SUMMARY OF TAX BILLS AND PROPOSED LEGISLATION

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Prepared by the Staff

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1. Continuation of Postponement of Effective Date for Certain NOL Carryover Rules

Present Law

The Tax Reform Act of 1976 substantially revised Code sections 382 and 383, relating to the carryover of corporate net operating losses and other corporate tax attributes following taxable acquisitions or tax-free reorganizations. Because of problems with the 1976 Act revisions which have been brought to the attention of the tax committees, the effective dates for these revisions had been postponed in order to allow time for further study and analysis.

Under present law, the 1976 Act revisions relating to taxable acquisitions are scheduled to become generally effective with respect to taxable years beginning after June 30, 1984. Those relating to tax-free reorganizations are now scheduled to become effective with respect to a reorganization pursuant to a plan of reorganization adopted by either party on or after January 1, 1984.

Explanation of the Proposal

The proposal would postpone the effective date for the 1976 Act revisions until November 1, 1984, both for tax-free reorganizations and taxable acquisitions.

Revenue Effect

The proposal is estimated to decrease budget receipts by less than $10 million annually.

2. Extension of the Special Tax Rules for the Payment-in-Kind Program

Present Law

PIK program

The Department of Agriculture (USDA) conducted an acreage reduction program for the 1983 crop year under which producers of corn, wheat, grain sorghum, rice, and upland cotton received commodities as payment for withdrawing land from production. USDA has announced that this program will be extended through the 1984 crop year for wheat. The payment-in-kind (PIK) program is in addition to other acreage reduction programs conducted by USDA; any payments made under the other programs are made in cash.

The Agriculture Act of 1949 presently limits payments under USDA acreage reduction programs to $50,000 per producer. In early 1983, USDA determined that this $50,000 limit does not apply to payments that are made in kind rather than in cash. On November 1, 1983, the General Accounting Office released a legal opinion that the $50,000 limit applies to all payments made under USDA acreage reduction programs, whether made in kind or in cash.

Tax treatment of PIK payments

Present tax rules (P.L. 98-4, enacted March 11, 1983) treat commodities received by a producer under a 1983 PIK program as if they had been grown on the land withdrawn from production under the PIK program. (PIK payments received with respect to crops that would have been planted in 1983, but harvested in 1984, are also eligible for this treatment.) This special tax treatment permits producers to defer recognition of income on PIK commodities until the commodities are sold.

Because income from PIK commodities generally is treated as active farming income rather than passive investment income, PIK participants are not disqualified, solely by reason of participation in the PIK program, from various special tax provisions available to taxpayers engaged in the business of farming. Among these special provisions are rules under which farmers are excused from making quarterly payments of estimated tax and provisions permitting current deduction of certain farm expenditures which otherwise would be required to be capitalized.

Also, because PIK income is treated as active farming income, and because land withdrawn from production is treated as if it were actively used in a farming operation, the applicability of other income, employment, and estate tax provisions is not affected solely as a result of a taxpayer's participation in the PIK program. Present law also includes special rules treating certain PIK income received by cooperatives as patronage-source income.

Absent the special tax treatment enacted in P.L. 98-4, PIK income would have to be recognized by the producer on the date it is received (or constructively received) and might be treated as passive investment income, rather than active business income, under various Code provisions.

Explanation of the Proposal

The proposal would extend the special PIK tax rules to the 1984 wheat program, with modifications.

Under the proposal, a participant in the 1984 PIK program for wheat would be eligible for tax treatment like that accorded participants in the 1983 program only to the extent that PIK payments received by the participant did not exceed $50,000 (reduced by any cash payments received under USDA acreage reduction programs). This treatment would apply to all wheat that would be harvested in 1984 but for withdrawal of land from production under the PIK program.

The tax treatment accorded 1983 PIK participants would be limited under the proposal to payments determined to be properly authorized under the Agriculture Act of 1949 (and land withdrawn from production in exchange for a properly authorized payment). The determination of whether payments in excess of $50,000 (reduced by any cash payments for acreage production) are authorized under the Agriculture Act of 1949 would be made in a declaratory judgment proceeding which the Comptroller General is directed to bring in the U.S. District Court for the District of Columbia within six months of the proposal's enactment. The treatment accorded cooperatives under P.L. 98-4 and the special estate tax treatment for land withdrawn from production under the 1983 PIK program would not be affected by any determination in this proceeding.

Effective Date

The proposal generally would apply with respect to wheat received (and land withdrawn from production) under the 1984 PIK program. Also, the special tax benefits would not apply to payments received (and land withdrawn from production) under the 1983 PIK program to the extent that 1983 PIK payments are determined not to have been authorized under the

Agriculture Act of 1949.

Revenue Effect

Based upon data presently provided by the Department of Agriculture, enactment of the 1983 PIK Tax Treatment Act is estimated to have had the following effect on budget receipts:

1984	1985	1986
(fiscal years) (millions of dollars)		
-412	-505	+917

Enactment of the proposal is estimated to affect anticipated budget receipts (reflecting present law, including the 1983 Act) as follows:

	1984	1985	1986
	fiscal years (millions of dollars)		
1984 PIK Program (with $50,000 limit)	-7	-8	+15
Modify 1983 PIK Program if payments determined unauthorized	+82	+101	-183
Net Revenue Effect of Proposal	+75	+93	-168

3. H.R. 677--Messrs. Shannon, Conable, Duncan, Anthony, and Frenzel, and others

Tax Exclusion for Value of Certain Lodging Furnished by Educational Institutions Prior to 1984

Present Law

Present law (Code sec. 119) excludes from an employee's gross income the value of lodging provided by the employer if (1) the lodging is furnished for the convenience of the employer, (2) the lodging is on the business premises of the employer, and (3) the employee is required to accept the lodging as a condition of employment. Several court decisions have held that on-campus housing furnished to faculty by an educational institution did not satisfy the section 119 requirements, and hence that the fair rental value of the housing (less any amounts paid for the housing by the employee) was includible in the employee's gross income and constituted wages for income tax withholding and employment tax purposes.

Explanation of the Bill

The bill would provide an exclusion, for income and employment tax purposes, for the value of certain lodging furnished by, or on behalf of, schools, colleges, and universities to employees (or the employee's spouse or dependents). The bill would apply if (1) the lodging is located on a campus of, or in the proximity of, the educational institution and (2) the rent paid by the employee at least equals the necessary direct costs paid or incurred by the institution in providing the lodging and constitutes a reasonable rent (as defined in the bill).

In any case in which lodging would qualify for the exclusion but for the fact that the rent paid is less than the necessary direct costs, only the excess of (1) the amount of the necessary direct costs over (2) the rent paid would be includible for income, FICA, and FUTA tax purposes.

Effective Date

The provisions of the bill would apply retroactively for taxable years or periods beginning before January 1, 1984.

Revenue Effect

The provisions of the bill are estimated to result in a one-time reduction of budget receipts of less than $5 million.

Possible Modifications

1. The bill conditions the exclusion on payment by the employee of a "reasonable" rent, an amount which may differ from both fair market value and the amount of necessary direct costs. Definitional problems would be alleviated by deleting the reference to "reasonable" rent, and providing instead that amounts would be includible on account of qualified campus lodging only to the extent that the rent is less than the necessary direct costs paid or incurred by the educational institution in providing the lodging.

2. In the case of off-campus lodging, the exclusion provided in the bill would apply where the lodging is in close proximity (rather than merely in proximity) to the school or university.

3. In conformity with the tax exclusion, the bill would provide that tax-free lodging is not included in the wage base for social security benefit purposes, so that an employee could not receive social security benefits with respect to amounts on which no FICA taxes have been paid.

4. The provisions of the bill would not apply where the lodging had been treated when provided as remuneration; i.e., the bill would not authorize refunds of taxes previously paid.

4. H.R. 2568--Messrs Shannon, Frenzel, Matsui, Jenkins, Thomas (Calif.), and Rangel, and others

Extend Exclusion for Certain Educational Assistance Programs

Present Law

Under present law, amounts paid or expenses incurred by an employer for educational assistance provided to an employee are excluded from the employee's income and from wages for employment tax purposes, if paid or incurred pursuant to a written plan that meets specified requirements, including certain nondiscrimination requirements (Code sec. 127). The exclusion applies whether or not the education paid for by the employer is related to the employee's job.

The exclusion is scheduled to expire for taxable years beginning after December 31, 1983.

Explanation of the Bill

The bill would make permanent the section 127 exclusion for certain educational assistance programs.

Effective Date

The bill would be effective on the date of enactment.

Revenue Effect

The provisions of the bill are estimated to reduce fiscal year budget receipts by $25 million in 1984, $43 million in 1985, $46 million in 1986, $50 million in 1987, and $54 million in 1988.

Possible Modifications

1. The bill would provide a two-year extension of the exclusion, rather than a permanent extension.

2. The bill would place a dollar or percentage cap on the amount of educational assistance benefits received by an employee that qualify for the exclusion.

3. As a result of a recent court decision, the question has arisen as to whether present law is adequate to preclude

a business from obtaining current deductions for pre-funding an educational assistance program for the payment of future benefits which would not be includible in income until later years (subject to the section 127 exclusion, if applicable). Thus, in one case a professional corporation of doctors received a current deduction for amounts contributed to a trust to pay college tuition in the future to children of the doctors, even though no amounts were currently includible in income (Greensboro Pathology Associates, P.A. v. United States, 699 F.2d 1196 (Fed. Cir. 1982)).

The bill would provide that no current deduction is available to an employer for amounts accumulated to provide educational assistance to employees, their spouses, or their dependents unless the employee is currently taxed on such amounts or would be currently taxed but for the section 127 exclusion.

5. H.R. 3030--Mr. Schulze

Exclusion for Certain Unemployment Compensation Paid in 1979

Present Law

Prior to enactment of the Revenue Act of 1978, the Internal Revenue Service had determined in a series of rulings that unemployment compensation paid under most government programs was tax-free. The 1978 Act made includible in gross income a portion of unemployment compensation benefits paid to taxpayers who had substantial other income during the year.

This change was made effective for payments of unemployment compensation made after 1978 (Code sec. 85). Thus, a portion of such benefits paid after 1978 may be subject to income tax even if attributable to periods of unemployment before 1979.

Explanation of the Bill

The bill would amend the Revenue Act of 1978 to provide that the provisions of that statute making includible in income a portion of unemployment compensation benefits would not apply to unemployment compensation (1) paid by reason of a work stoppage which began on March 19, 1973 and ended before July 19, 1973, and (2) paid in 1979 after the employer's appeal to the U.S. Supreme Court was dismissed on April 2, 1979, and its petition for rehearing denied on May 21, 1979. The bill would also extend until one year after its enactment the period for claiming any credit or refund, attributable to provisions of the bill, which would otherwise be precluded by the statute of limitations or other rule of law.

The intended beneficiaries of the bill are understood to be individuals represented (or formerly represented) in collective bargaining by Local (8)-901 of the Oil, Chemical, and Atomic Workers International Union, located in Marcus Hook, Pennsylvania, who were paid unemployment compensation in 1979 by reason of the 1973 work stoppage described above.

Effective Date

The bill would be effective on enactment.

Revenue Effect

The provisions of the bill are estimated to result in credits or refunds of less than $500,000.

Possible Modification

The bill would be made generally applicable by providing that the 1978 Act provisions on the taxation of certain unemployment compensation benefits are not to apply to any such benefits that are attributable to pre-1979 weeks of unemployment beginning before December 1, 1978, even if the benefits are actually paid after 1978. Thus, unemployment compensation benefits would be includible in income pursuant to Code section 85 only if (1) the benefits are attributable to weeks of unemployment beginning on or after December 1, 1978 and (2) payment of the benefits is made after 1978.

6. H.R. 3529--Mrs. Kennelly and Mr. Heftel

Modify the Tax Treatment of Regulated Investment Companies

Present Law

Qualification as RIC.--A regulated investment company (RIC) is treated, in essence, as a conduit for tax purposes. If a corporation qualifies as a RIC, it is allowed a deduction for dividends paid to its shareholders.

Under present law, a corporation which is a personal holding company (PHC) cannot qualify as a RIC. In general, a PHC is a corporation at least 60 percent of the adjusted gross income of which consists of certain passive income (such as interest and dividends), if more than 50 percent of the value of the stock of the corporation is owned by five or fewer individuals at any time during the last half of the taxable year. Certain attribution rules apply in determining the ownership of stock in a PHC.

Taxation of discount.--In the case of short-term government obligations issued at a discount and redeemable at maturity without interest, the amount of the original discount sale price is deemed to accrue at the earlier of the date the obligation is paid at maturity, or the date the obligation is sold or otherwise disposed of. Thus, with respect to such obligations, accrual-basis taxpayers are not taxable on the discount until the obligation matures.

Clarification of prior statutes.--The Highway Revenue Act of 1982 revised Code section 103(m) to clarify that interest on certain obligations is tax-exempt under section 103 and that, therefore, the shareholders of RICs holding such obligations qualify for tax-free treatment on the distributions of the interest on such obligations. Public Law 97-473 also revised old section 103(m) to provide cross references. Because the Highway Act was signed prior to Public Law 97-473, a question arises as to whether the provision relating to Code section 103(m) contained in the Highway Act was repealed by the later-signed law.

Explanation of the Bill

Qualification as RIC.--The bill would permit a PHC to qualify as a RIC under certain conditions. In the case of a RIC which was a PHC, the bill would provide that any undistributed investment company taxable income of the RIC would be taxed at the highest corporate rate. In addition, any PHC with accumulated subchapter C earnings and profits could not qualify as a RIC unless the corporation qualifies as a RIC at all times on or after June 30, 1983. This provision would be effective for taxable years beginning after 1982.

Taxation of discount.--The bill would permit a RIC to elect to be taxed on original issue discount accruing with respect to any short-term government obligation as it accrues.

Clarification of prior statutes.--The bill clarifies that Public Law 97-473 did not repeal the exempt interest provision added by the Highway Revenue Act of 1982.

Revenue Effect

The provisions of the bill are estimated to have a negligible effect on budget receipts.

Possible Modifications

The rule in the bill that a PHC could not elect RIC status if it has accumulated subchapter C earnings and profits (E&P) would be extended to apply to any corporation (whether or not a PHC). Corporations in RIC status on November 8, 1983, and at all times thereafter would be grandfathered from this requirement.

This rule would be waived where it is later determined by the IRS that the RIC election had been terminated and the corporation makes appropriate dividend distributions to reduce E&P and pays interest and penalties (except where the disqualification was for reasonable cause) comparable to that payable in a dividend deficiency procedure.

7. H.R. 4206--Messrs. Archer, Matsui, Hance Anthony, Martin (N.C.), Ford (Tenn.), Frenzel, Thomas (Calif.), Vander Jagt, Gradison, Jones (Okla.) Moore, Campbell, Conable, Schulze, Duncan, Philip M. Crane, Fowler, and Stark, and Mrs. Kennelly

Income Tax Exemption for Certain Military Personnel Killed Overseas

Present Law

Under present law, military personnel in active service who die while serving in a combat zone, or as a result of wounds, disease, or injury incurred while serving in a combat zone, are exempt from federal tax on income for the year of death and for any prior year ending on or after the first day such individual served in a combat zone (code sec. 692(a)). The term "combat zone" is defined as an area designated by the President, by Executive Order, as an area in which U.S. Armed Forces are or have engaged in combat (sec. 112(c)(2)). Presidential designation of a combat zone triggers certain other special tax rules, including an exclusion for certain amounts of pay for military personnel serving in the zone.

Other Legislation

Public Law 91-235 provided that service personnel who were members of the crew of the U.S.S. Pueblo, illegally detained in 1968 by North Korea, and who died during the detention were eligible for the income tax exemption (and other special tax rules) provided for service personnel who die in combat zones.

Public Law 96-449 provided that any military or civilian U.S. employee held captive in Iran who died as a result of injury, disease, or disability incurred or aggravated while in captive status, would be exempt from Federal tax on income for the year in which the individual died or any prior year ending on or after the first day he or she was in captive status.

Explanation of the Bill

Under the bill, if a member of the U.S. Armed Forces dies while in active service from wounds, disease, or injury incurred as a result of a hostile action outside the United States, then no U.S. income tax would apply for the year of death or for any earlier year ending on or after the first day the individual served outside the United States. In addition, any income tax liability for years preceding the year of first service outside the United States which is unpaid at the date of death would be forgiven or refunded.

Effective Date

The bill would apply with respect to all taxable years (including years beginning before the date of the enactment) of military personnel who died after 1979.

Revenue Effect

The provisions of the bill are estimated to decrease budget receipts by less than $5 million annually.

Possible Modifications

1. The provisions of the bill would be extended to apply in the case of civilian employees of the U.S. Government in the same circumstances as apply under the bill in the case of U.S. Armed Forces personnel.

2. The circumstances under which the provisions of the bill apply would be clarified. Thus, the bill would apply where death occurs as a result of wounds or injury incurred (outside the United States) in either (1) terroristic activities directed against the United States or any of its allies or (2) military action (other than training exercises) involving U.S. Armed Forces resulting from violence or aggression (or threat thereof) against the United States or any of its allies. (The term allies would include any multinational force in which the United States is participating.)

3. The taxable years to which the provisions of the bill apply would be defined as (1) the year of the individual's death and (2) any preceding year in the period beginning with the last year ending before the year in which the wounds or injury were incurred.

8. H.R. 4253--Mr. Dorgan

Deduction for Certain Transportation Expenses Incurred in 1970-74 With Respect to Employment at North Dakota Anti-Ballistic Missile Site

Present Law

Present law allows a deduction for all ordinary and necessary expenses paid or incurred in carrying on a trade or business (Code sec. 162). Traveling expenses (including meals and lodging) which meet these general requirements are deductible if incurred while away from home in the pursuit of a trade or business. No deduction is allowed for personal, living, or family expenses, including the cost of commuting to and from work.

Traveling expenses are considered to be away from home in several different situations. In general, traveling expenses incurred in connection with temporary employment away from home are deductible, while traveling expenses incurred in connection with employment which is considered to be of indefinite or indeterminate duration are not deductible.

In a 1979 case, Frederick v. United States, the U.S. Court of Appeals for the Eighth Circuit upheld the District Court's ruling that the taxpayer's employment as a carpenter at an anti-ballistic missile project in Nekoma, North Dakota, during the years 1970 through 1973, was temporary and, therefore, that the taxpayer's associated transportation expenses were deductible. The District Court had reasoned that because of the seasonal nature of the employment and numerous layoffs during construction, the taxpayer had reasonably expected to be employed on the project for a temporary period only. The Internal Revenue Service has stated that it will not follow the Frederick decision outside the Eighth Circuit.

Explanation of the Bill

Under the bill, traveling expenses in connection with employment at the Nekoma anti-ballistic missile project would be deductible if (1) the expenses are otherwise deductible as a business expense under section 162(a); (2) the expenses were paid or incurred after 1969 and before 1975; and (3) the expenses were claimed on a tax return filed for any taxable year which includes any portion of the period described in (2).

In addition, the bill would permit taxpayers who would be entitled as a result of the provisions of the bill to a refund or credit of any overpayment, but for the operation of the statute of limitations or other rule of law, to obtain the refund or credit by filing a claim within one year after the date of enactment.

Effective Date

The bill would apply retroactively to taxable years ending after 1969, with respect to expenses paid or incurred after 1969 and before 1975.

Revenue Effect

The provisions of the bill are estimated to result in credits or refunds of less than $1 million.

9. H.R. 4271--Mr. Rostenkowski

Increase Limitation on Deduction for Certain Business Gifts

Present Law

Code section 274(b) generally disallows business deductions for gifts to the extent that the total cost of all gifts of cash, tangible personal property, etc., to the same individual from the taxpayer during the taxable year exceeds $25. The statute expressly defines the term gift to mean any amount excludable from gross income under section 102 (relating to gifts and bequests). Thus, section 274(b) comes into play in the case of a payment of cash or property which section 102 treats as a gift, and provides rules for whether such payments may still be deductible by the payor.

The $25 limitation is increased in the case of business gifts of items of tangible personal property which are awarded to employees for certain purposes. Prior to enactment of the Economic Recovery Tax Act of 1981 (ERTA), this exception to the general $25 limitation applied to an item of tangible personal property only if the item's cost did not exceed $100, and only if the item was awarded to an employee by reason of length of service or for safety achievement. ERTA increased this ceiling from $100 to $400, and expanded the specified purposes to include productivity. ERTA did not increase the general $25 limitation on deductibility of business gifts.

Explanation of the Bill

The bill would amend Code section 274(b) by increasing from $25 to $100 the general limitation on the deductibility under sections 162 or 212 of all gifts of cash and property made to the same individual from the taxpayer during the taxable year. The amendment would not modify the exceptions to the general limitation which are enumerated in the statute (e.g., the special limitation on deductibility of gifts of certain tangible personal property awarded to employees for the specified purposes).

Effective Date

The amendment made by the bill would apply to gifts made after the date of enactment of the bill.

Possible Modification

Only business gifts of tangible personal property would be eligible for the increased deduction limitation.

Revenue Effect of Bill as Modified

The provisions of the bill, with the modification described above, are estimated to decrease budget receipts by $32 million in 1984, $69 million in 1985, $78 million in 1986, $89 million in 1987, and $98 million in 1988.