

SUMMARY OF H. R. 6056

TECHNICAL CORRECTIONS ACT OF 1982

Prepared for the

COMMITTEE ON WAYS AND MEANS

By the

Staff of the Joint Committee on Taxation

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A. Technical Corrections to the Economic Recovery Tax Act of 1981

Act sec. 101 -- Rate Cuts

The bill would clarify that noncorporate fiscal year taxpayers will use the 1981 rate schedules for fiscal year 1981-1982 (i.e., they will not prorate with the 1982 rate schedules). They will be entitled to the 1 1/4 percent credit on their full year's tax liability.

The bill would clarify that the 1 1/4 percent credit for 1981 is not allowed against the portion of an individual's tax determined under the 50-percent maximum rate for personal service income or the special 20-percent capital gains rate.

Act sec. 104 -- Inflation Adjustment

A conforming change to the indexing provision would be made.

Act sec. 111 -- Foreign Earned Income

The bill would clarify that the amount of the foreign earned income exclusion for an individual (including the exclusion for housing) plus the deduction for housing expenses cannot exceed the taxpayer's foreign earned income for the year.

Act sec. 122 -- Principal Residence Rollovers

A taxpayer selling a principal residence before August 13, 1981, could elect not to have the rollover amendments made by ERTA apply to the sale. This would prevent a taxpayer who had previously sold a residence within 2 years from losing the tax-free rollover benefit.

Act sec. 124 -- Dependent Care

The bill would require that a dependent care assistance program not provide benefits that discriminate in favor of officers, owners, or highly compensated employees or their dependents. Also, the bill would clarify that an employer is not denied a tax deduction for amounts employees exclude from income.

Act sec. 125 -- Adoption Expenses

This bill would make clear that the deduction would be available for adopting a child who the State determines is a child with special needs, as defined for purposes of the Social Security Act adoption assistance program. This is a child who the State determines cannot or should not be returned to his parent's home, who has a specific factor or condition which makes the child difficult to place and who has been the object of an unsuccessful placement effort.

Act sec. 126 -- Related Party Sales

The bill would clarify that non-resident aliens are not entitled to the related party exception for certain land sales at less than the usually prescribed interest rates.

Act sec. 127 -- State Legislators

Subsections (h) and (i) of section 162 would be redesignated.

Act sec. 201 -- ACRS

The bill would clarify that the recovery allowances for real property will be based on the number of months the property is in service during the year placed in service or disposed of without regard to the length of the taxpayer's taxable year.

The bill would allow the Secretary of the Treasury to prescribe rules relating to the treatment of recovery allowances where property is transferred in certain related party transfers, sale-leasebacks, and tax-free transfers.

The bill would allow the Secretary to prescribe rules to determine recovery allowances where the property changes use.

The bill would clarify that qualified coal utilization property in the 10-year recovery class means only property which otherwise would be 15-year public utility property.

The bill would clarify that the straight-line recovery method for 15-year real property in the year the property is placed in service shall be based on the number of months during the year the property is in service.

The bill would clarify that the additional depreciation under section 1245 with respect to "section 1245 recovery property" is to be treated as ordinary income in certain partnership transactions.

The bill would clarify that straight-line depreciation, for purposes of determining recapture on section 1250 property, would be based on straight-line depreciation over the recovery period applicable to the particular property.

Act sec. 205 -- Minimum Tax

The bill would clarify that the tax preference for accelerated recovery deductions on real estate continues to apply to corporations (including REITs) as under prior law.

The bill would clarify that the minimum tax is inapplicable where property is recovered over periods longer than the period prescribed under the minimum tax provisions.

Act Sec. 206 -- Earnings and Profits

A reference to sec. 312(k)(4) in sec. 1248 would be corrected.

Act sec. 207 -- Carryovers

The bill would clarify that the NOL carryover period for all unexpired NOL carryovers to 1981 of former REITs would be 15 taxable years.

The bill would clarify generally that NOL or credit carryovers which expired prior to 1981 would not be revived.

The bill would correct a reference to sec. 53(b).

Act sec. 211 -- Investment Tax Credit

The bill would clarify that all eligible property other than 3-year property gets the full investment credit.

The bill would clarify that a building or structural component (such as a warehouse) used as a storage facility in connection with the distribution of petroleum products is not eligible for the investment credit and would not automatically be subject to section 1245 recapture.

Act sec. 212 -- Rehabilitation Expenditures

The bill would clarify that ^abuilding on which a rehabilitation began before 1982 and which is not eligible for the new investment credit will not lose its eligibility for 5-year amortization (under sec. 191).

The bill would clarify that the end of the 24-month period with respect to which the substantiality of a rehabilitation project is measured may be made at any time during the taxable year.

The bill would clarify that a basis adjustment for any allowable investment credit would be required for certain rehabilitations, whether or not the credit is used or carried forward.

The bill would clarify that a taxpayer may make an election to use the straight-line recovery method for a building which has been rehabilitated up to the date which is 3 years after the building was placed in service.

The bill would clarify that only a qualified rehabilitated building is eligible for the rehabilitation credit.

The bill would clarify that the basis of land is not taken into

account in determining whether a rehabilitation is substantial.

Act sec. 213 -- ITC for Used Property

The bill would clarify that the increased used property limitation for the investment credit applies to taxable years beginning after 1980.

Act sec. 221 -- Research Activities

The bill would add the research credit to the list of credits which may be reduced where the taxpayer has income from the discharge of indebtedness.

The bill would provide that "in-house research expenses" do not include lease payments paid or incurred after March 31, 1982, other than payments for the use of computer time by a person who is not the principal user of the computer.

Act sec. 234 -- Subchapter S

The bill would clarify that certain simple trusts may be qualified subchapter S trusts.

Act sec. 251 -- Incentive Stock Options

The bill would clarify that the maximum dollar limit on shares that may be issued under an incentive stock option plan is not affected by nonqualified options issued under the plan.

The bill would clarify that any early disposition of stock acquired pursuant to the exercise of an incentive stock option at a recognized loss would reduce the taxpayer's ordinary income.

The bill would allow a good faith valuation to be used in applying the maximum dollar limit and the carryover of any unused limit, under regulations prescribed by the Treasury.

The bill would provide that the early disposition of stock acquired pursuant to the exercise of a statutory stock option to acquire other stock in connection with the exercise of an incentive stock option will not be treated as a non-recognition transaction under section 1036, etc. Thus, the disposition will result in ordinary income treatment under sec. 421(b).

Act sec. 252 -- Restricted Property

The bill would clarify that the new rules apply to transfers after December 31, 1981, without regard to the recipient's taxable year.

The bill would correct the name of the Securities Exchange Act of 1934.

Act. sec. 261 -- Targeted Jobs Credit

The bill would make clear that wages paid to cooperative education students would continue to be eligible wages even if the student's family's income increased after the initial determination that the family was economically disadvantaged.

The bill would make clear that the WIN credit is not available for amounts paid to any employee in taxable years beginning after December 31, 1981.

The bill would provide that certifications on the day the individual begins work would be valid.

The bill would clarify that individuals participating in work incentive demonstration programs authorized under P. L. 97-35 could be members of a targeted group.

Act sec. 263 -- Charitable Contributions

The bill would make conforming changes to the increased 10-percent corporate charitable contribution limit.

Act sec. 266 -- Motor Carriers

The bill would clarify that motor carrier amortization deductions may carry over in corporate acquisitions to which sec. 381 applies.

Act sec. 301 -- All-savers Certificates

The bill would clarify that credit union share accounts are eligible for the all-savers exclusion.

Act sec. 302 -- Net Interest Exclusion

The bill would clarify that a non-itemizer would not be required to reduce interest income eligible for the net interest exclusion by interest expense, and that an itemizer would be required to reduce such interest income by no more than the excess itemized deductions.

Act sec. 311--Individual retirement savings

The bill would clarify the rules for spousal IRAs to insure that an employee is not denied a deduction for contributions to an IRA for the benefit of a spouse having no compensation merely because the employee is also allowed a deduction for employer contributions to an IRA which qualifies as a simplified employee pension (SEP). In addition, the bill makes it clear that a deduction is allowable for IRA contributions for the benefit of a spouse who has no compensation and who has not attained age 70-1/2 before the close of the taxable year, even if the spouse having compensation is age 70-1/2 or older.

The bill would delete simplified employee pensions (SEPs) from the definition of qualified employer plan. (Except for the limits on contributions, SEPs are generally subject to the tax rules of IRAs).

The bill would clarify the rules allowing a deduction for individual retirement savings by providing that, for a self-employed individual, compensation includes net earnings from self-employment reduced by any amount allowable as a deduction to the individual for contributions made on behalf of the individual to a tax-qualified plan (an "H.R. 10" plan or "Keogh" plan). In addition, the bill would clarify that compensation does not include pension and annuity payments or other deferred compensation.

The bill would clarify the rule allowing an annual deduction for certain voluntary employee contributions made to a qualified employer or government plan after the close of the taxable year by providing that such contributions must be made on account of that taxable year.

The bill would clarify that a 10-percent additional income tax is imposed on early withdrawals (generally, before age 59-1/2) of accumulated deductible employee contributions from either the plan to which the contributions were made, or from a plan to which the accumulated contributions were rolled over or otherwise transferred.

The bill would revise the rules relating to lump sum distributions and rollover amounts under qualified plans and tax-sheltered annuity programs to clarify that partial (as well as total) distributions of accumulated deductible employee contributions are eligible for tax-free rollover treatment.

The bill would clarify that accumulated deductible employee contributions payable to a beneficiary of a deceased employee under a tax-qualified plan are eligible for the estate tax exclusion only if any lump sum distribution also payable to the beneficiary under the plan is eligible for the exclusion.

The bill would clarify that an owner-employee (a sole proprietor, or a partner whose partnership interest exceeds 10 percent) is permitted to make deductible employee contributions to a tax-qualified plan (an "H.R. 10" plan or "Keogh" plan) notwithstanding the rules which may preclude nondeductible employee contributions by the owner-employee.

The bill would clarify effective date provisions for the estate tax and gift tax provisions relating to individual retirement savings and would make clerical amendments.

Act sec. 312 -- Keogh Plans

The bill would amend the minimum contribution rule applicable to simplified employee pensions (SEPs) to permit the exclusion of self-employed individuals. This change would conform the minimum contribution rule for SEPs to that for H.R. 10 plans and plans maintained by subchapter S corporations.

The bill would increase the limit on contributions to an IRA to which an employer makes contributions under a SEP from \$15,000 to \$17,000 to allow the IRA to accept employee contributions of \$2,000 in addition to employer contributions of \$15,000

The bill would correct a reference in section 401(j)(3).

The bill would clarify the effective date provision to apply to all plans, whether or not they cover a self-employed individual.

Act sec. 321 - Dividend Reinvestment

The bill would clarify that the ACRS normalization requirements do not apply in determining whether a public utility is eligible to make tax-free distributions under a dividend reinvestment plan.

Act sec. 331 -- Payroll-based tax credit for employee
stock ownership plans

The bill would add provisions relating to regulated public utilities which would conform the rules for the payroll-based tax credit for ESOP contributions to the rules for the investment-based tax credit for ESOP contributions.

The bill would clarify that the tax-qualified status of an ESOP is not affected merely because employer contributions are determined solely by reference to the payroll-based tax credit allowable to the employer for the contributions.

Act sec. 334 -- Cash distributions from an employee stock
ownership plan (ESOP)

The bill would clarify that certain cash distribution provisions, if provided under a tax credit ESOP of an employer whose stock generally is required to be held only by employees, will not affect the plan's status either under the qualified plan rules or those additional rules applicable to tax credit ESOPs.

Act. sec. 337 -- Distribution of employer securities from a tax credit employee stock ownership plan in the case of a sale of employer assets or stock

The bill would clarify the rules permitting a distribution to a participant under a tax credit ESOP in the event of the participant's transfer from one employer to another incident to a sale of assets by the former employer to the new employer.

Act sec. 403 -- Marital Deduction

The bill would clarify that qualified terminable interest property ("QTIP property") included in the estate of a decedent is eligible for a "step-up" in basis.

The bill would clarify that QTIP property included in a decedent's estate would be treated as passing from the decedent, such as for purposes of the charitable or marital deduction.

The bill would clarify that the value of any interest in property can be deducted only once in computing the estate tax or gift tax liability.

The bill would clarify that the special disposition rules for lifetime transfers by the donee of QTIP property applies only to the remainder interest in QTIP property. The treatment of the life estate in QTIP property is governed by the rules applicable to life estates generally.

The bill would clarify that the lifetime QTIP election must be made no later than April 15 of the succeeding year (i.e., the due date of the annual gift tax return).

The bill would clarify that transfers by the donor spouse of any retained interest in QTIP property after the transfer of

the life estate in QTIP property to the donee spouse would not be treated as a transfer for estate and gift tax purposes. This rule would not apply after a subsequent disposition by the donee spouse or the death of the donee spouse.

The bill would clarify that an annuity may not qualify as a qualifying income interest.

Act. sec. 421 -- Farm Valuation

The bill would allow "tacking" of material participation by a retired spouse with active management by the surviving spouse to qualify property for current use valuation in the surviving spouse's estate.

The bill would clarify that recapture on certain tax-free exchanges occurs only to the extent non-qualified property is received.

The bill would correct a reference to the word "transfer" in section 1040.

The bill would clarify that the only retroactive amendment made by ERTA with respect to the cessation of qualified use is the provision of sec. 2032A(c)(7)(A) permitting a qualified heir a 2-year grace period to begin using the property in a qualified use.

The bill would clarify that the period to reinstate current use valuation by reason of the retroactive amendments did in no event expire before February 16, 1982.

The bill would clarify that the right to make a late initial election is available only if one of ERTA's retroactive amendments applies to the estate.

Act sec. 422 -- Extended Payments

The bill would correct a reference to the 35-percent requirement of sec. 6166 and would make conforming amendments relating to the relationship between acceleration of the tax and sec. 303 redemptions.

Act sec. 424 -- Gifts Made Within 3 years of Death

The bill would clarify that the special 3-year rule would apply for purposes of sec. 6166 only to determine eligibility for deferred payment treatment.

The bill would apply the 3-year inclusion rule to interests which would have been includible in the decedent's estate under secs. 2036, 2037, and 2038 whether or not a gift tax return was required with respect to the transfer.

The bill would not apply the 3-year rule to exercises of general powers of appointment.

The bill would allow the executor of a decedent's estate to elect to have the estate and gift tax amendments made by ERTA not apply in any case where the decedent had made a gift before August 13, 1981, and within 3 years of death on which a gift tax had been paid.

Act sec. 426 -- Disclaimers

A clerical amendment would delete a clause which was duplicated in the Act.

Act sec. 501 -- Straddle Loss Deferral

The bill would clarify that the loss deferral rules of sec. 1092 would apply in the case of unrecognized gain, whether or not realized.

The bill would delete certain language of sections 1092 (a) (1) (A) and 1092 (d) (4) as redundant.

Act sec. 503 -- Regulated Futures Contracts

The bill would clarify that gain is recognized under the mark-to-market system upon any transfer, as well as any termination of a futures contract.

The bill would clarify that holding periods are not tacked when delivery is taken upon the termination of a regulated futures contract that was marked to market.

The bill would clarify that the time for identifying a mixed straddle is not later than the day the futures contract forming part of the straddle is acquired.

The bill would allow the I.R.S. to treat, either by regulations or otherwise, certain holdings in a limited liability enterprise as attributable to active management in order to qualify the enterprise as eligible for the hedging transaction exception from the marked-to-market and other straddle rules.

Act sec. 601 -- Royalty Credit

The bill would make several clerical changes.

Act. sec. 603 -- Stripper Oil

The bill would clarify the transfer rule of section 4994(g)(2) to assure that it disqualifies only property which has actually been transferred.

Act sec. 722 -- Valuation Penalty

The bill would clarify that the \$1,000 de minimis exception to the valuation overstatement penalty applies to the aggregate of all overstatements of the taxpayer made during the taxable year. A clarification would be made that the penalty applies where the stated value is exactly 150 percent of the actual value.

Act sec. 724 -- Deposit Claims

A cross-reference to sec. 6660 would be corrected.

Act sec. 725 -- Estimated Tax

The bill would clarify that the underpayment penalty would not apply where the tax liability reduced by the income tax withheld is less than specified amounts (\$500 in 1985 and thereafter).

The bill would also correct a reference to section 6015(c).

Act sec. 802 -- Prepaid Legal Services

The bill would clarify that the exemption provision, as well as the exclusion provision, relating to group legal service plans will terminate after 1984.

Act sec. 823 -- Private Foundations

The bill would correct a clerical error.

B. Technical Corrections to the Crude Oil Windfall Profit Tax Act of 1980

Section 4988(b)(3)(C) Net Income Limitation-- Taxable periods for computing cost depletion

In applying the net income limitation, producers must compute their net income as if cost depletion had been claimed for "all taxable periods" (sec. 4988(b)(3)(C)). These periods were intended to include all periods during which the producer owned the property.

The amendment would change "taxable periods" to "taxable years." This is necessary since the definition of taxable periods, which was changed in the conference report, does not include periods before March 1980.

Section 4989(b)(3)-- Inflation adjustments

Under section 4989(b), the inflation adjustment for any quarter is based on the difference between the GNP deflator for the second preceding quarter and that for the second quarter of 1979. The second revision of the GNP deflator is used for this purpose.

The amendment would clarify that the GNP deflator for the second quarter of 1979 is to be measured using the revision most consistent with the second revision of the GNP deflator for the second preceding quarter.

Section 4991(d)(1) --National Petroleum Reserve

Federal production from U.S. owned petroleum reserves is taxed as tier two oil,

The amendment would correct the reference to "national petroleum reserve" in section 4991(d) to "naval petroleum reserve."

Section 4992(b)--Definition of "independent producer"

Under section 4992(b), an independent producer eligible for lower rates on tier 1 or tier 2 oil and for the stripper well exemption is defined as a producer who is not integrated during the calendar quarter.

The bill would change the quarterly test of independent producer status to an annual test like that used for depletion purposes. The amendment would take effect starting in 1983.

Section 4992(c)(2)-- Allocation of independent producer

If an independent's production exceeds 1,000 barrels a day, the 1,000 barrel amount must be allocated between tiers one and two in proportion to production in those tiers.

The amendment would provide that only production eligible for lower rates is to be considered in making this allocation.

Section 4992(d)(3)(B)-- Small producers transfers

Section 4992(d)(3)(B) refers to both "interests in property" and to "property."

The amendment would conform these references.

Section 4993(c)(2) -- Incremental tertiary project beginning date

Section 4993(c)(2)(B) requires qualified tertiary recovery projects to have a beginning date after May 1979. A project beginning date is the latter of the date injection begins or the date of certification.

The amendment would clarify that projects in fact started before June 1979 cannot qualify through a post-May 1979 certification.

Section 4994(c)(2) -- Refunds for Tertiary projects

Section 4994(c)(2) refers to the same person as both the taxpayer and the producer. The amount would make both references to the producer.

Section 4994(e) -- Alaskan exemption

A literal reading of section 4994(e) would result in taxing non-commercial quantities of oil produced north of the Arctic Circle and within 75 miles of the TAPs.

The amendment would provide that all oil produced north of the Arctic Circle (other than Sadlerochit Oil) is exempt from tax.

Section 4995(a)(3)(A) and (C) -- Liberalization of withholding adjustments

Under present law, any error in the amount withheld by the first purchaser with respect to a producer's windfall profit tax liability can be corrected by future withholding adjustments. Such adjustments cannot be required (1) in excess of the windfall profit amount of any payment, or (2) beyond the close of the calendar year of removal. These rules were designed to protect small producers such as small royalty owners who are now generally exempt from the windfall profit tax.

The amendment would streamline the withholding adjustment provisions of current law by striking the windfall profit limitation and by granting the Secretary authority to require adjustments after the close of the calendar year of removal. The committee reports would indicate that the Treasury should place a limitation on how long after the original error a correction can be made. Similarly, the reports would indicate agreement with the current cut off date for voluntary withholding adjustments. The amendment would be effective upon enactment.

Section 4995(a)(4) -- Deemed payment date

Present law provides that withheld windfall profit taxes are deemed paid on the last day of February following the close of the calendar year in which oil is removed from the premises.

The amendment would limit this deemed payment date rule to windfall profit tax and administrative purposes.

Section 4996(a) -- Treatment of Net Profits Interests

Under section 4996(a), the producer responsible for payment of the windfall profit tax on oil is defined by reference to the income tax concept of economic interests. Thus, in the case of a net profits interest, the working interest owner is taxed on all cost recovery oil allocated to him by the net profits agreement.

The bill would require allocation of cost recovery oil in proportion to the shares of net profits for net profits agreements entered into after March 31, 1982.

Section 4996(b)--Definition of "crude oil"

The bill would clarify the definition of crude oil to remove any doubt that condensate from oil and gas wells is taxable whether recovered before or after removal from the premises on which it is produced.

Section 4997 etc.--Penalty for failure to file returns

The bill would add a penalty for failure to file returns and make statements required under section 4997(a).

Sections 6015, 6154, 6654, and 6655--Estimated Tax

The bill would permit overpayments of windfall profit tax to be taken into account in the payment of estimated income tax to the extent provided for by the Treasury.

Section 44D(f)

The date of "December 3, 1979, in section 44d(f) would be corrected to read "December 31, 1979."

Section 193(b)(1) -- Tertiary injectants

The phrase "during the taxable year" would be deleted from section 193(b)(1). The phrase is redundant in light of the taxable year reference in section 193(a).

Section 223(a)

Section 223(a) of the Crude Oil Windfall Profit Tax Act of 1980 amended section 48(a)(10). The amendment should have been to section 48(a)(10)(A).

Section 613A(c)(10)(E)--Transfers to corporations

Under section 613A(c)(10), depletion is not lost on property transferred to a corporation by an individual if certain conditions are satisfied. One of these is that the stock of the corporation be issued solely in exchange for oil and gas properties.

The bill would clarify that oil and gas property includes necessary production equipment such as production casing and pumps.

C. Technical Corrections to the Installment Sales Revision Act of 1980

The bill would clarify that, in applying the "related party" rules of section 1239 (relating to the treatment of certain sales of depreciable property), "back-attribution" rules would not apply in determining who are related parties.

The bill would clarify that the receipt of like-kind property will qualify as a "payment" for purposes of determining whether a transaction is an installment sale.

The bill would make a clerical amendment to section 453B(d)(2).