one year, so as to apply to all R&D expenses paid or incurred in taxable years beginning after August 1, 1991 and on or before August 1, 1992.[10]

[10] The Treasury Department's *General Explanations of the President's Budget Proposals Affecting Receipts* erroneously describes the effective date of the proposal as "taxable years beginning after August 1, 1991 and *ending* on or before August 1, 1992."

7. Tax credit for qualified research expenditures (sec. 41 of the Code)

Present Law

General rule

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit will not apply to amounts paid or incurred after December 31, 1991.

Eligible expenditures

Research expenditures eligible for the 20-percent incremental credit under present law consist of: (1) in-house expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf. Expenditures attributable to research which is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

A 20-percent tax credit also applies to the *excess* of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for university basic research [11] *over* (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.[12]

Research definition

The Tax Reform Act of 1986 provided statutory rules defining qualified research for purposes of the incremental credit. These rules target the credit to research undertaken to discover information that is technological in nature and that pertains to functional aspects of products. Also, the 1986 Act expressly excluded certain types of expenditures from eligibility for the credit, including post-production research activities, duplication or adaptation costs, and surveys, studies, and certain other costs.

Computation of allowable credit

General rule.—Except for certain university basic research payments, the credit applies only to the extent that the taxpayer's qualified research expenditures for the taxable year exceed its base amount. The base amount for the current year is computed by multiplying the taxpayer's "fixed-base percentage" by the average

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[11] Expenditures paid or incurred for university basic research after December 31, 1991 are not eligible for the credit.

[12] The amount of credit-eligible basic research expenditures to which the university basic research credit applies does not enter into the computation of the incremental credit. The remaining amount of credit-eligible basic research expenditures—i.e., the amount to which the university basic research credit does not apply—enters into the incremental credit computation.

amount of the taxpayer's gross receipts for the four preceding years.

Existing firms.—If a taxpayer both incurred qualified research expenses and had gross receipts during each of at least three years from 1984 to 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenses for the 1984-1988 period bears to its total gross receipts for this period (subject to a maximum ratio of .16).

Start-up companies.—If a taxpayer did not both incur qualified research expenses and have gross receipts during each of at least three years between 1984-1988, then it is assigned a fixed-base percentage of .03.

Base limitation.—In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Aggregation rules.—To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related entities, research expenditures and gross receipts of the taxpayer are aggregated with research expenditures and gross receipts of certain related persons for purposes of computing any allowable credit. A foreign affiliate's gross receipts which are not effectively connected with the conduct of a trade or business in the United States do not enter into the computation of the credit.

Changes in business ownership.—Special rules apply for computing the credit when a business changes hands, under which qualified research expenditures and gross receipts for periods prior to the change of ownership are treated as transferred with the trade or business which gave rise to those expenditures and receipts for purposes of recomputing a taxpayer's fixed-base percentage.

Trade or business limitation

To qualify for the research credit, expenses must be paid or incurred by the taxpayer in carrying on a trade or business activity. A taxpayer is treated as meeting the trade or business requirement with respect to in-house research expenditures if, at the time such in-house research expenditures are incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business of the taxpayer or certain related taxpayers.

Relation to deduction

Deductions for qualified research expenditures allowed to a taxpayer under sec. 174 or any other provision are reduced by an amount equal to 100 percent of the taxpayer's research credit determined for that year.

Legislative Background

The research credit initially was enacted in the Economic Recovery Tax Act of 1981 as a credit equal to 25 percent of the excess of qualified research expenses in the current year over the average of qualified research expenses in the prior three taxable years. The research credit was modified in the Tax Reform Act of 1986 which (1) extended the credit through December 31, 1988, (2) reduced the

credit rate to 20 percent, (3) tightened the definition of research expenditures eligible for the credit, and (4) modified the university basic research credit.

The Technical and Miscellaneous Revenue Act of 1988 extended the credit for one additional year, through December 31, 1989. The 1988 Act also reduced the deduction allowed under section 174 for qualified research expenses by an amount equal to 50 percent of the research credit determined for the year.

The Omnibus Budget Reconciliation Act of 1989 effectively extended the research credit for nine months (by prorating qualified expenses incurred before January 1, 1991). The 1989 Act also (1) modified the method for calculating a taxpayer's base amount, (2) extended the availability of the credit to start-up firms which, although not presently conducting a particular trade or business, plan to use the results of their research in the active conduct of a future trade or business, and (3) further reduced the deduction allowed under section 174 for qualified research expenses by an amount equal to 100 percent of the research credit determined for the year.

The Omnibus Budget Reconciliation Act of 1990 extended the research credit through December 31, 1991 (and repealed the special rule to prorate qualified expenses incurred before January 1, 1991).

President's Budget Proposal

The President's fiscal year 1992 budget proposal would make permanent the 20-percent research tax credit for qualified research expenditures and university basic research expenditures.

8. Tax credit for low-income rental housing (sec. 42 of the Code)

Present Law

A tax credit is allowed in annual installments over 10 years for qualifying low-income rental housing, which may be newly constructed, substantially rehabilitated, or newly acquired existing residential rental property. For most newly constructed and rehabilitated housing placed in service after 1987, the credit percentages are adjusted monthly to maintain a present value for the credit of 70 percent of the total qualified expenditures. In the case of acquisition of existing housing and of newly constructed or rehabilitated housing receiving other Federal subsidies (including tax-exempt bonds), monthly adjustments are made to maintain a 30-percent present value for the credit.

A residential rental project qualifies for the low-income housing credit only if (1) 20 percent or more of the aggregate residential rental units are occupied by individuals with incomes of 50 percent or less of area median income, as adjusted for family size, or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of area median income, as adjusted for family size. Credit eligibility also depends on the existence of a 30-year extended low-income use agreement for the property. If property on which a low-income housing credit is claimed ceases to qualify as low-income rental housing or is disposed of before the end of an initial 15-year

credit compliance period, a portion of the credit is recaptured. The 30-year extended use agreement creates a State law right to enforce low-income use for an additional 15 years after the initial 15-year compliance period.

In order for a building to be a qualified low-income building, the building owner generally must receive a credit allocation from the appropriate credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The low income housing credit is allocated by State or local government authorities subject to an annual ceiling for each State. The annual credit ceiling for any State is $1.25 per resident per year.

The low-income housing credit is scheduled to expire on December 31, 1991.

Legislative Background

The low-income housing credit was enacted by the Tax Reform Act of 1986, with an expiration date of December 31, 1989. The credit was substantially revised and extended through December 31, 1990, by the Omnibus Budget Reconciliation Act of 1989 (the 1989 Act). To implement the equivalent of a partial-year extension of the credit, the 1989 Act reduced the annual low-income housing credit ceiling for 1990. In years prior to 1990, the credit ceiling for each State was $1.25 multiplied by the State's population. For calendar year 1990, that amount was reduced by 25 percent from $1.25 to $0.9375.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) restored the State credit ceiling applicable for 1990 to $1.25 per resident of the State, and extended authority to allocate the credit through December 31, 1991. In addition, the 1990 Act made technical and other modifications to the credit.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the current low-income housing credit for one year, through December 31, 1992.

9. Targeted jobs tax credit (sec. 51 of the Code)

Present Law

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. The targeted groups are: (1) vocational rehabilitation referrals; (2) economically disadvantaged youths aged 18 through 22; (3) economically disadvantaged Vietnam-era veterans; (4) Supplemental Security Income (SSI) recipients; (5) general assistance recipients; (6) economically disadvantaged cooperative education students aged 16 through 19; (7) economically disadvantaged former convicts; (8) Aid to Families with Dependent Children (AFDC) recipients and Work Incentive (WIN) registrants; and (9) economically disadvantaged summer youth employees aged 16 or 17. Certification of targeted group

membership is required as a condition of claiming the credit. In a certification request, the employer is required to (1) identify specifically the categories (up to 2) for which the employee is believed to be eligible, and (2) indicate that a good faith effort was made to determine that the employee is in a targeted group.

The credit generally is equal to 40 percent of up to $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200.

The credit is not available for wages paid to a targeted group member unless the individual either (1) is employed by the employer for at least 90 days (14 days in the case of economically disadvantaged summer youth employees), or (2) has completed at least 120 hours of work performed for the employer (20 hours in the case of economically disadvantaged summer youth employees). Also, the employer's deduction for wages must be reduced by the amount of the credit claimed.

The credit is available with respect to targeted-group individuals who begin work for the employer before January 1, 1992.

Authorization of appropriations

Present law authorizes appropriations for administrative and publicity expenses relating to the credit through December 31, 1991. These monies are to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

Legislative Background

Extension of credit

The targeted jobs tax credit was enacted by Congress in the Revenue Act of 1978 to replace an expiring credit for increased employment. As originally enacted, the targeted jobs tax credit was scheduled to apply to qualified wages paid before 1982.

The availability of the credit was successively extended by the Economic Recovery Tax Act of 1981 (ERTA) for one year (through 1982), by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) for two years (through 1984), and by the Deficit Reduction Act of 1984 (DEFRA) for one year (through 1985). The Tax Reform Act of 1986 (TRA 1986) extended the targeted jobs tax credit for three additional years (through 1988), with modifications. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) extended the credit for one year (through 1989), with modifications. The Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) extended the credit for nine months (through September 30, 1990). Most recently, the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) extended the credit for fifteen months (through 1991).

Modification of credit

ERTA, TEFRA, and DEFRA modified the targeted group definitions and made several technical and administrative changes in the credit provisions.

TRA 1986 limited the credit in three respects: (1) a 25-percent credit for qualified wages paid in the second year of a targeted-group individual's employment was repealed; (2) a 50-percent credit for qualified first year wages generally was reduced to a 40-percent credit (except that the credit allowed for economically disadvantaged summer youth employees was retained at 85 percent of up to $3000 in qualified first year wages); and (3) a provision was adopted under which no wages paid to a targeted-group member are taken into account for credit purposes unless the individual either (a) is employed by the employer for at least 90 days (14 days in the case of economically disadvantaged summer youth employees); or (b) has completed at least 120 hours of work for the employer (20 hours in the case of economically disadvantaged summer youth employees). Under TRA 1986, the modified credit is available for wages paid to targeted-group individuals who begin work after December 31, 1985.

The Omnibus Budget Reconciliation Act of 1987 provided that the credit would not be available for wages paid to a targeted-group individual who performs the same or substantially similar services as an employee participating in, or affected by, a strike or lockout.

Two modifications were made to the credit in TAMRA: (1) the category of economically disadvantaged youth was restricted to include employees aged 18 to 22 rather than 18 to 24; and (2) the credit percentage for economically disadvantaged summer youth employees was reduced from 85 percent to 40 percent.

OBRA 1989 further modified the certification process for the credit, requiring that employers making a certification request: (1) to identify the specific targeted groups (up to two) of which the employee is believed to be a member, and (2) indicate that a good faith effort was made to determine that the employee was a member of such targeted group(s).

Authorization of appropriations

TEFRA authorized appropriations for the expenses of administering the system, for certifying target group membership, and for providing publicity to employers regarding the targeted jobs tax credit. DEFRA, TRA 1986, TAMRA, OBRA 1989, and OBRA 1990 successively extended the authorization for appropriations for administrative and publicity expenses with the extension of the credit.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the credit for one year. Therefore, the credit would be available for workers who begin work for the employer before January 1, 1993.

10. Business energy tax credits for solar and geothermal property (sec. 48(a) of the Code)

Present Law

Under present law, nonrefundable business energy tax credits are allowed for 10 percent of the cost of certain qualified solar and geothermal energy property (Code sec. 48(a)). Solar energy property that qualifies for the credit includes any equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat. Qualifying geothermal property includes equipment which produces, distributes, or uses energy derived from a geothermal deposit, but, in the case of electricity generated by geothermal power, only up to (but not including) the electrical transmission stage.[13]

The business energy tax credits are currently scheduled to expire with respect to property placed in service after December 31, 1991.

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

Legislative Background

Ten-percent tax credits for qualifying solar and geothermal energy properties were enacted in the Energy Tax Act of 1978, effective after April 20, 1977, through December 31, 1982. In the Windfall Profit Tax Act of 1980, the solar and geothermal credits were extended through 1985, and the rates of these credits were increased to 15 percent. In the Tax Reform Act of 1986, the solar and geothermal credits were extended for three additional years (through 1988), at rates which phased down to 10 percent. An additional one-year extension (through 1989) of the solar and geothermal credits was provided in the Technical and Miscellaneous Revenue Act of 1988.

The business energy tax credits for solar and geothermal property were extended for the nine-month period through September 30, 1990, in the Omnibus Budget Reconciliation Act of 1989. In the Omnibus Budget Reconciliation Act of 1990, the solar and geothermal credits were extended for fifteen months through December 31, 1991.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the 10-percent business credits for solar and geothermal property for one year, through December 31, 1992.

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

11. Tax credit for orphan clinical drug testing expenses (sec. 28 of the Code)

Present Law

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

Legislative Background

This provision was enacted initially in the Orphan Drug Act of 1983, and was scheduled to expire after 1987. The credit was extended for three years in the Tax Reform Act of 1986, through December 31, 1990. The Omnibus Budget Reconciliation Act of 1990 extended the credit for one year, through December 31, 1991.

12. Minimum tax exception for gifts of appreciated tangible property (sec. 57(a)(6) of the Code)

Present Law

In computing taxable income, a taxpayer generally is allowed to deduct the fair market value of property contributed to a charitable organization.[14] In the case of a charitable contribution of tangible personal property, however, a taxpayer's deduction for regular tax purposes is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), section 57(a)(6) provides that the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis. However, a special rule provides that, in the case of any taxable year beginning in 1991, section 57(a)(6) does not apply to charitable contributions of tangible personal property.

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[14] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)). Special rules also limit the amount of a charitable contribution deduction to less than the contributed property's fair market value in cases of contributions of inventory or other ordinary income property and short-term capital gain property.

Legislative Background

The Tax Reform Act of 1986 added the rule that, for purposes of computing AMTI, treats as a preference item the amount of appreciation with respect to a charitable contribution of capital gain property.

The Omnibus Budget Reconciliation Act of 1990 provided the rule that, in the case of any taxable year beginning in 1991, the amount of appreciation with respect to a charitable contribution of tangible personal property is not treated as a preference item when computing AMTI.

B. 1992 Expiring Tax Provisions

1. Access to tax information by the Department of Veterans Affairs (sec. 6103 of the Code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain enumerated instances (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

Among the disclosures permitted under the Code is disclosure of certain third-party and self-employment tax information to the Department of Veterans Affairs (DVA) to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs (sec. 6103(l)(7)(D)(viii)). The income tax returns filed by the veterans themselves are not disclosed to DVA.

The DVA disclosure provision expires after September 30, 1992. The U.S. General Accounting Office (GAO) is required to submit a detailed report on the effects of this provision by January 1, 1992.

Legislative Background

The DVA disclosure provision was added by section 8051 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508).

2. Placed-in-service date for nonconventional fuels production credit (sec. 29 of the Code)

Present Law

Nonconventional fuels are eligible for a production credit that is equal to $3 per barrel or BTU oil barrel equivalent (adjusted for inflation). Qualified fuels must be produced domestically from a well drilled, or a facility placed in service, before January 1, 1993. The production credit is available for qualified fuels sold before January 1, 2003.

Qualified fuels include (1) oil produced from shale and tar sands, (2) gas produced from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass, and (3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Legislative Background

The nonconventional fuels production credit was originally enacted in the Windfall Profit Tax Act of 1980, with a requirement that the property generally be placed in service before January 1, 1990.

In the Technical and Miscellaneous Revenue Act of 1988, the placed-in-service date was extended from January 1, 1990, to January 1, 1991.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) extended the placed-in-service date for two years to January 1, 1993. Additionally, the 1990 Act extended the production credit sunset date so that sales of qualifying fuels occurring on or before December 31, 2002 would be eligible for the credit.

The 1990 Act reinstated gas produced from certain tight formations as qualifying for the section 29 credit, and repealed the requirement that the price of such gas be regulated.

3. Excise tax on certain vaccines for the Vaccine Injury Trust Fund (secs. 4131 and 9150 of the Code)

Present Law

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of compensation for individuals who die or who are injured as a result of the administration of certain vaccines: diptheria, pertussis, and tetanus (DPT); diptheria and tetanus (DT); measles, mumps, and rubella (MMR); and polio. The compensation program is to apply only to injuries from vaccines administered after September 30, 1988 and prior to October 1, 1992.

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

The vaccine excise tax will expire after the later of: (1) December 31, 1992; or (2) the date on which the Vaccine Trust Fund revenues exceed the projected liabilities with respect to compensable injuries from vaccines administered before October 1, 1992.

Legislative Background

The vaccine excise tax was enacted in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), with the excise tax imposed on sales of covered vaccines on or after January 1, 1988.

PRELIMINARY

APPENDIX IX:

ESTIMATED REVENUE EFFECTS OF EXTENDING EXPIRING TAX PROVISIONS PERMANENTLY

Fiscal Years 1992–1996

[Billions of Dollars]

Provision	1992	1993	1994	1995	1996	1992–96
A. 1991 Expiring Tax Provisions						
1. Employer-provided educational assistance (sec. 127)	−0.3	−0.3	−0.4	−0.4	−0.4	−1.8
2. Group legal services (secs. 120, 501(c)(20))	−0.1	−0.1	−0.1	−0.1	−0.1	−0.6
3. Health insurance deduction for self-employed (sec. 162(l))	−0.3	−0.4	−0.5	−0.5	−0.6	−2.3
4. Mortgage revenue bonds and mortgage credit certificates (secs. 143, 25)	(1)	−0.1	−0.1	−0.2	−0.3	−0.8
5. Qualified small-issue manufacturing bonds (sec. 144(a))	(1)	−0.1	−0.1	−0.2	−0.3	−0.6
6. Foreign allocation of R&D (secs. 861(b), 862(b), 863(b), 864(f))	−0.4	−0.8	−0.8	−0.9	−1.0	−3.9
7. Research and experimentation tax credit (sec. 41)	−0.5	−1.0	−1.3	−1.6	−1.8	−6.2
8. Low-income housing tax credit (sec. 42)	−0.1	−0.3	−0.6	−1.0	−1.2	−3.3
9. Targeted jobs tax credit (sec. 51)	−0.1	−0.2	−0.3	−0.4	−0.5	−1.5
10. Business energy tax credits for solar and geothermal property (sec. 48(a))	(1)	(1)	(1)	(1)	(1)	−0.2
11. Orphan drug tax credit (sec. 28)	(2)	(2)	(2)	(2)	(2)	(1)
12. Minimum tax exception for gifts of appreciated tangible property (sec. 57)	(2)	(1)	(1)	(1)	(1)	−0.1

B. 1992 Expiring Tax Provisions						
1. Access to tax information by the Dept. of Veterans Affairs (sec. 6103)	(3)	(3)	(3)	(3)	(3)	(3)
2. Placed-in-service date for nonconventional fuels production credit (sec. 29)	.....	−0.1	−0.3	−0.6	−0.9	−1.9
3. Excise tax on certain vaccines for the Vaccine Injury Compensation Fund (sec. 4131)	.....	0.1	0.1	0.1	0.1	0.5
Grand Totals	**−1.8**	**−3.4**	**−4.6**	**−5.9**	**−7.1**	**−22.7**

[1] Loss of less than $50 million.
[2] Loss of less than $10 million.
[3] This provision does not affect Federal tax receipts, but does result in a decrease in budget outlays. Because the budget effect associated with this provision was not credited to the tax-writing committees in the Omnibus Budget Reconciliation Act of 1990, it is not shown in this table.

Source: Joint Committee on Taxation.