

COMPARISON OF REVENUE PROVISIONS OF H.R. 5835
(REVENUE RECONCILIATION ACT OF 1990)
As Passed By the House and the Senate

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 comparative description of the revenue provisions of H.R. 5835 ("Revenue Reconciliation Act of 1990") as passed by the House and the Senate.

The first part of the document is a list of the identical provisions (including effective dates) in the House bill and the Senate amendment. These provisions are not described in this document.

The second part of the document describes the provisions that are similar in the House bill and the Senate amendment. The third part describes provisions that are only in the House bill. The fourth part describes provisions that are only in the Senate amendment. The fifth part describes provisions with joint jurisdiction between the tax committees and other committees.

A separate document (JCX-43-90) provides a comparison of the estimated revenue effects of the House bill and the Senate amendment.

¹ This document may be cited as follows: Joint Committee on Taxation, Comparison of Revenue Provisions of H.R. 5835 (Revenue Reconciliation Act of 1990) (JCX-44-90), October 19, 1990.

I. IDENTICAL PROVISIONS

The following revenue provisions are identical (including effective dates) in the House bill and the Senate amendment.

- A. Expand Ozone-Depleting Chemicals Excise Tax
- B. Certain Corporate Tax Provisions
 - 1. Expand and clarify information reporting and allocation rules for certain acquisitions
 - 2. Modify treatment of preferred stock issued with a redemption premium
 - 3. Expand the definition of a corporate equity reduction transaction for purposes of limiting certain NOL carrybacks
- C. Extend Federal Unemployment Tax (FUTA) Surtax
- D. Payroll Tax Deposit Stabilization
- E. Compliance Provisions
 - a. Apply accuracy-related penalty more effectively to section 482 adjustments
 - b. Treatment of persons providing services
 - c. Application of 1989 information reporting and related amendments to open years
 - d. Information reporting by foreign corporations engaged in U.S. business
 - e. Treasury studies and other administrative matters
- F. PBGC Premiums

II. SIMILAR PROVISIONS

A. Luxury Excise Tax

The House bill imposes a 10-percent excise tax on the portion of the retail price of the following items that exceeds the specified thresholds: automobiles above \$30,000; boats and yachts above \$100,000; aircraft above \$100,000; jewelry above \$5,000; and furs above \$10,000. Effective January 1, 1991.

Anti-abuse rules.--An anti-abuse rule prevents businesses from briefly using items subject to this tax in their trade or business and then selling them (or converting them to personal use) a short time thereafter as a way of avoiding this tax. An additional anti-abuse rule prevents the avoidance of the tax on automobiles, boats, yachts and aircraft through separate purchases of major component parts.

Special rule for leases.--A special rule applies to the leasing of boats and aircraft (as well as long-term leases of passenger vehicles) by a person in the trade or business of leasing. These lessors do not pay the tax on their purchase of these items; instead, their leasing of these items is treated as a sale (parallel to present law excise tax rules). Thus, a pro-rata portion of the tax is due on each lease payment, unless the lease payment is being made by a person who would be exempt from the tax (because of the nature of the use of the item) if the person owned the item.

Tax applicable to imports.--This tax applies to all items subject to the tax upon their importation into the United States (regardless of whether the item was used outside the United States prior to importation), unless the item is being imported by someone in the trade or business for subsequent retail sale or leasing (in which instance the subsequent retail sale or lease would be subject to tax).

The Senate amendment is the same as the House bill, except that:

- (1) the threshold for furs is \$5,000 instead of \$10,000;
- (2) the threshold for airplanes is \$250,000 instead of \$100,000, and airplanes actually used 80% or more in a trade or business may obtain a refund of tax after one full year; and
- (3) the tax expires on January 1, 2000.

B. Increase Dollar Limitation on Amount of Wages and Self-Employment Income Subject to the Medicare Hospital Insurance (HI) Payroll Tax

The House bill and Senate amendment increase the cap on wages and self-employment income considered in calculating HI tax liability. As under present law, for years after 1991, the cap is indexed for inflation.

Wage cap (for 1991):	<u>House</u> \$100,000	<u>Senate</u> \$89,000
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C. Modifications of Earned Income Tax Credit; Dependent Care Credit

1. Credit rate

Description of Provisions

House Bill

The House bill modifies the earned income tax credit (EITC) by providing an increase in the rate of the credit. The credit percentage is 18.5 percent in 1991, 19 percent in 1992 and 1993, and 20 percent in 1994 and thereafter. The phase-out percentage is 13 percent in 1991, 13.5 percent in 1992 and 1993, and 14 percent in 1994 and thereafter. Present-law dollar thresholds (as indexed) are retained.

Projected maximum credit amount: \$1,314 in 1991, \$1,406 in 1992, \$1,467 in 1993, and \$1,610 in 1994.

Senate Amendment

The Senate amendment increases the EITC and adjusts the credit for family size so that the credit when fully phased in is as follows:

Credit for 1994 and thereafter:

	<u>Credit percentage</u>	<u>Phase-out percentage</u>	<u>Maximum amount</u>
1 Qualifying Child	20.5	14.6	\$1,650
2 or more Qual. Children	22.5	16.1	\$1,811

Prior to 1994, there is a phase in of the credit and phase out rates. The maximum amount of the credit for these years is as follows: \$1,086 (1 child) and \$1,115 (2 or more children) in 1991, \$1,180 (1 child) and \$1,225 (2 or more children) in 1992, and \$1,332 (1 child) and \$1,409 (2 or more children) in 1993.

2. Supplemental EITC for certain health insurance premium expenses

Description of Senate Amendment Provision

The Senate amendment allows a credit to taxpayers for qualified health insurance expenses that includes coverage for a qualifying child.

The maximum amount of the credit is calculated in a manner similar to the EITC and is based on a percentage of earned income. The maximum credit is limited to the actual

cost of coverage. In 1994, when fully phased in, the credit percentage of the credit is 5.5 percent of earned income and the phaseout rate is 3.9 percent. Prior to 1994, there is a phase in of the credit and phase out rates.

Projected maximum amount of credit: \$78 in 1991, \$183 in 1992, \$193 in 1993, and \$443 in 1994.

3. Dependent care credit

Description of Senate Amendment Provision

The Senate amendment makes the dependent care credit partially refundable, except that taxpayers with AGI in excess of \$28,000 are not entitled to any refundable portion of the credit.

4. Miscellaneous provisions

Description of Senate Amendment Provision

The Senate amendment modifies the treatment of the EITC for purposes of certain means-tested programs, authorizes a study of the advanced payment system, and creates a public awareness program.

D. Increase Excise Taxes on Distilled Spirits, Beer, and Wine

The House bill and the Senate amendment increase the excise taxes on distilled spirits, beer, and wine (and impose floor stocks taxes), effective January 1, 1991.

Issues

(1) Rate increases.--The rate increases provided for are as follows:

	<u>Present Law</u>	<u>House Bill</u>	<u>Senate Amendment</u>
Distilled Spirits (per proof gallon)	\$12.50	\$13.50	\$13.70
Beer (per barrel)	\$9.00	\$18.00	\$18.00
Still wines (per wine gallon):			
Up to 14% alcohol	\$0.17	\$1.27	\$1.07
14 to 21% alcohol	\$0.67	\$1.77	\$1.57
21 to 24% alcohol	\$2.25	\$3.35	\$3.15
Artificially carbonated wines	\$2.40	\$3.50	\$3.30

(2) Small producer exception

(a) Beer.--The House bill retains the current-law exception for small breweries (i.e., a \$7.00 per-barrel rate for the first 60,000 barrels of beer produced by domestic breweries with total production below 2 million barrels). The Senate amendment provides for a \$11.00 per-barrel credit for the first 30,000 barrels of beer produced by domestic breweries with total production below 45,000 barrels. (The credit is phased out for production between 45,000 and 75,000 barrels.)

(b) Wine.--The House bill provides that present-law rates apply to the first 100,000 gallons of wine produced by domestic wineries with total production not exceeding 200,000 gallons (and an adjustment is provided for counting production of champagne). The Senate amendment provides for a 90 cent per-gallon credit on the first 100,000 gallons of wine produced by domestic wineries with total production below 150,000 gallons. (The credit is phased out for

production between 150,000 and 250,000 gallons, and no adjustment is provided for production of champagne.)

E. Increase Tobacco Excise Taxes

The House bill and the Senate amendment increase by 25 percent the excise taxes on all tobacco products (e.g., a 4 cent increase per pack of cigarettes), effective January 1, 1991, and further increase by the same dollar amount the excise taxes on all tobacco products (e.g., an additional 4 cent increase per pack of cigarettes), effective January 1, 1993.

Issues

(1) Cigars.--The House bill provides that the tax on large cigars is based on the manufacturer's or importer's actual selling price. The Senate amendment retains the current-law suggested wholesale price.

(2) Floor stocks.--The House bill imposes floor stocks taxes only on cigarettes. The Senate amendment imposes floor stocks taxes on all tobacco products.

F. Airport and Airway Trust Fund Excise Taxes

Current aviation excise tax rates are extended from January 1, 1991, through December 31, 1995 (5 years), and are deposited in the Trust Fund.

The aviation taxes are increased.

Issues

(1) Effective date.--House bill is December 1, 1990; Senate amendment is January 1, 1991.

(2) Dedication of revenues.--With respect to the use of the increased aviation excise tax revenues: House bill transfers the increase to the General Fund through 1992; and to the Trust Fund for 1993-1995. Senate amendment transfers all revenues to the Trust Fund through 1995.

G. Harbor Maintenance Excise Tax

Increase the harbor maintenance excise tax from 0.04 percent to 0.125 percent, effective January 1, 1991. (In President's FY 1991 Budget).

Issue

Both bills continue the transfer of harbor tax revenues to the Harbor Maintenance Trust Fund. However, the House bill does not change the limit on Trust Fund financing (up to 40 percent) of harbor maintenance and related costs. The Senate amendment specifically amends authorizing statute to increase the limit on Trust Fund financing to 100 percent of harbor maintenance and related costs.

H. Reimpose the Leaking Underground Storage Tank Trust Fund Tax

Reimpose the Leaking Underground Storage Tank Trust Fund tax (a tax of 0.1 cent per gallon imposed on gasoline, diesel fuel, special motor fuels, aviation fuel, and fuels used on inland waterways), extend the tax through December 31, 1995, and eliminate the present-law \$500 million Trust Fund revenue ceiling.

Issue

Effective date: The House bill is effective 30 days after enactment and the Senate amendment is effective December 1, 1990 (which is the same date as the effective date of the increase in the Highway and Motorboat fuels excise taxes in the Senate amendment).

I. Amortization of policy acquisition expenses of insurance companies (DAC)

Both the House bill and the Senate amendment require insurance companies to amortize policy acquisition expenses with respect to categories of specified insurance contracts on a straight-line basis over a period of 120 months (with a half-year convention). For each category, amortizable policy acquisition expenses are defined as a percentage of net premiums. The minimum tax requirement that life insurance companies amortize acquisition expenses is repealed, generally for taxable years beginning on or after September 30, 1990.

Issues

1. Percentages and Categories

	<u>House</u>	<u>Senate</u>
(1) Annuities	1.50%	1.85%
(2) Group life insurance	1.80%	2.20%
(3) Noncancellable or guaranteed renewable accident and health insurance	6.75%	2.20%
(4) Other life insurance	6.75%	8.30%

2. Small company rules

House bill:

5-year amortization: Provides amortization period of 60 months (rather than 120 months) for amortizable policy acquisition expenses of a small insurance company (assets of less than \$500 million at the close of the taxable year).

Senate amendment:

(1) 5-year amortization: Provides that the first \$5 million of amortizable policy expenses (other than with respect to a reinsurance contract) of an insurance company are amortized over a 60-month rather than a 120-month period. Provides a dollar-for-dollar reduction in the amount eligible for 60-month amortization, to the extent the company's amortizable policy acquisition expenses exceed \$10 million.

(2) Minimum tax amortization: repeals the minimum tax requirement that life insurance companies amortize acquisition expenses, effective for taxable years beginning after December 31, 1989, for life insurance companies meeting the definition of a small insurance company (assets of less than \$500 million at the close of the taxable year).

3. Regulatory authority to provide separate categories of specified insurance contracts

Senate amendment provides Treasury regulatory authority to provide a separate category for a type of specified insurance contract, with a percentage applicable to the category. Exercise of the regulatory authority shall not result in a decrease in the amount of revenue received under the provision for any fiscal year.

4. Application of tax treaties for purposes of determining net premiums with respect to certain reinsurance contracts

House bill: Provides a rule that net premiums are not reduced by reinsurance premiums that are not includible in income by a domestic insurance company or a US shareholder of a controlled foreign corporation. The legislative history provides that it is intended that this rule apply even if there is found to be a conflict with a treaty.

Senate amendment: Same as House bill, except that the legislative history provides that it is intended that the rule not apply if there is found to be a conflict with a treaty.

5. Technical issues

Other technical and conforming changes.

J. Treatment of Salvage and Subrogation of Property and Casualty Insurance Companies

The deduction allowed to property and casualty insurance companies for losses incurred, both paid and unpaid, is reduced by estimated recoveries of salvage (including subrogation claims) attributable to such losses, whether or not the salvage is treated as an asset for statutory accounting purposes.

Issue

House bill provides a full fresh start (forgiveness of income) for the amount of the adjustment required as a result of the change in method of accounting. Provides a rule recapturing the excess, if the amount of the adjustment is overstated.

Senate amendment provides a partial fresh start for 23 percent of the amount of the adjustment, and provides a comparable forgiveness of 23 percent of the amount of the adjustment for companies that took estimated salvage into account in taxable years beginning before January 1, 1990.

K. Compliance Provision: Suspension of Statute of Limitations During Proceedings to Enforce Certain Summonses

Description of Provision

In general, the House bill suspends the statute of limitations for a corporation during the period of time that the corporation and the IRS are in court litigating the issue of whether the corporation must comply with a specific type of summons issued by the IRS. Applies to any tax (regardless of whether imposed before, on, or after the date of enactment) if the statute of limitations for the assessment of the tax has not expired on the date of enactment.

The Senate amendment is the same as the House bill, except that the statute of limitations may be suspended with respect to any taxpayer (not just corporations).

Issue

Whether to limit the provision to corporate taxpayers only.

L. Use of Excess Pension Assets

Description of Provision¹

The bills generally increase the excise tax on reversions to 20 percent, and provide that the excise tax is higher unless the employer maintains a qualified replacement plan to which a portion of the reversion is transferred or provides certain pro-rata benefit increases.

The bills also permit the transfer of excess pension plan assets to a medical benefits account (sec. 401(h)) to pay retiree health benefits.

Issues

The level of the excise tax and the cushion requirements under the bills are as follows:

	<u>House</u>	<u>Senate</u>
General reversion tax	20%	20%
If no replacement plan or benefit increases	50%	40%
Asset cushion requirement for replacement plan	30%	20%
Pro-rata benefit increase amount	25%	15%

¹ These provisions are included in the bills of the House Ways and Means and Education and Labor Committees and the Senate Finance and Labor and Human Resources Committees.

M. Certain Business Tax Provisions

- 1. Require recognition of corporate level gain in certain divisive corporate transactions

Description of Provision

Under both bills, a distributing corporation recognizes corporate-level gain on the distribution of a subsidiary under section 355 of the Code if, immediately after the distribution, a shareholder holds a 50-percent or greater interest in the distributing corporation or a distributed subsidiary that is attributable to stock purchased after October 9, 1990, and within the 5 year period preceding the distribution.

Issue

Effective date.--Both the House and Senate bills provide transition for distributions after October 9, 1990, where stock is acquired by purchase after that date pursuant to a binding written contract in effect on that date. The House and Senate committee reports differ in that the Senate committee report includes additional references to the acquisition of stock by purchase (including the subsequent distribution to a holder of the stock), and to a binding written contract (including a binding written contract evidenced by a corporate charter, stock certificate, or other corporate instruments governing the terms of stock) in effect on October 9, 1990.

2. Clarify treatment of debt exchanges

Description of Provision

Both bills provide rules for determining the amount of cancellation of indebtedness income created in a debt-for-debt exchange and how the original issue discount rules apply in such a situation. Both bills also repeal the stock for debt exception in the case of certain stock issued by insolvent debtors and in title 11 cases.

Issue

Effective date:--The House bill provides transition for debt instruments issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer is pursuant to an offer which meets certain public announcement and SEC filing requirements. The Senate amendment substitutes the word transaction for the word offer and makes additional clerical changes.

**N. Extending Social Security to State and Local Employees
not Covered by a Public Retirement Plan**

Description of Provision

Under the House bill and the Senate amendment, those employees of State or local governments that are not participating in a retirement program in conjunction with their State or local employment are to be covered under Old-Age, Survivors and Disability Insurance (OASDI) and their wages are subject to the OASDI portion of the FICA tax. An exception is provided for students employed in public schools, colleges, and universities who would continue to be covered under social security at the option of the State government.

Issue

House

Senate

Effective date: January 1, 1991 January 1, 1992

O. Extension of IRS User Fees

The House bill extends the IRS user fee program for five years. The Senate amendment extends the IRS user fee program permanently.

III. PROVISIONS ONLY IN THE HOUSE BILL

A. Deficit Reduction Provisions

1. High-Income Individuals

a. Individual income tax rate structure

Description of House Bill Provision

i. Repeal 33-percent phase-out range.

ii. Replace it with a permanent 33-percent marginal tax rate bracket, which begins for each different tax status at the amount of taxable income the present law phase-out range begins.

- Married, joint return--Over \$78,400
- Head of household-----Over \$67,200
- Single individual-----Over \$47,000

iii. Increase the tax rate on AMT (alternative minimum taxable) income from 21 percent to 25 percent.

iv. Capital gains income is taxed at a maximum 28 percent rate.

Issue

If a capital gains exclusion is adopted, should the rate of tax on capital gains be limited to no more than 28 percent?

b. 10-percent Surtax on Taxable Income over \$1,000,000

Description of House Bill Provision

1. A 10-percent surtax is imposed on an individual's taxable income over \$1,000,000. As a result, the marginal tax rate on taxable income over \$1,000,000 becomes, in effect, 36.3 percent (33% + 3.3%).

2. Application of the 10-percent surtax to the alternative minimum taxable (AMT) income raises the marginal tax rate on AMT income over \$1,000,000 to 27.5-percent (25% + 2.5%).

3. The effective surtax rate on capital gains income depends on the amount of capital gains income relative to ordinary income, since the proposed maximum regular marginal tax rates for each type of income is different. The maximum capital gains tax rate, however, can be 30.8-percent (28% + 2.8%).

4. Effective date: taxable years beginning after December 31, 1990.

2. Gas Guzzler Excise Tax

Description of House Bill Provision

Doubles tax rates on automobiles that do not meet the statutory standard for fuel economy.

Subjects limousines (including stretch limousines) to the gas guzzler tax regardless of their weight.

Repeals the special rules permitting Treasury to set the rate of tax for small manufacturers.

Effective on or after January 1, 1991.

3. One-Year Delay of Indexing Income Tax Brackets and Personal

Exemptions

Description of House Bill Provision

1. Delay indexing threshold amounts of the individual taxable income brackets for one year. As a result, the next indexing adjustment will reflect the increase in the Consumer Price Index (CPI) in 1991 over the 1990 level, and it will affect tax returns for 1992.

2. Delay indexing personal exemption amounts allowed to each taxpayer and dependent for one year. The personal exemption amount of \$2,050 for 1990 will remain unchanged for 1991 returns. As for the taxable income brackets, the next increase that reflects a CPI adjustment will affect tax returns for 1992.

3. Standard deduction amounts will be indexed for 1991 tax returns, as required in present law.

4. Trusts with Foreign Grantors

Description of House Bill Provision

The House bill provides that a U.S. person who is a beneficiary of a trust is treated as the grantor of the trust to the extent that the beneficiary transferred more than \$10,000 per year to a foreign person who otherwise would have been treated as the owner under the grantor trust rules. The provision applies to any trust created after the date of enactment and to any portion of an existing trust that is attributable to contributions after that date.

2

5. Modifications Relating to Reporting of Cash Received in a Trade or Business

Description of House Bill Provision

The House bill provides that, to the extent provided in Treasury regulations, any monetary instrument (whether or not in bearer form) (other than personal checks) with a face amount of not more than \$10,000 is included in the definition of cash. In addition, the bill increases the penalty for intentional disregard of these reporting requirements to the greater of \$25,000 or the amount of cash received in the transaction (but no more than \$100,000). The heading of the provision of present law prohibiting evasion techniques is clarified. The Treasury study of the operation of section 6050I must be done by March 31, 1991.

B. Capital Gains Exclusions

Description of House Bill Provision

1. Lifetime capital gains deduction

a. individuals (aged 25+) get 50% deduction of capital gains. Maximum amount of gain to which deduction applies is \$200,000 over individual's lifetime.

b. eligible assets: capital assets held more than 1 year, except no collectibles and no publicly traded assets.

c. deduction is preference for AMT.

d. effective date: sales on or after October 15, 1990 (both old and new assets).

2. Annual \$1,000 capital gains deduction

a. individuals (other than dependents) get deduction of up to \$1,000 of capital gains each year.

b. income limitations: full \$1,000 deduction if AGI not greater than \$100,000; phase-out if AGI between \$100,000 and \$150,000; no deduction if AGI above \$150,000.

c. eligible assets: capital assets held more than 1 year (including publicly traded assets), no collectibles.

d. effective date: sales on or after October 15, 1990 (both old and new assets).

3. Depreciation recapture

a. depreciation on real property is recaptured in full as ordinary income (as opposed to only the excess of accelerated over straight-line depreciation).

b. effective date: sales on or after October 15, 1990.

IV. PROVISIONS ONLY IN THE SENATE AMENDMENT

A. Extend Expiring Tax Provision Through 1991

1. Allocation and apportionment of research and experimental expenditures

Description of Senate Amendment Provision

The Senate amendment contains an extension of expiring statutory rules for allocating and apportioning research and experimental (R&E) expenditures between U.S. and foreign sources. The extension is effective for a taxpayer's second taxable year beginning after August 1, 1989, and on or before August 1, 1991. In addition, for the taxpayer's first taxable year beginning after August 1, 1989 and before August 2, 1990, the statutory R&D allocation rules apply to that portion (generally, one quarter) of the taxpayer's R&D expenses that is subject under present law to the R&D allocation regulation.

2. Research and experimentation tax credit

Description of Senate Amendment Provision

The Senate amendment provides for a one-year extension of the research credit, through December 31, 1991.

3. Employer-provided educational assistance

Description of Senate Amendment Provision

Senate amendment extends exclusion from income for employer-provided educational assistance through December 31, 1991, and permits the exclusion to be claimed with respect to graduate-level courses.

Issue

Should the exclusion for graduate-level courses be adopted?

4. Employer-provided group legal services; tax exemption for group legal services organizations

Description of Senate Amendment Provision

The Senate amendment extends the exclusion for employer-provided educational assistance and the tax exemption for group legal services organizations through December 31, 1991.

5. Targeted Jobs Tax Credit

Description of Senate Amendment Provision

The Senate amendment extends the credit through December 31, 1991.

Issues

Clarify treatment of deferred adjudications on a prospective basis.

6. Business Energy Tax Credits

Description of Senate Amendment Provision

Business energy credits are extended through December 31, 1991.

7. Low Income Rental Housing Credit

Description of Senate Amendment Provision

The Senate amendment extends the low-income credit through December 31, 1991. It also restores the credit allocation limit to \$1.25 per State resident for 1990.

Issues

Policy Issues

(1) **Expand passive loss exception.** Under present law, an exception from the passive loss rules is provided, to qualifying persons, for the rehabilitation credit. This exception is phased out between \$200,000 and \$250,000 of adjusted gross income (AGI). The Senate amendment (the amendment) expands this exception by repealing the phaseout if the rehabilitation credit is associated with the low income housing credit.

(2) **Rights of first refusal.** The amendment provides that the allowance of Federal tax benefits is unaffected by the existence of a right of first refusal, at a below market price, held by tenant cooperatives, resident management corporations, qualified nonprofits, and governmental agencies. The amendment also tightens the definition of qualified nonprofits, for purposes of the credit, by excluding nonprofits that are affiliated with or created by for-profit organizations.

(3) **10-year rule exception.** The amendment expands availability, of the credit, to certain owner-occupied single family houses.

Other significant policy items

(1) **Gross rent/ Farmers' Home Administration 515 program.** The amendment provides an exception to the gross rent rules for the FmHA Section 515 program comparable to the exception, in present law, for the HUD Section 8 program.

(2) **Census tracts.** The amendment authorizes the Secretary of HUD to use certain census data in determining the credit in rural areas.

(3) **Compliance (including technical issue described in (7) below).** The amendment provides that State agencies monitor and report noncompliance with the credit to the IRS.

(4) **Intermediary costs.** The amendment removes one criteria

from the allocation process requirements and instead considers it in the evaluation process. That criteria concerns intermediary costs for low income projects.

(5) **Stewart McKinney Act.** The amendment provides an exception from the denial of the credit in conjunction with the Section 8 Moderate Rehabilitation program for funds disbursed under the Stewart B McKinney Homeless Act of 1988.

(6) **AFDC students.** The amendment provides that dwelling units occupied by students receiving AFDC payments do not fail to qualify for the credit.

(7) **Technical issue.** One technical issue is whether the expanded compliance monitoring by the States be made effective for all projects after December 31, 1991, (rather than the statutory draft which only applies to new projects after December 31, 1991).

8. Qualified Mortgage Bonds and Mortgage Credit Certificates

Description of Senate Amendment Provision

The Senate amendment extends the program through December 31, 1991. It also delays the effective date of the 1988 Act recapture provision by one year, from December 31, 1990 to December 31, 1991.

Issue

The recapture provisions, which were passed with a delayed effective date, allowed the State agencies time to implement them. The issue is whether to further delay the effective date of the recapture provision.

9. Qualified Small Issue Bonds

Description of Senate Amendment Provision

The Senate amendment extends authority to issue small issue IDBs through December 31, 1991

10. 25 percent deduction for health insurance expenses of self-employed individuals

Description of Senate Amendment Provision

Senate amendment extends the 25-percent deduction for health insurance expenses of self-employed individuals through December 31, 1991.

11. Orphan Drug Credit

Description of Senate Amendment Provision

The orphan drug tax credit is extended for one year through December 31, 1991.

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B. Other Tax Incentive Provisions

1. Energy Incentive Provisions

a. Extension of credit for nonconventional fuels

Description of Senate Amendment Provision

Under the Senate amendment, the January 1, 1991, placed-in-service date and the sunset date of January 1, 2001, under section 29 are repealed and the nonconventional fuels credit is made permanent. For purposes of the credit, the Senate amendment treats as qualifying tight formation gas any gas produced from a tight formation (1) which is produced from a well drilled after December 31, 1990, or (2) which, as of April 20, 1977, was committed or dedicated to interstate commerce. The provisions related to natural gas produced from tight formations apply to qualifying tight formation gas which is produced after December 31, 1990.

Issue

Extension of credit to tight formation gas.

b. Tax Incentives for Ethanol Production

House Bill

No provision.

Senate Amendment

1. The income tax credit for producers and blenders of ethanol fuels and the tariff provisions relating to ethanol are extended through December 31, 2000. The excise tax exemptions are extended through September 30, 2000.

2. New 10 cents per gallon income tax credit is allowed to eligible small ethanol producers for 15 million gallons of ethanol per year produced from a facility with productive capacity for 20 million gallons of alcohol. Anti-abuse provisions are included to (1) recapture the credit in event of failure to use ethanol as a fuel and (2) to prevent large producers from contriving to benefit from the credit. Carryovers of unused credits may not be carried over more than 2 years after termination of the credit.

3. Present 60 cents per gallon income tax credit for blenders of ethanol (more than 150 proof) in gasohol mixtures (10% alcohol/90% motor fuel) is reduced to 55 cents.

4. Present 6 cents per gallon excise tax exemption for 10% ethanol/90% motor fuels mixtures is reduced to 5.5 percent.

5. Ethanol tariff and CBI rates imposed on imports of ethanol are reduced from 15.85 cents per liter to 14.53 cents per liter. ETBE tariff rates are reduced to 6.66 cents per liter. These reductions are proportionate to the reductions in items 3 and 4 above.

5. Effective dates:

a. New producer credit: taxable years beginning after December 31, 1990.

b. Ethanol imports: articles or amounts withdrawn from warehouse on or after January 1, 1991.

- 4:
- c. Tax credit for costs attributable to enhanced oil recovery projects and qualified exploratory costs

Description of Senate Amendment Provision

The Senate amendment adds a new domestic energy exploration and production tax credit as a component of the general business credit. The exploration and production credit is equal to 15 percent of qualified costs attributable to qualified enhanced oil recovery projects and to certain exploratory drilling in the United States. To the extent that a credit is allowed for these costs, the taxpayer reduces the amount otherwise deductible or required to be capitalized and recovered through depreciation, depletion, or amortization, as appropriate, with respect to these costs.

The enhanced oil recovery portion of the exploration and production credit is effective for taxable years beginning after December 31, 1990, with respect to costs paid or incurred in enhanced oil recovery projects begun or significantly expanded after that date. The exploratory drilling portion of the exploration and production credit is effective for taxable years beginning after December 31, 1990, for costs paid or incurred after that date.

d. Modification of percentage depletion rules

Description of Senate Amendment Provision

Under the Senate amendment, the net income limitation on oil and gas percentage depletion is increased from 50 percent to 100 percent of the net income from the property. The 100-percent net income limitation applies to all oil and gas properties with respect to which percentage depletion is allowed.

Also, the Senate amendment repeals the prohibition on claiming percentage depletion on transferred proven oil and gas properties. The repeal of the transfer rule applies to all domestic oil and gas properties.

In addition under the Senate amendment, in the case of marginally producing oil and gas wells, the statutory percentage depletion rate will be increased by one percent (subject to a maximum rate increase of 10 percent) for each whole dollar that the average price of crude oil for the immediately preceding calendar year is less than \$20 per barrel.

The provisions related to the net income limitation and the percentage depletion rate for marginal properties are effective for taxable years beginning after December 31, 1990. The provision repealing the transfer rule is effective for property transfers occurring after October 11, 1990.

e. Alternative minimum tax relief for oil and gas operations

Description of Senate Amendment Proposal

The Senate amendment provides a special energy deduction for purposes of the alternative minimum tax. The deduction is based on a specified portion of the various oil and gas related tax preference items. In addition, for corporations, the deduction generally includes a specified percentage of the energy-related portion of the adjusted current earnings adjustment. The special energy deduction is not allowed to the extent that it exceeds 40 percent of alternative minimum taxable income determined without regard to either this special energy deduction or the alternative tax net operating loss deduction. The special energy deduction is effective for taxable years beginning after December 31, 1990.

2. Small Business Incentives

a. Revision of Estate Freeze Rules

Description of Senate Amendment Provision

The Senate amendment repeals section 2036(c) retroactively and provides in its place rules generally intended to assure more accurate gift tax valuation of the initial transfer. These rules modify the valuation of specific retained rights in corporations and partnerships, the valuation of split temporal interests in property, the effect of buy-sell agreements and options upon value, the transfer tax consequences of lapsing rights, and the gift tax statute of limitations. The provision is generally effective for transfers after October 8, 1990.

Issue

Should the effective date be October 8, 1990, or August 1, 1990 (the effective date of comparable legislation in the House)?

b. Section 179 expensing

Description of Senate Amendment Provision

The Senate bill increases the amount of the cost of eligible property that is eligible for expensing under section 179 from \$10,000 to \$14,000.

c. Treatment of Certain Expenditures Incurred to Make Public Accommodations Accessible to Disabled Individuals

Description of Senate Amendment Provision

Under the Senate amendment, an eligible small business that elects the application of the provision is allowed a nonrefundable income tax credit equal to 50 percent of the amount of the eligible public accommodations access expenditures for any taxable year that exceed \$250 but do not exceed \$10,250. In addition, the Senate amendment reduces the amount of architectural and transportation barrier removal expenses that may be deducted for any taxable year to \$15,000.

C. Deficit Reduction Provisions

1. Limitations on Itemized Deductions

Description of Senate Amendment Provisions

(1) Overall limitation on itemized deductions--Total otherwise allowable itemized deductions (other than medical expenses, casualty losses, and investment interest) are reduced by an amount equal to 5% of taxpayer's AGI exceeding \$100,000. Itemized deductions subject to the provision are reduced by no more than 80%. (For AMT purposes, there is no cutback of deductions.)

Issue: Should the threshold be higher for taxpayers filing joint returns?

(2) AMT deduction for contributions of tangible personal property--The present-law AMT rule that treats charitable contributions of appreciated property as a preference item is repealed in the case of donations of tangible personal property.

(3) Cosmetic surgery--The medical expense deduction for certain cosmetic surgery and procedures is disallowed.

2. Increase Highway and Motorboat Fuels Excise Taxes

Description of Senate Amendment Provision

Tax rates

The Senate amendment increases highway (including gasohol) and motorboat fuels taxes by 9.5 cents in the following increments:

4 cents per gallon	December 1, 1990
5 cents per gallon	July 1, 1991
0.5 cents per gallon	January 1, 1992

Railroad fuels are taxed at 50 percent of the above rates (a Sense of the Senate Resolution, however, provides that railroad fuels would be taxed at only 40 percent of the above rates).

Exemptions

- a. Present law exemptions generally are retained.
- b. Certain intercity buses are subject to a maximum fuels tax of 3.1 cents per gallon.
- c. Ethanol fuels exemptions generally are reduced from 6 cents per gallon to 5.5 cents per gallon.

Dedication of revenues

- a. 60 percent of the revenues from the rate increases in the highway fuel taxes and motorboat fuel taxes are dedicated to the Highway Trust Fund and Aquatic Resources Trust Fund, respectively; 40 percent of the revenues from the rate increases in the highway and motorboat fuel taxes are retained in the general fund.
- b. All of the revenues from the tax on railroad fuels are retained in the general fund.
- c. 20 percent of the revenue from the rate increase in the Highway Trust Fund are set aside for the mass transit account of that Trust Fund.
- d. Revenues from the rate increase in the Aquatic Resources Trust Fund are deposited in a new Wetlands Restoration Account in that Trust Fund.

Compliance provisions

A compliance package is adopted.

Expiration dates

a. Motor fuels tax rates are extended and made effective through September 30, 1995.

b. Highway Trust Fund expenditure authority is not extended (i.e., the October 1, 1993 expiration is retained).

3. Deny Deduction for Certain Interest Paid by Corporations to the IRS on Tax Obligations

Description of Senate Amendment Provision

The Senate amendment denies corporations a deduction for interest economically accruing after 30 days after the earlier of the furnishing of a notice of proposed deficiency (commonly called a 30-day letter) or the furnishing of a statutory notice of deficiency (commonly called a 90-day letter). Effective for interest economically accruing on or after January 1, 1991, regardless of the taxable period (if any) to which the underlying tax may relate.

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4. Extending Medicare Coverage of, and Application of Hospital Insurance Tax to, All State and Local Government Employees

Description of Senate Amendment Provision

The Senate amendment requires coverage of all employees of State and local governments under Medicare without regard to the employee's date of hire. The 2.9 percent HI payroll tax rate would be phased in with respect to newly covered State and local government employees so that the tax rate is 1.6 percent in 1992; 2.7 percent in 1993; and 2.9 percent in 1994 and thereafter. The present-law student exception is retained.

The provision is effective with respect to services performed after December 31, 1991.

5. Increase in Railroad Retirement Payroll Taxes

a. Increase in Railroad Retirement Tier 2 Payroll Taxes

Description of Senate Amendment Provision

Railroad employers, employees, and employee representatives are subject to a payroll tax to fund tier 2 railroad retirement benefits. The Senate amendment increases the tier 2 tax rate by 0.10 percent for employees (for a total rate of 5.00 percent), 0.30 percent for employers (for a total rate of 16.40 percent), and 0.30 percent for employee representatives (for a total rate of 15.05 percent). The provision is effective January 1, 1991.

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b. One-year Extension of General Fund Transfers to
Railroad Retirement Tier 2 Trust Fund

Description of Senate Amendment Provision

Under the Senate amendment, the transfer of proceeds from the taxation of railroad retirement tier 2 benefits from the General Fund into the Railroad Retirement Account is extended for one year, to apply to benefits received prior to October 1, 1991. The continuation of this transfer is estimated to result in an additional deposit into the Railroad Retirement Account of \$190 million.

- c. Railroad Retirement Tier 1 tax rate determined by reference to the Federal Insurance Contributions Act (FICA) tax rate

Description of Senate Amendment Provision

The Senate amendment amends the Railroad Retirement Tax Act to provide that the tier 1 tax rate is determined by cross-reference to the FICA tax rate.

6. Extension of Telephone Excise Tax

Description of Senate Amendment Provision

The 3-percent telephone excise tax is permanently extended. The provision is effective on January 1, 1991. Effective for semi-monthly period beginning after December 31, 1990, the collection period and deposit of the tax is modified. In addition, the certificate filing requirement applicable to communications service recipients exempt from the tax is modified.

7. Extend Statute of Limitations for Collection of Taxes

The Senate amendment extends the statute of limitations for collection of taxes after assessment from 6 years to 10 years. The extension would apply to assessments for which the statute of limitations is now running, but would not apply to assessments for which the statute of limitations has already expired.

D. Other Provisions

1. Increase in Refund Review Threshold for Reports Submitted to the Joint Committee on Taxation

Description of Senate Amendment Provision

The Senate amendment increases the threshold above which refunds must be submitted to the Joint Committee on Taxation for review from \$200,000 to \$1,000,000.

2. Increase Permanent Public Debt Limit

Description of House Bill Provision

1. The permanent public debt limit is increased from the present level of \$3,122.7 billion by \$1,377.3 billion to \$4.5 trillion (\$4,500 billion) from the date of enactment through September 30, 1993.

2. An additional increase of \$500 billion in the permanent public debt limit is effective on October 1, 1993, thus raising the permanent limit to \$5.0 trillion (\$5,000 billion).

Description of Senate Amendment Provision

The permanent public debt is increased by \$321 billion to \$3,443.7 billion. (Floor amendment by Senator Nickles.)

V. PROVISIONS WITH JOINT JURISDICTION

A. Access to Tax Information by the Department of Veteran's Affairs

The House bill and the Senate amendment permit disclosure by the IRS of certain third-party and self-employment tax information to the Department of Veteran's Affairs (DVA) to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs.

Issue: Should the disclosure provisions of the Code be expanded to permit this disclosure of otherwise confidential tax return information?

B. Harbor Tonnage Taxes

Description of House Bill Provisions

1. All vessels entering a port of the United States from any foreign port or place in North America, Central America, part of South America, and other parts of that geographical area will pay an increased tonnage tax of 27 cents per ton, not to exceed an amount of \$1.35 per ton per year. The fee in present law is 2 cents per ton, not to exceed an amount of 10 cents per ton per year.

2. All vessels entering a port of the United States from other foreign ports or places will pay an increased tonnage tax of 81 cents per ton, not to exceed an amount of \$4.05 per ton per year. The fee in present law is 6 cents per ton, not to exceed an amount of 30 cents per ton per year.

3. This amendment originated in the Committee on Merchant Marine and Fisheries.

