CHAIRMAN'S MARK OF REVENUE-RELATED PROVISIONS (ENTERPRISE ZONES, EXTENSION OF CERTAIN EXPIRING TAX PROVISIONS, TAX SIMPLIFICATION, INTANGIBLE ASSETS, REAL ESTATE, LUXURY EXCISE TAX, TAXPAYER BILL OF RIGHTS, TECHNICAL CORRECTIONS, AND CERTAIN REVENUE-RAISING PROVISIONS) AND SUBCOMMITTEE PROPOSALS

Scheduled for a Markup

by the

HOUSE COMMITTEE ON WAYS AND MEANS

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Prepared by the Staff

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JOINT COMMITTEE ON TAXATION

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CONTENTS

INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of Chairman Rostenkowski's mark of a revenue proposal relating to enterprise zones, extension of certain expiring tax provisions, tax simplification, tax treatment of intangible assets, real estate provisions, luxury excise tax, Taxpayer Bill of Rights, technical corrections, certain Subcommittee provisions, and certain revenue-raising provisions. The proposal is scheduled for markup consideration by the House Committee on Ways and Means on June 24, 1992.

The description of the proposal indicates whether the proposal was previously included in H.R. 4210 as passed by the House or by the House and the Senate. The description of the technical corrections provisions indicates how the Chairman's proposal differs from H.R. 1555 as previously passed by the House.

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[1] This document may be cited as follows: Joint Committee on Taxation, Chairman's Mark of Revenue-Related Provisions (Enterprize Zones, Extension of Certain Expiring Tax Provisions, Tax Simplification, Intangible Assets, Real Estate, Luxury Excise Tax, Taxpayer Bill of Rights, Technical Corrections, and Certain Revenue-Raising Provisions) and Subcommittee Proposals (JCX-24-92), June 23, 1992.

DESCRIPTION OF CHAIRMAN'S MARK

I.--PROVISIONS RELATING TO URBAN AND RURAL DISTRESSED AREAS

A. Enterprise Zone Tax Incentives

Present Law

The Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax treatment. Within certain Code sections, however, there are definitions of targeted areas for limited purposes (e.g., low-income housing credit and qualified mortgage bond provisions target certain economically distressed areas). In addition, present law provides favorable Federal income tax treatment for certain U.S. corporations that operate in Puerto Rico, the U.S. Virgin Islands, or a possession of the United States to encourage the conduct of trades or businesses within these areas.

Description of Proposal

Designation of tax enterprise zones

In general.--A total of 50 tax enterprise zones could be designated before the end of 1996. Tax enterprise zones would be either urban tax enterprise zones or rural development investment zones, and would be designated from areas nominated by State and local governments, a State-chartered economic development corporation, or a governing body of an Indian reservation.

The Secretary of Housing and Urban Development (HUD) could designate 25 urban zones (up to 8 zones selected in 1992 and 1993, 7 zones in 1994, 6 zones in year 1995, and 4 zones in year 1996). Any shortfall in designations of zones may be carried forward to the next year, but not beyond 1996.

The Secretary of Agriculture (in consultation with the Secretary of Commerce) could designate 25 rural zones (at least one of which must be located on an Indian reservation). The maximum number of rural zones designated each year would be the same as with urban zones.

Zone designations generally would remain in effect for 15 years.

Eligibility criteria for urban zones.--To be eligible for designation as an urban tax enterprise zone, a nominated area would be required to have all of the following characteristics: (1) a population of at least 4,000; (2) a condition of pervasive poverty, unemployment, and general

economic distress (which may include distress from a high incidence of crime and narcotics use); (3) with respect to size, (a) does not exceed 20 square miles, (b) consists of not more than three noncontiguous parcels, and (c) is located entirely within one State; (4) an unemployment rate of at least 1.5 times the national unemployment rate; (5) poverty rates of at least 20 percent in each of 90 percent of the area's census tracts; (6) does not include any portion of a central business district (as described by the most recent Census of Retail Trade defining such term); and (7) a satisfactory course of action (described below) adopted by the State and local governments designed to promote economic development in the nominated area.

Eligibility criteria for rural zones.--To be nominated as a rural development investment zone, an area would be required to be either outside a standard metropolitan statistical area or determined by the Secretary of Agriculture to be a rural area. To be eligible for designation, a nominated rural area would be required to possess the following four characteristics: (1) a population of at least 1,000; (2) a condition of general economic distress; (3) with respect to size, (a) does not exceed 10,000 square miles, (b) is located within not more than four contiguous counties, (c) consists of not more than three noncontiguous parcels, and (d) is located entirely within one State (unless located on one or more Indian reservations); and (4) a satisfactory course of action (described below) adopted by the State and local governments for the nominated area. In addition, a rural area would be required to meet at least two of the following requirements: (1) an unemployment rate of at least 1.5 times the national unemployment rate; (2) poverty rates of at least 20 percent in each of 90 percent of the area's census tracts (or equivalent areas); (3) a decline in employment (as measured by total wages) of more than five percent over the five-year period prior to the zone's designation; and (4) a decline in population of 10 percent or more over the period from 1980 to 1990.

Course of action.--In order for a nominated area to be eligible for designation as a tax enterprise zone, the local government and State in which the area is located would be required to agree in writing that they will adopt (or continue to follow) a specified course of action designed to reduce burdens borne by employers or employees in the area. A specified course of action may include one or more of the following actions with respect to a nominated area: (1) direct provision by the State or local government of certain property insurance to businesses that are unable to purchase comparable insurance coverage, or that are able to purchase such coverage only at a cost which is significantly higher than the state-wide average cost of such coverage; (2) reduced tax rates or fees; (3) increased delivery of local public services; (4) involvement in the program by

public or private entities (e.g., community groups), including a commitment to provide jobs and job training, and technical, financial, or other assistance to employers, employees, and residents of the area; (5) special preferences granted to minority contractors; (6) donations of surplus land to community organizations agreeing to operate businesses on the land; (7) programs to encourage employers to purchase health insurance for employees on a pooled basis; (8) certain programs to encourage local financial institutions to make loans to area businesses (with emphasis on start-up firms and other small businesses); and (9) special preferences for projects within the area in allocations of the State's low-income housing credit ceiling and private activity bonds ceiling. Programs which serve as part of the required course of action could not be funded with proceeds from any Federal program.

Selection process and criteria.--All designated tax enterprise zones would be selected from nominated areas on the basis of the following criteria (each of which would be given equal weight): (1) the strength and quality of promised contributions by State and local governments relative to their fiscal ability; (2) the effectiveness and enforceability of the guarantees that the promised course of action actually will be implemented; (3) the level of commitments by private entities of additional resources to the economy of the nominated area, including the creation of new or expanded business activities; (4) the average ranking (relative to other nominated areas) with respect to (a) in the case of a nominated urban zone, the degree of poverty and unemployment, or (b) in the case of a nominated rural zone, two of the following criteria that give the area a higher average ranking: poverty, unemployment, job loss, or population loss; and (5) the potential for revitalization of the nominated area (including the potential reduction in the incidence of crime and narcotics use and traffic), taking into account particularly the number of jobs to be created or retained.

Rules.--Within four months after the date of enactment, the Secretary of HUD and the Secretary of Agriculture would be required to promulgate rules (by notice or regulation) regarding: (1) procedures for nominating tax enterprise zones; (2) the method for comparing the enumerated selection criteria; and (3) recordkeeping requirements to assist in the preparation of studies to be submitted to Congress (described below).

Tax incentives

Employer wage credit.--A 15 percent credit against income tax liability would be available to all employers for the first $20,000 of wages paid to each employee who (1) is a zone resident, and (2) performs substantially all employment

services within the zone in a trade or business of the employer.

The wage credit would be available with respect to a qualified employee, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for all other tax incentives described below).

Qualified wages would include the first $20,000 of wages (generally defined as for FUTA purposes). Thus, the maximum credit per employee would be $3,000 per year. Wages paid to a qualified employee would continue to be eligible for the credit if the employee earns more than $20,000, although only the first $20,000 of wages would be eligible for the credit.

The credit would be allowed with respect to full-time and part-time employees. However, if an employee is terminated less than one year after initial employment, the amount of credits previously claimed by the employer with respect to that employee generally would be recaptured (unless the employee voluntarily leaves, becomes disabled, or is fired due to misconduct).

Wages would not be eligible for the credit if paid to certain relatives of the employer or, if the employer is a corporation, certain relatives of a person who owns more than 50 percent of the corporation. In addition, wages would not be eligible for the credit if paid to a person who owns more than five percent of the stock (or capital or profits interests) of the employer.

To be eligible for the wage credit, an employer would be required to notify all employees of the advance refundability of the earned income tax credit (EITC).

The credit would not be refundable, and an employer's deduction otherwise allowed for wages paid would be reduced by the amount of credit claimed for that taxable year. The credit would be subject to the general business credit limitations (sec. 38) and, therefore, could not be used to reduce tentative minimum tax.

Definition of "enterprise zone business".--The five investment tax incentives described below (but not the employer wage credit described above) would be available only with respect to trade or business activities that satisfy the criteria for an "enterprise zone business." Under the proposal, a trade or business activity would qualify as an "enterprise zone business" if: (1) at least 80 percent of the gross income is derived from the active conduct of a trade or business within a zone; (2) substantially all of the use of its tangible property occurs within a zone; (3) substantially all of the services performed by employees are performed

within a zone; (4) at least one-third of the employees are residents of the zone; and (5) no more than five percent of the average of the aggregate unadjusted bases of the property owned by the business is attributable to (a) certain financial property, or (b) collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.

The leasing of real property that is located within the tax enterprise zone to others would be treated as an active trade or business if the use is directly related to the conduct of the lessee's enterprise zone business, or the real property is residential rental property that has been substantially improved by the enterprise zone business. The rental of personal property to others would not be treated as an enterprise zone business unless substantially all the customers are enterprise zone businesses or residents. The holding or creating of intangibles for use by customers would not be treated as an enterprise zone business unless substantially all the customers are enterprise zone businesses.

In determining whether an activity qualifies as an "enterprise zone business," all activities conducted by a sole proprietorship, partnership, or corporation would be taken into account. However, activities of legally separate (even if related) parties would not be aggregated.

Increased section 179 expensing.--The $10,000 expensing allowance for depreciable business property provided under section 179 would be increased to $20,000 for qualified "enterprise zone businesses" (as defined above). As under present law, the section 179 expensing allowance would be phased out for taxpayers with investment in depreciable business property during the taxable year exceeding $200,000 (i.e., the phase-out range for enterprise zone businesses would be investment between $200,000 and $220,000).

The increased expensing allowance would apply for purposes of the alternative minimum tax (i.e., it would not be a preference item).

Ordinary loss treatment.--Loss on disposition of certain property used in an enterprise zone business would be treated as ordinary loss. The proposal would apply to property used in an enterprise zone business for at least two years (five years in the case of real property). Loss on disposition of an ownership interest in an enterprise zone business held for at least two years would be treated as ordinary loss. Ordinary loss treatment would not be available for intangible property, other than ownership interests in enterprise zone businesses.

The ordinary loss treatment would apply only to losses that are attributable to the period that the property is used in an enterprise zone business. Losses from transactions with related persons would not be eligible for the ordinary loss treatment.

The ordinary loss treatment would apply for purposes of computing regular and alternative minimum tax.

Capital gain deferral.--Taxpayers would be permitted to defer recognition of capital gains attributable to periods that property was used in an enterprise zone business (or, for ownership interests, was held in such a business), provided that the gain is re-invested in property used in an enterprise zone business (or an ownership interest in such a business).

The capital gain deferral would not apply to intangible property (other than ownership interests in an enterprise zone business) nor would it apply to gains attributable to the severance of timber, coal, and other natural resources.

If an individual taxpayer disposes of stock in an enterprise zone business with respect to which the expensing deduction (described below) was claimed, then the amount realized up to the amount of the expensing deduction is treated as ordinary income not eligible for the capital gain deferral. Taxpayers continuing to hold property that was used in an enterprise business (or an ownership interest in such a business) at the end of the 15-year zone designation period would recognize any built-in gain when there is a subsequent disposition of the property or, in the case of tangible property, it is transferred out of the zone.

Stock expensing.--An individual would be allowed a deduction for the amount paid in cash during any taxable year to purchase certain stock in an enterprise zone business. The amount of the deduction would be limited to $25,000 per year (with a $250,000 lifetime cap).

Stock would qualify for the expensing deduction only if it was issued by a domestic C corporation that (1) meets the definition of an enterprise zone business (described above), (2) does not have more than one class of stock outstanding, (3) the sum of (a) the unadjusted bases of the assets owned by the corporation and (b) the value of leased assets does not exceed $5 million, (4) more than 20 percent of the total value and total voting power of the stock of the corporation is owned by individuals (directly or through partnerships or trusts) or by estates, (5) the cash paid for the stock is used by the issuing corporation within 12 months to acquire property (a) which is tangible property (whether real or personal) to which section 168 applies, (b) which is originally used within the zone by the issuing corporation,

and (c) substantially all of the use of which is in the zone; and (6) the stock is certified by the local allocating official (described below) as being eligible for the expensing deduction.

The local allocating official with respect to a zone would be a government official designated by the State and local government, who would have the responsibility of certifying, for each year the zone designation is in effect, up to $30 million of enterprise zone business stock as being eligible for the expensing deduction.

For purposes of the $25,000 annual limitation and the $250,000 lifetime cap, an individual and certain members of his family would be treated as a single individual.

The basis of stock would be reduced by the amount of the deduction. In addition, gain on disposition of the stock would be treated as ordinary income to the extent of the amount allowed as a deduction, and interest would be payable on certain premature dispositions. The deduction would be allowed for purposes of the alternative minimum tax.

Tax-exempt financing.--The present-law qualified redevelopment bond rules would be expanded as follows for bonds, 95 percent or more of the net proceeds of which were used in tax enterprise zones:

(1) Tax enterprise zones would per se qualify as blighted areas during the first five years following their designation as zones.

(2) The requirement that tax revenues be pledged as security for the bonds would be liberalized to allow the general purpose governmental unit within which a tax enterprise zone was located to (a) directly guarantee repayment of the bonds (other than by pledge of specific tax revenues), or (b) purchase with non-bond local funds a letter of credit or bond insurance. (The cost of the letter of credit or bond insurance could not be recovered through bond nonpurpose arbitrage profits.)

(3) In addition to the real property activities currently eligible for qualified redevelopment bond financing, all or any portion of the net proceeds of a bond issue could be used to make loans to enterprise zone businesses (as defined above) in amounts not exceeding $2,500,000 per business (including related parties) for (a) acquisition of land and buildings, (b) construction or rehabilitation of buildings, and (c) costs of equipment used in the business.

All loans to private persons would have to be made within 18 months after the bonds were issued. To maximize the interest rate subsidy to enterprise zone businesses, the tax-exempt bond program arbitrage rules would not apply. Additionally to ensure benefit to low-income residents, housing bonds would continue to be subject to the existing requirements for such bonds.

(4) The State private activity bond volume limitation allocation requirement would be reduced from 100 percent to 50 percent.

(5) Repayments received from private persons using proceeds of bond issues subject to these special rules would have to be used to redeem bonds (i.e., recycling of proceeds would not be permitted).

(6) If a business ceased to be a qualifying enterprise zone business or if equipment were removed from the zone for business use elsewhere (other than as a result of bankruptcy, etc.) while a loan was outstanding, interest on the loan would become nondeductible.

(7) If equipment financed with these bonds were removed from the zone for use elsewhere (other than as a result of bankruptcy, etc.) during the period when the zone designation was in effect, a nondeductible penalty of 1.25 percentage points of the total financing (both for equipment and real property) received by the person from all bonds issued under these special rules would be imposed.

Neither event in (6) or (7), above, would affect the tax-exemption of interest on the bonds.

Studies

The Secretary of the Treasury and the Comptroller General each would be directed to submit an interim report by July 1, 1996, and a final report by July 1, 2001, to Congress analyzing the effectiveness of the tax enterprise zones.

Effective Date

Tax enterprise zone designations could be made only during calendar years 1992 through 1996. The tax incentives provided for would be available during the period that the designation remains in effect, which generally would be for 15 years after the designation first becomes effective.

B. Permanent Extension of Certain Expiring Provisions

1. Tax Credit for Low-Income Rental Housing

Present Law

A tax credit is allowed in annual installments over 10 years for qualifying newly constructed or substantially rehabilitated low-income rental housing. Generally, a building for which the credit is claimed must be rented to qualified low-income tenants at restricted rents for 15 years after the building is placed in service. The maximum rent that may be charged to low-income tenants depends on the number of bedrooms in the unit. For buildings placed in service before 1990, the maximum rent was based on family size.

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

Description of Proposal

The proposal would make permanent the low-income housing tax credit.

The proposal also would make a provision of the Omnibus Budget Reconciliation Act of 1989 available on a prospective basis to taxpayers who placed low-income housing credit buildings in service before the effective date of that Act. That provision would allow taxpayers who placed buildings in service before 1990 to elect irrevocably to use either apartment size or family size as the basis for determining incomes under the credit's gross rent limitation.

The proposal is the same as was included in H.R. 4210, as reported by the committee and passed by the House. The conference agreement on that bill made several additional modifications to the program requirements.

Effective Date

Generally, the proposal would be effective for periods after June 30, 1992.

2. Targeted Jobs Tax Credit

Present Law

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. These targeted groups consist of individuals who are either

recipients of payments under means-tested programs, economically disadvantaged (as measured by family income), or disabled.

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

Authorization of appropriations

Present law authorizes appropriations for administration and publicity expenses relating to the credit through June 30, 1992.

Description of Proposal

The proposal would permanently extend the targeted jobs tax credit and the authorization for appropriations. The proposal would also restore individuals aged 23 and 24 to the category of economically disadvantaged youth.

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

Effective Date

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

3. Qualified Mortgage Bonds and Mortgage Credit Certificates

Present Law

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

Qualified governmental units may elect to exchange private activity bond volume authority for authority to issue mortgage credit certificates ("MCCs"). MCCs entitle home-buyers to nonrefundable income tax credits for a specified percentage of the interest paid on mortgage loans

on their principal residences. MCCs are subject to the same targeting requirements and recapture rules as QMBS.

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

Description of Proposal

The proposal would make permanent the authority to issue QMBs and to elect to trade in bond volume authority to issue MCCs.

The proposal also would provide rules for coordinating certain local housing assistance subsidies with the QMB and MCC programs in high housing cost areas.

The proposal is the same as was included in H.R. 4210, as reported by the committee and passed by the House. The conference agreement on that bill extended the QMB and MCC programs for 12 months.

Effective Date

The extension proposal would be effective for periods after June 30, 1992; the program modification would apply to QMB and MCC financing provided after the date of enactment.

4. Qualified Small-Issue Bonds

Present Law

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

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

Description of Proposal

The proposal would permanently extend the authority to issue qualified small-issue bonds.

The proposal is the same as was included in H.R. 4210, as reported by the committee and passed by the House. The conference agreement on that bill extended authority to issue these bonds for 12 months.

Effective Date

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

C. Jobs Training Program Modifications and Welfare Reform

1. Enhanced Federal match and carryover funds for the JOBS program

Present Law

Federal matching for expenditures under the JOBS program is available to States as a capped entitlement limited to $1 billion in fiscal years 1992 and 1993, $1.1 billion in fiscal year 1994, $1.3 billion in fiscal year 1995 and $1.0 billion a year thereafter.

The Federal match is 90 percent for expenditures up to the amount allotted to the States for the WIN program in fiscal year 1987 ($126 million for all States). Of additional amounts, the Federal match for nonadministrative costs (including the costs of full-time JOBS personnel) varies by State, but is at least 60 percent (and at most 79.99 percent in fiscal year 1992), and for administrative costs is a flat 50 percent.

In fiscal year 1991, States obligated approximately $600 million of the $1 billion entitlement. For fiscal year 1992, CBO projects that States will obligate two-thirds of the available federal funds (or, $660 million). OMB estimates that States will obligate $750 million in fiscal year 1992.

Description of Provision

Carryover of funds from fiscal year 1991.-- Under the amendment, $100 million (approximately one-fourth) of the JOBS entitlement funds left unobligated for fiscal year 1991 would be available for obligation by the States. States would have one year after the date of enactment to obligate these "carryover" funds, and would have to liquidate the obligations within two years after the date of enactment. No State match would apply to the carryover funds. The funds would be allocated to each State based on its relative share of JOBS obligations for fiscal year 1991. States would be required to apply these 100% Federal funds to the JOBS program, and to ensure that the funds do not supplant any State or local funds used for the JOBS program.

Enhanced match for obligations above fiscal year 1991 level in fiscal year 1993.-- Each State would be subject to the current law matching rates under the JOBS program for obligations in fiscal year 1993 up to the State's fiscal year 1991 obligation level (the latter number calculated not to include any fiscal year 1991 funds carried over into fiscal years 1992 and 1993). The State's JOBS obligations in fiscal year 1993 that are in excess of the State's 1991 obligation

level would be matched at a higher federal rate (90 percent), up to the State's JOBS cap.

Carryover of funds from fiscal years 1992 and 1993.--Fifty-percent of the entitlement funds left unobligated for fiscal year 1992, and 100 percent of the funds left unobligated for fiscal year 1993, would be available for obligation by the States for fiscal years 1993 and 1994, respectively. These "carryover" funds, now projected at $170 million and $250 million, respectively, would be allocated among the States based on their relative shares of JOBS obligations for fiscal year 1991. Carryover funds would be eligible for the enhanced 90 percent matching rate in fiscal year 1993, but the Federal match for carryover funds would revert to the variable rate of current law in fiscal year 1994.

Modification to the 20-hour rule for JOBS participants.--For purposes of calculating JOBS participation rates, States would have the option either on a case-by-case basis or overall of (1) defining participation to include persons who are satisfactorily participating in educational or training activities and are given two hours of credit for each hour of classroom instruction, or (2) adopting a definition of "satisfactorily participating in educational activities" that would satisfy the 20-hour rule as full-time students who maintain a grade point average that is not below the minimum required by their educational institution. Under this option, to be treated as a full-time enrollee, a person would have to be enrolled for the number of credit hours that the institution regards as those of a full-time student.

State in-kind contribution under JOBS.--Would permit a State's contribution for all JOBS funding to be in cash or in kind, fairly evaluated up to 125 percent of the WIN-equivalent sum.

2. Changes in Treatment of Assets under AFDC

Present Law

Federal law directs the State welfare agency to determine ineligible for AFDC any family whose counted resources exceed $1,000, or a lower amount set by the State. The following resources are exempt from the resource limit: a home in which the family lives, an automobile (so long as the individual's ownership interest does not exceed the amount specified in regulations, which is currently $1,500, or such lower amount as the State may determine), burial plots, funeral agreements, and real property (for a limited time period) of which the family is making a good faith effort to dispose.

Federal regulations for AFDC define "earned income" from self-employment as the total profit from business enterprise, farming, etc. Under the rules, total profit is calculated by comparing gross receipts with certain business expenses, those directly related to producing the goods or services and without which the goods or services could not be produced.

States are required by Federal law to disregard certain earned income when determining the amount of benefits to which a recipient family is entitled. States must disregard all of the earned income of a dependent child receiving AFDC who is a full-time student or a part-time student who is not a full-time employee and is attending a school, college, university, or vocational training course. States may, for a period of 6 months, disregard all or part of the earned income of a dependent child who is a full-time student and who is applying for AFDC, if and only if the earnings of the child are excluded in determining whether the family's total monthly income is below the eligibility ceiling, 185 percent of the AFDC need standard. States also have the option of disregarding all or any part of income derived from Job Training Partnership Act (JTPA) programs by a dependent child applying for or receiving AFDC (there is a 6-month limit on the disregard of earned income, and no limit on unearned income). Further, in determining whether the family meets the gross income test (185 percent of need), States may disregard earnings of a child who is a full-time student, but only for 6 months.

Description of Provision

Would permit States under certain conditions to exclude from the resource limit applicable to recipient families, assets valued up to $10,000 (States could choose any amount between $1,000 and $10,000). To exercise this option, the State would be required in its AFDC plan to provide that: (1) the State agency will determine that these disregarded resources are being retained for improving the education,

training or employability (including self-employment) of a family member or for the purchase of a home for the family; (2) the value of any disregarded resources will not be taken into account in determining eligibility under the food stamp program; and (3) the State agency will not disregard any resource owned by a family member within the preceding 12 months if the resource was disposed of at less than fair market value for the purpose of establishing eligibility for AFDC.

Would provide that recipient status for this resource treatment will be deemed for families that received AFDC in at least one of the previous 4 months. In addition, recipient status for resource treatment would be deemed for 12 months for families that leave AFDC due to earnings. These deeming provisions would permit former AFDC families who lost employment or suffered other income loss to regain AFDC eligibility without having to spend savings down to $1,000 (or lower) as new applicants.

Would require the Secretary to report to the Congress on the need to update the asset limit on vehicles and the extent to which an updated limit would increase the employability of AFDC recipients. In addition, the Secretary could, by regulation, issue new regulations relating to the asset limit on vehicles. In promulgating these regulations, the Secretary should to the maximum extent possible coordinate those rules with other Federal means-tested programs.

As under H.R. 3450, would require States to exempt from the AFDC resource limitation the first $10,000 of net worth (assets reduced by liabilities) of microenterprises owned, in whole or in part, by an AFDC child or the child's caretaker relative and stipulates that only the net profit of these enterprises shall be treated as earned income of the AFDC family.

Would exempt any earnings of a child who is a student from the resource test and from consideration in the gross income test (185 percent of need). Would also mandate that all States disregard the earnings of an applicant child for purposes of eligibility determination. Would eliminate the 6-month time limitations mentioned above. Would also clarify that the earnings disregards apply to any student, including teen parents under the age of 20.

II.--EXTENSION OF CERTAIN OTHER EXPIRING TAX PROVISIONS

1. Research and Experimentation Tax Credit

Present Law

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

The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. A taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Qualified research expenditures eligible for the credit consist of: (1) "in-house" expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf.

In addition, the 20-percent tax credit also applies to a corporate taxpayer's cash expenditures for university basic research that exceed its base amount for such expenditures.

Description of Proposal

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

Effective Date

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

2. Exclusion for Employer-Provided Educational Assistance

Present Law

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. This exclusion, which expires with respect to amounts paid after June 30, 1992, is limited to

$5,250 of educational assistance with respect to an individual during a calendar year.

Description of Proposal

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

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

Effective Date

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

3. Contributions of Appreciated Property

Present Law

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair-market value of property contributed to a charitable organization. However, in the case of a charitable contribution of inventory or other ordinary-income property, tangible personal property the use of which is not related to the donee's exempt purpose, short-term capital gain property, or certain gifts to private foundations, the amount of the deduction generally is limited to the taxpayer's adjusted basis in the property.

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

Description of Proposal

AMT relief for donated appreciated property

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

Study of corporate sponsorship payments

The Treasury Department would be directed to conduct a study on the tax treatment of corporate sponsorship payments received by charitable and other tax-exempt organizations in connection with athletic and other events, including the ramifications of IRS proposed examination guidelines contained in Announcement 92-15, 1992-5 I.R.B. 51. Within one year after the date of enactment, the Treasury Department would be required to report the results of this study to the Congress.[1]

Advance valuation procedure

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

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

Effective Date

The proposal would be effective for contributions made during the period January 1, 1992, through December 31, 1993. Not later than one year after date of enactment, the

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[1] The committee would express its concern about the application of the proposed examination guidelines contained in Announcement 92-15 to royalties and other payments that may be received by the U.S. Olympic Committee and the Atlanta Committee for the Olympic Games, Inc., in connection with the 1996 Games of the XXVI Olympiad. The committee would express its expectation that, under general UBIT rules (see Rev. Rul. 81-178, 1981-2 C.B. 135), royalty income derived from licensing Olympic trademarks, emblems, and designations, as well as all income from broadcasting, filming, and videotaping the Olympics, will be treated as exempt from the UBIT.

Secretary of the Treasury would be required to report to Congress the results of a study of corporate sponsorship payments and on the development of an advance valuation procedure.

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

Present Law

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

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

Description of Proposal

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

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

Effective Date

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

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

Present Law

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of revenue to compensate individuals who are injured (or die) as a result of the administration of certain vaccines: diphtheria, pertussis, and tetanus ("DPT"); diphtheria and tetanus ("DT"); measles, mumps, and rubella ("MMR"); and polio. The Vaccine Trust Fund is funded by a manufacturer's excise tax on DPT, DT,

MMR, and polio vaccines (and any other vaccines used to prevent these diseases).

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

Description of Proposal

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

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

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

Effective Date

The provisions would be effective on the date of enactment.

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

Present Law

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

Description of Proposal

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

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

Effective Date

The proposal would be effective beginning October 1, 1992.

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

Present Law

Present law provides a deduction for 25 percent of the amount paid for health insurance for a self-employed individual and the individual's spouse and dependents. The 25-percent deduction is also available to more than 2-percent shareholders of S corporations.

The 25-percent deduction expires for taxable years beginning after June 30, 1992.

Description of Proposal

The proposal would extend the 25-percent deduction for health insurance expenses of self-employed individuals for 6 months, through December 31, 1992.

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

Effective Date

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

8. Allocation and Apportionment of Research Expenses

Present Law

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

Treasury regulations issued in 1977 described methods for allocating expenses between U.S. and foreign source income, including rules for the allocation of research and

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

Description of Proposal

The report of the committee on the bill would state the committee's belief that the Treasury Department should now resolve this controversy. The President's Budget for fiscal year 1993 contains a proposal to provide an 18-month extension of these R&D allocation rules. The General Explanations of the President's Budget Proposals Affecting Receipts dated January 1992, in a section entitled "Jobs and Investments", states that the Administration believes in providing tax incentives to increase the performance of U.S.-based research activities. Further, the explanation states that by enhancing the return on R&D expenditures, the proposal encourages the growth of overall R&D activity as well as the location of such research within the United States.

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

The report would state that the committee further urges the Treasury Department, when revising its regulations, to take into consideration that taxpayers, in appropriate circumstances, are required for business purposes to conduct significant amounts of R&D at foreign sites and should not be penalized by the allocation rules.

The report language urging Treasury Department action described above appeared in the Committee on Ways and Means technical explanation of H.R. 4287, the Senate Finance Committee technical explanation of H.R. 4210, and the conference report accompanying H.R. 4210.

Effective Date

The report would state that the committee expects and requests the Treasury Department to issue regulations immediately, to be effective for all periods after the termination of the current temporary rules.

III.--ITEMS PREVIOUSLY PASSED BY THE HOUSE

A. Simplification Provisions Generally Contained in the House-Passed Version of H.R. 4210

Adopt the simplification provisions contained in H.R. 4210, as it passed the House of Representatives on February 27, 1992, with the following modifications:

1. Pension Provisions

a. The provision repealing 10-year forward income averaging for lump-sum distributions from qualified pension plans would be dropped.

b. The provision repealing the special treatment of net unrealized appreciation in employer securities would be dropped.

c. The provisions relating to simplified employee pensions (SEPs) would be dropped.

d. The provision relating to the alternative full funding limit would be modified as follows: an employer could elect the alternative limit if each plan in the employer's controlled group is not top-heavy and the average accrued liability of active participants is at least 80 percent of the plan's total accrued liability; the notification to the Secretary would be required to be made by the January 1 of the calendar year preceding the calendar year in which the election period begins; a special notice rule would apply to election periods beginning on or after July 1, 1992, and before January 1, 1994; the Secretary is required to notify plan sponsors who have not elected to have the alternative limit apply of the adjusted limit applicable to their plan; and a special correction rule applies to reduce excess contributions made during the transition period as a result of the adjusted limit applicable to nonelecting plans. These modifications generally conform to the provisions adopted in the conference agreement to H.R. 4210.

e. The provision relating to the application of health care continuation rules to Savings and Loan Associations would be modified to provide that the definition of employees who are covered under the provision would be clarified to include any individual who was provided coverage under a group health plan of a failed depository institution by virtue of the performance of services for such institution, or any dependent of such individual. In addition, the continuation plan maintained by the Federal Deposit Insurance Corporation on the date of committee action, or any other substantially similar plan, would be deemed to satisfy the health care continuation requirements.

2. Foreign Provisions

Certain technical modifications to the basis reporting and common trust fund provisions would be included.

3. Mutual Fund Provisions

Certain technical modifications adopted in the conference agreement to H.R. 4210 would be included.

4. Tax-Exempt Bond Provisions

Delete the provision relating to automatic extension of certain construction bond temporary periods (rendered moot by recent Treasury Department regulations).

5. Revocable Trust Provision

The provision that treats certain revocable trusts as estates would be dropped.

6. Administrative Provisions

a. The provision to simplify payroll tax deposit requirements would be dropped.

b. The provision repealing the tax shelter registration rules would be dropped.

B. Amortization of Goodwill and Certain Other Intangibles

Present Law

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

Description of Proposal

In general

An amortization deduction would be allowed with respect to certain intangible property (defined as a "section 197 intangible") that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction would be determined by amortizing the adjusted basis of the intangible ratably over a 14-year period.

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

Definition of section 197 intangible

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

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

currency contract, notional principal contract, interest rate swap or other similar financial contract; (3) any interest in land; (4) computer software[2] that is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified;[3] (5) other computer software that is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof); (6) any interest in a film, sound recording, video tape, book, or other similar property (including a right to broadcast or transmit a live event) that is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof); (7) certain rights to receive tangible property or services; (8) certain interests in patents or copyrights; (9) any interest under an existing lease of tangible property; (10) any interest under an existing indebtedness (except for the deposit base and similar items of a financial institution); and (11) a franchise to engage in any professional sport and any item acquired in connection with such a franchise.

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

Other rules

Special rules would apply if a taxpayer disposes of a section 197 intangible that was acquired in a transaction or series of related transactions and, after the disposition, the taxpayer retains other section 197 intangibles that were

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

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

acquired in such transaction or series or related transactions. First, no loss would be recognized by reason of such a disposition. Second, the adjusted bases of the retained section 197 intangibles that were acquired in connection with such transaction or series of related transactions would be increased by the amount of any loss that is not recognized.

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

Prior action

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

Effective Date

In general

The proposal generally would apply to property acquired after the date of enactment. A taxpayer would be allowed to elect to apply the proposal to all property acquired after July 25, 1991, by the taxpayer and any other person under common control with the electing taxpayer (within the meaning of section 41(f)(1) of the Internal Revenue Code).

In addition, a taxpayer would be allowed to elect to apply present law (rather than the proposal) to property that is acquired after the date of enactment if the property is acquired pursuant to a binding written contract in effect on the date of enactment and at all times thereafter until the property is acquired. A taxpayer would not be allowed to make this election if (1) the taxpayer makes the election described above to apply the proposal to all property acquired after July 25, 1991, or (2) the taxpayer makes the election described below to apply the proposal to all property acquired during certain open taxable years.

Election to apply bill to property acquired during certain open taxable years

A taxpayer would be allowed to elect to apply the proposal to all property acquired by the taxpayer during an "open taxable year."[4] In the case of any section 197 intangible that was acquired by an electing taxpayer on or before the date of enactment of the proposal, the adjusted basis of the intangible would be amortized ratably over a 19-year period that begins with the month that intangible was acquired.

Interest would be payable by the taxpayer with respect to any underpayment of tax that is attributable to the election. Interest would not be payable by the Internal Revenue Service with respect to any overpayment of tax that is attributable to the election. The election would be required to be made before January 1, 1993, and any additional tax and interest that is due by reason of the election would be required to be paid before January 1, 1993.

A special rule would apply to property that is acquired by certain electing taxpayers in certain taxable years for which the statute of limitations has expired as of July 25, 1991. If (1) an "open taxable year" election applies to a taxpayer, (2) the taxpayer and the Internal Revenue Service have agreed on the treatment of an acquired intangible for which the "open taxable year" election does not apply, and (3) as of February 14, 1992, there was a dispute between the taxpayer and the Internal Revenue Service that arose because the Internal Revenue Service took a position with respect to an open taxable year that was contrary to that specified in the agreement with respect to the treatment of the acquired intangible, then the taxpayer would be allowed to amortize such intangible in accordance with the agreement between the taxpayer and the Internal Revenue Service.

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[4] An open taxable year would be defined as any taxable year for which either (1) the statute of limitations on the assessment of tax has not expired as of July 25, 1991, or (2) a refund claim or suit is pending as of July 25, 1991, but only if the refund claim or suit involves the issue of the proper Federal income tax treatment of intangibles, acquired in such year, that are defined as section 197 intangibles under the proposal. An open taxable year, however, would not include any taxable year that occurs before a taxable year that is not an open taxable year.

Treatment of certain payments to retired or deceased partners

The portion of the proposal relating to the treatment of certain payments to retired or deceased partners generally would apply to partners retiring or dying after February 14, 1992.

Anti-churning rules

Special rules would be provided to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation deduction would not have been allowable under present law into amortizable property to which the proposal applies. These "anti-churning" rules would not apply to any section 197 intangible that is acquired from a person with less than a 50-percent relationship to the acquirer if: (1) the seller recognizes gain on the transaction with respect to such intangible; and (2) the seller agrees, notwithstanding any other provision of the Code, to pay a tax on such gain equal to the highest rate of tax imposed by section 1 or 11 of the Code, whichever is applicable.

C. Real Estate Proposals

1. Modification of Passive Loss Rules for Certain Real Estate Persons

Present Law

The passive loss rules limit deductions and credits from passive trade or business activities. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. Credits from passive activities may not reduce the taxpayer's tax liability, to the extent such credits exceed regular tax liability from passive activities. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person.

Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate. To materially participate in an activity, a taxpayer must be involved in the operations of the activity on a regular, continuous, and substantial basis. Except as provided in regulations, a taxpayer is treated as not materially participating in an activity held through a limited partnership interest.

Rental activities also are included in the definition of passive activities (regardless of the level of the taxpayer's participation). In general, rental activities are treated as separate from other business activities. A special rule permits the deduction of up to $25,000 of losses from certain rental real estate activities (even though they are considered passive) if the taxpayer actively participates in them. This $25,000 amount is allowed for taxpayers with adjusted gross incomes of $100,000 or less, and is phased out for taxpayers with adjusted gross incomes between $100,000 and $150,000. Active participation is a lesser standard of involvement than material participation. A taxpayer is treated as actively participating if, for example, he participates, in a significant and bona fide sense, in the making of management decisions or arranging for others to provide services (such as repairs). The active participation standard is not satisfied, however, if the taxpayer's interest is less than 10 percent (by value) of all interests in the activity. A taxpayer generally is deemed not to satisfy the active participation standard with respect to property he holds through a limited partnership interest.

Description of Proposal

The proposal is the same as the proposal contained in H.R. 4210, with a technical modification.

If a taxpayer materially participates in the performance of certain qualified real estate services and rental of certain qualified real property (determined by treating all these activities as a single activity), a portion of the taxpayer's passive activity loss that does not exceed net losses from the rental of the qualified real property generally is allowed under the proposal.

The loss allowed under the proposal may not exceed 80 percent of the lesser of (1) the taxpayer's net income from non-passive activities consisting of the performance of qualified real estate services, or (2) the taxpayer's taxable income (determined without regard to this proposal). A similar rule applies with respect to passive activity credits.

Qualified real estate services means services in the construction, substantial renovation, and management of real property or in the leasing and brokerage of real property provided the taxpayer spends more than 500 hours during the taxable year performing such leasing or brokerage services. Services as an employee are not taken into account unless the taxpayer owns more than a de minimis interest in the employer, except in the case of services consisting of leasing and brokerage of real property.

Qualified real property means real property if during the taxable year the taxpayer actively participates in rental activities with respect to the property. Active participation has the same meaning as under present law, except that the taxpayer is required to have an interest in the property that is not de minimis, rather than to meet the 10 percent test of present law. For determining active participation and material participation, except as provided in regulations, no interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively or materially participates.

The proposal does not apply with respect to any real property originally placed in service (by the taxpayer or another person) after the date of committee action. Property that is substantially renovated after that date is treated as originally placed in service after that date. Property is treated as substantially renovated after that date if, during any 24-month period beginning after that date, expenditures for renovation equal or exceed the adjusted basis of the property at the start of the 24-month period. Expenditures for renovation are any expenditures that are added to the basis of the property.

The proposal applies to taxpayers subject to the passive loss rule, other than closely held C corporations.

Effective Date

The proposal would be effective with respect to taxable years beginning after December 31, 1991.

2. Increase Recovery Period for Depreciation of Nonresidential Real Property

Present Law

A taxpayer is allowed to recover, through annual depreciation allowances, the cost or other basis of real property (other than land) that is used in a trade or business or that is held for the production of rental income. For regular tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year is determined using the straight-line method and a recovery period of 31.5 years.

Description of Proposal

For regular tax purposes, the depreciation deduction for nonresidential real property would be determined by using a recovery period of 38 years.

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

Effective Date

The proposal generally would apply to property placed in service on or after the date of committee action. The proposal would not apply to property that is placed in service by a taxpayer before January 1, 1995, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before June 23, 1992, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before June 23, 1992.

3. Changes Relating to Real Estate Investments by Pension Funds and Others

Present Law

In general, a qualified pension trust or an organization that is otherwise exempt from Federal income tax is taxed on any income from a trade or business that is unrelated to the organization's exempt purposes (Unrelated Business Taxable Income or "UBTI") (sec. 511). Certain types of income, including rents, royalties, dividends, and interest are

excluded from UBTI, except when such income is derived from "debt-financed property." Income from debt-financed property generally is treated as UBTI in proportion to the amount of debt financing (sec. 514(a)). An exception to the rule treating income from debt-financed property as UBTI is available to pension trusts, educational institutions and certain other exempt organizations that make certain debt-financed investments in real property.

Additional rules provide generally that (1) gross income from a publicly traded partnership is treated as UBTI, (2) title holding companies (exempt under sec. 501(c)(2) or (c)(25)) may not receive any amount of UBTI, (3) gains or losses from the sale of property held primarily for sale to customers are not excluded from UBTI, (4) five or fewer investors (including domestic pension funds) cannot collectively own more than 50 percent in value of the outstanding stock of a real estate investment trust ("REIT").

Description of Proposal

The proposal would (1) extend the exception from UBTI for certain additional debt-financed investments in real property, (2) repeal the automatic UBTI rule for publicly traded partnerships, (3) permit title holding companies to receive small amounts of UBTI, (4) exclude from UBTI certain gains from the disposition of property acquired from financial institutions in conservatorships or receiverships, (5) exclude from UBTI loan commitment fees and certain option premiums, and (6) relax certain limitations on investments in REITs by pension funds.

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

Effective Date

The proposal generally would be effective for acquisitions on or after June 24, 1992, and for taxable years beginning after December 31, 1991.

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

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

Present Law

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

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

The tax applies to sales before January 1, 2000.

Description of Proposal

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

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

The proposal to repeal the luxury excise tax on boats, furs, airplanes, and jewelry, and to index the threshold of the tax with respect to automobiles, was included in H.R. 4210 as passed by the House and Senate.

Effective Date

The repeal of the luxury tax imposed on boats, airplanes, jewelry, and furs would be effective for sales on or after January 1, 1992. The indexation of the threshold applicable to automobiles would be effective for sales on or after July 1, 1992.

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

Present Law

Federal excise taxes generally are imposed on gasoline and special motor fuels used in highway transportation and by certain off-highway recreational trail vehicles and by motorboats (14 cents per gallon). A Federal excise tax also

is imposed on diesel fuel (20 cents per gallon) used in highway transportation.

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

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

Description of Proposal

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

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

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

Effective Date

The proposal would be effective after September 30, 1992.

E. Corporate Alternative Minimum Tax: Elimination of ACE Depreciation Adjustment for Corporate AMT

Present Law

Under present law, a corporation is subject to an alternative minimum tax ("AMT") which is payable, in addition to all other tax liabilities, to the extent that it exceeds the corporation's regular income tax liability. Alternative minimum taxable income ("AMTI") is the corporation's taxable income increased by the corporation's tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the deferral of income resulting from the regular tax treatment of those items. For a corporation, the amount of AMT paid in a year may be carried forward as a credit and used to reduce the corporation's regular tax liability (but not below the corporation's tentative minimum tax for the year).

One of the adjustments that is made to taxable income to arrive at AMTI relates to depreciation. Depreciation on most personal property to which the modified ACRS system adopted in 1986 applies is calculated using the 150-percent declining balance method (switching to straight line in the year necessary to maximize the deduction) over the life described in Code section 168(g) (generally the ADR class life of the property).

For taxable years beginning after 1989, AMTI is increased by an amount equal to 75 percent of the amount by which adjusted current earnings ("ACE") exceeds AMTI (as determined before this adjustment). The ACE adjustment replaced the book-income adjustment applicable to tax years 1987 through 1989. In general, ACE equals AMTI with additional adjustments that generally follow the rules presently applicable to corporations in computing their earnings and profits. For purposes of ACE, depreciation is computed using the straight-line method over the class life of the property. Thus, a corporation generally must make two depreciation calculations for purposes of the AMT--once using the 150-percent declining balance method and again using the straight-line method.

Description of Proposal

The proposal would eliminate the depreciation component of ACE for corporate AMT purposes. Thus, in computing ACE, a corporation would use the same depreciation methods and lives that it uses in computing AMTI (generally, the 150-percent declining balance method for tangible personal property).

The proposal was included in H.R. 4210 as passed by the House and Senate, with a different effective date.

Effective Date

The proposal would be effective for property placed in service in taxable years beginning after the date of enactment.

F. Other Provisions Previously Passed by the House

1. Employer tax credit for FICA taxes paid on tip income

Present Law

Under present law, all employee tip income is treated as employer-provided wages for purposes of the Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA). For purposes of the minimum wage provisions of the Fair Labor Standards Act (FLSA), reported tips are treated as employer-provided wages to the extent they do not exceed one-half of such minimum wage.

Description of Proposal

The proposal would provide a business tax credit in an amount equal to the employer's FICA tax obligation (7.65 percent) attributable to reported tips in excess of those treated as wages for purposes of satisfying the minimum wage provisions of the FLSA. To prevent double dipping, no deduction would be allowed for any amount taken into account in determining the credit. Carryback of unused FICA credits to a taxable year ending before the date of enactment would be prohibited.

Effective Date

The provision would be effective for tips received and wages paid after the date of enactment.

2. Deny deduction for club dues

Present Law

No deduction is permitted for club dues unless the taxpayer establishes that his or her use of the club was primarily for the furtherance of the taxpayer's trade or business and the specific expense was directly related to the active conduct of that trade or business. No deduction is permitted for an initiation or similar fee that is payable only upon joining a club if the useful life of the fee extends over more than one year. Such initiation fees are nondeductible capital expenditures.

Description of Proposal

No deduction would be permitted for club dues. This rule would apply to all types of clubs: business, social, athletic, luncheon, or sporting clubs. Specific business expenses (e.g. meals) incurred at a club would be deductible only to the extent they otherwise satisfy present-law standards for deductibility.

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

Effective Date

The proposal would be effective for club dues paid on or after the date of enactment.

G. Taxpayer Bill of Rights 2

In General

The proposal generally follows the conference report on H.R. 4210, except as otherwise noted in the description of specific proposals.

1. Taxpayer Advocate

a. Establishment of position of Taxpayer Advocate within Internal Revenue Service

Present Law

The Office of the Taxpayer Ombudsman was created by the IRS in 1979. The Taxpayer Ombudsman's duties are to serve as the primary advocate, within the IRS, for taxpayers. As the taxpayers' advocate, the Taxpayer Ombudsman participates in an ongoing review of IRS policies and procedures to determine their impact on taxpayers, receives ideas from the public concerning tax administration, identifies areas of the tax law that confuse or create an inequity for taxpayers, and supervises cases handled under the Problem Resolution Program. Under current procedures, the Taxpayer Ombudsman is selected by the Commissioner of the IRS and serves at his discretion.

Description of Proposal

The proposal would establish a new position, Taxpayer Advocate, within the IRS. This would replace the position of Taxpayer Ombudsman. The Advocate would be nominated by the President, by and with the advice and consent of the Senate. The Advocate would report directly to the Commissioner. Compensation of the Advocate would be at a level equal to that of the IRS Chief Counsel.

The proposal also would establish the Office of Taxpayer Advocate within the IRS. All problem resolution officers would be part of that office, and would be under the supervision and direction of the Taxpayer Advocate. The functions of the office would be (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

The Taxpayer Advocate would be required to make two annual reports to the tax-writing Committees. The first report would contain the objectives of the Taxpayer Advocate

for the next calendar year. This report would contain full and substantive analysis, in addition to statistical information. The second report would be on the activities of the Taxpayer Advocate during the previous fiscal year.

Effective Date

The proposal would be effective on the date of enactment. The first annual reports of the Taxpayer Advocate would be due in 1992.

b. Expansion of authority to issue Taxpayer Assistance Orders

Present Law

Section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance Order (TAO). TAOs may order the release of taxpayer property levied upon by the IRS and may require the IRS to cease any action, or refrain from taking any action if, in the determination of the Taxpayer Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered.

Description of Proposal

The proposal would provide the Taxpayers' Advocate with broader authority to affirmatively take any action with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. The proposal also would provide that a TAO may specify a time period within which the TAO must be followed. Finally, the proposal would provide that only the Taxpayer Advocate, the Commissioner of the IRS, or a superior of those two positions, as well as a delegate of the Taxpayer Advocate, may modify or rescind a TAO.

Effective Date

The proposal would be effective on the date of enactment.

2. Modifications to Installment Agreement Provisions

a. Notification of reasons for termination or denial of installment agreements

Present Law

Section 6159 authorizes the IRS to enter into written installment agreements with taxpayers to facilitate the collection of tax liabilities. In general, the IRS has the right to terminate (or in some instances, alter or modify)

such agreements if the taxpayer provided inaccurate or incomplete information before the agreement was entered into, if the taxpayer fails to make a timely payment of an installment or another tax liability, if the taxpayer fails to provide the IRS with a requested update of financial condition, if the IRS determines that the financial condition of the taxpayer has changed significantly, or if the IRS believes collection of the tax liability is in jeopardy. If the IRS determines that the financial condition of a taxpayer that has entered into an installment agreement has changed significantly, the IRS must provide the taxpayer with a written notice that explains the IRS determination at least 30 days before altering, modifying or terminating the installment agreement. No notice is statutorily required if the installment agreement is altered, modified, or terminated for other reasons.

Description of Proposal

The proposal would require the IRS to notify taxpayers 30 days before altering, modifying, or terminating any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy. The IRS must include in the notification an explanation of why the IRS intends to take this action. The proposal also would require that the IRS notify taxpayers 30 days before denying any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy.

Effective Date

The proposal would be effective six months after the date of enactment.

b. Administrative review of denial of requests for, or termination of, installment agreements

Present Law

A taxpayer whose request for an installment agreement is denied can appeal to successively higher levels of Collection Division management, including the District Director. The IRS is currently testing an appeal process for various collection actions, including installment agreements, that will permit taxpayers to appeal these collection actions to Appeals Division personnel.

Description of Proposal

The proposal would require the IRS to establish additional procedures for administrative review by the Appeals Division of denials of requests for installment agreements and terminations of installment agreements.

Effective Date

The proposal would be effective on the date of enactment.

c. Running of failure to pay penalty suspended during the period an installment agreement is in effect

Present Law

Section 6651 provides that a taxpayer is liable for a "failure to pay" penalty on late payments of tax. The penalty is imposed on the unpaid tax at the rate of one-half percent per month up to a maximum of 25 percent. The penalty applies to unpaid amounts without regard to whether the taxpayer is making payments pursuant to an installment agreement.

Description of Proposal

The proposal would suspend the application of the failure to pay penalty with respect to taxpayers who have installment agreements in effect and are meeting the conditions of the agreements.

Effective Date

The proposal would be effective for installment agreements entered into after the date of enactment.

3. Interest

a. Extension of interest-free period for payment of tax after notice and demand

Present Law

In general, a taxpayer must pay interest on late payments of tax. An interest-free period of ten days is provided to taxpayers who pay the tax due within ten days of notice and demand.

Description of Proposal

The proposal would extend the interest-free period provided to taxpayers for the payment of the tax liability reflected in the notice from 10 days to 21 days, provided that the total tax liability shown on the notice of deficiency is less than $100,000.

Effective Date

The proposal would apply in the case of any notice and demand given after the date six months after the date of enactment.

b. Expansion of authority to abate interest

Present Law

Any assessment of interest on any deficiency attributable in whole or in part to any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act may be abated.

Description of Proposal

The proposal would expand the authority to abate interest to managerial acts as well as ministerial acts. Such managerial acts would include extensive delays resulting from: the loss of records by the IRS, IRS personnel transfers, extended illnesses, extended personnel training, or extended leave.

Effective Date

The proposal would apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of enactment.

4. Joint Returns

a. Disclosure of collection activities with respect to joint returns

Present Law

The IRS does not disclose collection information to spouses that have filed a joint return.

Description of Proposal

If a tax deficiency with respect to a joint return is assessed, and the individuals filing the return are no longer married or no longer reside in the same household, the proposal would permit the IRS to disclose in writing (in response to a written request by one of the individuals) to that individual whether the IRS has attempted to collect the deficiency from the other individual, the general nature of the collection activities, and the amount (if any) collected.

Effective Date

The proposal would be effective on the date of enactment.

b. Joint return may be made after separate returns without full payment of tax

Present Law

Taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded by statute from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability before the expiration of the three-year period for making the election to file jointly.

Description of Proposal

The proposal would repeal the requirement of full payment of tax liability as a precondition to switching from married filing separately status to married filing jointly status.

Effective Date

The proposal would apply to taxable years beginning after the date of the enactment.

5. Collection Activities

a. Modifications to lien and levy provisions

i. Withdrawal of public notice of lien

Present Law

The IRS must file a notice of lien in the public record, in order to protect the priority of a tax lien. A notice of tax lien provides public notice that a taxpayer owes the Government money. The IRS has discretion in filing such a notice, but may withdraw a filed notice only if the notice (and the underlying lien) was erroneously filed or if the underlying lien has been paid, bonded, or become unenforceable.

Description of Proposal

The proposal would allow the IRS to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer if the Secretary determines that (1) the filing of the notice was premature or otherwise not in accordance with the administration procedures of the IRS, (2) the taxpayer

has entered into an installment agreement to satisfy the tax liability, (3) the withdrawal of the lien will facilitate collection of the tax liability, or (4) the withdrawal of the lien would be in the best interests of the taxpayer and the Government (with the consent of the taxpayer or the Taxpayer Advocate). The proposal also would require that, at the written request of the taxpayer, the IRS make reasonable efforts to give notice of the withdrawal of a lien to credit reporting agencies or financial institutions specified by the taxpayer.

Effective Date

The proposal would be effective on the date of enactment.

ii. Return of levied property

Present Law

The IRS is authorized to return levied property to a taxpayer only when the taxpayer has overpaid its liability to tax, interest, and penalty.

Description of Proposal

The proposal would allow the IRS to return property (including money deposited in the Treasury) that has been levied upon if the Secretary determines that (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability, (3) the return of the property will facilitate collection of the tax liability, or (4) the return of the property would be in the best interests of the taxpayer and the United States (with the consent of the taxpayer or the Taxpayer Advocate).

Effective Date

The proposal would be effective on the date of enactment.

iii. Modifications in certain levy exemption amounts

Present Law

Property exempt from levy includes personal property with a value of up to $1,650, and books and tools necessary for the taxpayer's trade, business, or profession with a value of up to $1,100.

Description of Proposal

The proposal would increase the exemption amounts to $1,700 for personal property and $1,200 for books and tools. Both these amounts are indexed for inflation commencing with calendar year 1994.

Effective Date

The proposal would be effective on the date of enactment.

b. Offers-in-compromise

Present Law

The IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if: the taxpayer is unable to pay the full amount of the tax liability and it is doubtful that the tax, interest, and penalties can be collected or there is doubt as to the validity of the actual tax liability. Amounts over $500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS Chief Counsel.

Description of Proposal

The proposal would allow acceptance of an offer-in-compromise where the compromise would be in the best interest of the Government. The proposal also would increase from $500 to $50,000 the amount requiring a written opinion from the Office of Chief Counsel. Compromises below the $50,000 threshold would be subject to continuing quality review by the IRS.

Effective Date

The proposal would be effective on the date of enactment.

c. Notification of examination

Present Law

In general, the IRS notifies taxpayers in writing prior to commencing an examination and encloses a copy of Publication 1, "Your Rights as a Taxpayer," with the notice. Sometimes, however, the IRS uses the telephone to schedule an examination.

Description of Proposal

The proposal would require the IRS to notify a taxpayer in writing prior to commencing an examination and to provide the taxpayer with an explanation of the examination process prior to commencing the examination. The proposal would exempt from this requirement any examination with respect to which the Secretary determines (1) that it is in connection with a criminal investigation, (2) that the collection of the tax is in jeopardy, (3) that the requirements are inconsistent with national security needs, or (4) that the requirements would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity. This provision would not preclude the IRS from using the telephone to attempt to schedule an examination, so long as the written notice required by this provision is given.

Effective Date

The proposal would be effective on the date of enactment.

d. Modification of certain limits on recovery of civil damages for unauthorized collection activities

Present Law

A taxpayer may sue the United States for up to $100,000 of damages caused by an officer or employee of the IRS who recklessly or intentionally disregards provisions of the Internal Revenue Code or the Treasury regulations promulgated thereunder.

Description of Proposal

The proposal would increase the cap to $1 million with respect to reckless or intentional acts.

Effective Date

The proposal would apply to actions by IRS employees that occur after the date of enactment.

e. Designated summons

Present Law

The period for assessment of additional tax with respect to most tax returns, corporate or otherwise, is three years. The IRS and the taxpayer can together agree to extend the period, either for a specified period of time or indefinitely. The taxpayer may terminate an indefinite

agreement to extend the period by providing notice to the IRS.

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS seeks information by issuing an administrative summons. Such a summons will not be judicially enforced unless the Government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court. In addition, a taxpayer may petition the court to quash an administrative summons where this is permitted by statute.[5]

In certain cases the running of the assessment period is suspended during the period when the parties are in court to obtain or avoid judicial enforcement of an administrative summons. Such a suspension is provided in the case of litigation over a third-party summons (sec. 7609(e)) or litigation over a summons regarding the examination of a related party transaction. Such a suspension can also occur with respect to a corporate tax return if a summons is issued at least 60 days before the day on which the assessment period (as extended) is scheduled to expire. In this case, suspension is only permitted if the summons clearly states that it is a "designated summons" for this purpose. Only one summons may be treated as a designated summons for purposes of any one tax return. The limitations period is suspended during the judicial enforcement period of the designated summons and of any other summons relating to the same tax return that is issued within 30 days after the designated summons is issued.

Under current internal procedures of the IRS, no designated summons is issued unless first reviewed by the Office of Chief Counsel to the IRS, including review by an IRS Deputy Regional Counsel for the Region in which the examination of the corporation's return is being conducted.

Description of Proposal

The proposal would require that issuance of any designated summons with respect to a corporation's tax return must be preceded by review of such issuance by the Regional Counsel, Office of Chief Counsel to the IRS, for the Region

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[5] Petitions to quash are permitted, for example, in connection with the examination of certain related party transactions under section 6038A(e)(4), and in the case of certain third-party summonses under section 7609(b)(2).

in which the examination of the corporation's return is being conducted.

In addition, the proposal would require that the corporation whose return is in issue be promptly notified in writing in any case where the Secretary issues a designated summons (or another summons, the litigation over which suspends the running of the assessment period under the designated summons procedure) to a third party. It is expected that the IRS generally will meet this requirement by issuing such notice on the same day that it issues such summons, and by transmitting such notice to the corporation in a manner reasonably designed to bring it to the prompt attention of an agent of the corporation responsible for communicating with the IRS in connection with the examination.

Effective Date

The proposal would apply to summonses issued after date of enactment.

6. Information Returns

a. Phone numbers of person providing payee statement required to be shown on such statement

Present Law

Information returns must contain the name and address of the payor.

Description of Proposal

The proposal would require that information returns contain the name, address, and phone number of the payor's information contact.

Effective Date

The proposal would apply to statements required to be furnished after December 31, 1992 (determined without regard to any extension).

b. Civil damages for fraudulent filing of information returns

Present Law

Federal law provides no private cause of action to a taxpayer who is injured because a false or fraudulent information return has been filed with the IRS asserting that payments have been made to the taxpayer.

Description of Proposal

The proposal would provide that, if any person willfully files a false or fraudulent information return with respect to payments purported to have been made to another person, the other person may bring a civil action for damages against the person filing that return. Recoverable damages would be the greater of $5,000 or the amount of actual damages (including the costs of the action). An action seeking damages under this provision would be required to be brought within six years after the filing of the false or fraudulent information return.

Effective Date

The proposal would apply to false or fraudulent information returns filed after the date of enactment.

c. Requirement to verify accuracy of information returns

Present Law

Deficiencies determined by the IRS are generally afforded a presumption of correctness.

Description of Proposal

The proposal would provide that, in any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed by a third party and the taxpayer has fully cooperated with the IRS, the Government must, in presenting evidence of the deficiency based on the information return, present reasonable evidence of the deficiency (in addition to the information return itself). One way in which the taxpayer must cooperate with the IRS is to bring the reasonable dispute over the item of income to the attention of the IRS at the earliest possible time.

Effective Date

The proposal would be effective on the date of enactment.

7. Modification To Penalty For Failure To Collect and Pay Over Tax

a. Preliminary notice requirements

Present Law

A "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis. An individual the IRS

has identified as a responsible person is permitted an administrative appeal on the question of responsibility.

Description of Proposal

The proposal would require the IRS to issue a notice to an individual the IRS had determined to be a responsible person with respect to unpaid trust fund taxes at least 60 days prior to issuing a notice and demand for the penalty. The statute of limitations would not expire before the date 60 days after the date on which the notice was mailed. The provision does not apply if the Secretary finds that the collection of the penalty is in jeopardy.

Effective Date

The proposal would apply to failures occurring after the date of enactment.

b. No penalty if prompt notification of IRS

Present Law

A responsible person may be subject to a penalty equal to 100 percent of the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

Description of Proposal

The proposal would provide that a responsible person who notifies the IRS within 10 days of the failure to pay over trust fund taxes to the Government is not liable for this penalty, so long as the notification is made prior to the IRS's contacting the business about the failure to pay over the taxes, and provided that the person is not a significant owner (of a 5-percent or more interest) or a highly compensated employee (with compensation in excess of $75,000).

Effective Date

The proposal would apply in the case of failures to collect and pay over tax that occur after the date of enactment.

c. Disclosure of certain information where more than one person subject to penalty

Present Law

The IRS may not disclose to a responsible person the IRS's efforts to collect unpaid trust fund taxes from other responsible persons, who may also be liable for the same tax liability.

Description of Proposal

The proposal would require the IRS, if requested in writing by a person considered by the IRS to be a responsible person, to disclose in writing to that person the name of any other person the IRS has determined to be a responsible person with respect to the tax liability. The IRS would be required to disclose in writing whether it has attempted to collect this penalty from other responsible persons, the general nature of those collection activities, and the amount (if any) collected. Failure by the IRS to follow this provision would not absolve any individual for any liability for this penalty.

Effective Date

The proposal would be effective on the date of enactment.

8. Awarding of Costs And Certain Fees

a. IRS employees personally liable in certain cases

Present Law

IRS employees are not personally liable for the payment of any litigation costs under section 7430.

Description of Proposal

The proposal would give discretion to the court in tax cases to assess all or a portion of any award under section 7430 against an IRS employee, if the court determines that the proceeding resulted from any arbitrary, capricious, or malicious act of the employee.

The proposal would also permit the Government to provide legal representation to an IRS employee accused of arbitrary, capricious, or malicious action. If the court ultimately determines that the IRS employee acted arbitrarily, capriciously, or maliciously, and the court assesses all or a portion of an award under section 7430 against the IRS employee, the IRS employee would be required to reimburse the Government for the costs of the legal representation (in addition to paying the amount assessed by the court). (This paragraph of the proposal was added to the provision contained in the conference report on H.R. 4210.)

Effective Date

The proposal would apply to proceedings commenced after the date of enactment.

b. Motion for disclosure of information

Present Law

A taxpayer that successfully challenges a determination of deficiency by the IRS may recover attorneys' fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." A taxpayer qualifies as a prevailing party if it (1) establishes that the position of the United States was not substantially justified; (2) substantially prevails with respect to the amount in controversy or with respect to the most significant issue or set of issues presented; and (3) meets certain net worth and (if the taxpayer is a business) size requirements.

Description of Proposal

The proposal would provide that once a taxpayer has substantially prevailed, the taxpayer may file a motion for an order requiring the disclosure (within a specified period) of all information and copies of relevant records in the possession of the IRS with respect to the taxpayer's case and the substantial justification for the position taken by the IRS. Disclosure under this provision would be subject to the confidentiality restrictions of section 6103. Relevant records would be required to be disclosed as quickly as practicable. The provision would not require the disclosure of privileged or otherwise non-disclosable information.

Effective Date

The proposal would be effective for notices made and proceedings commenced after the date of enactment.

c. Increased limit on attorney fees

Present Law

Attorneys' fees recoverable by prevailing parties as litigation or administrative costs are limited to a maximum of $75 per hour.

Description of Proposal

The proposal would raise the statutory rate to $110 per hour, indexed for inflation beginning after 1992.

Effective Date

The proposal would apply to notices made and proceedings commenced after the date of enactment.

d. Failure to agree to extension not taken into account

Present Law

To qualify for an award of attorney's fees, the taxpayer must have exhausted the administrative remedies available within the IRS. The IRS has taken the position in regulations that attorney's fees cannot be awarded if the taxpayer has not agreed to extend the statute of limitations. In Minahan v. Commissioner, 88 T.C. 492 (1987), the Tax Court held that regulation invalid insofar as it provides that a taxpayer's refusal to consent to extend the statute of limitations is to be taken into account in determining whether the taxpayer has exhausted administrative remedies available to the taxpayer.

Description of Proposal

The proposal would provide that any failure to agree to an extension of the statute of limitations cannot be taken into account for purposes of determining whether a taxpayer has exhausted the administrative remedies for purposes of determining eligibility for an award of attorney's fees.

Effective Date

The proposal would apply to proceedings commenced after the date of enactment.

9. Other Provisions

a. Relief from retroactive application of Treasury Department Regulations

Present Law

Treasury may prescribe the extent (if any) to which regulations shall be applied without retroactive effect.

Description of Proposal

Temporary and proposed regulations would be required to have an effective date no earlier than the date of publication in the Federal Register. This proposal may be superseded by a legislative grant authorizing the Treasury to prescribe the effective date with respect to a statutory provision. The Treasury would be permitted to issue retroactive temporary or proposed regulations to prevent abuse of the statute. The Treasury would also be permitted to issue retroactive temporary, proposed, or final regulations to correct a procedural defect in the issuance of a regulation. The Treasury may provide that taxpayers may elect to apply a temporary or proposed regulation retroactively from the date of publication of the regulation.

Final regulations may take effect from the date of publication of the temporary or proposed regulation to which they relate.

There may be additional instances in which retroactive application of Treasury regulations has created undue hardship. The proposal does not preclude the Congress from both examining these cases and providing any appropriate relief in the future.

Effective Date

The proposal would apply with respect to any temporary or proposed regulation published on or after February 20, 1992, and any temporary or proposed regulation published before February 20, 1992, and published as a final regulation after that date.

b. Required content of certain notices

Present Law

The Code requires the IRS to describe the basis for and identify the amounts of tax due, interest, penalties, and any other additional amounts owed in the notice of deficiency sent to taxpayers.

Description of Proposal

The proposal would require that the IRS set forth the components of and explanation for each specific adjustment that is the basis for the total tax deficiency. An inadequate description would not invalidate the notice.

Effective Date

The proposal would apply to notices sent after the date six months after the date of enactment.

c. Treatment of substitute returns for purposes of the penalty for failure to pay taxes

Present Law

Section 6651(a)(2) provides that the IRS may assess a penalty for failure to pay tax from the due date of the return until the tax is paid. If no return is filed by the taxpayer and the IRS files a substitute return under section 6020, the tax on which the penalty is measured is considered a deficiency assessable under section 6212 or 6213, and the failure to pay penalty begins to accumulate ten days after the IRS sends the taxpayer a notice and demand for payment of the tax.

Description of Proposal

The proposal would apply the failure to file penalty to substitute returns in the same manner as the penalty applies to delinquent filers.

Effective Date

The proposal would apply in the case of any return the due date for which (determined without regard to extensions) is after the date of enactment.

d. Unauthorized enticement of information disclosure

Present Law

There is no statutory disincentive for enticing a tax professional to disclose information about clients in exchange for forgiving the taxes of the professional.

Description of Proposal

The proposal would provide that, if a Government employee defers or offers to defer (or forgives or offers to forgive) the determination or collection of any tax due to a tax professional in exchange for information concerning the professional's clients, the information so obtained may not be utilized in determining or adjusting the tax liability of the client. (This proposal is different from the conference report on H.R. 4210.)

Effective Date

The proposal would apply to actions taken after the date of enactment.

10. Form Modifications

a. Explanation of certain provisions

Present Law

Section 6159 authorizes the IRS to enter into written installment agreements with any taxpayer. Section 7122 authorizes the IRS to accept offers in compromise from taxpayers in certain situations. Section 6161 authorizes the IRS to extend the time for payment of tax.

Description of Proposal

The proposal would require the IRS to take such actions as may be appropriate (including improved publicity) to ensure that taxpayers are aware of the availability of installment agreements, offers in compromise, and the

extension of time to pay tax. The IRS would be required to do so in both the income tax return instructions and collection notices.

Effective Date

The proposal would be effective on the date of enactment.

b. Improved procedures for notifying IRS of change of address or name

Present Law

Generally, the IRS posts the new address of a taxpayer only upon the filing of the subsequent tax return which contains a new address or if the taxpayer submits a Form 8822, Change of Address, to the IRS.

Description of Proposal

The proposal would require the IRS to provide improved procedures for taxpayers to notify the IRS of changes in names or addresses. In addition, the proposal would require that the IRS institute procedures before 1993 for the timely updating of all IRS records with change of address information provided to the IRS by taxpayers.

Effective Date

The proposal would be effective on the date of enactment.

c. Rights and responsibilities of divorced individuals

Present Law

The IRS provides information on the rights and responsibilities of divorced individuals in Publication 504, Tax Information for Divorced or Separated Individuals. This publication is not as widely utilized as Publication 1, Your Rights As a Taxpayer.

Description of Proposal

The proposal would require the IRS to include a section on the rights and responsibilities of divorced individuals in Publication 1, Your Rights As a Taxpayer.

Effective Date

The proposal would be effective on the date of enactment.

d. Penalties relating to failure to collect and pay over tax

i. Public information requirements

Present Law

Under section 6672, a "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

Description of Proposal

The proposal would require the IRS to print warnings on payroll tax deposit coupon books and appropriate tax returns indicating that certain employees may be liable for this penalty, and to develop a special information packet relating to this penalty.

Effective Date

The proposal would be effective on the date of enactment.

ii. Board members of tax-exempt organizations

Present Law

Under section 6672, "responsible persons" of tax-exempt organizations are subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

Description of Proposal

The proposal would clarify that the section 6672 responsible person penalty is not to be imposed on volunteer, unpaid members of any board of trustees or directors of a tax-exempt organization to the extent such members are solely serving in an honorary capacity and do not participate in the day-to-day or financial activities of the organization. The proposal would require the IRS to develop materials to better inform board members of tax-exempt organizations (including voluntary or honorary members) that they may be treated as responsible persons. The IRS would be required to make such materials routinely available to tax-exempt organizations. The proposal also would require the IRS to clarify its instructions to IRS employees on application of the responsible person penalty with regard to honorary or volunteer members of boards of trustees or directors of tax-exempt organizations.

Effective Date

The proposal would be effective on the date of enactment.

iii. Prompt notification

Present Law

The IRS is not required to notify promptly taxpayers who fall behind in depositing trust fund taxes.

Description of Proposal

The proposal would require the IRS, to the maximum extent practicable, to notify all taxpayers with delinquent trust fund deposits within 30 days of the first indication that there has been a failure to make a timely and complete deposit. Failure to provide this notice would not absolve any individual from any liability for this penalty.

Effective Date

The proposal would be effective on the date of enactment.

e. Required notice to taxpayers of certain payments

Present Law

If the IRS receives a payment without sufficient information to properly credit it to a taxpayer's account, the IRS may attempt to contact the taxpayer. If contact cannot be made, the IRS places the payment in an unidentified remittance file.

Description of Proposal

The proposal would require the IRS to make reasonable efforts to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with any outstanding tax liability.

Effective Date

The proposal would be effective on the date of enactment.

11. Studies

a. Pilot program for appeal of enforcement actions

Present Law

A taxpayer who disagrees with an IRS collection action generally can only appeal to successively higher levels of management in the Collection Division. Certain cases involving the 6672 penalty, offers-in-compromise, and employment tax issues may, however, be appealed to the Appeals Division.

Description of Proposal

The proposal would require the IRS to establish a one-year pilot program to evaluate the merits of allowing an independent appeal, by the taxpayer, to the Appeals Division of enforcement actions (including lien, levy, and seizure actions) where the deficiency was assessed without the actual knowledge of the taxpayer, where the deficiency was assessed without an opportunity for administrative appeal, and in other appropriate circumstances.

Effective Date

The IRS would be required to report to the tax-writing committees by December 31, 1992, on the effectiveness of this pilot program.

b. Study on taxpayers with special needs

Present Law

The IRS is responsible for providing timely and accurate assistance to taxpayers who want to comply with Federal tax laws.

Description of Proposal

The proposal would require the IRS to conduct a study of ways to assist the elderly, physically impaired, foreign-language speaking, and other taxpayers with special needs to comply with the tax laws.

Effective Date

The report (and any recommendations) would be required to be submitted to the tax-writing committees by December 31, 1992.

c. Reports on taxpayer rights education program

Present Law

The IRS is currently conducting a program to educate revenue officers concerning the rights of taxpayers.

Description of Proposal

The proposal would require the IRS to report to the tax-writing Committees on its taxpayer rights education program for its officers and employees, including the scope and content of the program, and on the effectiveness of the program.

Effective Date

The report on the scope and content of the taxpayer-rights education program would be required to be submitted to the tax-writing committees by August 1, 1992, and the report on the effectiveness of the program would be required to be submitted by December 31, 1992.

d. Biennial reports on misconduct By IRS employees

Present Law

As mandated by the Inspector General Act, every six months the Inspector General of the Department of the Treasury receives information from the IRS for the Secretary of the Treasury's semiannual report to Congress on employee misconduct. The Inspector General Act, in part, requires that these reports include summary information and descriptions of significant investigative activities and a summary of matters referred to prosecuting authorities and the prosecutions and convictions that have resulted.

Description of Proposal

The proposal would require the IRS to report to the tax-writing committees every two years on all cases involving complaints about IRS employee misconduct and on the disposition of those complaints.

Effective Date

The first report would be required to be submitted during December 1992.

e. Study of notices of deficiency

Present Law

Under section 6212, the IRS is required to send a notice of tax deficiency to taxpayers by registered or certified mail.

Description of Proposal

The proposal would require the GAO to study the effectiveness of current IRS efforts to notify taxpayers with regard to tax deficiencies under section 6212, the number of registered or certified letters and other notices returned to the IRS as undeliverable, any follow-up action taken by the IRS to locate the taxpayers, the effect that failures to receive actual notice have on taxpayers, and recommendations on how the IRS can better notify taxpayers of tax deficiencies.

Effective Date

The report and recommendations would be required to be furnished by December 31, 1992.

f. Notice and form accuracy study

Present Law

The IRS is responsible for providing accurate and instructive notices, forms, and instructions to taxpayers to assist them in complying with Federal tax laws.

Description of Proposal

The proposal would require the GAO to study annually the accuracy of 25 of the most commonly used IRS forms, notices, and publications. In conducting its review, the GAO would be required to seek and consider the comments of organizations representing taxpayers, employers, and tax professionals.

Effective Date

The initial report (and any recommendations) would be required to be submitted to the tax-writing committees by December 31, 1992.

g. IRS employees' suggestions study

Present Law

The IRS maintains several programs to encourage and reward employees who make suggestions for improving the administration of the tax system.

Description of Proposal

The proposal would require the GAO to conduct a review of the IRS employee suggestion programs. The study would be required to include a review of all suggestions that were accepted and rewarded by the IRS, an analysis as to how many of these suggestions were implemented, and why the remaining suggestions were not implemented.

Effective Date

The report (and any recommendations) would be required to be submitted to the tax-writing committees by December 31, 1992.

H. Technical Corrections Act (H.R. 1555)

Description of Proposal

The proposal would adopt the technical corrections relating to revenues and to Social Security, human resources and trade[6] that were contained in Titles I and III of H.R. 1555, as that bill passed the House of Representatives on November 26, 1991, with the following modification:

1. Conforming Amendments Relating to Pension Reemployment Rights of Members of the Uniformed Services

Legislative Background and Present Law

Veterans' bill

H.R. 1578 ("Uniformed Services Employment and Reemployment Rights Act of 1991") was passed by House of Representatives on May 14, 1991. The bill was referred to the Senate Committee on Veterans' Affairs on May 16, 1991. On November 7, 1991, S. 1095 ("Uniformed Services Employment and Reemployment Rights Act of 1991") was reported by the Senate Committee on Veterans' Affairs (S. Rept. 102-203), and is pending before the Senate.

H.R. 1578, as passed by the House, and S. 1095, as reported by the Senate Committee on Veterans' Affairs, each provides for reemployment rights and benefits for individuals who serve voluntarily or involuntarily in the uniformed services (i.e., the Armed Forces or the commissioned corps of the Public Health Service). Each of the bills provides, among other things, that for qualified retirement plan purposes, service in the uniformed services is considered service with the employer for benefit accrual purposes; the employer who reemploys the individual is liable for funding any resulting obligation; and the reemployed individual is entitled to any accrued benefits attributable to employee contributions to the extent that the individual makes payments with respect to the contributions ("make-up contributions").

Internal Revenue Code

Under the Internal Revenue Code, overall limits are provided on contributions and benefits under qualified plans based on the type of plan. Under a defined contribution plan, the qualification rules limit the annual additions to the plan with respect to each plan participant to the lesser

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[6] The proposal would not adopt the technical corrections relating to Medicare in Title II of H.R. 1555.

of 25 percent of compensation or $30,000. There is no provision under present law that permits contributions to exceed these annual limits in the case of make-up contributions with respect to a reemployed member of the uniformed services.

Description of Proposal

The proposal would amend the Internal Revenue Code to provide special rules in the case of make-up contributions with respect to a reemployed member of the uniformed services.

Under the proposal, if an individual is entitled to credit under an employer's qualified defined contribution retirement plan or eligible deferred compensation plan (sec. 457) for service as a member of the uniformed services, any make-up contribution with respect to such service would be exempt from the qualified plan contribution limits to the extent such contributions could have been made if the member had remained continuously employed. For purposes of determining this amount, an individual's compensation would be the compensation the individual would have received if the individual was paid at the rate of compensation paid immediately before the period of uniformed service. A special rule would apply in the case of make-up contributions of salary reduction and employer matching amounts.

Make-up contributions would not be taken into account for nondiscrimination and certain other qualified plan requirements.

No earnings would be credited to an employee with respect to any contribution prior to such contribution actually being made. In addition, any profit-sharing or similar contribution, or any forfeiture, for any year during the period of uniformed service would not be allocated to the reemployed individual. A plan would also be permitted to suspend repayment of a plan loan for the period of uniformed service without adverse consequences to the individual.

Effective Date

The proposal would apply to reemployment initiated under chapter 43 of title 38, United States Code, on or after August 1, 1990.

IV.--SUBCOMMITTEE LEGISLATION

A. Human Resources Subcommittee

1. Effect of Failure to Carry Out State Plan (Suter v. Artist M.)

Present Law

Many of the principal Federal social welfare programs are established under the "State plan" titles of the Social Security Act of 1935, as amended. These programs include Aid to Families with Dependent Children (Title IV-A), Child Welfare Services (Title IV-B), Child Support and Establishment of Paternity (Title IV-D), Adoption Assistance and Child Welfare (Title IV-E), and Medicaid (Title XIX). Under the State plan titles of the Act, as a precondition of funding each participating State is required to develop a written "State plan" that meets certain statutory requirements in order to be approved by the Secretary of the Department of Health and Human Services (DHHS).

On March 25, 1992, the Supreme Court decided in Suter v. Artist M., --- U.S. ---, 112 S. Ct. 1360 (1992), that beneficiaries of the Adoption Assistance and Child Welfare Act of 1980 (Title IV-E of the Social Security Act) do not have a private right under the Act to enforce its provisions. Moreover, the Court also decided that the beneficiaries of the Act could not enforce its provisions through a Federal civil rights action under 42 U.S.C. 1983 to remedy violations of the Federal statute.

Description of Provision

Would amend title XI of the Social Security Act to provide that the failure of any State to which Federal funds are paid under a title of the Social Security Act that includes plan requirements to: (1) have a plan that meets such requirements, or (2) administer such a plan in accordance with such requirements, whether before or after the date of enactment, shall constitute a violation of rights enforceable in any civil action for deprivation of rights under color of State law.

Social Security Act program beneficiaries, parents, and advocacy groups have brought hundreds of successful suits alleging failure of the State and/or locality to comply with State plan requirements of the Social Security Act. These cases typically address legal issues such as a State's failure to use mandated income and resource eligibility rules of the program, the failure to provide a fair hearing when denying benefits, the failure to decide an application in a timely manner, or the failure to make reasonable efforts to

preserve or reunify a family. Much of this litigation has resulted in comprehensive reforms of Federal-State programs, and increased compliance with the mandates of Federal statutes.

Suter v. Artist M. could result in the dismissal of many suits brought to enforce the State plan titles of the Social Security Act pending on or commenced after the date of the Court's decision in the case. Lower courts have already relied on the Suter v. Artist M. decision to dismiss lawsuits brought to enforce the program requirements of the Aid to Families with Dependent Children program (Title IV-A of the Social Security Act) and the Child Support Enforcement program (Title IV-D of the Social Security Act). See, Mason v. Bradley, 1992 WL 80124 (N.D. Ill., Apr. 20, 1992)(no private right of action exists under the Aid to Families with Dependent Children program).

As a result of the Court's decision, the only enforcement mechanism that exists for a State's noncompliance with State plan requirements under the Act is the authority of the Secretary of DHHS to reduce or eliminate payments to a State based upon a finding that the State's plan no longer complies with the statutory requirements or that there is a substantial failure in the administration of the State plan. Enforcement actions by DHHS for a State's noncompliance are rare as Federal officials are reluctant to reduce or eliminate payments for a variety of reasons. Furthermore, considerable resources are required to monitor compliance on a State-by-State basis.

Correspondingly, there is no procedure, after the Suter v. Artist M. decision, by which program beneficiaries can trigger a DHHS investigation or compliance proceeding for a State's failure to have a plan that meets the State plan requirements or to administer such a plan in accordance with such requirements.

This amendment is therefore intended to restore to an aggrieved party the right to enforce, as it existed prior to the Suter v. Artist M. decision, the federal mandates of the State plan titles of the Social Security Act. This amendment is not intended to identify, create, or expand enforceable rights under the state plan titles of the Social Security Act. Nor is this amendment intended to define, clarify, or establish standards for determining whether states have made "reasonable efforts" to prevent the need for foster care placement or to reunify children with their families after placement as required by the Adoption Assistance and Child Welfare Act (Title IV-E of the Social Security Act). Under the Adoption Assistance Act, Courts must make a judicial determination that this requirement has been met. Although "reasonable efforts" is not defined either in the statute or the accompanying regulations, states have applied varying

interpretations to the term. In Suter v. Artist M., the Supreme Court concluded that under the Adoption Assistance Act no statutory guidance is found as to how "reasonable efforts" are to be measured, and concluded that the "reasonable effort" language does not unambiguously confer an enforceable right upon the Act's beneficiaries.

The purpose of this provision is to assure that individuals who have been injured by a state's failure to comply with the state plan requirements are able to seek redress in the federal courts to the extent they were able to prior to the decision in Suter v. Artist M. The provision does not alter the rules of statutory construction that the courts used prior to Suter v. Artist M. The provision does not alter the finding in Suter v. Artist M., that the "reasonable efforts" provision, without further direction, is too vague to be enforceable in such an action. It only alters that portion of Suter suggesting that failure of a state to comply with a state plan provision is not litigable as a violation of federal statutory rights.

2. All Other Items Reported by the Subcommittee on Human Resources

Description of Provisions

Foster Care/Child Welfare

- Permanently extend and index for inflation the authorization for the foster care independent living program, and lower the age of eligibility to 14 years old, at State option;

- Permanently extend the foster and adoptive parent training provisions at the 75 percent rate of Federal reimbursement under the title IV-E foster care maintenance payments program;

- Postpone for one year collections under child welfare services section 427 triennial reviews;

Research/Demonstrations/Studies

- Extend the authorization for early child development projects through fiscal year 1997 and authorize appropriations not to exceed $3 million for each of fiscal years 1993 through 1997;

- Reimburse, as under H.R. 5354, qualified private demonstration programs, such as the New Hope demonstration in Wisconsin, with Federal saving that will occur because its participants will no longer be receiving Aid to Families with Dependent Children (AFDC) and Medicaid benefits;

- Require the Secretary of Health and Human Services (HHS), as under S. 1256, to develop indicators and predictors of welfare dependency and to prepare an annual report on welfare dependency in the United States; establish an advisory board on welfare dependency to advise the Secretary;

- Extend the authorization of the U.S. Commission on Interstate Child Support through September 30, 1992 and extend the Commission's deadline for filing its report to Congress to August 1, 1992;

- Extend the terms of service of the members of the National Commission on Children through December 31, 1992;

- Provide, as under H.R. 4046, for a joint report by the Secretaries of Health and Human Services and Agriculture to assist in decisions regarding

coordination of rules among the AFDC, Food Stamp and Medicaid programs;

- Authorize a three-year demonstration project in one State that would provide community-based services for young adult former foster children ages 21 to 25;

AFDC

- Delay the effective date for the requirement under the Family Support Act that the outlaying areas implement an AFDC-unemployed parent program to October 1, 1994;

- Direct the Secretary of HHS to develop an appropriate methodology for determining what proportion of eligible children are using Transitional Child Care Assistance and report to Congress on its findings; require the States to better disseminate information on the Transitional Child Care program and establish automatic eligibility procedures where appropriate for families;

- Require the Secretary to (1) review the State's plans for new dollar investments to improve AFDC program administration and (2) take the State's plan into account as the Secretary considers appropriate;

SSI

- Eliminate the unintended two-month Supplemental Security Income (SSI) benefit increase following a Cost of Living Adjustment (COLA) by using the current month's benefit amount as the basis for presuming value of in-kind support and maintenance, and other technical changes;

- Prevent adverse effects on SSI eligibility or benefit amounts when spouses or parents of SSI-eligible persons are absent from their households because of military service assignments;

- Apply SSI definition of disability for children to all individuals under age 18 years old;

Indian Trust Income

- Exclude income up to $2,000 per year that is derived from interests of individual Indians in trust or in restricted lands in determining eligibility and benefit amounts for the SSI and AFDC programs; and

Child Support

- Require State child support enforcement agencies to report monthly the names of any parent whose child support payments have fallen behind two or more months and the amounts of their arrears to consumer reporting agencies unless the agencies refuse to receive such information.

B. Social Security Subcommittee

1. Misuse of symbols, Emblems or Names Related to the Social Security Administration, Health Care Financing Administration and the Department of Health and Human Services

The civil monetary penalties against using the names and symbols of the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) in a misleading fashion would be strengthened by including in the protections the names and symbols of the Department of Health and Human Services, eliminating the annual $100,000 cap on civil monetary penalties, providing that a disclaimer on the material is no defense against an action, and making other improvements.

2. Clarification of Statutory Requirement for Public Telephone Access to Local Social Security Administration

The requirement that SSA maintain public telephone access to local social security offices at the level generally available on September 30, 1989, would be made more explicit by requiring that the agency reestablish and maintain the same number of public-inquiry telephone lines to the offices as were in service on that date, including telephone sets for the lines. SSA's 800-number service would also be maintained.

3. Social Security Exclusion for Election Workers

The Federal Insurance Contributions Act (FICA) tax exclusion for election workers would be raised from $100 to $1,000 annually, beginning on January 1, 1993, and would be indexed thereafter. In addition, a transition rule would exclude election worker earnings for the period October 1, 1992, through December 31, 1992, if they did not exceed $500.

4. Social Security Coverage of Non-Cash Agricultural Wages

Non-cash remuneration paid to agricultural workers would generally be covered by social security and therefore subject to tax under FICA.

5. Use of Social Security Numbers for Jury Selection

States which collect social security numbers from individuals for purposes permitted under current law would be permitted to use those numbers to eliminate both duplicate names and names of convicted felons from jury source lists.

6. Authority for Optional Social Security Coverage of Police and Firefighters in All States

The option currently available in 24 States for the State to cover under social security police and firefighters who participate in a public retirement system would be expanded to apply to all States.

7. Limited Exemption from SECA for U.S. Ministers Working and Resident in Canada

Limited relief from social security taxes would be provided for U.S. citizens who are ministers residing and working in Canada. The relief would be from double taxation--taxation under both the U.S. and Canadian social insurance systems on the same work--for years just prior to the U.S. totalization agreement with Canada which eliminated such double taxation.

8. Miscellaneous Amendments

Miscellaneous amendments to the Social Security Act would be made relating to: totalization benefits and the Windfall Elimination Provision (WEP); application of the WEP and the Government Pension Offset to social security benefits for military reservists with inactive duty between 1956 and 1988; a rounding distortion in the indexation of the social security wage base and the retirement earnings test exempt amounts; the facility-of-payment provision; the subsequent entitlement guarantee in Maximum Family Benefit cases; and limited release of Social Security Administration information for purposes of epidemiological research.

C. Oversight Subcommittee

1. Misuse of Symbols, Emblems or Names Related to the Department of the Treasury, Internal Revenue Service, and other Bureaus and Agencies.

Prohibits the use of certain names, symbols, and emblems of the Department of the Treasury, and its subsidiary bureaus and agencies in a manner which could reasonably be interpreted or construed as conveying the false impression that such activity is authorized by or associated with the Treasury. Civil penalties would apply for noncompliance. A report to the tax-writing committees regarding implementation of the provisions would be required.

2. Certain Organizations Required to Disclose Nonexempt Status.

Organizations which do not have Federal tax-exempt status, but which claim in a solicitation to be nonprofit, would be required to expressly state that they are not tax-exempt under the Internal Revenue Code. Civil penalties would apply for noncompliance.

3. Exempt Organizations Required to Provide Copies of Certain Public Documents

Tax-exempt organization would be required to provide, upon request, for a reasonable fee, a photocopy of the organization's annual information returns and application for tax-exempt status. Civil penalties would apply for noncompliance.

V.--OTHER REVENUE-INCREASE PROVISIONS

A. Administration Proposals

1. Mark-to-Market Accounting Method for Dealers in Securities

Present Law

A taxpayer that is a dealer in securities is required for Federal income tax purposes to maintain an inventory of securities held for sale to customers. A dealer in securities is allowed for Federal income tax purposes to determine (or value) the inventory of securities held for sale based on: (1) the cost of the securities; (2) the lower of the cost or market value of the securities; or (3) the market value of the securities.

If the inventory of securities is determined based on cost, unrealized gains and losses with respect to the securities are not taken into account for Federal income tax purposes. If the inventory of securities is determined based on the lower of cost or market value, unrealized losses (but not unrealized gains) with respect to the securities are taken into account for Federal income tax purposes. If the inventory of securities is determined based on market value, both unrealized gains and losses with respect to the securities are taken into account for Federal income tax purposes.

For financial accounting purposes, the inventory of securities generally is determined based on market value.

Description of Proposal

Certain securities that are held by a dealer in securities would be marked to market for Federal income tax purposes (i.e., gain and loss with respect to the securities generally would be taken into account even though the securities have not been disposed of by the dealer).

For this purpose, a dealer in securities would be defined as any taxpayer that either (1) regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

A security generally would be defined as: (1) any share of stock in a corporation; (2) any partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; (3) any note, bond, debenture, or other

evidence of indebtedness; (4) any interest rate, currency, or equity notional principal contract; and (5) any evidence of an interest in, or any derivative financial instrument in, a security described in (1) through (4) above or any currency, including any option, forward contract, short position, or any similar financial instrument in such a security or currency (but not including a contract to which section 1256(a) applies).

Notwithstanding the definition of security, the mark-to-market rules generally would not apply to: (1) any security that is held for investment; (2) any evidence of indebtedness that is acquired (including originated) by a dealer in the ordinary course of a trade or business of the dealer but only if the evidence of indebtedness is not held for sale; (3) any security which is a hedge with respect to a security that is not subject to the mark-to-market rules; and (4) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer.

The proposal is the same as was included in H.R. 4210 as passed by the House and Senate, except for certain minor technical modifications (including, for example, clarification as to the application of the identification rules to commitments to acquire mortgages).

Effective Date

As provided in H.R. 4210 as passed by the House and Senate, the proposal would apply to taxable years ending on or after December 31, 1992.

2. Modify Estimated Tax Requirements for Individuals

Present Law

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax liability of the prior year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax liability of the current year. Income tax withholding from wages is considered to be a payment of estimated taxes.

In addition, for taxable years beginning after 1991 and before 1997, the 100 percent of last year's liability safe harbor generally is not available to a taxpayer that (1) has an adjusted gross income (AGI) in the current year that exceeds the taxpayer's AGI in the prior year by more than $40,000 ($20,000 in the case of a separate return by a married individual) and (2) has an adjusted gross income

(AGI) in excess of $75,000 in the current year ($37,500 in the case of a separate return by a married individual).

Description of Proposal

The special rule that denies the use of the 100 percent of last year's liability safe harbor would be repealed. In addition, the 100 percent of last year's liability safe harbor would be modified to be a 115 percent of last year's liability safe harbor.

Thus, under the proposal, an individual generally would not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 115 percent of the tax liability of the prior year or (2) 90 percent of the tax liability of the current year.

The proposal was included in H.R. 4210 as passed by the House and the Senate (effective for taxable years beginning after 1991).

Effective Date

The proposal generally would be effective for estimated tax payments applicable to taxable years beginning after December 31, 1992. Individuals who are denied the use of the 100 percent of last year's liability safe harbor for 1992 would be allowed to elect to use the 115 percent of last year's liability safe harbor for 1992.

3. Taxable Year Election for Partnerships, S Corporations, and Personal Service Corporations

Present Law

A partnership is generally required for Federal income tax purposes to use the taxable year that is used by a majority of its partners. An S corporation is generally required for Federal income tax purposes to use the calendar year as its taxable year. A personal service corporation also is generally required for Federal income tax purposes to use the calendar year as its taxable year.[7]

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[7] For this purpose, a personal service corporation is defined as a C corporation the principal activity of which is the performance of services if (1) the services are substantially performed by employee-owners, and (2) more than 10 percent of the stock of the corporation is owned by employee-owners.

A partnership, S corporation, or personal service corporation, however, may elect to use a taxable year other than the required taxable year. In the case of a partnership, S corporation, or personal service corporation that is adopting a taxable year or changing a taxable year, the taxable year that may be elected generally may not result in a deferral period of more than three months. For this purpose, the deferral period generally is the number of months between (1) the beginning of the taxable year of the partnership, S corporation, or personal service corporation, and (2) the close of the first required taxable year that ends within such year.

A partnership or S corporation that elects a taxable year other than the required taxable year is required to make a payment to the Internal Revenue Service (a "required payment") that is designed to compensate the Federal government for the deferral of tax that results from the use of a taxable year other than the required taxable year. A personal service corporation that elects a taxable year other than the required taxable year is required to satisfy a minimum distribution requirement that applies to certain amounts paid by the personal service corporation to employee-owners.

Description of Proposal

A partnership, S corporation, or personal service corporation would be allowed to elect any taxable year without regard to the length of the deferral period of the taxable year elected if the annual financial statements (if any) of the entity used for credit purposes or provided to the partners, shareholders, or other proprietors of the entity cover the same period as the taxable year elected.

The proposal would increase the amount of the required payment that must be made by a partnership or S corporation that elects a taxable year other than the required taxable year (including any partnership or S corporation that has an election in effect on the date of enactment of the proposal).[8] In addition, the proposal would require an additional required payment for any taxable year that a partnership or S corporation first makes a taxable year election or changes a taxable year election to increase the deferral period.

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[8] The required payment would be determined by using the highest rate of tax in effect under section 1 of the Code plus 2 percentage points.

The proposal would also increase the minimum distribution requirement that must be satisfied by a personal service corporation that elects a taxable year other than the required taxable year (including a personal service corporation that has an election in effect on the date of enactment of the proposal).

The proposal is the same as was included in H.R. 4210 as passed by the House and Senate (except that the proposal included in H.R. 4210 applied to taxable years beginning after December 31, 1991).

Effective Date

The proposal would apply to taxable years beginning after December 31, 1992.

4. Tax Treatment of Certain FSLIC Financial Assistance

Present Law and Background

A taxpayer may claim a deduction for a loss on the sale or other disposition of property only to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the disposition and the loss is not compensated for by insurance or otherwise (sec. 165 of the Code). A similar rule applies for purposes of accounting for bad debts.

A special statutory tax rule, enacted in 1981, excluded from a thrift institution's income financial assistance received from the Federal Savings and Loan Insurance Corporation (FSLIC), and prohibited a reduction in the tax basis of the thrift institution's assets on account of the receipt of the assistance. Under the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), taxpayers generally were required to reduce certain tax attributes by one-half the amount of financial assistance received from the FSLIC pursuant to certain acquisitions of financially troubled thrift institutions occurring after December 31, 1988. These special rules were repealed by FIRREA, but still apply to transactions that occurred before May 10, 1989.

Prior to the enactment of FIRREA, the FSLIC entered into a number of assistance agreements in which it agreed to provide loss protection to acquirers of troubled thrift institutions by compensating them for the difference between the book value and sales proceeds of "covered assets."

A March 4, 1991 Treasury Department report ("Treasury report") on tax issues relating to the 1988/89 FSLIC transactions concluded that deductions should not be allowed for losses that are reimbursed with exempt FSLIC assistance. The Treasury report states that the Treasury view is expected

to be challenged in the courts and recommended that Congress enact clarifying legislation disallowing these deductions.[9]

Description of Proposal

General rule

Any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of an asset would be taken into account as compensation for such loss for purposes of section 165 of the Code. Any FSLIC assistance with respect to any debt would be taken into account for purposes of determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts.

Financial assistance to which the FIRREA amendments apply

The proposal would not apply to any financial assistance to which the amendments made by section 1401(a)(3) of FIRREA apply.

No inference

No inference would be intended as to prior law or as to the treatment of any item to which this proposal does not apply.

Prior action

The proposal is identical to H.R.4210 as passed by the House and the Senate.

Effective Date

In general

The proposal would apply to financial assistance credited on or after March 4, 1991, with respect to (1) assets disposed of and charge-offs made in taxable years ending on or after March 4, 1991; and (2) assets disposed of and charge-offs made in taxable years ending before March 4, 1991, but only for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991.

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[9] Department of the Treasury, Report on Tax Issues Relating to the 1988/89 Federal Savings and Loan Insurance Corporation Assisted Transactions, March, 1991 at pp. 16-17.

For this purpose, financial assistance would be considered to be credited when the taxpayer makes an approved debit entry to a Special Reserve Account required to be maintained under the assistance agreement to reflect the asset disposition or write-down. An amount would also be considered to be credited prior to March 4, 1991 if the asset was sold, with prior FSLIC approval, before that date.

Application to certain net operating losses

The proposal would apply to the determination of any net operating loss carried into a taxable year ending on or after March 4, 1991, to the extent that the net operating loss is attributable to a loss or charge-off for which the taxpayer had a right to FSLIC assistance which had not been credited before March 4, 1991.

B. Revenue-Increase Provisions Previously Passed by the Congress

1. Modify Estimated Tax Rules for Large Corporations

Present Law

A corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning in 1993, 1994, 1995, and 1996, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least 95 percent of the tax liability shown on the return for the current taxable year. A corporation may estimate its current year tax liability based upon a method that annualizes its income through the period ending with either the month or the quarter ending prior to the estimated tax payment date.

For taxable years beginning in 1992, the 95 percent requirement is a 93 percent requirement; the 95 percent requirement becomes a 90 percent requirement for taxable years beginning in 1997 and thereafter.

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

Description of Proposal

For taxable years beginning after 1996, a corporation that does not use the 100 percent of last year's liability safe harbor for its estimated tax payments would be required to base its estimated tax payments on 95 percent (rather than 90 percent) of its current year tax liability, whether such liability is determined on an actual or annualized basis.

In addition, the proposal would add an additional set of periods upon which a corporate taxpayer may base its annualized income and would require a corporation to prospectively select which set it would use.

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

A substantially similar proposal was contained in H.R. 4210 as passed by the House and Senate.

Effective Date

The proposal generally would be effective for estimated tax payments with respect to taxable years beginning after December 31, 1996. The changes to the periods upon which a corporate taxpayer may base its annualized income would be effective for estimated tax payments with respect to taxable years beginning after December 31, 1992.

C. Revenue-Increase Provisions Previously Passed by the House

1. Treatment of Pre-Contribution Gain on Certain Partnership Redemptions

Present Law

Generally, if a partner contributes appreciated property to a partnership, no gain is recognized to the contributing partner at the time of the contribution, but gain recognized subsequently by the partnership with respect to that property must be allocated to the contributing partner to the extent of the pre-contribution appreciation. In addition, if the property is subsequently distributed to another partner within 5 years of the contribution, the contributing partner generally must recognize gain as if the property had been sold for its value at the time of the distribution. Present law generally does not require a partner who contributes appreciated property to a partnership to recognize pre-contribution gain upon a subsequent distribution of other property to that partner even if the value of that other property exceeds the partner's basis in his partnership interest (unless the transaction is otherwise treated as a disguised sale).

Description of Proposal

The proposal requires a partner who contributes appreciated property to a partnership to include pre-contribution gain in income to the extent that the value of other property distributed by the partnership exceeds his adjusted basis in his partnership interest. The proposal applies whether or not the contributing partner's interest in the partnership is reduced in connection with the distribution. The proposal generally applies only if the distribution is made within 5 years after the contribution of the appreciated property. Appropriate basis adjustments are to be made to take account of gain recognized by the distributee partner under the proposal.

Gain recognition generally is not required to the extent the partnership distributes property which had been contributed by the distributee partner. If the property distributed consists of an interest in an entity, however, gain recognition is required to the extent that the value of the interest in the entity is attributable to property contributed to the entity after the interest in it was contributed to the partnership. Similarly, if contributed property is distributed indirectly to a partner other than its contributor, the contributing partner is subject to tax on the pre-contribution gain as if the property had been distributed directly rather than indirectly.

Effective Date

The proposal would apply to partnership distributions after the date of committee action.

D. Other Revenue-Increase Provisions

1. Permanent Extension of Top Estate and Gift Tax Rates

Present law

The Federal estate and gift taxes are unified so that a single progressive rate schedule is applied to an individual's cumulative gifts and bequests. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate.

For 1992, the Federal estate and gift tax rates begin at 18 percent on the first $10,000 of taxable transfers and reach 55 percent on taxable transfers in excess of $3,000,000. For transfers occurring after 1992, the maximum Federal estate and gift tax rates are scheduled to decline to 50 percent on taxable transfers over $2,500,000.

In addition, the benefit of the graduated rates is phased-out at a 5-percent rate for taxable transfers in excess of $10,000,000 and $21,040,000.

Description of Proposal

The scheduled decline in the Federal gift and estate tax rates would be deferred permanently.

Effective Date

The proposal would be effective for decedents dying, and gifts made, after December 31, 1992.

2. Limit on Deduction for Moving Expenses

Present Law

An employee or self-employed individual may claim a deduction from gross income for certain expenses incurred as a result of moving to a new residence in connection with beginning work at a new location (sec. 217). The deduction is not subject to the floor that generally limits a taxpayer's allowable miscellaneous itemized deductions to those amounts that exceed 2 percent of his or her adjusted gross income. Any amount received directly or indirectly by a taxpayer as a reimbursement of moving expenses must be included in the taxpayer's gross income as compensation (sec. 82). The taxpayer may offset this income by deducting the moving expenses that would otherwise qualify as deductible items under section 217.

Deductible moving expenses are the expenses of transporting the taxpayer and members of the taxpayer's household, their household goods, and their personal effects from the old to the new residence; the cost of meals and lodging en route; the expenses for pre-move househunting trips; temporary living expenses for up to 30 days (90 days in the case of foreign moves[10]) in the general location of the new job; certain expenses related to the sale or settlement of a lease on the old residence; and certain expenses related to the purchase or lease of a new residence in the general location of the new job.

The moving expense deduction is subject to a number of limitations. A maximum of $1,500 can be deducted for pre-move househunting and temporary living expenses in the general location of the new job. A maximum of $3,000 (reduced by any deduction claimed for househunting or temporary living expenses) can be deducted for certain qualified expenses for the sale and purchase of a residence or settlement of a lease. For foreign moves, the above limits are $4,500 and $6,000, respectively. If both a husband and wife begin new jobs in the same general location, the move is treated as a single commencement of work. If a husband and wife file separate returns, the maximum deduction available to each is one-half of the amounts otherwise allowed.

Also, in order for a taxpayer to claim a moving expense deduction, his new principal place of work has to be at least 35 miles farther from his former residence than was his former principal place of work (or his former residence, if he has no former place of work).

Description of Proposal

The proposal would make four changes relating to the deduction for moving expenses:

(1) The $1,500 limit ($4,500 limit for foreign moves) on pre-move househunting and temporary living expenses in the general location of the new job would be repealed. The $3,000 limit on the sum of pre-move househunting expenses, temporary living expenses, and qualified expenses for the sale and purchase of a residence or settlement of a lease would be retained. For foreign moves, this latter limit would be reduced to $5,000.

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[10] Section 217(h)(3) defines a foreign move as the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(2) An overall $5,000 cap would be imposed on allowable moving expenses (including expenses subject to the limit for househunting, temporary living, and qualified settlement expenses) for each qualified move (including foreign moves).

(3) An individual would be allowed, under section 62, an above-the-line deduction in computing adjusted gross income for an amount equal to the otherwise allowable deduction for moving expenses but only to the extent such expenses are reimbursed and included in the gross income of the taxpayer under section 82.

(4) To the extent that moving expenses are unreimbursed, the deduction would be made subject to the 2-percent floor on miscellaneous itemized deductions.

Effective Date

The proposal would be effective for moving expenses paid or incurred after December 31, 1992.