DESCRIPTION OF H. R. 5454

(THE TECHNICAL CORRECTIONS ACT OF 1990)

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the provisions of H.R. 5454 (The Technical Corrections Act of 1990), introduced by Chairman Rostenkowski and Congressman Archer on August 3, 1990.

Part I of the document describes technical corrections to the Revenue Reconciliation Act of 1989 ("1989 Act"). Part II describes technical corrections to the Technical and Miscellaneous Revenue Act of 1988 ("1988 Act") and other recent tax legislation.

The amendments made by the Technical Corrections Act of 1990 are intended to correct, clarify, or conform various recently enacted tax provisions. Provisions in the bill are generally effective as if included in the original legislation, unless otherwise provided. Provisions in the bill for which no descriptions are provided are clerical in nature.

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[1] This document may be cited as follows: Joint Committee on Taxation, Description of H.R. 5454 (The Technical Corrections Act of 1990) (JCX-25-90), August 3, 1990.

I. TECHNICAL CORRECTIONS TO THE REVENUE RECONCILIATION ACT OF 1989

A. Low-Income Rental Housing Tax Credit Provisions (sec. 2(a) of the bill, sec. 7108 of the 1989 Act, and sec. 42 of the Code)

Present Law

A tax credit is allowed in annual installments, generally over 10 years, for qualifying low-income rental housing, which may be newly constructed or substantially rehabilitated property. The credit is expressed as a percentage of the qualified basis of each qualified low-income building. For newly constructed housing and substantial rehabilitation expenditures, the credit percentages generally are adjusted monthly to maintain a present value of the credit stream of 70 percent of qualified basis. For the acquisition cost of existing housing, and housing that is federally subsidized (e.g., that is funded with the proceeds of tax-exempt bonds or below market Federal loans), monthly adjustments generally are made to maintain a present value of the credit stream of 30 percent of qualified basis. The Statement of Managers for the 1989 Act stated that property receiving assistance under the HUD Section 8 Moderate Rehabilitation program would receive neither the 70-percent nor the 30-percent credit. Nonetheless, the statute denies such property only the 30-percent credit.

Qualified basis

The qualified basis of a building is the percentage of eligible basis in a qualified low-income building attributable to the rent restricted low-income rental housing units. This percentage is the lesser of (1) the percentage of low-income units to all residential rental units or (2) the percentage of the floor space of the low-income units to the floor space of all residential rental units.

Eligible basis generally is the cost of acquiring and rehabilitating existing buildings, or the cost of acquiring or constructing new buildings. Eligible basis may be increased by 30 percent for a building within a difficult development area or a designated qualified census tract. A qualified census tract generally is any census tract of a metropolitan statistical area in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income.

Qualified low-income building

A building is treated as a qualified low-income building only if it is a part of a qualified low-income project within 12 months after the building is placed in service. For a project to be a qualified low-income project, a specified percentage of units must be rent restricted and occupied by individuals with income below specified limits. A unit is rent restricted if its gross rent does not exceed 30 percent of the imputed income limitation applicable to the unit. If the tenant's income rises above 140 percent of the income limitation, the unit is treated as rent restricted only if the next vacant unit is rented to a tenant whose income is within the limitation ("the next available unit" rule).

Allocation of credit

In order for a building to be a qualified low-income building, the building owner generally must receive a credit allocation from the appropriate housing credit agency. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The low-income housing credit is allocated by State or local housing credit agencies subject to an annual limitation for each State. The annual credit limitation was $1.25 per resident for years before 1990 and is $0.9375 per resident for 1990.

In recognition of the fact that a State may not allocate or use all available credits in a given year, present law provides that such unused credit may be carried over for one year. If any amounts are still unallocated at the end of the succeeding calendar year: (1) those unallocated amounts are placed in the national pool for allocation among qualifying States, and (2) the State with such unallocated amounts is not eligible for the national pool that year. Unused credits are defined as the difference between the State's annual credit limitation for a calendar year and the State's aggregate credit allocations for that year.

The statute does not address the carryover of returned credits, e.g., credits previously allocated to projects which do not become qualified projects within the applicable time limitation or any credits for which an allocation is cancelled by the mutual consent of the housing credit agency and the allocation recipient. Returned credits may be reallocated during the taxable year they are returned.

Extended low-income use commitment

A taxpayer may claim low income housing credits only if an extended low-income housing commitment is in effect as of the end of such taxable year. The commitment is an agreement between the taxpayer and the housing credit agency which must be binding on the taxpayer and all successors of the taxpayer with respect to the property for which the credit is claimed.

The commitment must require that the portion of the building occupied by low-income tenants (the applicable fraction) for each taxable year in the extended use period is not less than the amount specified in the commitment. The commitment must be recorded under State law as a restrictive covenant and must permit eligible low-income individuals the right to enforce the commitment in the courts of the State in which the property is located. The commitment must provide for an extended period of low-income use. The extended use period must extend at least 15 years beyond the close of the compliance period.

There are two exceptions to the extended use requirement. First, if a building subject to an extended use commitment is acquired by foreclosure, the extended use period terminates on the date of such acquisition. Second, if after the fourteenth year of the compliance period the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building, and if by the end of the fifteenth year of the compliance period the housing credit agency has been unable to present a qualified contract for acquisition by any person who will continue to operate the low-income portion of the building as a qualified low-income building, the extended use period will terminate with the termination of the compliance period. A qualified contract is a bona fide contract to acquire the low-income portion of the building for a price not less than the applicable fraction multiplied by a minimum purchase price.

Termination of credit with respect to bond financed property

Authority to allocate credit available under the annual credit ceiling expires December 31, 1990. Generally, the credit may be claimed only for property placed in service in the year the credit allocation is received. An exception to this rule exists for newly constructed or substantially rehabilitated property which is placed in service within two years after the credit allocation was received, if, at the close of the calendar year of allocation, the taxpayer's basis in the project exceeds 10 percent of its reasonably expected basis. For property which is substantially bond financed, a similar exception (the "10-percent exception") applies only with respect to reasonably anticipated costs of construction, reconstruction, or rehabilitation incurred as of January 1, 1990, if the bonds were issued before 1990 and the building is placed in service before January 1, 1992.

Effective date

The amendments to the low-income credit enacted by the Omnibus Budget Reconciliation Act of 1989 are generally applicable in the case of substantially bond financed property if the property is placed in service after December

31, 1989.

Under the 1989 Act, property that is substantially bond financed (and therefore excepted from credit allocation requirements) must be evaluated under the criteria of the qualified allocation plan applicable to the area in which the project is located, and it must be determined that the credit claimed for the property does not exceed the amount necessary to ensure its economic feasibility (the "conformity to State plan requirement").

Explanation of Provisions

HUD Section 8 programs

The bill contains a technical amendment providing that property receiving assistance under the Section 8 Moderate Rehabilitation program at any time during the compliance period receives neither the 70- nor the 30-percent credit.

Qualified census tracts

The bill clarifies that a qualified census tract is one that is designated by the Secretary of HUD based on the most recent year for which census data is available on household income in such tract.

Qualified low-income building

Under the bill, a qualified low-income building must meet the requirements for a qualified low-income project not later than the close of the first year of the credit period for the building. Buildings for which allocations were made under annual State housing credit ceilings before 1990 would be treated as qualified low-income buildings if the requirements for being a qualified low-income housing project are met by the close of the taxable year following the taxable year in which the building is placed in service.

The bill clarifies that a unit will not cease to be a low-income unit because the low-income tenant's income rises above the income threshold, provided that the rent continues to be restricted. This clarification would apply to determinations of qualified basis made after the date of enactment of the bill or made prior to such enactment if the rent was actually restricted for the period of such determination.

The next available unit rule is applied to deep rent skewed projects only for tenants whose incomes rise above 170 percent of the threshold.

Allocation of credit

Under the bill, returned credits, like unused credits, may be carried over for one year. It is intended that credits allocated in excess of the amount necessary to assure project feasibility could be returned.

It is intended that the Internal Revenue Service's responsibility to ensure taxpayer compliance with the minimum standards of the credit does not authorize the Service to examine particular state agency allocations provided that such minimum standards are satisfied. It also is intended that the Service generally not challenge allocations made pursuant to a plan meeting the statutory requisites.

Extended low-income use

The bill clarifies that the extended low-income housing commitment must prohibit the eviction or termination of tenancy (other than for good cause) of an existing tenant of a low-income unit or any increase in the gross rent inconsistent with the rent restrictions on the unit.

The bill also clarifies that an acquisition by foreclosure will not terminate the extended use period if the Secretary of the Treasury determines that the purpose of the foreclosure is part of an arrangement a purpose of which is to terminate that period.

Finally, the bill contains extended use rules for mixed use buildings. It clarifies that the commitment must prohibit the disposition of a part of a building, and that the qualified contract for a mixed use building must specify a price for the nonlow-income portion equal to fair market value.

Termination of credit with respect to bond financed property

The bill modifies the 10-percent exception for bond-financed property to apply only if the bonds are issued before 1991, and the building is placed in service before January 1, 1993. The bill also conforms the 10-percent exception for bond financed projects to that for non-bond financed projects.

Effective date

Under the bill, the amendments to the low-income housing credit provisions enacted by the Omnibus Budget Reconciliation Act of 1989 are generally applicable in the case of substantially bond financed property where such property is placed in service after December 31, 1989, but are applicable only with respect to bonds issued after

December 31, 1989.

In addition, the conformity to State plan requirement applies in the case of property substantially financed with bonds if the bonds are issued after December 31, 1989.

B. Research Credit Provision

Effective date of extension of credit for qualified research expenditures (sec. 2(b) of the bill, sec. 7110 of the 1989 Act, and sec. 41 of the Code)

Present Law

For purposes of the research credit provided for by section 41, the credit will not apply to amounts paid or incurred after December 31, 1990, and a special rule to prorate qualified research expenditures applies in the case of any taxable year which begins before October 1, 1990, and ends after September 30, 1990. Under this special proration rule, the amount of qualified research expenses incurred by a taxpayer prior to January 1, 1991, is multiplied by the ratio that the number of days in that taxable year before October 1, 1990, bears to the total number of days in such taxable year before January 1, 1991.

Explanation of Provision

The research credit will not apply to any amounts paid or incurred in a taxable year which begins after September 30, 1990.

C. Corporate Provisions

1. Treatment of certain high-yield original issue discount obligations (sec. 2(c) of the bill, sec. 7202 of the 1989 Act, and sec. 163 of the Code)

Present Law

The 1989 Act imposed special limitations upon the deductibility of interest on applicable high-yield discount obligations ("AHYDO") issued by a corporation. No deduction is allowed for the disqualified portion of the original issue discount (OID) on an AHYDO and the remainder of the OID is not deductible until paid. The disqualified portion cannot exceed the amount of the OID on the instrument. Deductions are not disallowed for amounts that qualify as qualified periodic interest payments (i.e., generally, interest based on a fixed rate and payable unconditionally at fixed periodic intervals of 1 year or less during the entire term of the debt instrument).

An AHYDO is a debt instrument with (1) a maturity date more than five years from date of issue, (2) a yield to maturity, equal to, or in excess of, five points over the applicable Federal rate, and (3) significant OID. For purposes of determining whether a debt instrument is an AHYDO, any payment to be made in the form of another obligation (or stock) of the issuer (or a related person) is assumed to be made when such obligation (or stock) is required to be made in cash or in property other than such obligation (or stock) (the "payment assumption rule").

Rules similar to the payment assumption rule apply for purposes of determining when the OID portion of an AHYDO is paid.

Explanation of Provision

The bill modifies the manner in which the payment assumption rule is to be applied for determining whether certain instruments are AHYDOs. Under the bill, the payment assumption rule does not apply to a payment in stock for purposes of determining the debt instrument's yield to maturity. However, the payment assumption rule will continue to apply to a payment in stock for purposes of determining whether the debt instrument's term is greater than 5 years and whether the debt instrument has significant OID.

The bill also provides that rules similar to the payment assumption rule will apply in determining the OID portion of an AHYDO. Thus, under the bill, the portion of the yield of an AHYDO that is paid in obligations (or stock) of the issuer (or a related party) is treated as OID that is subject to the special limitations.

2. Limitation on deduction for certain interest paid by corporation to related person (sec. 2(d) of the bill, sec. 7210(a) of the 1989 Act, and sec. 163(j) of the Code)

Present Law

Subject to certain limitations, a taxpayer may deduct interest paid or accrued on indebtedness within a taxable year (sec. 163(a)). The 1989 Act added a so-called "earnings stripping" limitation on interest deductibility with respect to certain interest paid by corporations to related persons. In general, the rule disallows deductions for certain amounts of "disqualified interest," that is, interest paid by a corporation to related persons that are not subject to U.S. tax on the interest received, if two thresholds are exceeded. (If, in accordance with a U.S. income tax treaty, interest income of a related person is subject to a reduced rate of U.S. tax, a portion of the interest paid to the related person is deemed to be interest on which no tax is imposed.)

To exceed the first threshold, the corporation must have "excess interest expense" as that term is defined in the Code for this purpose. To exceed the second threshold, the corporation must have a ratio of debt to equity as of the close of the taxable year in question that exceeds 1.5 to 1. For this purpose, a corporation's ratio of debt to equity generally means the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets less such total indebtedness. The Secretary is also authorized to prescribe by regulations other days during the taxable year on which the debt-equity ratio must be tested.

Explanation of Provision

The bill clarifies that for purposes of determining whether a corporation's ratio of debt to equity exceeds 1.5 to 1, the term "ratio of debt to equity" means the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets reduced, but not below zero, by such total indebtedness. Thus, the provision clarifies that if a corporation's total indebtedness is equal to or exceeds the sum of its money and all other assets, then the corporation's ratio of debt to equity is in excess of 1.5 to 1 for purposes of these rules.

The bill also clarifies that the provisions of section 163(j) apply to a corporation for any taxable year if it has excess interest expense, and if its ratio of debt to equity exceeds 1.5 to 1 either on the last day of that taxable year or on any other day prescribed by the Secretary in regulations. Thus, the bill clarifies that if a corporation does not have a debt to equity ratio in excess of 1.5 to 1 on the last day of its taxable year, but does have a debt to equity ratio in excess of 1.5 to 1 on another day during the taxable year on which regulations require that ratio to be computed, then the corporation's deduction for interest expense for the taxable year may be limited under the earnings stripping rules.

D. Employee Benefit Provisions

1. Excise tax on disposition of employer securities (sec. 2(f) of the bill, sec. 7301 of the 1989 Act, and sec. 4978B of the Code)

Present Law

Under present law, an excise tax applies to certain dispositions of employer securities acquired by an employee stock ownership plan (ESOP) in a transaction to which the partial interest exclusion of section 133 applies. Similar excise taxes apply to dispositions of securities acquired in a transaction to which the nonrecognition treatment of section 1042 applied and to dispositions of securities acquired in a transaction to which the estate tax deduction (former sec. 2057) applied. The tax on section 133 securities does not apply to "qualified securities (as defined in section 4978(e)(2)" or to "qualified employer securities (as defined in section 4978A(f)(2)), as in effect on the day before the date of the enactment" of the excise tax.

Explanation of Provision

The bill clarifies that the tax on securities acquired in a transaction to which section 133 applies does not apply to securities to which a tax is imposed under the provisions relating to dispositions of securities acquired in a section 1042 or section 2057 transaction. This clarification conforms the statute to Congressional intent that only one excise tax should be imposed with respect to the disposition of any employer securities and eliminates an unintended inference that the excise tax does not apply in the case of nonpublicly traded securities.

2. Definition of elective deferrals (sec. 2(k) of the bill, sec. 7811 of the 1989 Act, and sec. 403(b)(12)(A) of the Code)

Present Law

Under present law, for purposes of applying the nondiscrimination rules to tax-sheltered annuities, contributions to a tax-sheltered annuity are not considered made pursuant to a salary reduction agreement if the contributions are made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations (sec. 403(b)(12)). Under present law as amended by the Omnibus Reconciliation Act of 1989, a contribution to a tax-sheltered annuity under a salary reduction agreement is not treated as an elective deferral for purposes of the limit on elective deferrals if the contribution is made pursuant to a one-time irrevocable election made by the participant at the time of initial eligibility to participate or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations (sec. 402(g)).

Explanation of Provision

The bill conforms the definition of salary reduction contributions under a tax-sheltered annuity for nondiscrimination testing purposes to the definition of elective deferrals by amending section 403(b) to provide that contributions under a tax-sheltered annuity are not considered to be made under a salary reduction agreement if the contribution is made pursuant to a one-time irrevocable election made by the participant at the time of initial eligibility to participate or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations.

E. Foreign Provision

Definition of annual accounting period for foreign corporations (sec. 2(g) of the bill, sec. 7401 of the 1989 Act, and sec. 6038 of the Code)

Present Law

A U.S. person must furnish the IRS certain information with respect to any foreign corporation which the person controls (sec. 6038). This information is to be furnished for the annual accounting period of the foreign corporation ending with or within the U.S. person's taxable year. For purposes of section 6038, the annual accounting period of a foreign corporation is the annual period on the basis of which the corporation regularly computes its income in keeping its books (sec. 6038(e)(2)).

Similarly, the taxable year of a corporation is generally its annual accounting period, which means for this purpose the annual period on the basis of which the corporation computes its income in keeping its books (sec. 441(b)(1) and (c)). However, the 1989 Act added new Code section 898, under which in certain cases a "specified foreign corporation" is required to adopt a taxpayer year based on the taxable year of its U.S. shareholders.

Explanation of Provision

The bill clarifies that in the case of a specified foreign corporation (as that term is defined in section 898) the corporation's annual accounting period, for purposes of the information reporting and other rules of section 6038, will be its taxable year.

F. Like-Kind Exchange Provision

Like-kind exchanges involving related persons (sec. 2(h) of the bill, sec. 7601 of the 1989 Act, and sec. 1031 of the Code)

Present Law

The 1989 Act provided that if a taxpayer exchanges property with a related person, the exchange would otherwise be eligible for nonrecognition treatment as a like-kind exchange under section 1031, and within two years either the related person or the taxpayer disposes of the property, the original exchange will not qualify for nonrecognition under section 1031. Certain dispositions will not invalidate the nonrecognition treatment of the original exchange. However, nonrecognition will not be accorded to any exchange which is part of a transaction or series of transactions structured to avoid the purposes of the related person rule.

For purposes of this rule, the term "related person" means any person bearing a relationship to the taxpayer described in section 267(b).

Explanation of Provision

The bill provides that the term "related person" includes any person bearing a relationship to the taxpayer described in section 707(b)(1) (relating to certain partnerships). The term continues to include any person bearing a relationship to the taxpayer described in section 267(b).

The amendment is effective with respect to transfers after August 3, 1990.

G. Accounting Provision

Period of amortization for franchises, trademarks, and trade names (sec. 2(i) of the bill, sec. 7622 of the 1989 Act, and sec. 1253 of the Code)

Present Law

Section 1253(d)(3) provides that amounts paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name are treated as amounts charged to capital account unless an exception under section 1253(d)(1) or (2) applies. Under general income tax principles, amounts charged to capital account under section 1253(d)(3) are amortized over the useful life of the franchise, trademark, or trade name. Section 1253(d) permits a taxpayer to amortize certain amounts over 25 years rather than under this general rule, if the taxpayer so elects.

Section 1253(d)(4) provides that for purposes of determining the period of amortization under section 1253(d), there shall be taken into account all renewal options and any other period for which the parties reasonably expect the agreement to be renewed.

Explanation of Provision

The bill clarifies that section 1253(d)(4) provides rules for determining the period of amortization for income tax purposes under the Code. Thus, a taxpayer that must charge amounts to capital account under section 1253(d) and that does not elect the 25-year amortization permitted by section 1253(d) must determine the period of amortization by including the period of any renewal option or any other period for which the parties reasonably expect the agreement to be renewed.

H. Tax-Exempt Bond Provisions

Arbitrage rebate exception for certain construction issues (sec. 2(j) of the bill, sec. 7652 of the 1989 Act, and sec. 148 of the Code)

Present Law

In general

Interest on State and local government bonds generally is excluded from gross income of the holder thereof (sec. 103). Interest on arbitrage bonds is taxable. In general, a bond is an arbitrage bond if more than a minor portion of the proceeds is invested at a yield materially higher than the yield on the issue of which the bond is a part. An exception to this yield restriction requirement is provided for certain temporary investments.

In addition to the yield restriction requirement, arbitrage earned on investments unrelated to the governmental purpose for the bonds ("nonpurpose arbitrage") generally must be rebated to the Federal Government. Nonpurpose arbitrage (other than arbitrage on a reasonably required reserve or replacement fund or a debt service fund) is not required to be rebated if all gross proceeds of an issue (other than such reserve and debt service funds) are spent for the purpose of the borrowing within 6 months after the bonds are issued (the "6-month exception"). Present law is unclear concerning the effect of certain amounts not intended to be spent on eligibility for the 6-month exception.

Construction issues

The 1989 Act provided, in addition to the 6-month exception, an alternative 24-month expenditure period (the "24-month exception") for construction issues. A construction issue is defined as an issue (or a portion of an issue) at least 75 percent of the net proceeds of which is to be used for construction. Qualifying bonds are (a) bonds which are not private activity bonds; (b) qualified 501(c)(3) bonds; or (c) private activity bonds for facilities owned by governmental units.

Under the 24-month exception, a prescribed percentage of the net proceeds of the issue must be spent by the end of each 6-month period within the 24-month expenditure period. At the conclusion of that 24-month period, 100 percent of the net proceeds of the issue must have been spent, except for limited amounts of retainage which must be spent within the succeeding 12 months.

During the expenditure period, the 24-month exception generally applies to amounts in a reasonably required reserve or replacement fund, although only the earnings of such a fund are subject to the spending requirements of the exception. If the issuer elects to rebate those earnings from the date the bonds are issued, however, the 24-month exception does not apply to the fund or earnings thereon.

Issuers may elect to bifurcate an issue into a construction portion and a nonconstruction portion, with the construction portion qualifying for the 24-month exception and the nonconstruction portion being subject to the general rebate requirement. Such an election must be made when the bonds are issued, and at least 75 percent of the designated construction portion must be used to finance construction expenditures. Present law does not expressly address the treatment under this rule of bonds and portions of bonds used to refund other bonds.

Penalty alternative to rebate

Issuers of construction issues also are permitted to elect to pay a penalty in lieu of rebate if the spending requirements of the 24-month exception are not satisfied. The penalty is equal to 1.5 percent of the net proceeds required to be spent but not spent, and is determined as of the end of each 6-month period following issuance of the bonds. Present law is not clear whether the penalty terminates before the final maturity date of the bonds. Present law also is unclear about the interaction of this penalty with another penalty alternative to loss of tax-exemption that applies to governmental bonds (sec. 148(f)(7)).

Special rules for pooled bonds

Special rules determine when the spending requirements of the 24-month exception commence in the case of pooled bonds, i.e., bonds issued to make or finance loans to multiple borrowers.

Explanation of Provisions

The bill makes numerous technical amendments to the 6- and 24-month exceptions. For clarity and ease of administration, the bill restates the entire substantive provisions of the 24-month exception. The following describes the technical amendments made by the bill.

6-month exception

The bill clarifies that, in addition to amounts in a reasonably required reserve or replacement fund and a bona fide debt service fund, proceeds arising after issuance of the bonds that were not reasonably anticipated on the date of issue, are not included in gross proceeds solely for purposes of determining compliance with the 6-month exception. Earnings on such amounts are, however, subject to rebate.

24-month exception

Eligible proceeds

The bill clarifies that the 24-month exception applies to the "available construction proceeds" of a construction issue. A "construction issue" is an issue at least 75 percent of the available construction proceeds of which are to be used to finance construction expenditures. The term "available construction proceeds" is defined as the sum of (a) the issue price of the construction issue (less amounts invested in a reasonably required reserve or replacement fund), (b) earnings on the issue price and on any reasonably required reserve or replacement fund (regardless of whether funded from other than bond proceeds), and (c) earnings on (b). Available construction proceeds does not include amounts received as repayments of acquired purpose or acquired program obligations (and earnings on such amounts).

Earnings on a reasonably required reserve or replacement fund are eligible for the 24-month exception unless the issuer elects to apply the general rebate requirement to such amounts from the date the bonds are issued. Earnings on such a fund arising after conclusion of the 24-month expenditure period (or after the substantial completion of construction if earlier and so elected by the issuer) are subject to rebate in all cases. The special rules of section 148(f)(4)(A) continue to apply to earnings on a bona fide debt service fund. Other amounts not included in available construction proceeds are subject to the rebate requirement under generally applicable rules.

For purposes of both the spending requirements of the 24-month exception and the penalty alternatives, payment of principal on construction bonds is not treated as an expenditure.

Penalty alternatives

1.5-percent penalty

The bill clarifies that issuers may elect to terminate the 1.5-percent penalty which is imposed on unspent available construction proceeds as of the end of each 6-month period at the earlier of (a) expiration of the initial temporary period applicable to the bonds or (b) with respect to any portion of bond proceeds identified as excess, upon substantial completion of construction to be financed with available construction proceeds of the issue. The determination of when construction is substantially complete is intended to be made under rules similar to those of Rev. Proc. 79-5, 1979-1 C.B. 485 as modified by Rev. Proc. 81-22 (1981-1 C.B. 692). For purposes of the 24-month exception, the term initial temporary period means the temporary period described in section 1.103-14(b)(1) of the Income Tax Regulations.

To terminate the 1.5-percent penalty, the issuer must pay a special penalty equal to 3 percent per year (measured from the date of issue through the date described in the preceding paragraph) of the unspent available construction proceeds. Additionally, proceeds for which this election is made must be invested at all subsequent times at a yield not exceeding the yield on the issue of which they are a part, and such proceeds must be used to redeem bonds of the construction issue at the first date on which such redemption is not prohibited under the terms of the bond (regardless of whether the redemption price is above par value).

The bill clarifies that if the issuer does not elect this special 3-percent penalty, the 1.5-percent penalty continues to be payable at the end of each 6-month period until the last bond that is part of the issue (including refunding bonds) matures. As stated above, redemption of bonds before their stated maturity does not terminate liability for this 1.5-percent penalty.

For example, if a construction issue with a 20-year maturity and a 10-year call prohibition qualified for a 5-year temporary period and had $1 million of unspent available construction proceeds at the end of that 5-year temporary period, the issuer could elect to pay a penalty of $150,000 ($1 million multiplied by 3 percent for 5 years) and restrict the yield on the $1 million for 5 years at which time the bonds would be required to be redeemed, or pay $450,000 ($1 million multiplied by 1.5 percent every 6 months for 15 years).

Failure to pay penalties

The bill clarifies that the 1.5-percent and 3-percent penalties are the exclusive alternatives to the payment of rebate under the general rebate requirement. Failure to pay either of these penalties as required results in loss of tax-exemption (from the date bonds are issued) for both original and any refunding bonds unless, in the case of noncompliance which is not due to willful neglect, the Treasury Department waives such a result or accepts in lieu of loss of tax-exemption payment of (a) all such penalty amounts due, (b) an additional penalty of 50-percent of the amount not paid as required, and (c) interest on all unpaid amounts.

Time for payment of penalties

The bill clarifies that all penalties associated with the 24-month exception must be paid no later than 90 days after the period to which the penalty relates.

Portions of an issue

As stated above, an issuer may designate a portion of an issue as eligible for the 24-month spending requirements. As under present law, such a designated portion must include all proceeds of the issue of which it is a part that are to be used for construction expenditures. Further, for purposes of the spending requirements, the portion is deemed to include earnings on an allocable portion[2] of any reasonably required reserve or replacement fund associated with the issue unless an election is made to apply the general rebate rules to the reserve fund earnings.

Refunding bonds

The bill clarifies that, in general, the 24-month spending requirement and the penalty alternatives do not apply to refunding bonds. Thus, if bonds are issued partially to fund new money construction and acquisition expenditures and partially to refund other bonds, the portion of the issue properly allocable to the refunding must in all cases be treated as a separate issue not eligible for the 24-month exception, regardless of the purpose for which the refunded bonds were issued. Proceeds of a "new money" construction bond are not affected by a refunding of a new money construction bond and continue to be subject to the provisions of the 24-month exception. A refunding of a bond that was not eligible for the 24-month exception does not permit the proceeds of such refunded bond to be eligible for any portion of the 24-month exception.

This rule is illustrated by the following example: The proceeds of an issue are to be used for $100,000 of construction costs, $50,000 for acquisition of equipment, and $75,000 for the refunding of prior bond issue. The issuer may elect to treat up to $133,000 as a construction issue (i.e., $100,000 divided by .75) but may not treat less

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[2] Allocation of a reasonably required reserve or replacement fund between the construction and nonconstruction portion of an issue should be pro-rata unless another method of allocation more accurately reflects the economics of the financing. Likewise, allocation of issue price between the construction and nonconstruction must be pro rata unless another allocation more correctly reflects the economics of the bifurcation.

than the $100,000 as the construction issue. The issuer may not include any of the refunding amount in the construction issue.

The bill further clarifies that the measurement of the 24-month exception spending periods is not affected by any subsequent refunding of a construction issue, and that any failure to pay a required penalty that results in loss of tax exemption relates both to the original bonds and to all refunding bonds.

Special rule for pooled bonds

The bill codifies the statement in the 1989 legislative history that the general rebate requirement, and not the 24-month exception, applies to pooled bond proceeds during periods when such proceeds are held by the issuer of the pool rather than the ultimate borrower from the pool, if the issuer elects to delay the start of the 24-month expenditure period.

Time for making elections

The bill clarifies that, in general, all elections with respect to the 24-month spending requirement and associated penalties are irrevocable and must be made no later than the date the bonds are issued. The election to terminate the 1.5-percent penalty upon completion of construction must be made within 90 days after such completion.

Effective dates

These provisions of the bill generally are effective as if included in the Omnibus Budget Reconciliation Act of 1989; however, for bonds for which the 1.5-percent penalty alternative is elected before the date of the bill's enactment, the period for electing the new procedures to terminate that penalty does not expire until 180 days after the bill's enactment.

II. TECHNICAL CORRECTIONS TO THE TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988 AND OTHER RECENT TAX LEGISLATION

A. Corporate Provision

Conforming amendments to the repeal of the General Utilities doctrine (secs. 3(a) and (e) of the bill, secs. 1006 and 1018 of the 1988 Act, and secs. 355, 367, 453B of the Code)

Present Law

As a result of changes made by the Tax Reform Act of 1984 and the Tax Reform Act of 1986, gain is generally recognized on the distribution of appreciated property by a corporation to its shareholders. Exceptions apply to certain reorganizations, certain distributions of stock and securities of a subsidiary, and liquidations of certain subsidiary corporations.

Explanation of Provision

The bill makes three conforming amendments. First, the rule set forth in section 355(c) is rewritten to state the rule in the affirmative rather than through a reference to another section (sec. 311); second, the bill clarifies that the addition of section 361(c), relating to distributions in reorganizations, did not create a separate class of section 361 exchanges for purposes of section 367(a) in the absence of an exchange under section 361(a) or (b); and third, the installment sale rules relating to liquidations of subsidiary corporations (sec. 453B(d)) is conformed to the amendments made by the 1986 Act.

B. Accounting Provision

Annual accrual method of accounting (sec. 3(b) of the bill, sec. 1008(b)(6) of the 1988 Act, and sec. 447(g) of the Code)

Present Law

Application of uniform cost capitalization rules to certain farmers

Under the uniform cost capitalization rules, the direct and indirect costs of producing property generally are required to be capitalized (or included in inventoriable costs) and are recovered as income is derived from the sale or use of the property to which the costs relate. In the case of a plant that is produced by a taxpayer in a farming business, the uniform cost capitalization rules apply only if (1) the plant has a preproductive period of more than two years, or (2) the taxpayer is a corporation, partnership, or tax shelter that is required to use an accrual method of accounting.

A taxpayer that is engaged in the production of a plant that has a preproductive period of more than two years generally may elect to deduct the costs of producing the plant as paid or incurred. A taxpayer that makes this election is required to use the alternative depreciation system (which provides for straight-line cost recovery over a longer recovery period than generally applies) for all farm assets that are placed in service in taxable years for which the election is in effect. In addition, if this election is made, gain from the disposition of the plant is taxed as ordinary income to the extent of prior deductions that would have been capitalized but for the election. The election may not be made by a corporation, partnership, or tax shelter that is required to use an accrual method of accounting.

Annual accrual method of accounting

An exception to the uniform cost capitalization rules is provided for certain corporations and qualified partnerships that are permitted to use the annual accrual method of accounting with respect to the trade or business of farming sugar cane. Under the annual accrual method of accounting, revenues, costs, and expenses are determined under an accrual method of accounting and the preproductive period expenses incurred during any taxable year are charged to harvested crops or are deducted in determining taxable income for such year.

Explanation of Provision

Under the bill, certain corporations are allowed to use the annual accrual method of accounting with respect to the trade or business of farming any plant that has a preproductive period of two years or less. In addition, such corporations may elect to use the annual accrual method of accounting with respect to the trade or business of farming any plant (other than citrus or almond trees) with a preproductive period of more than two years provided that the alternative depreciation system is used with respect to all farm assets and the expensed costs are recaptured as ordinary income upon disposition of the plant.

In the case of any corporation that for its first taxable year beginning after December 31, 1986, ceased using the annual accrual method of accounting with respect to a trade or business of farming any plant and that is allowed to use the annual accrual method of accounting with respect to such trade or business for such year only by virtue of this provision, special rules shall apply. The corporation shall be allowed to use the annual accrual method of accounting with respect to such trade or business for such year and for any subsequent year for which a timely Federal income tax return has been filed by filing amended returns with the Internal Revenue Service before January 1, 1991. In the case of a trade or business of farming any plant (other than citrus or almond trees) with a preproductive period of more than two years, the alternative depreciation system must be used with respect to all farm assets placed in service during the years for which an amended return is filed. A taxpayer that files amended returns as required by this paragraph shall not be required to obtain the consent of the Secretary of the Treasury to use the annual accrual method of accounting for such years.

C. Foreign Provision

Treaty-based return positions (sec. 3(c) of the bill, sec. 1012 of the 1988 Act, and sec. 6114 of the Code)

Present Law

Any treaty-based position taken by a taxpayer that overrules or otherwise modifies the operation of an internal revenue law shall be disclosed on the taxpayer's tax return (or by such other means as the Secretary of the Treasury may provide, if no return is required to be filed) in such manner as the Secretary may prescribe (Code sec. 6114(a)). Section 6114(b) of the Code provides that the Secretary may by regulations waive the general requirements for treaty-based return position reporting with respect to classes of cases for which the Secretary determines that the waiver will not impede the assessment and collection of tax. The current regulations enumerate several instances in which the reporting requirements are to be waived (Treas. Reg. sec. 301.6114-1(c)).

Explanation of Provision

The bill clarifies that the Secretary may, by means other than regulations (e.g., by revenue procedure), provide classes of cases with respect to which the treaty-based return position reporting requirements will be waived.

D. Minor Child Provision

Alternative minimum tax treatment of unearned income of minor children (sec. 3(d) of the bill, sec. 1014(e)(5) of the 1988 Act, and sec. 59 of the Code)

Present Law

The 1988 Act generally limited the alternative minimum tax exemption for the unearned income of children under the age of 14 to $1,000. The Act also provided that the child's alternative minimum tax could not exceed the alternative minimum tax which would be imposed on the parent if the parent were allocated the child's tentative minimum tax and the child's regular tax. The 1988 Act provision may result in a family not being entitled to a full alternative minimum tax exemption ($30,000 for a single individual; a $40,000 for a joint return) where the parent's alternative minimum taxable income is less than the parent's minimum tax exemption amount.

Explanation of Provision

The bill provides that the child's minimum tax exemption amount with respect to unearned income shall not be less than the child's share of the "unused parental minimum tax exemption". This amount is the excess of the parent's exemption amount over the parent's alternative minimum taxable income for the taxable year.

E. Estate and Gift Tax Provisions

1. Marital deduction for property passing to noncitizen spouses (secs. 2(l) and 3(f) of the bill, sec. 7815 of the 1988 Act, sec. 5033 of the 1988 Act, and secs. 2056(d), 2056A and 2523(i) of the Code)

Present Law

Marital deduction in general

A deduction generally is allowed for Federal estate and gift tax purposes for the value of property passing to a spouse. Generally, no deduction is allowed if the interest passing to the spouse is terminable (i.e., will terminate upon a lapse of time, the occurrence of a contingency, or on the failure of an event or contingency to occur) (secs. 2056(b), 2523(b)).

There are several exceptions to this "terminable interest" rule. One requires that the spouse be entitled to all the income from the interest and have the power to appoint the entire interest (secs. 2056(b)(5), 2523(e)). Another requires that the spouse be entitled to all the income from the property, that no person have a power to appoint any part of the property to a person other than the surviving spouse during the spouse's life, and that an election be made (secs. 2056(b)(7), 2523(f)) (the "QTIP rule"). Unless otherwise elected, the transfer to a spouse of an interest in a joint and survivor annuity under which only the spouses have the right to receive payments before the death of the last spouse to die qualifies for the marital deduction under the QTIP rule (secs. 2056(b)(7)(C), 2523(f)(6)).

Annual exclusion and marital deduction for property passing to noncitizen spouse

The marital deduction generally is disallowed for the value of property passing to a noncitizen spouse. The first $100,000 per year of gifts to a noncitizen spouse, however, is not subject to gift tax if such amount would qualify for the marital deduction if the donee were a U.S. citizen. In addition, property passing at death to a noncitizen spouse may qualify for the marital deduction so long as it passes in a qualified domestic trust (QDT) and satisfies the generally applicable requirements for the marital deduction.

Definition of qualified domestic trust (QDT)

To be a QDT, a trust must meet three conditions. First the trust instrument must require that one trustee be a U.S. citizen or domestic corporation and that no distribution be made without that trustee's approval. Second, the trust must meet regulatory requirements prescribed by the Secretary of the Treasury. Third, an election must be made on an estate tax return. The 1989 Act contained provisions allowing reformation of a trust to meet these conditions if the reformation suit is commenced before the estate tax return is filed.

Estate tax on QDT

An estate tax is imposed upon a distribution of principal (other than on account of hardship) from a QDT made prior to the surviving spouse's death and upon the value of property remaining in a QDT upon that spouse's death. Certain benefits are allowed in determining the deathtime tax on QDTs so long as that property is includible in the surviving spouse's gross estate (or would have been includible had the surviving spouse been a U.S. citizen) and the requirements for receiving those benefits are otherwise met by the surviving spouse's estate.

Explanation of Provisions

Transfer tax on property passing to noncitizen spouse

The bill extends the gift tax marital deduction allowed for transfers to citizen spouses of survivor benefits under a joint and survivor annuity to transfers to noncitizen spouses. Upon death, however, such annuity would qualify for the marital deduction only if it met the QDT requirements.

It is intended that the entire $100,000 annual exclusion for gifts to a noncitizen spouse qualify as a present interest under section 2503(b), while only the additional $90,000 exclusion permitted noncitizen spouses must be transferred in a form that would qualify for the marital deduction if the donee spouse were a citizen.

The bill also provides that a QDT will not fail the exceptions for power of appointment and QTIP trusts merely because it permits withholding from distributions to pay the QDT tax.

Definition of QDT

The bill replaces the requirement that the U.S. trustee approve all QDT distributions with a requirement that no corpus distribution be made without being subject to the U.S. trustee's right to withhold the estate tax imposed on such distribution.

The bill also provides that no QDT election may be made on a return filed more than one year after the due date of the return, including any extension. In addition, a reformation to meet the QDT requirements may be commenced any time prior to six months after the enactment of this bill, notwithstanding the prior filing of an estate tax return.

Estate tax on QDT

The bill provides that the QDT tax is not imposed upon any distribution to reimburse the spouse for Federal income tax paid on an item of income of the QDT to which the spouse is not entitled under the terms of the trust, e.g., capital gains if such gains are taxable to the spouse. The bill also allows the State and foreign death tax credits for state or foreign taxes paid by the surviving spouse's estate against the deathtime tax on QDTs if the property is includible in the gross estate of the spouse (or would have been had the spouse been a U.S. citizen).

2. Joint tenancies (sec. 2(l)(3) of the bill, sec. 7815(d)(16) of the 1989 Act, sec. 5033 of the 1988 Act, and sec. 2040 of the Code)

Present Law

The creation of a joint tenancy in property is generally treated as a completed gift. Prior to the 1988 Act, such gift between spouses qualified for the gift tax marital deduction. Only one-half of the jointly held property was subsequently included in the estate of the first spouse to die.

Effective July 14, 1988, the 1988 Act repealed the marital deduction for gifts made to a noncitizen spouse. That Act also provided that jointly held property was fully includible in the estate of the first spouse to die, reduced by the portion of the property for which consideration was received.

The 1989 Act provided that a gift made by creating a joint tenancy in property prior to July 14, 1988 is treated as consideration belonging to the surviving spouse for purposes of determining the value of the tenancy includible in the decedent spouse's estate. The rule does not apply if the creation did not result in a gift, as where a nonresident noncitizen transfers property not situated in the United States.

Explanation of Provision

The bill treats a transfer creating a joint tenancy as consideration belonging to the surviving spouse if the transfer would have constituted a gift had the donor been a U.S. citizen. Accordingly, the amount of joint tenancy property included in the estate of the first spouse to die is reduced proportionately by the amount of the gift.

3. Generation-skipping transfer tax

a. Treatment of certain nontaxable gifts in trust (sec. 4(c)(1), (2) of the bill, sec. 1431 of the 1986 Reform Act, and sec. 2642(c) of the Code)

Present Law

The applicable rate for the generation-skipping transfer tax equals the maximum Federal estate tax rate times the inclusion ratio with respect to the transfer. For trusts, the inclusion ratio equals the excess of one over a fraction, the numerator of which is the amount of GST exemption allocated to the trust, and the denominator of which is the value of the property transferred to the trust, with certain reductions.

A direct skip is a transfer subject to the Federal gift or estate tax, determined without reference to deductions, exclusions or credits. A direct skip includes, for example, a gift regardless of whether the gift is a taxable gift under the Federal gift tax.

A nontaxable gift is any transfer of property to the extent such transfer is not treated as taxable because of certain exclusions. Nontaxable gifts which are direct skips have a zero inclusion ratio.

A nontaxable gift in trust has an exclusion ratio of zero only if (1) no portion of the corpus or income of the trust could be distributed to a person other than the individual benefited by the gift, and (2) if the individual benefited dies before termination of the trust, the trust assets will be includible in his estate (the "trust exception").

It is unclear whether the discharge of an obligation of support is treated as a distribution for the benefit of a person other than the beneficiary of the gift. It is also unclear whether to qualify for the trust exemption a trust that terminates on the beneficiary's death must be includible in the beneficiary's estate.

Explanation of Provision

The bill provides that the use of trust property to satisfy any obligation of support arising by reason of State law is to be disregarded in determining whether a portion may be distributed to, or for the benefit of, a person other than the beneficiary of the gift if such use is discretionary or pursuant to any State law substantially equivalent to the Uniform Gifts to Minors Act. Thus, a parent is not treated as having an interest in a trust by reason of powers he may have as a guardian for the child. On the other hand, a parent will be treated as having an interest in a trust if the trust instrument mandates that trust assets be used to discharge a support obligation.

In addition, the bill clarifies that to qualify for the trust exception, the assets of a trust that terminates on the beneficiary's death must be includible in the beneficiary's estate.

b. Effective date of the revised generation-skipping transfer tax (sec. 4(c)(3) of the bill and sec. 1433 of the 1986 Reform Act)

Present law

The generation-skipping transfer tax generally applies to transfers made after October 22, 1986, and to certain inter vivos transfers made after September 25, 1985.

The generation-skipping transfer tax does not apply, however, to transfers under a trust to the extent that such trust consists of property included in the gross estate of the decedent or which are direct skips which occur by reason of the death of any decedent if the decedent was incompetent on the date of enactment of the Reform Act (October 22, 1986) and at all times thereafter until death (the "incompetency exemption"). The tax does apply, however, to a transfer of qualified terminable interest property made after October 21, 1988, to a mentally incompetent spouse.

Explanation of Provision

The bill provides that the incompetency exemption does not apply to property transferred by gift or by means of death to the decedent or trust after August 3, 1990. Thus, property transferred after August 3, 1990 to an incompetent will nonetheless be subject to the generation-skipping tax.

F. Employee Benefit Provisions

1. Definition of leased employee (sec. 4(b) of the bill and sec. 414 of the Code)

Present Law

Under present law, for purposes of certain pension and employee benefit requirements, a leased employee (sec. 414(n)) is treated as the employee of the person for whom the leased employee performs services. A leased employee includes any person who is not an employee of the service recipient if (1) the person performs services pursuant to an agreement between the service recipient and a leasing organization, (2) the person has performed services for the service recipient on a substantially full-time basis for a period of at least 1 year (6 months in the case of core health benefits), and (3) the services performed are of a type historically performed by employees in the business field of the service recipient. The rule under which a person can be treated as a leased employee after performing services for 6 months for the service recipient was added in the Tax Reform Act of 1986 when the employee leasing rules were made applicable for purposes of the nondiscrimination rules for employee benefit plans (sec. 89).

Explanation of Provision

The bill repeals the rule under which a person can be treated as a leased employee after performing services on a substantially full-time basis for 6 months in the case of core health benefits. The repeal of this rule conforms the employee leasing rules to the repeal of the section 89 nondiscrimination requirements for employee benefit plans.

2. Group-term life insurance rules (sec. 4(e) of the bill and sec. 79(d)(6) of the Code)

Present Law

Under present law, group-term life insurance plans cannot discriminate in favor of key employees (sec. 79). For such purpose, a key employee is defined as under the rules relating to top-heavy pension plans (sec. 416). In addition, the term key employee includes any retired employee if the employee was a key employee when he retired or separated from service (sec. 79(d)(6)). For purposes of the group-term life insurance rules, the term employee includes a former employee.

Explanation of Provision

The bill provides that, for purposes of the group-term life insurance rules, a key employee includes any former employee (rather than just a retired employee) if the employee was a key employee when he separated from service. This change relates to provisions that were repealed when section 89 was enacted in the Tax Reform Act of 1986. With the repeal of section 89, these provisions are again operative. The change conforms the definition of key employee to the definition of employee generally under the group-term life insurance rules.

The provision applies to employees who separate from service after the date of enactment.

G. Miscellaneous Provisions

1. Education savings bonds (sec. 3(g) of the bill, sec. 6009 of the 1988 Act, and sec. 135 of the Code)

Present Law

Section 135 provides that interest earned on certain U.S. Series EE savings bonds issued after December 31, 1989, is excludible from gross income if the proceeds of the bonds upon redemption do not exceed qualified higher education expenses paid by the taxpayer during the taxable year. The exclusion is phased out for taxpayers with modified adjusted gross income (AGI) between $40,000 and $55,000 (the phase-out range is between $60,000 and $90,000 in the case of a joint return). For taxable years beginning after 1990, the phaseout ranges are adjusted for inflation. Such adjustments will be rounded to the nearest $50.

Explanation of Provision

The provision clarifies that, after 1990, the $40,000 threshold ($60,000 in the case of a joint return) for the phase-out range will be adjusted for inflation, but that the size of the phase-out range will not change due to inflation. Thus, the phase-out of the interest exclusion will occur over a $15,000 range (a $30,000 range in the case of a joint return), the threshold of which will be adjusted for inflation.

The provision also clarifies that the requirement that the inflation adjustment be rounded to the nearest $50 applies only to establishing the thresholds of the phase-out ranges.

2. Like-kind exchanges of certain partnership interests (sec. 4(d) of the bill, sec. 77 of the Tax Reform Act of 1984, and sec. 1031 of the Code)

Present Law

The Tax Reform Act of 1984 provided that the like-kind exchange rules of section 1031 do not apply to an exchange of interests in a partnership. It is not entirely clear, however, whether this provision applies to organizations which have elected, under section 761(a) of the Code, not to be subject to the partnership provisions of Subchapter K of the Code. The legislative history indicates that this provision was not intended to apply to organizations which have made a section 761 election; instead, an exchange of interests in such organizations would be treated as an exchange of interests in the assets of the respective organizations and the applicability of section 1031 would be determined on the basis of those exchanges. See 130 Cong. Rec. H. 7113 (June 27, 1984) (statement of Mr. Rostenkowski), S. 8410 (June 27, 1984) (statement of Sen. Dole).

Explanation of Provision

The bill provides that, for purposes of section 1031, an interest in a partnership that has in effect a valid election under section 761(a) to be excluded from the application of all of Subchapter K is treated as an interest in each of the assets of such partnership and not as an interest in a partnership.