105TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
105–817

EXTENSION OF EXPIRING PROVISIONS AND OTHER TAX RELIEF

OCTOBER 12, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 4738]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4738) to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, provide tax relief for farmers and small businesses, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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69–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(b) TABLE OF CONTENTS.—

TITLE I—EXTENSION AND MODIFICATION OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Tax Provisions

SEC. 101. RESEARCH CREDIT.

(a) TEMPORARY EXTENSION.—Paragraph (1) of section 41(h) (relating to termination) is amended—

(1) by striking "June 30, 1998" and inserting "December 31, 1999";

(2) by striking "24-month" and inserting "42-month"; and

(3) by striking "24 months" and inserting "42 months".

(b) TECHNICAL AMENDMENT.—Subparagraph (D) of section 45C(b)(1) is amended by striking "June 30, 1998" and inserting "December 31, 1999".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1998.

SEC. 102. WORK OPPORTUNITY CREDIT.

(a) TEMPORARY EXTENSION.—Subparagraph (B) of section 51(c)(4) (relating to termination) is amended by striking "June 30, 1998" and inserting "December 31, 1999".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals who begin work for the employer after June 30, 1998.

SEC. 103. INCOME AVERAGING FOR FARMERS MADE PERMANENT.

Subsection (c) of section 933 of the Taxpayer Relief Act of 1997 is amended by striking ", and before January 1, 2001".

SEC. 104. CONTRIBUTIONS OF STOCK TO PRIVATE FOUNDATIONS; EXPANDED PUBLIC INSPECTION OF PRIVATE FOUNDATIONS' ANNUAL RETURNS.

(a) SPECIAL RULE FOR CONTRIBUTIONS OF STOCK MADE PERMANENT.—

(1) IN GENERAL.—Paragraph (5) of section 170(e) is amended by striking subparagraph (D) (relating to termination).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contributions made after June 30, 1998.

(b) EXPANDED PUBLIC INSPECTION OF PRIVATE FOUNDATIONS' ANNUAL RETURNS, ETC.—

(1) IN GENERAL.—Section 6104 (relating to publicity of information required from certain exempt organizations and certain trusts) is amended by striking subsections (d) and (e) and inserting after subsection (c) the following new subsection:

"(d) PUBLIC INSPECTION OF CERTAIN ANNUAL RETURNS AND APPLICATIONS FOR EXEMPTION.—

"(1) IN GENERAL.—In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a)—

"(A) a copy of—

"(i) the annual return filed under section 6033 (relating to returns by exempt organizations) by such organization; and

"(ii) if the organization filed an application for recognition of exemption under section 501, the exempt status application materials of such organization,

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office; and

"(B) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return and exempt status application materials shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in subparagraph (B) must be made in person or in writing. If such request is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.

"(2) 3-YEAR LIMITATION ON INSPECTION OF RETURNS.—Paragraph (1) shall apply to an annual return filed under section 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

"(3) EXCEPTIONS FROM DISCLOSURE REQUIREMENT.—

"(A) NONDISCLOSURE OF CONTRIBUTORS, ETC.—Paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization. In the case of an organization described in section 501(d), paragraph (1) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization.

"(B) NONDISCLOSURE OF CERTAIN OTHER INFORMATION.—Paragraph (1) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D).

"(4) LIMITATION ON PROVIDING COPIES.—Paragraph (1)(B) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.

"(5) EXEMPT STATUS APPLICATION MATERIALS.—For purposes of paragraph (1), the term 'exempt status applicable materials' means the application for recognition of exemption under section 501 and any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application.".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (c) of section 6033 is amended by adding "and" at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(B) Subparagraph (C) of section 6652(c)(1) is amended by striking "subsection (d) or (e)(1) of section 6104 (relating to public inspection of annual returns)" and inserting "section 6104(d) with respect to any annual return".

(C) Subparagraph (D) of section 6652(c)(1) is amended by striking "section 6104(e)(2) (relating to public inspection of applications for exemption)" and inserting "section 6104(d) with respect to any exempt status application materials (as defined in such section)".

(D) Section 6685 is amended by striking "or (e)".

(E) Section 7207 is amended by striking "or (e)".

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to requests made after the later of December 31, 1998, or the 60th day after the Secretary of the Treasury first issues the regulations referred to in such section 6104(d)(4) of the Internal Revenue Code of 1986, as amended by this section.

(B) PUBLICATION OF ANNUAL RETURNS.—Section 6104(d) of such Code, as in effect before the amendments made by this subsection, shall not apply to any return the due date for which is after the date such amendments take effect under subparagraph (A).

SEC. 105. SUBPART F EXEMPTION FOR ACTIVE FINANCING INCOME.

(a) INCOME DERIVED FROM BANKING, FINANCING, OR SIMILAR BUSINESSES.—Section 954(h) (relating to income derived in the active conduct of banking, financing, or similar businesses) is amended to read as follows:

"(h) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR BUSINESSES.—

"(1) IN GENERAL.—For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified banking or financing income of an eligible controlled foreign corporation.

"(2) ELIGIBLE CONTROLLED FOREIGN CORPORATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'eligible controlled foreign corporation' means a controlled foreign corporation which—

"(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

"(ii) conducts substantial activity with respect to such business.

"(B) PREDOMINANTLY ENGAGED.—A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

"(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

"(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

"(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or is any other corporation not so registered which is specified by the Secretary in regulations).

"(3) QUALIFIED BANKING OR FINANCING INCOME.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified banking or financing income' means income of an eligible controlled foreign corporation which—

"(i) is derived in the active conduct of a banking, financing, or similar business by—

"(I) such eligible controlled foreign corporation, or

"(II) a qualified business unit of such eligible controlled foreign corporation;

"(ii) is derived from one or more transactions—

"(I) with customers located in a country other than the United States, and

"(II) substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country; and

"(iii) is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws.

"(B) LIMITATION ON NONBANKING AND NONSECURITIES BUSINESSES.—No income of an eligible controlled foreign corporation not described in clause (ii) or (iii) of paragraph (2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such corporation's or unit's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation's or unit's home country.

"(C) SUBSTANTIAL ACTIVITY REQUIREMENT FOR CROSS BORDER INCOME.—The term 'qualified banking or financing income' shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

"(D) DETERMINATIONS MADE SEPARATELY.—For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

"(i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation; and

"(ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such unit.

"(4) LENDING OR FINANCE BUSINESS.—For purposes of this subsection, the term 'lending or finance business' means the business of—

"(A) making loans;

"(B) purchasing or discounting accounts receivable, notes, or installment obligations;

"(C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets);

"(D) issuing letters of credit or providing guarantees;

"(E) providing charge and credit card services; or

"(F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—

"(i) the corporation (or qualified business unit) rendering services or making facilities available; or

"(ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

"(5) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) CUSTOMER.—The term 'customer' means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

"(B) HOME COUNTRY.—Except as provided in regulations—

"(i) CONTROLLED FOREIGN CORPORATION.—The term 'home country' means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

"(ii) QUALIFIED BUSINESS UNIT.—The term 'home country' means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

"(C) LOCATED.—The determination of where a customer is located shall be made under rules prescribed by the Secretary.

"(D) QUALIFIED BUSINESS UNIT.—The term 'qualified business unit' has the meaning given such term by section 989(a).

"(E) RELATED PERSON.—The term 'related person' has the meaning given such term by subsection (d)(3).

"(6) COORDINATION WITH EXCEPTION FOR DEALERS.—Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

"(7) ANTI-ABUSE RULES.—For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

"(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection;

"(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in regular and continuous transactions with customers which are not related persons;

"(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

"(i) one or more entities in order to satisfy any home country requirement under this subsection, or

"(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection; and

"(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

"(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

"(9) APPLICATION.—This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to the first taxable year of a foreign corporation beginning after December 31, 1998, and before January 1, 2000, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.".

(b) INCOME DERIVED FROM INSURANCE BUSINESS.—

(1) INCOME ATTRIBUTABLE TO ISSUANCE OR REINSURANCE.—

(A) IN GENERAL.—Section 953(a) (defining insurance income) is amended to read as follows:

"(a) INSURANCE INCOME.—

"(1) IN GENERAL.—For purposes of section 952(a)(1), the term 'insurance income' means any income which—

"(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract; and

"(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

"(2) EXCEPTION.—Such term shall not include any exempt insurance income (as defined in subsection (e)).".

(B) EXEMPT INSURANCE INCOME.—Section 953 (relating to insurance income) is amended by adding at the end the following new subsection:

"(e) EXEMPT INSURANCE INCOME.—For purposes of this section—

"(1) EXEMPT INSURANCE INCOME DEFINED.—

"(A) IN GENERAL.—The term 'exempt insurance income' means income derived by a qualifying insurance company which—

"(i) is attributable to the issuing (or reinsuring) of an exempt contract by such company or a qualifying insurance company branch of such company; and

"(ii) is treated as earned by such company or branch in its home country for purposes of such country's tax laws.

"(B) EXCEPTION FOR CERTAIN ARRANGEMENTS.—Such term shall not include income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract which is not an exempt contract.

"(C) DETERMINATIONS MADE SEPARATELY.—For purposes of this subsection and section 954(i), the exempt insurance income and exempt contracts of a qualifying insurance company or any qualifying insurance company branch of such company shall be determined separately for such company and each such branch by taking into account—

"(i) in the case of the qualifying insurance company, only items of income, deduction, gain, or loss, and activities of such company not properly allocable or attributable to any qualifying insurance company branch of such company; and

"(ii) in the case of a qualifying insurance company branch, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such branch.

"(2) EXEMPT CONTRACT.—

"(A) IN GENERAL.—The term 'exempt contract' means an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualifying insurance company branch in connection with property in, liability arising out of activity in, or the lives or health of residents of, a country other than the United States.

"(B) MINIMUM HOME COUNTRY INCOME REQUIRED.—

"(i) IN GENERAL.—No contract of a qualifying insurance company or of a qualifying insurance company branch shall be treated as an exempt contract unless such company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this subparagraph)—

"(I) which cover applicable home country risks; and

"(II) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)).

"(ii) APPLICABLE HOME COUNTRY RISKS.—The term 'applicable home country risks' means risks in connection with property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or qualifying insurance company branch, as the case may be, issuing or reinsuring the contract covering the risks.

"(C) SUBSTANTIAL ACTIVITY REQUIREMENTS FOR CROSS BORDER RISKS.—A contract issued by a qualifying insurance company or qualifying insurance company branch which covers risks other than applicable home country risks (as defined in subparagraph (B)(ii)) shall not be treated as an exempt contract unless such company or branch, as the case may be—

"(i) conducts substantial activity with respect to an insurance business in its home country; and

"(ii) performs in its home country substantially all of the activities necessary to give rise to the income generated by such contract.

"(3) QUALIFYING INSURANCE COMPANY.—The term 'qualifying insurance company' means any controlled foreign corporation which—

"(A) is subject to regulation as an insurance (or reinsurance) company by its home country, and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country;

"(B) derives more than 50 percent of its aggregate net written premiums from the issuance or reinsurance by such controlled foreign corporation and each of its qualifying insurance company branches of contracts—

"(i) covering applicable home country risks (as defined in paragraph (2)) of such corporation or branch, as the case may be; and

"(ii) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3));

except that in the case of a branch, such premiums shall only be taken into account to the extent such premiums are treated as earned by such branch in its home country for purposes of such country's tax laws; and

"(C) is engaged in the insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

"(4) QUALIFYING INSURANCE COMPANY BRANCH.—The term 'qualifying insurance company branch' means a qualified business unit (within the meaning of section 989(a)) of a controlled foreign corporation if—

"(A) such unit is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country; and

"(B) such controlled foreign corporation is a qualifying insurance company, determined under paragraph (3) as if such unit were a qualifying insurance company branch.

"(5) LIFE INSURANCE OR ANNUITY CONTRACT.—For purposes of this section and section 954, the determination of whether a contract issued by a controlled foreign corporation or a qualified business unit (within the meaning of section 989(a)) is a life insurance contract or an annuity contract shall be made without regard to sections 72(s), 101(f), 817(h), and 7702 if—

"(A) such contract is regulated as a life insurance or annuity contract by the corporation's or unit's home country; and

"(B) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person.

"(6) HOME COUNTRY.—For purposes of this subsection, except as provided in regulations—

"(A) CONTROLLED FOREIGN CORPORATION.—The term 'home country' means, with respect to a controlled foreign corporation, the country in which such corporation is created or organized.

"(B) QUALIFIED BUSINESS UNIT.—The term 'home country' means, with respect to a qualified business unit (as defined in section 989(a)), the country in which the principal office of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance, or annuity contracts to persons other than related persons (as defined in section 954(d)(3)) in such country.

"(7) ANTI-ABUSE RULES.—For purposes of applying this subsection and section 954(i)—

"(A) the rules of section 954(h)(7) (other than subparagraph (B) thereof) shall apply;

"(B) there shall be disregarded any item of income, gain, loss, or deduction of, or derived from, an entity which is not engaged in regular and continuous transactions with persons which are not related persons;

"(C) there shall be disregarded any change in the method of computing reserves a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of this subsection or section 954(i);

"(D) a contract of insurance or reinsurance shall not be treated as an exempt contract (and premiums from such contract shall not be taken into account for purposes of paragraph (2)(B) or (3)) if—

"(i) any policyholder, insured, annuitant, or beneficiary is a resident of the United States and such contract was marketed to such resident and was written to cover a risk outside the United States; or

"(ii) the contract covers risks located within and without the United States and the qualifying insurance company or qualifying insurance company branch does not maintain such contemporaneous records, and file such reports, with respect to such contract as the Secretary may require;

"(E) the Secretary may prescribe rules for the allocation of contracts (and income from contracts) among 2 or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches; and

"(F) premiums from a contract shall not be taken into account for purposes of paragraph (2)(B) or (3) if such contract reinsures a contract issued or reinsured by a related person (as defined in section 954(d)(3)).

For purposes of subparagraph (D), the determination of where risks are located shall be made under the principles of section 953.

"(8) COORDINATION WITH SUBSECTION (c).—In determining insurance income for purposes of subsection (c), exempt insurance income shall not include income derived from exempt contracts which cover risks other than applicable home country risks.

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and section 954(i).

"(10) APPLICATION.—This subsection and section 954(i) shall apply only to the first taxable year of a foreign corporation beginning after December 31, 1998, and before January 1, 2000, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.

"(11) CROSS REFERENCE.—

"For income exempt from foreign personal holding company income, see section 954(i).".

(2) EXEMPTION FROM FOREIGN PERSONAL HOLDING COMPANY INCOME.—Section 954 (defining foreign base company income) is amended by adding at the end the following new subsection:

"(i) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF INSURANCE BUSINESS.—

"(1) IN GENERAL.—For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

"(2) QUALIFIED INSURANCE INCOME.—The term 'qualified insurance income' means income of a qualifying insurance company which is—

"(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

"(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

"(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

"(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

"(3) PRINCIPLES FOR DETERMINING INSURANCE INCOME.—Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

"(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

"(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

"(4) METHODS FOR DETERMINING UNEARNED PREMIUMS AND RESERVES.—For purposes of paragraph (2)(A)—

"(A) PROPERTY AND CASUALTY CONTRACTS.—The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

"(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

"(ii) such company or branch shall use the appropriate foreign loss payment pattern.

"(B) LIFE INSURANCE AND ANNUITY CONTRACTS.—The amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

"(i) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

"(ii) the reserve determined under paragraph (5).

"(C) LIMITATION ON RESERVES.—In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

"(5) AMOUNT OF RESERVE.—The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

"(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate;

"(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall be substituted for the prevailing State assumed interest rate; and

"(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

"(6) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.".

(3) RESERVES.—Section 953(b) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) Reserves for any insurance or annuity contract shall be determined in the same manner as under section 954(i).".

(c) SPECIAL RULES FOR DEALERS.—Section 954(c)(2)(C) is amended to read as follows:

"(C) EXCEPTION FOR DEALERS.—Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

"(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions) entered into in the ordinary course of such dealer's trade or business as such a dealer; and

"(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(J)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).".

(d) EXEMPTION FROM FOREIGN BASE COMPANY SERVICES INCOME.—Paragraph (2) of section 954(e) is amended by inserting "or" at the end of subparagraph (A), by striking ", or" at the end of subparagraph (B) and inserting a period, by striking subparagraph (C), and by adding at the end the following new flush sentence:

"Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection (c)(2)(C)(ii), (h), or (i).".

(e) EXEMPTION FOR GAIN.—Section 954(c)(1)(B)(i) (relating to net gains from certain property transactions) is amended by inserting "other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year" before the comma at the end.

SEC. 106. DISCLOSURE OF RETURN INFORMATION ON INCOME CONTINGENT STUDENT LOANS.

Subparagraph (D) of section 6103(l)(13) (relating to disclosure of return information to carry out income contingent repayment of student loans) is amended by striking "September 30, 1998" and inserting "September 30, 2003".

Subtitle B—Generalized System of Preferences

SEC. 111. EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES.

(a) EXTENSION OF DUTY-FREE TREATMENT UNDER SYSTEM.—Section 505 of the Trade Act of 1974 (29 U.S.C. 2465) is amended by striking "June 30, 1998" and inserting "December 31, 1999".

(b) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (2), any entry—

(A) of an article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if such title had been in effect during the period beginning on July 1, 1998, and ending on the day before the date of the enactment of this Act; and

(B) that was made after June 30, 1998, and before the date of the enactment of this Act,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry. As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

(2) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

TITLE II—OTHER PROVISIONS

SEC. 201. DEPRECIATION STUDY.

The Secretary of the Treasury (or the Secretary's delegate)—

(1) shall conduct a comprehensive study of the recovery periods and depreciation methods under section 168 of the Internal Revenue Code of 1986, and

(2) not later than March 31, 2000, shall submit the results of such study, together with recommendations for determining such periods and methods in a more rational manner, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 202. PRODUCTION FLEXIBILITY CONTRACT PAYMENTS.

(a) IN GENERAL.—The options under paragraphs (2) and (3) of section 112(d) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7212(d) (2) and (3)), as in effect on the date of the enactment of this Act, shall be disregarded in determining the taxable year for which any payment under a production flexibility contract under subtitle B of title I of such Act (as so in effect) is properly includible in gross income for purposes of the Internal Revenue Code of 1986.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to taxable years ending after December 31, 1995.

SEC. 203. 100 PERCENT DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—The table contained in subparagraph (B) of section 162(l)(1) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking the last 4 items and inserting the following new items:

"2002	75
2003 and thereafter	100."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 204. INCREASE IN VOLUME CAP ON PRIVATE ACTIVITY BONDS.

(a) IN GENERAL.—Subsection (d) of section 146 (relating to volume cap) is amended by striking paragraphs (1) and (2) and inserting the following new paragraphs:

"(1) IN GENERAL.—The State ceiling applicable to any State for any calendar year shall be the greater of—

"(A) an amount equal to the per capita limit for such year multiplied by the State population, or

"(B) the aggregate limit for such year.

Subparagraph (B) shall not apply to any possession of the United States.

"(2) PER CAPITA LIMIT; AGGREGATE LIMIT.—For purposes of paragraph (1), the per capita limit, and the aggregate limit, for any calendar year shall be determined in accordance with the following table:

Calendar Year	Per Capita Limit	Aggregate Limit
1999 through 2002	$50	$150,000,000
2003	55	165,000,000
2004	60	180,000,000
2005	65	195,000,000
2006	70	210,000,000
2007 and thereafter	75	225,000,000."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar years after 1998.

SEC. 205. MODIFICATION OF ESTIMATED TAX SAFE HARBORS.

(a) IN GENERAL.—The table contained in clause (i) of section 6654(d)(1)(C) (relating to limitation on use of preceding year's tax) is amended by striking the item relating to 1998, 1999, or 2000 and inserting the following new items:

"1998	105
1999 or 2000	106".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 1999.

SEC. 206. EXEMPTION FOR STUDENTS EMPLOYED BY STATE SCHOOLS, COLLEGES, OR UNIVERSITIES.

(a) IN GENERAL.—Notwithstanding section 218 of the Social Security Act, any agreement with a State (or any modification thereof) entered into pursuant to such section may, at the option of such State, be modified at any time on or after January 1, 1999, and on or before March 31, 1999, so as to exclude service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

(b) EFFECTIVE DATE OF MODIFICATION.—Any modification of an agreement pursuant to subsection (a) shall be effective with respect to services performed after June 30, 1999.

(c) IRREVOCABILITY OF MODIFICATION.—If any modification of an agreement pursuant to subsection (a) terminates coverage with respect to service performed in the employ of a school, college, or university, by a student who is enrolled and regularly attending classes at such school, college, or university, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable to such service performed in the employ of such school, college, or university.

TITLE III—REVENUE OFFSETS

SEC. 301. TREATMENT OF CERTAIN DEDUCTIBLE LIQUIDATING DISTRIBUTIONS OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.

(a) IN GENERAL.—Section 332 (relating to complete liquidations of subsidiaries) is amended by adding at the end the following new subsection:

"(c) DEDUCTIBLE LIQUIDATING DISTRIBUTIONS OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If a corporation receives a distribution from a regulated investment company or a real estate investment trust which is considered under subsection (b) as being in complete liquidation of such company or trust, then, notwithstanding any other provision of this chapter, such corporation shall recognize and treat as a dividend from such company or trust an amount equal to the deduction for dividends paid allowable to such company or trust by reason of such distribution.".

(b) CONFORMING AMENDMENTS.—

(1) The material preceding paragraph (1) of section 332(b) is amended by striking "subsection (a)" and inserting "this section".

(2) Paragraph (1) of section 334(b) is amended by striking "section 332(a)" and inserting "section 332".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after May 21, 1998.

SEC. 302. INCLUSION OF ROTAVIRUS GASTROENTERITIS AS A TAXABLE VACCINE.

(a) IN GENERAL.—Paragraph (1) of section 4132 (defining taxable vaccine) is amended by adding at the end the following new subparagraph:

"(K) Any vaccine against rotavirus gastroenteritis.".

(b) EFFECTIVE DATE.—

(1) SALES.—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1), in the case of sales on or before the date of the enactment of this Act for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 303. CLARIFICATION AND EXPANSION OF MATHEMATICAL ERROR ASSESSMENT PROCEDURES.

(a) TIN DEEMED INCORRECT IF INFORMATION ON RETURN DIFFERS WITH AGENCY RECORDS.—Paragraph (2) of section 6213(g) (defining mathematical or clerical error) is amended by adding at the end the following flush sentence:

"A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.".

(b) EXPANSION OF MATHEMATICAL ERROR PROCEDURES TO CASES WHERE TIN ESTABLISHES INDIVIDUAL NOT ELIGIBLE FOR TAX CREDIT.—Paragraph (2) of section 6213(g) is amended by striking "and" at the end of subparagraph (J), by striking the period at the end of the subparagraph (K) and inserting ", and", and by inserting after subparagraph (K) the following new subparagraph:

"(L) the inclusion on a return of a TIN required to be included on the return under section 21, 24, or 32 if—

"(i) such TIN is of an individual whose age affects the amount of the credit under such section; and

"(ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 304. CLARIFICATION OF DEFINITION OF SPECIFIED LIABILITY LOSS.

(a) IN GENERAL.—Subparagraph (B) of section 172(f)(1) (defining specified liability loss) is amended to read as follows:

"(B)(i) Any amount allowable as a deduction under this chapter (other than section 468(a)(1) or 468A(a)) which is in satisfaction of a liability under a Federal or State law requiring—

"(I) the reclamation of land;

"(II) the decommissioning of a nuclear power plant (or any unit thereof);

"(III) the dismantlement of a drilling platform;

"(IV) the remediation of environmental contamination; or

"(V) a payment under any workers compensation act (within the meaning of section 461(h)(2)(C)(i)).

"(ii) A liability shall be taken into account under this subparagraph only if—

"(I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year; and

"(II) the taxpayer used an accrual method of accounting throughout the period or periods during which such act (or failure to act) occurred.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to net operating losses arising in taxable years ending after the date of the enactment of this Act.

TITLE IV—TECHNICAL CORRECTIONS

SEC. 401. DEFINITIONS; COORDINATION WITH OTHER TITLES.

(a) DEFINITIONS.—For purposes of this title—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) 1998 ACT.—The term "1998 Act" means the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206).

(3) 1997 ACT.—The term "1997 Act" means the Taxpayer Relief Act of 1997 (Public Law 105–34).

(b) COORDINATION WITH OTHER TITLES.—For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.

SEC. 402. AMENDMENTS RELATED TO INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998.

(a) AMENDMENT RELATED TO SECTION 1101 OF 1998 ACT.—Paragraph (5) of section 6103(h) of the 1986 Code, as added by section 1101(b) of the 1998 Act, is redesignated as paragraph (6).

(b) AMENDMENT RELATED TO SECTION 3001 OF 1998 ACT.—Paragraph (2) of section 7491(a) of the 1986 Code is amended by adding at the end the following flush sentence:

"Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section 645(b)(1)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section 645(b)(2)).".

(c) AMENDMENTS RELATED TO SECTION 3201 OF 1998 ACT.—

(1) Section 7421(a) of the 1986 Code is amended by striking "6015(d)" and inserting "6015(e)".

(2) Subparagraph (A) of section 6015(e)(3) is amended by striking "of this section" and inserting "of subsection (b) or (f)".

(d) AMENDMENT RELATED TO SECTION 3301 OF 1998 ACT.—Paragraph (2) of section 3301(c) of the 1998 Act is amended by striking "The amendments" and inserting "Subject to any applicable statute of limitation not having expired with regard to either a tax underpayment or a tax overpayment, the amendments".

(e) AMENDMENT RELATED TO SECTION 3401 OF 1998 ACT.—Section 3401(c) of the 1998 Act is amended—

(1) in paragraph (1), by striking "7443(b)" and inserting "7443A(b)"; and

(2) in paragraph (2), by striking "7443(c)" and inserting "7443A(c)".

(f) AMENDMENT RELATED TO SECTION 3433 OF 1998 ACT.—Section 7421(a) of the 1986 Code is amended by inserting "6331(i)," after "6246(b),".

(g) AMENDMENT RELATED TO SECTION 3467 OF 1998 ACT.—The subsection (d) of section 6159 of the 1986 Code relating to cross reference is redesignated as subsection (e).

(h) AMENDMENT RELATED TO SECTION 3708 OF 1998 ACT.—Subparagraph (A) of section 6103(p)(3) of the 1986 Code is amended by inserting "(f)(5)," after "(c), (e),".

(i) AMENDMENTS RELATED TO SECTION 5001 OF 1998 ACT.—

(1) Subparagraph (B) of section 1(h)(13) of the 1986 Code is amended by striking "paragraph (7)(A)" and inserting "paragraph (7)(A)(i)".

(2)(A) Subparagraphs (A)(i)(II), (A)(ii)(II), and (B)(ii) of section 1(h)(13) of the 1986 Code shall not apply to any distribution after December 31, 1997, by a regulated investment company or a real estate investment trust with respect to—

(i) gains and losses recognized directly by such company or trust, and

(ii) amounts properly taken into account by such company or trust by reason of holding (directly or indirectly) an interest in another such company or trust to the extent that such subparagraphs did not apply to such other company or trust with respect to such amounts.

(B) Subparagraph (A) shall not apply to any distribution which is treated under section 852(b)(7) or 857(b)(8) of the 1986 Code as received on December 31, 1997.

(C) For purposes of subparagraph (A), any amount which is includible in gross income of its shareholders under section 852(b)(3)(D) or 857(b)(3)(D) of the 1986 Code after December 31, 1997, shall be treated as distributed after such date.

(D)(i) For purposes of subparagraph (A), in the case of a qualified partnership with respect to which a regulated investment company meets the holding requirement of clause (iii)—

(I) the subparagraphs referred to in subparagraph (A) shall not apply to gains and losses recognized directly by such partnership for purposes of determining such company's distributive share of such gains and losses, and

(II) such company's distributive share of such gains and losses (as so determined) shall be treated as recognized directly by such company.

The preceding sentence shall apply only if the qualified partnership provides the company with written documentation of such distributive share as so determined.

(ii) For purposes of clause (i), the term "qualified partnership" means, with respect to a regulated investment company, any partnership if—

(I) the partnership is an investment company registered under the Investment Company Act of 1940,

(II) the regulated investment company is permitted to invest in such partnership by reason of section 12(d)(1)(E) of such Act or an exemptive order of the Securities and Exchange Commission under such section, and

(III) the regulated investment company and the partnership have the same taxable year.

(iii) A regulated investment company meets the holding requirement of this clause with respect to a qualified partnership if (as of January 1, 1998)—

(I) the value of the interests of the regulated investment company in such partnership is 35 percent or more of the value of such company's total assets, or

(II) the value of the interests of the regulated investment company in such partnership and all other qualified partnerships is 90 percent or more of the value of such company's total assets.

(3) Paragraph (13) of section 1(h) of the 1986 Code is amended by adding at the end the following new subparagraph:

"(D) CHARITABLE REMAINDER TRUSTS.—Subparagraphs (A) and (B)(ii) shall not apply to any capital gain distribution made by a trust described in section 664."

(j) AMENDMENT RELATED TO SECTION 7004 OF 1998 ACT.—Clause (i) of section 408A(c)(3)(C) of the 1986 Code, as amended by section 7004 of the 1998 Act, is amended by striking the period at the end of subclause (II) and inserting ", and".

(k) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the 1998 Act to which they relate.

SEC. 403. AMENDMENTS RELATED TO TAXPAYER RELIEF ACT OF 1997.

(a) AMENDMENTS RELATED TO SECTION 202 OF 1997 ACT.—

(1) Paragraph (2) of section 163(h) of the 1986 Code is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", and", and by adding at the end the following new subparagraph:

"(F) any interest allowable as a deduction under section 221 (relating to interest on educational loans)."

(2)(A) Subparagraph (C) of section 221(b)(2) of the 1986 Code is amended—

(i) by striking "135, 137," in clause (i),

(ii) by inserting "135, 137," after "sections 86," in clause (ii), and

(iii) by striking the last sentence.

(B) Sections 86(b)(2)(A), 135(c)(4)(A), and 219(g)(3)(A)(ii) of the 1986 Code are each amended by inserting "221," after "137,".

(C) Subparagraph (A) of section 137(b)(3) of the 1986 Code is amended by inserting "221," before "911,".

(D) Clause (iii) of section 469(i)(3)(E) of the 1986 Code is amended to read as follows:

"(iii) the amounts allowable as a deduction under sections 219 and 221, and".

(3) The last sentence of section 221(e)(1) of the 1986 Code is amended by inserting before the period "or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5)".

(b) PROVISION RELATED TO SECTION 311 OF 1997 ACT.—In the case of any capital gain distribution made after 1997 by a trust to which section 664 of the 1986 Code applies with respect to amounts properly taken into account by such trust during 1997, paragraphs (5)(A)(i)(I), (5)(A)(ii)(I), and (13)(A) of section 1(h) of the 1986 Code (as in effect for taxable years ending on December 31, 1997) shall not apply.

(c) AMENDMENT RELATED TO SECTION 506 OF 1997 ACT.—Section 2001(f)(2) of the 1986 Code is amended by adding at the end the following:

"For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.".

(d) AMENDMENTS RELATED TO SECTION 904 OF 1997 ACT.—

(1) Paragraph (1) of section 9510(c) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for—

"(A) the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on August 5, 1997) for vaccine-related injury or death with respect to any vaccine—

"(i) which is administered after September 30, 1988, and

"(ii) which is a taxable vaccine (as defined in section 4132(a)(1)) at the time compensation is paid under such subtitle 2, or

"(B) the payment of all expenses of administration (but not in excess of $9,500,000 for any fiscal year) incurred by the Federal Government in administering such subtitle.".

(2) Section 9510(b) of the 1986 Code is amended by adding at the end the following new paragraph:

"(3) LIMITATION ON TRANSFERS TO VACCINE INJURY COMPENSATION TRUST FUND.—No amount may be appropriated to the Vaccine Injury Compensation Trust Fund on and after the date of any expenditure from the Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

"(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

"(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.".

(e) AMENDMENTS RELATED TO SECTION 915 OF 1997 ACT.—

(1) Section 915 of the 1997 Act is amended—

(A) in subsection (b), by inserting "or 1998" after "1997", and

(B) by amending subsection (d) to read as follows:

"(d) EFFECTIVE DATE.—This section shall apply to taxable years ending with or within calendar year 1997.".

(2) Paragraph (2) of section 6404(h) of the 1986 Code is amended by inserting "Robert T. Stafford" before "Disaster".

(f) AMENDMENTS RELATED TO SECTION 1012 OF 1997 ACT.—

(1) Paragraph (2) of section 351(c) of the 1986 Code, as amended by section 6010(c) of the 1998 Act, is amended by inserting ", or the fact that the corporation whose stock was distributed issues additional stock," after "dispose of part or all of the distributed stock".

(2) Clause (ii) of section 368(a)(2)(H) of the 1986 Code, as amended by section 6010(c) of the 1998 Act, is amended by inserting ", or the fact that the corporation whose stock was distributed issues additional stock," after "dispose of part or all of the distributed stock".

(g) PROVISION RELATED TO SECTION 1042 OF 1997 ACT.—Rules similar to the rules of section 1.1502-75(d)(5) of the Treasury Regulations shall apply with respect to any organization described in section 1042(b) of the 1997 Act.

(h) AMENDMENT RELATED TO SECTION 1082 OF 1997 ACT.—Subparagraph (F) of section 172(b)(1) of the 1986 Code is amended by adding at the end the following new clause:

"(iv) COORDINATION WITH PARAGRAPH (2).—For purposes of applying paragraph (2), an eligible loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated."

(i) AMENDMENT RELATED TO SECTION 1084 OF 1997 ACT.—Paragraph (3) of section 264(f) of the 1986 Code is amended by adding at the end the following flush sentence:

"If the amount described in subparagraph (A) with respect to any policy or contract does not reasonably approximate its actual value, the amount taken into account under subparagraph (A) shall be the greater of the amount of the insurance company liability or the insurance company reserve with respect to such policy or contract (as determined for purposes of the annual statement approved by the National Association of Insurance Commissioners) or shall be such other amount as is determined by the Secretary."

(j) AMENDMENT RELATED TO SECTION 1175 OF 1997 ACT.—Subparagraph (C) of section 954(e)(2) of the 1986 Code is amended by striking "subsection (h)(8)" and inserting "subsection (h)(9)".

(k) AMENDMENT RELATED TO SECTION 1205 OF 1997 ACT.—Paragraph (2) of section 6311(d) of the 1986 Code is amended by striking "under such contracts" in the last sentence and inserting "under any such contract for the use of credit, debit, or charge cards for the payment of taxes imposed by subtitle A".

(l) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the 1997 Act to which they relate.

SEC. 404. AMENDMENTS RELATED TO TAX REFORM ACT OF 1984.

(a) IN GENERAL.—Subparagraph (C) of section 172(d)(4) of the 1986 Code is amended to read as follows:

"(C) any deduction for casualty or theft losses allowable under paragraph (2) or (3) of section 165(c) shall be treated as attributable to the trade or business; and".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 67(b) of the 1986 Code is amended by striking "for losses described in subsection (c)(3) or (d) of section 165" and inserting "for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)".

(2) Paragraph (3) of section 68(c) of the 1986 Code is amended by striking "for losses described in subsection (c)(3) or (d) of section 165" and inserting "for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)".

(3) Paragraph (1) of section 873(b) is amended to read as follows:

"(1) LOSSES.—The deduction allowed by section 165 for casualty or theft losses described in paragraph (2) or (3) of section 165(c), but only if the loss is of property located within the United States."

(c) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (b)(3) shall apply to taxable years beginning after December 31, 1983.

(2) The amendment made by subsection (b)(1) shall apply to taxable years beginning after December 31, 1986.

(3) The amendment made by subsection (b)(2) shall apply to taxable years beginning after December 31, 1990.

SEC. 405. OTHER AMENDMENTS.

(a) AMENDMENTS RELATED TO SECTION 6103 OF 1986 CODE.—

(1) Subsection (j) of section 6103 of the 1986 Code is amended by adding at the end the following new paragraph:

"(5) DEPARTMENT OF AGRICULTURE.—Upon request in writing by the Secretary of Agriculture, the Secretary shall furnish such returns, or return information reflected thereon, as the Secretary may prescribe by regulation to officers and employees of the Department of Agriculture whose official duties require access to such returns or information for the purpose of, but only to the extent necessary in, structuring, preparing, and conducting the census of agriculture pursuant to the Census of Agriculture Act of 1997 (Public Law 105–113).".

(2) Paragraph (4) of section 6103(p) of the 1986 Code is amended by striking "(j)(1) or (2)" in the material preceding subparagraph (A) and in subparagraph (F) and inserting "(j)(1), (2), or (5)".

(3) The amendments made by this subsection shall apply to requests made on or after the date of the enactment of this Act.

(b) AMENDMENT RELATED TO SECTION 9004 OF TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—

(1) Paragraph (2) of section 9503(f) of the 1986 Code is amended to read as follows:

"(2) notwithstanding section 9602(b), obligations held by such Fund after September 30, 1998, shall be obligations of the United States which are not interest-bearing."

(2) The amendment made by paragraph (1) shall take effect on October 1, 1998.

(c) CLERICAL AMENDMENTS.—

(1) Clause (i) of section 51(d)(6)(B) of the 1986 Code is amended by striking "rehabilitation plan" and inserting "plan for employment". The reference to "plan for employment" in such clause shall be treated as including a reference to the rehabilitation plan referred to in such clause as in effect before the amendment made by the preceding sentence.

(2) Paragraph (3) of section 56(a) of the 1986 Code is amended by striking "section 460(b)(2)" and inserting "section 460(b)(1)" and by striking "section 460(b)(4)" and inserting "section 460(b)(3)".

(3) Paragraph (10) of section 2031(c) of the 1986 Code is amended by striking "section 2033A(e)(3)" and inserting "section 2057(e)(3)".

(4) Subparagraphs (C) and (D) of section 6693(a)(2) of the 1986 Code are each amended by striking "Section" and inserting "section".

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

PURPOSE

The bill, H.R. 4738, provides extensions of expired and expiring tax and trade provisions, accelerates the increase in the deduction for self-employed health insurance, requires a Treasury study of depreciation periods and methods, clarifies the treatment of certain farm production flexibility payments, increases the private activity bond volume cap, modifies the tax treatment of certain deductible liquidating distributions of regulated investment companies ("RICs") and real estate investment trusts ("REITS"), restricts net operating loss carryback rules for specified liability losses, clarifies and expands mathematical error procedures, adds vaccines against rotavirus gastroenteritis to the list of taxable vaccines, and provides necessary technical corrections to recent tax legislation.

SUMMARY OF THE BILL

Extension of expiring provisions

The bill extends the following tax and trade provisions, retroactive to the existing expiration date:

(1) Research and experimentation tax credit, with certain modifications (through 1999);

(2) Work opportunity tax credit (through 1999);

(3) Permanent extension of the deduction for contributions of appreciated stock to private foundations, along with public inspection of private foundation annual returns;

(4) Exceptions under subpart F for certain active financing income, with modifications, applicable only for taxable years beginning in 1999;

(5) Disclosure of return information to the Department of Education for income contingent student loans (through September 30, 2003);

(6) Permanent extension of income averaging for farmers; and

(7) Reauthorization of the generalized system of preferences ("GSP"), effective for duties paid on or after July 1, 1998 and before January 1, 2000.

Treasury study on depreciation

The Treasury Department is to conduct a comprehensive study of recovery periods and depreciation methods under Code section 168, and to provide recommendations regarding such periods and methods by March 31, 2000.

Farm production flexibility contract payments

The time a production flexibility contract payment under the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) is properly includible in income is determined without regard to the options granted by section 112(d)(2) (allowing receipt of one-half of the annual payment on either December 15 or January 15 of the fiscal year) or section 112(d)(3) (allowing the acceleration of all payments for fiscal year 1999) of that Act. The provision is effective for production flexibility contract payments made under the FAIR Act in taxable years ending after December 31, 1998.

Increase deduction for health insurance expenses of self-employed individuals

The bill increases the deduction for health insurance of self-employed individuals to 75 percent for taxable years beginning in 2002 and to 100 percent for taxable years beginning in 2003 and thereafter.

Volume limits on private activity bonds

The bill increases the limit on State private activity tax-exempt bonds to $75 per resident of each State or $225 million (if greater) beginning in calendar year 2007. The limit increase is phased in, beginning with $55 per capita or $165 million (if greater) in calendar year 2003.

Modification of individual estimated tax safe harbors

For taxable years beginning in 2000 and 2001, the 105 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year is modified to be a 106 percent of last year's liability safe harbor.

State election to exempt student employees from Social Security

The bill allows a limited window of time (January 1 through March 31, 1999) for States to modify existing State agreements to exempt from Social Security coverage students (including graduate assistants) who are employed by a public school, university, or college in a nonexempted State. The provision is effective with respect to earnings after June 30, 1999.

Revenue offset provisions

Treatment of certain deductible liquidating distributions of regulated investment companies ("RICs") and real estate investment trusts ("REITS").—Under the bill, any amount which a liquidating RIC or REIT may take as a deduction for dividends paid with respect to an otherwise tax-free liquidating distribution to an 80-percent corporate owner will be includible in the income of the recipient corporation. The includible amount will be treated as a dividend received from the RIC or REIT. The liquidating corporation will be able to designate the amount treated as a dividend, as a capital gain dividend or, in the case of a RIC, a dividend eligible for the 70-percent dividends received deduction, to the extent provided by the RIC or REIT provisions of the Code.

The bill does not otherwise change the tax treatment of the distribution to the parent corporation or to the RIC or REIT. Thus, for example, the liquidating corporation will not recognize gain (if any) on the liquidating distribution and the recipient corporation will hold the assets at a carryover basis. The provision is effective for distributions on or after May 22, 1998, regardless of when the plan of liquidation was adopted. No inference is intended regarding the treatment of such transactions under present law.

Mathematical error procedure.—The bill clarifies and expands the mathematical and clerical error procedures so that a correct TIN is a TIN assigned by the Social Security Administration (or IRS) to the individual identified on the tax return.

Vaccine excise tax.—The bill adds vaccines against rotavirus gastroenteritis to the list of taxable vaccines, effective for vaccine purchases after the date of enactment.

Restrict NOL carryback rules for specified liability losses.—The bill limits the definition of specified liability losses that can be carried back 10 years. The provision is effective for net operating losses arising in taxable years ending after the date of enactment. No inference is intended regarding the interpretation of the specified liability loss carryback rules under present law.

Tax technical corrections provisions

The bill makes necessary technical corrections to recent tax legislation, including the Internal Revenue Service Restructuring and Reform Act of 1998 ("1998 Act"), the Taxpayer Relief Act of 1997 ("1997 Act"), and other tax legislation.

B. Background and Need for Legislation

Certain tax and trade provisions expired as of July 1, 1998. The Committee believes that these provisions should be extended, generally through 1999, in order for taxpayers to have certainty in applying the provisions and for the Congress to have additional time to review and evaluate the provisions. The deduction for contributions of appreciated stock to private foundations and income averaging for farmers are extended permanently.

The Committee concluded that the scheduled increase to 100 percent for the deduction for self-employed health insurance should be accelerated in order to make health insurance more affordable for self-employed individuals.

The Treasury Department is required to conduct a comprehensive study of recovery periods and depreciation under Code section 168, and to provide recommendations regarding such periods and methods.

The bill provides revenue offsets for the costs of the other provisions of the bill, as well as necessary tax technical corrections to recent tax legislation.

C. Legislative History

The bill, H.R. 4738, was introduced by Chairman Archer on October 8, 1998. The Committee marked up the bill on October 9, 1998, and approved the bill with the Chairman's amendment in the nature of a substitute by a voice vote (with a quorum present).

The provisions of H.R. 4738 generally were also included in H.R. 4579 ("Taxpayer Relief Act of 1998"), as passed by the House of Representatives on September 26, 1998. Three of the revenue-offset provisions (restrict NOL carryback rules for specified liability losses, clarify and expand mathematical error procedures, and adding the vaccine against rotavirus gastroenteritis as a taxable vaccine) were included in H.R. 4250 ("Patient Protection Act of 1998"), as passed by the House of Representatives on July 24, 1998.

II. EXPLANATION OF THE BILL

TITLE I. EXTENSION OF EXPIRING PROVISIONS

Subtitle A—Tax Provisions

A. EXTENSION OF RESEARCH TAX CREDIT (SEC. 101 OF THE BILL AND SEC. 41 OF THE CODE)

PRESENT LAW

General rule

Section 41 provides for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceeded its base amount for that year. The research tax credit expired and generally does not apply to amounts paid or incurred after June 30, 1998.

A 20-percent research tax credit also applied to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation is commonly referred to as the "university basic research credit" (see sec. 41(e)).

Computation of allowable credit

Except for certain university basic research payments made by corporations, the research tax credit applies only to the extent that the taxpayer's qualified research expenditures for the current taxable year exceed its base amount. The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of 16). All other taxpayers (so-called "start-up firms") are assigned a fixed-base percentage of 3 percent.[1]

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

[1] A special rule is designed to gradually recompute a start-up firm's fixed-base percentate based on its actual research experience. Under this special rule, a start-up firm will be assigned a fixed-based percentage of 3 percent for each of its first five taxable years after 1993 in which it incurs qualified research expenditures. In the event that the research credit is extended beyond the scheduled expiration date, a start-up firm's fixed-based percentage for its sixth through tenth taxable years after 1993 in which it incurs qualifed research expenditures will be a phased-in ratio based on its actual research experience. For all subsequent taxable years, the taxpayer's fixed-based percentage will be its actual ratio of qualified research expenditures to gross receipts for any five years selected by the taxpayer from its fifth through tenth taxable years after 1993 (sec. 41(c)(3)(B)).

Alternative incremental research credit regime

Taxpayers are allowed to elect an alternative incremental research credit regime. If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 1.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1 percent (i.e., the base amount equals 1 percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 2.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of 2 percent. A credit rate of 2.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 2 percent. An election to be subject to this alternative incremental credit regime may be made for any taxable year beginning after June 30, 1996, and such an election applies to that taxable year and all subsequent years (in the event that the credit subsequently is extended by Congress) unless revoked with the consent of the Secretary of the Treasury.

Eligible expenditures

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

To be eligible for the credit, the research must not only satisfy the requirements of present-law section 174 but must be undertaken for the purpose of discovering information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and must involve a process of experimentation related to functional aspects, performance, reliability, or quality of a business component.

Expenditures attributable to research that is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

[2] Under a special rule, 75 percent of amounts paid to a research consortium for qualified research is treated as qualified research expenses eligible for the research credit (rather than 65 percent under the general rule under sec. 41(b)(3) governing contract research expenses) if (1) such research consortium is a tax-exempt organization that is described in section 501(c)(3) (other than a private foundation) or section 501(c)(6) and is organized and operated primarily to conduct scientific research, and (2) such qualified research is conducted by the consortium on behalf of the taxpayer and one or more persons not related to the taxpayer.

Relation to deduction

Deductions allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal to 100 percent of the taxpayer's research tax credit determined for the taxable year. Taxpayers may alternatively elect to claim a reduced research tax credit amount under section 41 in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

REASONS FOR CHANGE

The Committee believes that increasing technological knowledge ultimately will lead to new and better products produced at lower costs. New and better products and lower production costs are the genesis of economic growth. For this reason, the Committee believes it is important to extend the research and experimentation tax credit.

EXPLANATION OF PROVISION

The bill extends the research tax credit for 18 months—i.e., generally, for the period July 1, 1998, through December 31, 1999.

In extending the credit, the Committee wishes to reaffirm the scope of the term "qualified research." Section 41 targets the credit to research which is undertaken for the purpose of discovering information which is technological in nature and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer. However, eligibility for the credit does not require that the research be successful—i.e., the research need not achieve its desired result. Moreover, evolutionary research activities intended to improve functionality, performance, reliability, or quality are eligible for the credit, as are research activities intended to achieve a result that has already been achieved by other persons but is not yet within the common knowledge (e.g., freely available to the general public) of the field (provided that the research otherwise meets the requirements of section 41, including not being excluded by subsection (d)(4)).

Activities constitute a process of experimentation, as required for credit eligibility, if they involve evaluation of more than one alternative to achieve a result where the means of achieving the result are uncertain at the outset, even if the taxpayer knows at the outset that it may be technically possible to achieve the result. Thus, even though a researcher may know of a particular method of achieving an outcome, the use of the process of experimentation to effect a new or better method of achieving that outcome may be eligible for the credit (provided that the research otherwise meets the requirements of section 41, including not being excluded by subsection (d)(4)).

Lastly, the Committee observes the lack of clarity in the interpretation of the distinction between internal-use software, the costs of which may be eligible for the credit if additional tests are met, and other software. The Committee emphasizes that application of the definition of internal-use software should fully reflect Congressional intent.

EFFECTIVE DATE

The extension of the research credit is effective for qualified research expenditures paid or incurred during the period July 1, 1998, through December 31, 1999.

B. EXTENSION OF THE WORK OPPORTUNITY TAX CREDIT (SEC. 102 OF THE BILL AND SEC. 51 OF THE CODE)

PRESENT LAW

In general

The work opportunity tax credit ("WOTC"), which expired on June 30, 1998, was available on an elective basis for employers hiring individuals from one or more of eight targeted groups. The credit equals 40 percent (25 percent for employment of 400 hours or less) of qualified wages. Qualified wages are wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer. For a vocational rehabilitation referral, however, the period begins on the day the individual began work for the employer on or after the beginning of the individual's vocational rehabilitation plan.

The maximum credit per employee is $2,400 (40% of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit is $1,200 (40 percent of the first $3,000 of qualified first-year wages).

The employer's deduction for wages is reduced by the amount of the credit.

Targeted groups eligible for the credit

The eight targeted groups are: (1) families eligible to receive benefits under the Temporary Assistance for Needy Families (TANF) Program; (2) high-risk youth; (3) qualified ex-felons; (4) vocational rehabilitation referrals; (5) qualified summer youth employees; (6) qualified veterans; (7) families receiving food stamps; and (8) persons receiving certain Supplemental Security Income (SSI) benefits.

Minimum employment period

No credit is allowed for wages paid to employees who work less than 120 hours in the first year of employment.

Expiration date

The credit is effective for wages paid or incurred to a qualified individual who began work for an employer before July 1, 1998.

REASONS FOR CHANGE

The Committee believes the preliminary experience of the WOTC is promising as an incentive for employers to hire individuals who are under-skilled, undereducated, or who generally may be less desirable to employers. A temporary extension of this credit will allow the Congress and the Treasury and Labor Departments to continue to monitor the effectiveness of the credit.

EXPLANATION OF PROVISION

The bill extends the work opportunity tax credit for 18 months (through December 31, 1999).

EFFECTIVE DATE

The provision is effective for wages paid or incurred to qualified individuals who begin work for the employer on or after July 1, 1998, and before January 1, 2000.

C. Permanent Extension of Income Averaging for Farmers (Sec. 103 of the Bill and Sec. 1301 of the Code)

PRESENT LAW

An individual engaged in a farming business may elect to compute his or her current year tax liability by averaging, over the prior three-year period, all or a portion of the taxable income that is attributable to the farming business.

In general, an individual who makes the election (1) designates all or a portion of his or her taxable income attributable to any farming business from the current year as "elected farm income";[3] (2) allocates one-third of the elected farm income to each of the three prior taxable years; and (3) determines the current year section 1 tax liability by combining (a) his or her current year section 1 tax liability excluding the elected farm income allocated to the three prior taxable years, plus (b) the increases in the section 1 tax liability for each of the three prior taxable years caused by including one-third of the elected farm income in each such year. Any allocation of elected farm income pursuant to the election applies for purposes of any election in a subsequent taxable year.

The provision does not apply for employment tax purposes, or to an estate or a trust. The provision also does not apply for purposes of the alternative minimum tax. The provision is effective for taxable years beginning after December 31, 1997, and before January 1, 2001.

REASONS FOR CHANGE

Income from a farming business can fluctuate significantly from year to year due to circumstances beyond the farmer's control. Allowing farmers an election to average their income over a period of years mitigates the adverse tax consequences that could result from fluctuating income levels. The Committee believes that the election by farmers to average their income should be made permanent.

EXPLANATION OF PROVISION

The bill permanently extends the income averaging provision for farmers.

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[3] The amount of elected farm income of a taxpayer for a taxable year may not exceed the taxable income attributable to any farming business for the year.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2000.

D. Extend the Deduction Provided for Contributions of Appreciated Stock to Private Foundations; Public Inspection of Private Foundation Annual Returns

1. Extend the deduction provided for contributions of appreciated stock to private foundations (sec. 104(a) of the bill and sec. 170(e)(5) of the Code)

PRESENT LAW

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair market value of property contributed to a charitable organization.[4] However, in the case of a charitable contribution of short-term gain, inventory, or other ordinary income property, the amount of the deduction generally is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose.

In cases involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the taxpayer's basis in the property. However, under a special rule contained in section 170(e)(5), taxpayers are allowed a deduction equal to the fair market value of "qualified appreciated stock" contributed to a private foundation prior to July 1, 1998. Qualified appreciated stock is defined as publicly traded stock which is capital gain property. The fair-market-value deduction for qualified appreciated stock donations applies only to the extent that total donations made by the donor to private foundations of stock in a particular corporation did not exceed 10 percent of the outstanding stock of that corporation. For this purpose, an individual is treated as making all contributions that were made by any member of the individual's family.

REASONS FOR CHANGE

The Committee believes that, to encourage donations to charitable private foundations, it is appropriate to extend permanently the rule that allows a fair market value deduction for certain gifts of appreciated stock to private foundations.

EXPLANATION OF PROVISION

The provision extends permanently the special rule contained in section 170(e)(5).

[4] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

EFFECTIVE DATE

The provision is effective for contributions of qualified appreciated stock to private foundations made on or after July 1, 1998.

2. Public inspection of private foundation annual returns (sec. 104(b) of the bill and secs. 6033, 6104, 6652, 6685, 7207 of the Code)

PRESENT LAW

Tax-exempt organizations (other than churches and certain small organizations) are required to file an annual information return (Form 990) with the Internal Revenue Service ("IRS"), setting forth the organization's items of gross income and expenses attributable to such income, disbursements for tax-exempt purposes, plus certain other information for the taxable year.

Private foundations are required to make the current year's annual information return (Form 990–PF) available for public inspection at the foundation's principal office during regular business hours (sec. 6104(d)). Such return must be made available for inspection by any citizen on request made within 180 days after the date of publication of notice of its availability. Notice must be published, not later than the day the return is required to be filed, in a newspaper having general circulation in the county in which the principal office of the foundation is located. The notice must state that the annual return is available for public inspection by any citizen who requests it, and must state the address and telephone number of the private foundation's principal office and the name of its principal manager.

Tax-exempt organizations (other than private foundations) that are required to file a Form 990, including public charities, are required to allow public inspection at the organization's principal office (and certain regional or district offices) of their Forms 990 for the three most recent taxable years (sec. 6104(e)).

The Taxpayer Bill of Rights 2 imposed additional public inspection requirements on tax-exempt organizations. All tax-exempt organizations, except private foundations, will be required to comply with requests made in person or in writing by individuals who seek a copy of the organization's Form 990 for any of the organization's three most recent taxable years. Upon such a request, the organization is required to supply copies without charge other than a reasonable fee for reproduction and mailing costs. If the request for copies is made in person, then the organization must immediately provide such copies. If the request for copies is made in writing, then copies must be provided within 30 days. In addition, all tax-exempt organizations, including private foundations, will be required to comply in the same manner with requests made in person or in writing by individuals who seek a copy of the organization's application for recognition of tax-exempt status and certain related documents. However, an organization may be relieved of its obligation to provide copies if, in accordance with regulations to be promulgated by the Secretary of Treasury, (1) the organization has made the requested documents widely available or (2) the Secretary of the Treasury determined, upon application by the organization, that the organization was subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest. These additional public inspection provisions apply to requests made no earlier than 60 days after the date on which the Treasury Department publishes regulations defining when requested documents have been made widely available or when a request is part of a harassment campaign.[5] While proposed regulations have been issued, final regulations have not been published; therefore, the provision is not yet in effect.[6]

Upon written request to the IRS, members of the general public also are permitted to inspect annual information returns of tax-exempt organizations and applications for recognition of tax-exempt status (and related documents) at the National Office of the IRS in Washington, D.C. A person making such a written request is notified by the IRS when the material is available for inspection at the National Office, where notes may be taken of the material open for inspection, photographs taken with the person's own equipment, or copies of such material obtained from the IRS for a fee (Treas. Reg. secs. 301.6104(a)–6 and 301.6104(b)–1).

REASONS FOR CHANGE

To enhance oversight and public accountability of non-profit organizations, the Committee believes that the disclosure provisions applicable to private foundations should be consistent with those applicable to public charities and other tax-exempt organizations. In addition, this change will result in more efficient use of private foundation resources by eliminating the present-law publication requirements.

EXPLANATION OF PROVISION

Under the provision, private foundations are subject to the public inspection requirements that currently apply to public charities and all other tax-exempt organizations that file annual information returns. Accordingly, private foundations will be required to comply with requests from individuals who seek a copy of the foundation's annual information return for any of the foundation's three most recent taxable years. Private foundations are no longer subject to the publication requirements of section 6104(d).

The Committee is aware that the length of annual information returns filed by certain private foundations may make duplication and mailing of the return expensive and administratively burdensome. The Committee expects that the Treasury Department will publish regulations to address this issue (e.g., by permitting persons to request a copy of particular portions of the return).

EFFECTIVE DATE

The additional public inspection provisions apply to requests made after the later of: (1) the date which is 60 days after the date on which the Treasury Department publishes regulations defining

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[5] However, the legislative history of the provision indicates that Congress expected that organizations will comply voluntarily with the public inspection provisions prior to the issuance of such final regulations.

[6] Prop. Treas. Reg. sec. 301.6104(e)–1.

when requested documents have been made widely available or when a request is part of a harassment campaign, or (2) December 31, 1998. The repeal of the present-law publication requirement shall apply only to those returns the due date for filing of which is on or after the date the public inspection requirements become effective.

E. Exceptions Under Subpart F for Certain Active Financing Income (Sec. 105 of the Bill and Secs. 953 and 954 of the Code)

PRESENT LAW

In general

Under the subpart F rules, certain U.S. shareholders of a controlled foreign corporation ("CFC") are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, "foreign personal holding company income" and insurance income. The U.S. 10-percent shareholders of a CFC also are subject to current inclusion with respect to their shares of the CFC's foreign base company services income (i.e., income derived from services performed for a related person outside the country in which the CFC is organized).

Foreign personal holding company income generally consists of the following: (1) dividends, interest, royalties, rents and annuities; (2) net gains from the sale or exchange of (a) property that gives rise to the preceding types of income, (b) property that does not give rise to income, and (c) interests in trusts, partnerships, and REMICs; (3) net gains from commodities transactions; (4) net gains from foreign currency transactions; (5) income that is equivalent to interest; (6) income from notional principal contracts; and (7) payments in lieu of dividends.

Insurance income subject to current inclusion under the subpart F rules includes any income of a CFC attributable to the issuing or reinsuring of any insurance or annuity contract in connection with risks located in a country other than the CFC's country of organization. Subpart F insurance income also includes income attributable to an insurance contract in connection with risks located within the CFC's country of organization, as the result of an arrangement under which another corporation receives a substantially equal amount of consideration for insurance of other-country risks. Investment income of a CFC that is allocable to any insurance or annuity contract related to risks located outside the CFC's country of organization is taxable as subpart F insurance income (Prop. Treas. Reg. sec. 1.953–1(a)).

Temporary exceptions from foreign personal holding company income and foreign base company services income apply for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, insurance, or similar business. These exceptions (described below) are applicable only for taxable years beginning in 1998.

Income from the active conduct of a banking, financing, or similar business

A temporary exception from foreign personal holding company income applies to income that is derived in the active conduct of a banking, financing, or similar business by a CFC that is predominantly engaged in the active conduct of such business. For this purpose, income derived in the active conduct of a banking, financing, or similar business generally is determined under the principles applicable in determining financial services income for foreign tax credit limitation purposes. However, in the case of a corporation that is engaged in the active conduct of a banking or securities business, the income that is eligible for this exception is determined under the principles applicable in determining the income which is treated as nonpassive income for purposes of the passive foreign investment company provisions. In this regard, the income of a corporation engaged in the active conduct of a banking or securities business that is eligible for this exception is the income that is treated as nonpassive under the regulations proposed under section 1296(b) (as in effect prior to the enactment of the Taxpayer Relief Act of 1997). See Prop. Treas. Reg. secs. 1.1296–4 and 1.1296–6. The Secretary of the Treasury is directed to prescribe regulations applying look-through treatment in characterizing for this purpose dividends, interest, income equivalent to interest, rents and royalties from related persons.

For purposes of the temporary exception, a corporation is considered to be predominantly engaged in the active conduct of a banking, financing, or similar business if it is engaged in the active conduct of a banking or securities business or is a qualified bank affiliate or qualified securities affiliate. In this regard, a corporation is considered to be engaged in the active conduct of a banking or securities business if the corporation would be treated as so engaged under the regulations proposed under prior law section 1296(b) (as in effect prior to the enactment of the Taxpayer Relief Act of 1997); qualified bank affiliates and qualified securities affiliates are as determined under such proposed regulations. See Prop. Treas. Reg. secs. 1.1296–4 and 1.1296–6.

Alternatively, a corporation is considered to be engaged in the active conduct of a banking, financing, or similar business if more than 70 percent of its gross income is derived from such business from transactions with unrelated persons located within the country under the laws of which the corporation is created or organized. For this purpose, income derived by a qualified business unit ("QBU") of a corporation from transactions with unrelated persons located in the country in which the QBU maintains its principal office and conducts substantial business activity is treated as derived by the corporation from transactions with unrelated persons located within the country in which the corporation is created or organized. A person other than a natural person is considered to be located within the country in which it maintains an office through which it engages in a trade or business and by which the transaction is effected. A natural person is treated as located within the country in which such person is physically located when such person enters into the transaction.

Income from the active conduct of an insurance business

A temporary exception from foreign personal holding company income applies for certain investment income of a qualifying insurance company with respect to risks located within the CFC's country of creation or organization. These rules differ from the rules of section 953 of the Code, which determines the subpart F inclusions of a U.S. shareholder relating to insurance income of a CFC. Such insurance income under section 953 generally is computed in accordance with the rules of subchapter L of the Code.

A temporary exception applies for income (received from a person other than a related person) from investments made by a qualifying insurance company of its reserves or 80 percent of its unearned premiums. For this purpose, in the case of contracts regulated in the country in which sold as property, casualty or health insurance contracts, unearned premiums and reserves are defined as unearned premiums and reserves for losses incurred determined using the methods and interest rates that would be used if the qualifying insurance company were subject to tax under subchapter L of the Code. Thus, for this purpose, unearned premiums are determined in accordance with section 832(b)(4), and reserves for losses incurred are determined in accordance with section 832(b)(5) and 846 of the Code (as well as any other rules applicable to a U.S. property and casualty insurance company with respect to such amounts).

In the case of a contract regulated in the country in which sold as a life insurance or annuity contract, the following three alternative rules for determining reserves apply. Any one of the three rules can be elected with respect to a particular line of business.

First, reserves for such contracts can be determined generally under the rules applicable to domestic life insurance companies under subchapter L of the Code, using the methods there specified, but substituting for the interest rates in Code section 807(d)(2)(B) an interest rate determined for the country in which the qualifying insurance company was created or organized, calculated in the same manner as the mid-term applicable Federal interest rate ("AFR") (within the meaning of section 1274(d)).

Second, the reserves for such contracts can be determined using a preliminary term foreign reserve method, except that the interest rate to be used is the interest rate determined for the country in which the qualifying insurance company was created or organized, calculated in the same manner as the mid-term AFR. If a qualifying insurance company uses such a preliminary term method with respect to contracts insuring risks located in the country in which the company is created or organized, then such method is the method that applies for purposes of this election.

Third, reserves for such contracts can be determined to be equal to the net surrender value of the contract (as defined in section 807(e)(1)(A)).

In no event can the reserve for any contract at any time exceed the foreign statement reserve for the contract, reduced by any catastrophe or deficiency reserve. This rule applies whether the contract is regulated as a property, casualty, health, life insurance, annuity or any other type of contract.

A temporary exception from foreign personal holding company income also applies for income from investment of assets equal to: (1) one-third of premiums earned during the taxable year on insurance contracts regulated in the country in which sold as property, casualty, or health insurance contracts; and (2) the greater of 10 percent of reserves, or, in the case of a qualifying insurance company that is a startup company, $10 million. For this purpose, a startup company is a company (including any predecessor) that has not been engaged in the active conduct of an insurance business for more than 5 years. In general, the 5-year period commences when the foreign company first is engaged in the active conduct of an insurance business. If the foreign company was formed before being acquired by the U.S. shareholder, the 5-year period commences when the acquired company first was engaged in the active conduct of an insurance business. In the event of the acquisition of a book of business from another company through an assumption or indemnity reinsurance transaction, the 5-year period commences when the acquiring company first engaged in the active conduct of an insurance business, except that if more than a substantial part (e.g., 80 percent) of the business of the ceding company is acquired, then the 5-year period commences when the ceding company first engaged in the active conduct of an insurance business. Reinsurance transactions among related persons may not be used to multiply the number of 5-year periods.

Under rules prescribed by the Secretary, income is allocated to contracts as follows. In the case of contracts that are separate account-type contracts (including variable contracts not meeting the requirements of sec. 817), only the income specifically allocable to such contracts are taken into account. In the case of other contracts, income not specifically allocable is allocated ratably among such contracts.

A qualifying insurance company is defined as any entity which: (1) is regulated as an insurance company under the laws of the country in which it is incorporated; (2) derives at least 50 percent of its net written premiums from the insurance or reinsurance of risks situated within its country of incorporation; and (3) is engaged in the active conduct of an insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

The temporary exceptions do not apply to investment income (includable in the income of a U.S. shareholder of a CFC pursuant to sec. 953) allocable to contracts that insure related party risks or risks located in a country other than the country in which the qualifying insurance company is created or organized.

Anti-abuse rule

An anti-abuse rule applies for purposes of these temporary exceptions. For purposes of applying these exceptions, items with respect to a transaction or series of transactions are disregarded if one of the principal purposes of the transaction or transactions is to qualify income or gain for these exceptions, including any change in the method of computing reserves or any other transaction or transactions one of the principal purposes of which is the acceleration or deferral of any item in order to claim the benefits of these exceptions.

Foreign base company services income

A temporary exception from foreign base company services income applies for income derived from services performed in connection with the active conduct of a banking, financing, insurance or similar business by a CFC that is predominantly engaged in the active conduct of such business or is a qualifying insurance company.

REASONS FOR CHANGE

The subpart F rules historically have been aimed at requiring current inclusion by the U.S. shareholders of income of a CFC that is either passive or easily moveable. Under the subpart F rules, certain U.S. shareholders of a CFC are subject to U.S. tax on a current basis on certain income (including certain insurance income and foreign personal holding company income) earned by the CFC, whether or not such income is distributed to the shareholders. Prior to the enactment of the Tax Reform Act of 1986 (the "1986 Act"), exceptions from foreign personal holding company income were provided for income derived in the active conduct of a banking, financing, or similar business, or derived from certain investments made by an insurance company. The Committee recognizes that the 1986 Act's repeal of these exceptions may be viewed as causing the subpart F rules to apply to income that is neither passive nor easily moveable, requiring inclusion of such income on a current basis by U.S. shareholders. In the Taxpayer Relief Act of 1997, a one-year temporary exception from foreign personal holding company income was enacted [7] for income from the active conduct of an insurance, banking, financing, or similar business. The Committee believes it is appropriate to extend for one year these exceptions from subpart F, with certain modifications.

The Committee believes that modifications to the present-law provision are appropriate, including changes designed to treat various types of businesses with active financing income more similarly to each other than does the present-law provision. The Committee also believes that it is appropriate to modify the present-law provision to require that eligible businesses conduct substantial activity with regard to their respective financial service businesses, and that the income eligible for the exceptions have a nexus with the business activities giving rise to such income. In the case of transactions conducted with persons located outside the home country of the CFC or its foreign branch (so-called "cross border" transactions), the Committee believes that it is appropriate to impose higher standards for qualifying under the provision due to the increased concerns with respect to the mobility of income from such transactions.

EXPLANATION OF PROVISION

In general

The bill extends and modifies the present-law temporary exceptions from subpart F for income that is derived in the active conduct of a banking, financing, or similar business or in the conduct

[7] The President canceled this provision in 1997 pursuant to the Line Item Veto Act. On June 25, 1998, the U.S. Supreme Court held that the cancellation procedures set forth in the Line Item Veto Act are unconstitutional. *Clinton* v. *City of New York,* 118 S. Ct. 2091 (June 25, 1998).

of an insurance business. These exceptions (as modified) are applicable only for taxable years beginning in 1999.

With respect to income derived in the active conduct of a banking, financing, or similar business, the bill differs from the present-law temporary exceptions in the following significant respects. First, the bill requires a CFC to conduct substantial activity with respect to its business in order to qualify for the exceptions. Second, the bill adds certain nexus requirements which require that income which is derived by a CFC or QBU from transactions with customers are eligible for the exceptions if, among other things, substantially all of the activities in connection with such transactions are conducted directly by the CFC or QBU in its home country, and such income is treated as earned by the CFC or QBU in its home country for purposes of such country's tax laws. Third, the bill modifies the tests for determining whether a CFC is predominantly engaged in the active conduct of a banking, financing, or similar business, including modifications for income derived from a lending or finance business. Fourth, the bill extends the exceptions to income derived from certain cross border transactions, provided that certain requirements are met. Fifth, the determination of where a customer is treated as located is made under rules prescribed by the Secretary of the Treasury. Finally, the look-through rule that was included in the present-law provision for purposes of determining the income eligible for the exceptions is eliminated.

In the case of insurance, the bill differs from present law in the following significant respects. In addition to the exception for certain income of a qualifying insurance company with respect to risks located within the CFC's country of creation or organization that is provided under present law, the bill provides additional exceptions. First, the bill provides temporary exceptions from insurance income and from foreign personal holding company income for certain income of a qualifying branch of a qualifying insurance company with respect to risks located within the home country of the branch, provided certain requirements are met under each of the exceptions. Further, the bill adds additional temporary exceptions from insurance income and from foreign personal holding company income for certain income of certain CFCs or branches with respect to risks located in any country other than the United States, provided that the requirements for these exceptions are met.

Income from the active conduct of a banking, financing, or similar business

Substantial activity requirement

The bill modifies the exceptions from subpart F for income derived in the active conduct of a banking, financing, or similar business by, among other things, incorporating a substantial activity requirement. Under the bill, the subpart F exceptions apply to a CFC that is an eligible controlled foreign corporation (an "eligible CFC"). An eligible CFC is defined as a CFC which is predominantly engaged in the active conduct of a banking, financing, or similar business, but only if it conducts substantial activity with respect to such business.

Whether a CFC is considered to conduct substantial activity with respect to a banking, financing, or similar business is determined under all the facts and circumstances. It is intended that as part of this facts and circumstances analysis in determining whether the activities conducted by the CFC are substantial, all relevant factors are taken into account, including the overall size of the CFC, the amount of its revenues and expenses, the number of its employees, the ratio of its revenues per employee, the amount of property it owns, and the nature, size, and relative significance of the applicable activities conducted by the CFC. Under the bill, the Secretary is granted the authority to prescribe regulations to carry out the purposes of these exceptions. It is intended that such authority includes the authority to prescribe rules relating to whether a CFC (or, as relevant, a QBU) is considered to conduct substantial activity.

It also is intended that as part of this facts and circumstances analysis, a CFC is required to conduct substantially all of the activities necessary for the generation of income with respect to the business, which generally include the following:

Initial solicitation of customers (including vendors);

Advising customers on financial needs, including funding and financial products;

Providing financial and technical advice to customers;

Designing or tailoring financial products to customers' needs;

Negotiating terms with customers;

Performing credit analysis on customers and evaluating non-credit risks;

Providing related services to customers;

Making loans, entering into leases, extending credit or entering into other transactions with customers that generate income that would be considered derived in the active conduct of a banking, financing, or similar business;

Collecting from customers;

Performing remarketing activities (including sales) following termination of transactions with customers;

Responding to customers' failure to satisfy their obligations under transactions, including enforcement or renegotiation of terms, liquidation of collateral, foreclosure, and/or institution of litigation; and

Holding collateral for transactions with customers.

It is intended that the performance of back-office functions (including accounting for income or loss, recordkeeping, and routine communicating with customers) not be taken into account in determining whether the substantial activity requirement is satisfied. It also is intended that the relevant activities of the business may be modified by Treasury regulation to take into account future changes in the operations of these businesses.

In general, the substantial activity requirement is applied based on the activities of the CFC as a whole, including the activities of any QBUs of the CFC. In determining whether the substantial activity requirement is satisfied, activities performed in the country in which the CFC is incorporated (or in the country in which the QBU has its principal office) by employees of a related person of the CFC are taken into account, but only to the extent that the related person is compensated on an arm's-length basis for the services of such employees and such compensation is includible in the related person's income in such country for purposes of such country's income tax laws. For this purpose, a related person has the meaning provided in section 954(d)(3), substituting "at least 80 percent" for "more than 50 percent." It is intended that the activities of such a related person are not again taken into account in determining whether another CFC or QBU (e.g., the related person) satisfies the substantial activity requirement.

Predominantly engaged requirement

The bill also modifies the rules for determining whether a CFC is predominantly engaged in the active conduct of a banking, financing, or similar business. Alternative rules apply for this purpose.

Banking or securities business.—The bill modifies the present-law application of the banking or securities business tests for determining whether a CFC is predominantly engaged in the active conduct of a banking, financing, or similar business. Under the bill, a CFC is considered to be predominantly engaged in the active conduct of a banking, financing, or similar business if it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the United States (or is any other corporation not so licensed which is specified in regulations). In addition, a CFC is considered to be predominantly engaged in the active conduct of a banking, financing, or similar business if it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under applicable U.S. securities laws (or is any other corporation not so registered which is specified in regulations). It generally is intended that these requirements for the active conduct of a banking or securities business be interpreted in the manner provided in the regulations proposed under prior law section 1296(b) (as in effect prior to the enactment of the Taxpayer Relief Act of 1997). See Prop. Treas. Reg. secs. 1.1296–4 and 1.1296–6. Specifically, it is intended that these requirements include the requirements for foreign banks under Prop. Treas. Reg. sec. 1.1296–4 as currently drafted. However, it is not intended that these requirements be considered to be satisfied by a CFC merely because it is a qualified bank affiliate or a qualified securities affiliate within the meaning of the proposed regulations under former section 1296(b).

Lending or finance business.—The bill modifies the present-law 70-percent test for determining whether a CFC is predominantly engaged in the active conduct of a banking, financing, or similar business. Under the bill, a CFC is considered to be predominantly engaged in the active conduct of such business if more than 70 percent of its gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are unrelated persons. For this purpose, it is intended that transactions with customers located in the United States not be taken into account in determining whether the 70-percent test is satisfied.

For this purpose, a CFC is considered to be engaged in a lending or finance business if it is engaged in the business of:

(1) making loans;

(2) purchasing or discounting accounts receivable, notes (including loans), or installment obligations;

(3) engaging in leasing (including entering into leases and purchasing, servicing and disposing of leases and leased assets);

(4) issuing letters of credit and providing guarantees;

(5) providing charge and credit card services; or

(6) rendering services or making facilities available in connection with the foregoing activities carried on by the corporation rendering such services or facilities, or by another corporation which is a member of the same affiliated group.

For this purpose, whether two corporations are affiliated is determined by reference to section 1504 with one modification: the exclusion for foreign corporations is disregarded.

Whether any portion of a CFC's gross income is derived directly from the active and regular conduct of a lending or finance business is determined under all the facts and circumstances. Under the bill, the Secretary is granted the authority to prescribe regulations to carry out the purposes of these exceptions. It is intended that such authority includes the authority to prescribe rules relating to this determination.

Qualified banking or financing income exempt from subpart F

In general.—If a CFC is treated as an eligible CFC (i.e., it satisfies the substantial activity and predominantly engaged requirements), the subpart F exceptions apply to qualified banking or financing income of such corporation. Qualified banking or financing income is defined as income which is derived in the active conduct of a banking, financing, or similar business by an eligible CFC or a QBU of such CFC if: (1) the income is derived from transactions with customers not located in the United States, (2) substantially all of the activities in connection with such transactions are conducted directly by the corporation or unit in its home country, and (3) the income is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws. For this purpose, income is considered to be earned by a CFC or a QBU in its home country if such income is sourced and allocable to such CFC or QBU in its home country for purposes of such country's tax laws. In addition, for this purpose, activities are considered to be conducted by a CFC or QBU if such activities are performed by employees of the CFC or QBU. Except as provided by regulations, a CFC's home country is defined as its country of creation or organization, and a QBU's home country is defined as the country in which the unit maintains its principal office. Moreover, income derived from transactions with customers apply only to transactions with customers acting in their capacity as such.

For this purpose, it is intended that income derived by an eligible CFC or QBU of such CFC from the following types of activities be considered to be income derived in the active conduct of a banking, financing, or similar business (provided that the other requirements for these exceptions are satisfied):

(1) regularly making personal, mortgage, industrial, or other loans in the ordinary course of the corporation's trade or business;

(2) factoring evidences of indebtedness for customers;

(3) purchasing, selling, discounting, or negotiating for customers notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;

(4) issuing letters of credit and negotiating drafts drawn thereunder for customers;

(5) performing trust services, including as a fiduciary, agent, or custodian, for customers, provided such trust activities are not performed in connection with services provided by a dealer in stock, securities or similar financial instruments;

(6) arranging foreign exchange transactions (including any section 988 transaction within the meaning of section 988(c)(1)) for, or engaging in foreign exchange transactions with, customers;

(7) arranging interest rate or currency futures, forwards, options or notional principal contracts for, or entering into such transactions with, customers;

(8) underwriting issues of stock, debt instruments or other securities under best efforts or firm commitment agreements for customers;

(9) engaging in leasing (including entering into leases and purchasing, servicing and disposing of leases and leased assets);

(10) providing charge and credit card services for customers or factoring receivables obtained in the course of providing such services;

(11) providing traveler's check and money order services for customers;

(12) providing correspondent bank services for customers;

(13) providing paying agency and collection agency services for customers;

(14) maintaining restricted reserves (including money or securities) in a segregated account in order to satisfy a capital or reserve requirement imposed by a local banking or securities regulatory authority;

(15) engaging in hedging activities directly related to another activity described herein;

(16) repackaging mortgages and other financial assets into securities and servicing activities with respect to such assets (including the accrual of interest incidental to such activity);

(17) engaging in financing activities typically provided in the ordinary course by an investment bank, such as project financing provided in connection with construction projects, structured finance (including the extension of a loan and the sale of participations or interests in the loan to other financial institutions or investors), and leasing activities to the extent incidental to such financing activities;

(18) providing financial or investment advisory services, investment management services, fiduciary services, or custodial services;

(19) purchasing or selling stock, debt instruments, interest rate or currency futures or other securities or derivative financial products (including notional principal contracts) from or to customers and holding stock, debt instruments and other securities as inventory for sale to customers, unless the relevant securities or derivative financial products are not held in a dealer capacity;

(20) effecting transactions in securities for customers as a securities broker; and

(21) any other activity that the Secretary of the Treasury determines to be a financing activity conducted by active corporations in the ordinary course of their business.

Qualified banking or financing income of an eligible CFC or QBU of such CFC is determined separately for the CFC and each QBU, taking into account, in the case of an eligible CFC, only items of income, gain, deduction, loss or other items, as well as activities, of such CFC that are not properly allocable to any QBUs. Similarly, in the case of a QBU, qualified banking or financing income is determined by taking into account such applicable items (e.g., income and activities) that are properly allocable to such QBU. Under the bill, the Secretary is granted the authority to prescribe regulations to carry out the purposes of these exceptions. It is intended that such authority includes the authority to prescribe rules for properly allocating items and activities among branches or units of a CFC, and between the CFC and its branches or units.

Income from local customer transactions.—If the requirements above are satisfied, the exceptions apply to income that is derived from transactions with customers located in the CFC's home country. In addition, the exceptions apply to income that is derived by a QBU of an eligible CFC from transactions with customers located in the QBU's home country.

For example, assume that a CFC is incorporated in the United Kingdom and has operations in France that constitute a QBU. Also assume that the activities of the U.K. CFC's head office together with the activities of the French QBU satisfy the substantial activity requirement. Under the bill, income derived by the U.K. CFC from transactions with customers in the United Kingdom is eligible for the exceptions if substantially all of the activities in connection with the transaction are performed in the United Kingdom by employees of the U.K. CFC, and the income is treated as earned by the U.K. CFC in the United Kingdom for U.K. income tax purposes. In addition, income derived by the French QBU from transactions with customers in France is eligible for the exceptions if substantially all of the activities in connection with the transactions are performed in France by employees of the French QBU, and the income is treated as earned by the French QBU in France for French income tax purposes.

Income from cross border transactions.—If the requirements above are satisfied, the exceptions also apply to income from certain cross border transactions, but only if a higher standard with respect to the substantial activity requirement is satisfied. Under the bill, income derived by a CFC from transactions with customers not located in the CFC's home country or the United States is eligible for the exceptions if the CFC conducts substantial activity with respect to a banking, financing, or similar business in its home country. In addition, income derived by a QBU of an eligible CFC from transactions with customers not located in the QBU's home country or the United States is eligible for the exceptions, but only if the QBU conducts substantial activity with respect to such a business in its home country. For this purpose, the substantial activity requirement is applied by looking only at the activities of the applicable CFC or QBU on a stand-alone basis. Thus, income derived by a QBU from transactions with customers not located in its home country (or in the United States) is eligible for the exceptions if the activities of the QBU itself constitute substantial activities (provided that the other requirements are satisfied).

Consider again the U.K. CFC and the French QBU. If the head office of the U.K. CFC derives income from a transaction with a customer in Germany, the income is eligible for the exceptions if the activities of the CFC itself (without regard to those of the French QBU) satisfy the substantial activity requirement. Alternatively, if the French QBU derives income from a transaction with a German customer, the income is eligible for the exceptions if the activities of the French QBU itself satisfy the substantial activity requirement.

Home country requirement for income earned with respect to a lending or finance business.—In the case of a lending or finance business, in addition to the requirements described above, the bill includes an additional requirement to qualify for the exceptions in the case of income earned by a CFC which qualifies as an eligible CFC by satisfying the predominantly engaged requirement for an active lending or finance business. For such an eligible CFC, income derived by such CFC is eligible for the exceptions only if such CFC derives more than 30 percent of its gross income directly from the active and regular conduct of a lending or finance business from transactions with customers that are unrelated persons and that are located within the CFC's home country (the "home country" requirement). In addition, income derived by a QBU of such an eligible CFC is eligible for the exceptions only if such QBU derives more than 30 percent of its gross income directly from the active and regular conduct of a lending or finance business from transactions with customers that are unrelated persons and that are located within the QBU's home country. For this purpose, it is intended that transactions with customers located in the United States not be taken into account.

The home country requirement is applied on a stand-alone basis to the particular CFC or QBU. Thus, the 30-percent gross income test takes into account only the gross income of a particular CFC (without regard to the income of its QBUs) from transactions with its home-country unrelated customers. Similarly, in the case of a QBU, there is taken into account the gross income of the particular QBU (without regard to the income of the CFC or other QBUs) from transactions with its home-country unrelated customers. Accordingly, if more than 70 percent of the CFC's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with unrelated customers, and one of the CFC's QBUs satisfies the home country requirement but another QBU does not satisfy such requirement, income derived by the QBU that satisfies the home country requirement is eligible for the exceptions from subpart F (provided that the other requirements are satisfied), but income derived by the other QBU is not eligible for the exceptions.

Coordination with other rules.—The bill provides that the exceptions under section 954(h) for income derived in the active conduct of a banking, financing, or similar business do not apply to income described in the dealer exception under section 954(c)(2)(C)(ii) (described below) for a dealer in securities which is an eligible CFC that satisfies the predominantly engaged requirement for a securities business.

In addition, the Committee expects that the Treasury Department and the Internal Revenue Service will issue timely guidance to make currently effective conforming changes to existing regulations in order to reflect the exceptions under section 954(h), including conforming changes to the regulations under section 954(c)(3).

Exception for securities dealers

The bill provides an additional exception from foreign personal holding company income for certain income derived by a securities dealer within the meaning of section 475 (the so-called "dealer exception"). The dealer exception applies to interest or dividends (or equivalent amounts described in sec. 954(c)(1)(E) or (G)) from any transaction (including a hedging transaction or a transaction consisting of a deposit of collateral or margin described in sec. 956(c)(2)(J)) entered into in the ordinary course of the dealer's trade or business as such a securities dealer, but only if the income is attributable to activities of the dealer in the country in which the dealer is created or organized (or, in the case of a QBU of the dealer, is attributable to activities of the QBU in the country in which the QBU both maintains its principal office and conducts substantial business activity). For this purpose, income is considered to be attributable to activities of the dealer in its country of incorporation (or to a QBU in the country in which the QBU both maintains its principal office and conducts substantial business activity), if such income is attributable to activities performed in such country by employees of the dealer (or QBU), and such income is treated as earned in such country by the dealer (or QBU) for purposes of such country's tax laws. For this purpose, income is considered to be earned in the country in which the dealer is created or organized (or, in the case of a QBU, in the country in which the QBU both maintains its principal office and conducts substantial business activity), if such income is sourced and allocable to such dealer (or QBU) in such country for purposes of such country's tax laws. It is intended that the dealer exception not apply to income from transactions with persons located in the United States with respect to U.S. securities. This reflects the Committee's understanding that the exception from current inclusion under subpart F for income earned by dealers in securities does not apply to activities that would otherwise be conducted in the United States. In addition, it is intended that the dealer exception will apply to interest paid by customers to the dealer on margin loans in connection with sales of securities (provided that the other requirements of the provision are satisfied).

Insurance income

In general

The bill provides a temporary exception to insurance income under section 953. For purposes of the exception to insurance income, reserves for an exempt insurance or annuity contract are determined in the same manner as under the temporary exception, described below, for foreign personal holding company income relating to certain insurance contracts (sec. 954(i), as added by the bill). For purposes of these provisions, reserves are intended to include discounted unpaid losses or losses incurred, as appropriate, for property and casualty contracts.

Operation of the exception

The bill provides an exception from insurance income for income derived by a qualifying insurance company that is attributable to the issuing (or reinsuring) of an exempt contract by the qualifying insurance company or a qualifying insurance company branch of such a company, and that is treated as earned by the company or branch in that company's, or branch's, home country for purposes of that country's tax laws. The exception from insurance income does not apply to income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring a contract that is not an exempt contract). An exempt contract is an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualified insurance company branch in connection with property in, liability arising out of activity in, or the lives or health of residents of, a country other than the United States.

No contract is treated as an exempt contract unless the qualifying insurance company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this sentence) covering applicable home country risks, and with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (within the meaning of sec. 954(d)(3)). Applicable home country risks are risks in connection with property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or branch, as the case may be. In all cases, the 30-percent test is applied on a unit-by-unit basis. Accordingly, income derived by a qualifying insurance company branch of a CFC qualifies only if such branch alone satisfies the 30-percent test (without regard to the net written premiums of any other branch). Income derived by the CFC qualifies only if the CFC alone satisfies the 30-percent test without regard to the net written premiums of any other unit or branch of the CFC.

When determinations under the bill are made separately with respect to a qualifying insurance company and its qualifying insurance company branch or branches, then in the case of the qualifying insurance company, only income, gain, or loss and activities of the company not properly allocable or attributable to any qualifying insurance company branch are taken into account. In the case of a qualifying insurance company branch, only income, gain, or loss and activities of the branch that are properly allocable or attributable to it are taken into account. Under the bill, the Secretary is granted the authority to carry out the purposes of these exceptions. It is intended that such authority includes the authority to prescribe rules for properly allocating items and activities among branches or units of a CFC, and among the CFC and its branches or units.

The home country of a CFC is the country in which the CFC is created or organized. The home country of a qualified business unit that is a qualifying insurance company branch of a qualifying insurance company means the country in which the principal office of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance or annuity contracts to persons other than related persons (within the meaning of sec. 954(d)(3)) in that country.

Qualifying insurance company

A qualifying insurance company is a CFC that meets the following requirements, which are intended to distinguish firms that have a real business nexus with a foreign country or countries from firms that do not. The first requirement is that the CFC be subject to regulation as an insurance (or reinsurance) company by its home country, and that the CFC be licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in its home country.

The second requirement is that the CFC derive more than 50 percent of its aggregate net written premiums from the insurance or reinsurance by the CFC (on an aggregate basis, including qualifying insurance company branches) covering applicable home country risks (as described above) of the CFC or branch, as the case may be. For purposes of this rule, if a policyholder, insured, annuitant, or beneficiary is a related person, then the contract is treated as not covering home country risks. A related person has the meaning set forth in section 954(d)(3). In the case of a qualifying insurance company branch, premiums are taken into account under this second requirement only to the extent that the premiums are treated as earned by the branch in its home country for purposes of that country's tax laws.

The 50-percent test applies on an aggregate basis. For example, assume that a German CFC has a branch in France and a branch in Italy. Assume that $50 of net written premiums are properly allocable to the Italian branch, $100 of net written premiums are properly allocable to the French branch, and $100 of net written premiums are properly allocable to the CFC in Germany. For the Italian branch, assume $20 of the $50, or 40 percent, is from home country risks. For the French branch, assume that $80 of the $100, or 80 percent, is from home country risks. For the CFC in Germany, assume that $60 of the $100, or 60 percent, is from home country risks. Taking into account the respective amounts and percentages, the CFC has 64 percent of its net written premiums from home country risks on an aggregate basis.

The third requirement is that the CFC be engaged in the insurance business and that it would be subject to tax under subchapter L if it were a domestic corporation. A CFC is considered to be engaged in the insurance business, within the meaning of this bill, if it operates in a manner consistent with the operation of other bona fide commercial insurance companies that sell insurance products to unrelated parties in its home country, and conducts managerial activities in that country with respect to the major functions of the insurance business. A factor, among others, that could be considered in determining whether it conducts managerial activities in its home country with respect to the major functions of the insurance business may be whether in its home country it exercises key decision making in determining business strategy with respect to the major functions of the insurance business. For purposes of the requirement that the CFC be engaged in the insurance business, activities performed in the home country of the CFC by employees of the CFC and of a related person are taken into account, to the extent that the related person is compensated on an arm's-length basis for the services of such employees and such compensation is includible in the related person's income in such country for purposes of that country's tax laws. For this purpose, a related person has the meaning provided in section 954(d)(3), substituting "at least 80 percent" for "more than 50 percent." In determining whether a CFC is engaged in the insurance business, for example, an entity that is not engaged in regular and continuous transactions with persons that are not related persons (as described in the anti-abuse rules) is not considered as engaged in the insurance business.

Qualifying insurance company branch

A qualifying insurance company branch is a qualified business unit of a CFC that meets two requirements. A qualified business unit means any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records (within the meaning of sec. 989(a)). The first requirement is that the unit be licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance or annuity contracts to persons other than related persons (within the meaning of sec. 954(d)(3)) in that country. It is intended that the applicable insurance regulatory body be the regulatory body that has the authority to license, authorize, or regulate with respect to the insurance business in the country where the branch is located and a branch that is regulated by such a body be considered to be regulated in the country where the branch is located. The second requirement is that the CFC (of which the branch is a unit) be a qualifying insurance company, taking the unit into account for purposes of the applicable tests (above) as if it were a qualifying insurance company branch.

Additional requirements in the case of cross border risks

The bill imposes additional requirements with respect to any contract that covers cross border risks (that is, risks other than applicable home country risks), due to the increased concern about mobility of income in cross border business. A contract issued by a qualifying insurance company or qualifying insurance company branch that covers risks other than applicable home country risks is not treated as an exempt contract unless such company or branch, as the case may be, (1) conducts substantial activity in its home country with respect to the insurance business, and (2) performs in its home country substantially all of the activities necessary to give rise to the income generated by the contract.

Whether a CFC or unit thereof is considered to perform in its home country substantial activities with respect to the insurance business is determined under all the facts and circumstances. It is intended that as part of this facts and circumstances analysis in determining whether the activities conducted by the CFC or unit are substantial, all relevant factors are taken into account, including the overall size of the CFC or unit, the amount of its revenues and expenses, the number of its employees, the ratio of its revenues per employee, the amount of property it owns, and the nature, size and relative significance of the applicable activities conducted by the CFC or unit. Under the bill, the Secretary is granted the authority to carry out the purposes of these exceptions. It is intended that such authority includes the authority to prescribe regulations relating to whether a CFC or unit is considered to conduct substantial activity.

It also is intended that as part of this facts and circumstances analysis, a CFC or unit is required to conduct substantially all of the activities necessary for the generation of income with respect to the insurance business. Such activities of an insurance business generally depend on the line of business, and could include:

Designing or tailoring insurance products to meet market or customer requirements;

Performing actuarial analysis with respect to insurance products;

Determining investment options for separate account-type products;

Performing underwriting functions with respect to insurance products;

Performing analysis for purposes of risk assessment;

Performing analysis for purposes of setting premium rates;

Performing analysis for purposes of calculating reserves;

Performing claims management and adjustment functions;

Developing marketing strategies, advertising and other public image activities;

Making (or arranging for) sales to customers;

Maintaining reserves and surplus (other than excess surplus);

Making (or arranging for) investments; and

Collecting from customers.

It further is intended that the performance of back-office functions (including accounting for income or loss, recordkeeping, and routine communicating with customers) not be taken into account in determining whether the substantial activity requirement is satisfied. It also is intended that the relevant activities of the business may be modified by Treasury regulation to take into account the actual operation of lines of insurance business and future changes in the operation of lines of insurance business.

It further is intended that activities performed in the CFC's or unit's home country by employees of a related person (within the meaning of sec. 954(d)(3), substituting "at least 80 percent" for "more than 50 percent") be taken into account, to the extent that the related person is compensated on an arm's-length basis for the services of such employees and such compensation is includible in the related person's income in that country for purposes of such country's tax laws. It also is intended that the activities of such a related person are not again taken into account in determining whether another CFC or unit (e.g., the related person) satisfies the substantial activity requirement.

In addition, with respect to a contract issued by a qualifying insurance company or qualifying insurance company branch that covers risks other than applicable home country risks, the qualifying insurance company or qualifying insurance company branch is required to perform in its home country substantially all of the activities necessary to give rise to the income generated by the contract.

Foreign personal holding company income with respect to insurance

The bill provides a temporary exception from foreign personal holding company income for certain investment income derived by a qualifying insurance company and by certain qualifying insurance company branches.

The exception applies to income (received from a person other than a related person) from investments made by a qualifying insurance company or qualifying insurance company branch of its reserves allocable to exempt contracts or 80 percent of its unearned premiums from exempt contracts. For this purpose, an exempt contract has the meaning provided under the bill.

In the case of exempt contracts that are property, casualty, or health insurance contracts, unearned premiums and reserves mean unearned premiums and reserves for losses incurred determined using the methods and interest rates that would be used if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L of the Code, with certain modifications. For this purpose, unearned premiums and losses incurred are determined in accordance with section 832(b) and 846 of the Code (as well as any other rules applicable to a U.S. property and casualty insurance company with respect to such amounts). However, in applying these rules, there is substituted for the applicable Federal interest rate the interest rate determined for the functional currency of the company or branch and which (except as provided by the Treasury Secretary) is calculated in the same manner as the Federal mid-term rate under section 1274(d). In addition, there is substituted for the loss payment pattern under section 846 the appropriate foreign loss payment pattern determined by the Treasury Secretary for the line of business. In the case of health insurance contracts, it is intended that appropriate foreign mortality and morbidity tables be used for this purpose. In the case of disability contracts (other than credit disability) which are subject to section 846(f)(6)(A), it is intended that mortality and morbidity tables reasonably reflect appropriate experience and foreign mortality and morbidity factors.

In the case of an exempt contract that is a life insurance or annuity contract, reserves for such contracts are determined as follows. The reserves equal the greater of: (1) the net surrender value of the contract (as defined in section 807(e)(1)(A)), including in the case of pension plan contracts; or (2) the amount determined by applying the tax reserve method that would apply if the qualifying insurance company were subject to tax under Subchapter L of the Code, with the following modifications. First, there is substituted for the applicable Federal interest rate an interest rate determined for the functional currency of the qualifying insurance company's home country, calculated (except as provided by the Treasury Secretary in order to address insufficient data and similar problems) in the same manner as the mid-term applicable Federal interest rate ("AFR") (within the meaning of section 1274(d)). Second, there is substituted for the prevailing State assumed rate the highest assumed interest rate permitted to be used for purposes of determining statement reserves in the foreign country for the contract. Third, in lieu of U.S. mortality and morbidity tables, there is applied mortality and morbidity tables that reasonably reflect the current mortality and morbidity risks in the foreign country. Fourth, the Treasury Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for one or more of its branches when appropriate.

In no event may the reserve for any contract at any time exceed the foreign statement reserve for the contract, reduced by any catastrophe, equalization, or deficiency reserve or any similar reserve. In the case of a contract that is a property, casualty, or health insurance contract, it is intended that this limitation applies with respect to unpaid losses by line of business (similar to sec. 846(a)(3)). These rules apply whether the contract is regulated as a property, casualty, health, life insurance, annuity, or any other type of contract.

The bill also provides an exception from foreign personal holding company income for income from investment of assets equal to (1) one-third of premiums earned during the taxable year on exempt contracts regulated in the country in which sold as property, casualty, or health insurance contracts, and (2) 10 percent of reserves (determined for purposes of the bill) for contracts regulated in the country in which sold as life insurance or annuity contracts. In no event does the exception from foreign personal holding company income apply to investment income with respect to excess surplus.

To prevent the shifting of relatively high-yielding assets to generate investment income that qualifies under this temporary exception, the bill provides that, except as provided by the Treasury Secretary, income is allocated to contracts as follows. In the case of a separate account-type contract (including a variable contract not meeting the requirements of section 817), the income credited under the contract is allocable only to that contract. Income not so allocated generally is allocated ratably among all contracts that are not separate account-type contracts, subject to the anti-abuse rules (described below).

Other definitions and anti-abuse rules relating to insurance

The bill provides that the present-law statutory definition of a life insurance contract (under secs. 7702 or 101(f)), as well as the distribution on death requirement of section 72(s) and the diversification requirement of section 817(h), do not apply for purposes of determining reserves for a life insurance or annuity contract under sections 953 and 954 of the Code, provided that neither the policyholders, the insureds or annuitants, nor the beneficiaries with respect to the contract are U.S. persons.

The bill provides a rule coordinating the exception to insurance income with the present-law special rule for certain captive insurance companies (sec. 953(c)). Under the coordination rule, the scope of the present-law rule that related party insurance income is treated as subpart F income is retained. The exception under the bill from the definition of insurance income does not include income derived from exempt contracts that cover risks other than applicable home country risks, for purposes of the rules of section 953(c).

The anti-abuse rules applicable under the subpart F exceptions provided in section 954(h) (other than sec. 954(h)(7)(B)) (as added by the bill) apply to these exceptions for insurance. In addition, the bill provides anti-abuse rules applicable under the exceptions from subpart F income relating to insurance.

The bill provides that there shall be disregarded any item of income, gain, loss, or deduction of, or derived from, an entity which is not engaged in regular and continuous transactions with persons that are not related persons. This rule is intended, for example, to address the use of fronting companies or similar entities (that are not engaged in regular and continuous transactions with persons that are not related persons) to reinsure risks in a manner to cause a CFC or branch to qualify as a qualifying insurance company or qualifying insurance company branch by meeting percentage requirements with respect to home country risks that it would not otherwise meet.

The bill provides that there shall be disregarded any change in the method of computing reserves or any other transaction or transactions one of the principal purposes of which is the acceleration or deferral of any item in order to claim the benefits of these exceptions.

The bill also provides that a contract is not treated as an exempt contract (as described above), if any policyholder, insured or annuitant, or beneficiary is a resident of the United States, the contract was marketed to the U.S. resident, and was written to cover a risk outside the United States.

The bill also provides that a contract is not treated as an exempt contract, if the contract covers risks located both within and outside the United States, and the qualifying insurance company or branch does not maintain such records, and file such reports, with respect to the contract as the Treasury Secretary requires. It is intended that documentation that is contemporaneous with the issuance of the contract be maintained by the qualifying insurance company or branch.

The bill also provides that the Treasury Secretary may prescribe rules for the allocation of contracts (and income from contracts) among two or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches.

The bill also provides that premiums from a contract are treated as not covering home country risks (and are treated as covering risks other than home country risks) for purposes of the tests for 30 percent and 50 percent, respectively, of net written premiums if the contract reinsures a contract issued or reinsured by a related person (within the meaning of sec. 954(d)(3)).

The bill also provides that the Treasury Secretary may prescribe regulations as may be necessary or appropriate to carry out the purposes of the exceptions from insurance income and foreign personal holding company income provided under sections 953(e) and 954(i) (as added by the bill).

Other anti-abuse rules

The bill generally includes the anti-abuse rules of the present-law provision, with certain further refinements. Under the bill, the anti-abuse rules provide that items with respect to a transaction or series of transactions are disregarded if one of the principal purposes of the transaction or transactions is to qualify income or gain for these exceptions, including any transaction or a series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of these exceptions. In addition, the anti-abuse rules provide that items of an entity which is not engaged in regular and continuous transactions with customers which are not related persons are disregarded. Moreover, items with respect to a transaction or series of transactions are disregarded if one of the principal purposes of the transaction or transactions is to qualify income or gain for these exceptions, including utilizing or doing business with: (1) one or more entities in order to satisfy any home country requirement, or (2) a special purpose entity or arrangement, including a securitization or financing arrangement or any similar entity or arrangement. Finally, the anti-abuse rules provide that a related person, officer, director, or employee with respect to any CFC (or QBU) which otherwise would be treated as a customer of such corporation or unit with respect to any transaction is not treated as a customer, if a principal purpose of such transaction is to satisfy any requirement for these exceptions.

Sale of assets of an active financing business

The bill includes a modification to address the treatment of sales of assets of an active financing business. In general, foreign personal holding company income includes net gains from the sale or exchange of property that gives rise to dividends, interest, royalties, rents, or annuities. The bill provides an exception from this rule for income that qualifies for the exception from subpart F for income derived in the active conduct of a banking, financing, or similar business. Under the bill, foreign personal holding company income does not include net gains from the sale or exchange of property that gives rise to dividends, interest, royalties, rents, or annuities if such property gives rise to income not treated as foreign personal holding company income for the taxable year by reason of the exceptions under section 954(h) or (i) (as added by the bill) for income derived in the active conduct of a banking, financing, or similar business or in the conduct of an insurance business. It is intended that this exception applies only to the extent that, prior to its disposition, the property was held to generate or generated income which qualifies for the exceptions under section 954(h) or (i) (and such property was not so held for a principal purpose of taking advantage of such exception).

Exceptions from foreign base company services income

The present-law provision includes a corresponding exception from foreign base company services income for income derived by a CFC from the performance of services that are directly related to a transaction entered into by the CFC that gives rise to income that is eligible for these exceptions from subpart F. Under the bill, foreign base company services income does not include income that is not treated as foreign personal holding company income by reason of the exceptions under section 954(h) or 954(i) or the securities dealer exception under section 954(c)(2)(C)(ii), or treated as exempt insurance income by reason of section 953(e) (as added by the bill).

Other matters

Nothing in this provision is intended to alter the Treasury Department's agreement, as reflected in Notice 98–35, not to finalize regulations regarding so-called hybrid entities prior to January 1, 2000, in order to allow Congress the opportunity to fully consider the tax policy issues involved.

EFFECTIVE DATE

The provision applies only to taxable years of foreign corporations beginning in 1999, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

F. Disclosure of Return Information to Department of Education in Connection with Income Contingent Loans (Sec. 106 of the Bill and Sec. 6103(l)(13) of the Code)

PRESENT LAW

Under section 6103(l)(13) of the Code, the Secretary of Treasury was authorized to disclose to the Department of Education certain return information with respect to any taxpayer who has received an "applicable student loan." An "applicable student loan" is any loan made under (1) part D of title IV of the Higher Education Act of 1965 or (2) parts B or E of title IV of the Higher Education Act of 1965 which is in default and has been assigned to the Department of Education, if the loan repayment amounts are based in whole or in part on the taxpayer's income. The Secretary is permitted to disclose only taxpayer identity information and the adjusted gross income of the taxpayer. The Department of Education may use the information only to establish the appropriate income contingent repayment amount for an applicable student loan.

The disclosure authority under section 6103(l)(13) terminated with respect to requests made after September 30, 1998.

REASONS FOR CHANGE

The Committee believes it is appropriate to extend the disclosure authority with respect to applicable student loans during the period in which the applicable loan programs are extended.

EXPLANATION OF PROVISION

The provision reinstates the disclosure authority under section 6103(l)(13) with respect to requests made after the date of enactment and before October 1, 2003.

EFFECTIVE DATE

The disclosure authority under section 6103(l)(13) applies to requests made after the date of enactment and before October 1, 2003.

Subtitle B—Generalized System of Preferences

A. EXTENSION OF THE GENERALIZED SYSTEM OF PREFERENCES (SEC. 111 OF THE BILL AND SEC. 505 OF THE TRADE ACT OF 1974)

PRESENT LAW

Title V of the Trade Act of 1974, as amended, grants authority to the President to provide duty-free treatment on imports of certain articles from beneficiary developing countries subject to certain conditions and limitations. To qualify for GSP privileges, each beneficiary country is subject to various mandatory and discretionary eligiblity criteria. Import sensitive products are ineligible for GSP. The GSP program, which is designed to promote development through trade rather than traditional aid programs, expired after June 30, 1998.

REASONS FOR CHANGE

The Committee believes it is appropriate to extend the GSP program.

EXPLANATION OF PROVISION

The bill reauthorizes the GSP program to terminate after December 31, 1999. Refunds would be authorized, upon request of the importer, for duties paid between July 1, 1998, and the date of enactment of the bill.

EFFECTIVE DATE

The provision is effective for duties paid on or after July 1, 1998, and before January 1, 2000.

II. OTHER PROVISIONS

A. COMPREHENSIVE STUDY OF RECOVERY PERIODS AND DEPRECIATION METHODS UNDER SECTION 168 (SEC. 201 OF THE BILL)

PRESENT LAW

A taxpayer is allowed to deduct a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property that is used in a trade or business or is held for the production of income. For most tangible personal and real property placed in service after 1986, the amount of the deductible allowance is determined under section 168 using the applicable recovery period, the applicable depreciation method, and the applicable convention specified in section 168.

For some types of assets, the applicable recovery period of an asset is provided in section 168. In other cases, the recovery period of an asset is determined by reference to its class life. The class life of an asset may be provided by section 168, or may be determined with regard to the list of class lives provided by the Treasury that was in effect on January 1, 1986. The Treasury Department is required to monitor and analyze actual experience with respect to all depreciable assets.

The applicable depreciation method determines the rate at which the cost of the property is recovered. In general, the applicable depreciation method specified in section 168 varies with the recovery period of the property. For property with a recovery period of 10 years or less, the applicable method is the 200 percent declining balance method, switching to straight-line in the first year in which that method yields a larger allowance. The 150 percent declining balance, (switching to straight-line) is the applicable method for property with a recovery period of 15 or 20 years, as well as for all property used in the trade or business of farming. The straight-line method must be used for property with a longer recovery period, as well as for certain specified types of property.

The applicable convention determines the point of time during the year that the property is considered placed in service. Applicable conventions specified in section 168 include the mid- year, the mid-quarter and the mid-month conventions.

REASONS FOR CHANGE

The Committee is concerned that, in some cases, the present law depreciation rules may measure income improperly, may create competitive disadvantages, and may result in an inefficient allocation of investment capital. The Committee also believes that the manner in which recovery periods and methods are determined should be examined to determine if they could be improved.

EXPLANATION OF PROVISION

The Secretary of the Treasury (or his delegate) is directed to conduct a comprehensive study of the recovery periods and depreciation methods under section 168 of the Code, and to provide recommendations for determining such periods and methods in a more rational manner.

EFFECTIVE DATE

The Secretary of the Treasury (or his delegate) is directed to submit the results of the study and recommendations to the House Ways and Means and Senate Finance Committees by March 31, 2000.

B. Farm Production Flexibility Contract Payments (Sec. 202 of the Bill)

PRESENT LAW

A taxpayer generally is required to include an item in income no later than the time of its actual or constructive receipt, unless such amount properly is accounted for in a different period under the taxpayer's method of accounting. If a taxpayer has an unrestricted right to demand the payment of an amount, the taxpayer is in constructive receipt of that amount whether or not the taxpayer makes the demand and actually receives the payment.

The Federal Agriculture Improvement and Reform Act of 1996 (the "FAIR Act") provides for production flexibility contracts between certain eligible owners and producers and the Secretary of Agriculture. These contracts generally cover crop years from 1996 through 2002. Annual payments are made under such contracts at specific times during the Federal government's fiscal year. Section 112(d)(2) of the FAIR Act provides that one-half of each annual payment is to be made on either December 15 or January 15 of the fiscal year, at the option of the recipient.[8] This option to receive the payment on December 15 potentially results in the constructive receipt (and thus potential inclusion in income) of one-half of the annual payment at that time, even if the option to receive the amount on January 15 is elected.

The remaining one-half of the annual payment must be made no later than September 30 of the fiscal year. The Emergency Farm Financial Relief Act of 1998 added section 112(d)(3) to the FAIR Act which provides that all payments for fiscal year 1999 are to be paid at such time or times during fiscal year 1999 as the recipient may specify. Thus, the one-half of the annual amount that would otherwise be required to be paid no later than September 30, 1999 can be specified for payment in calendar year 1998. This potentially results in the constructive receipt (and thus required inclusion in taxable income) of such amounts in calendar year 1998, whether or not the amounts actually are received or the right to their receipt is fixed.

REASONS FOR CHANGE

The Committee believes that efficient tax administration will be furthered by not taking into account those options that control the timing of a production flexibility contract payment in determining taxable income.

EXPLANATION OF PROVISION

The time a production flexibility contract payment under the FAIR Act properly is includible in income would be determined without regard to the options granted by section 112(d)(2) (allowing receipt of one-half of the annual payment on either December 15 or January 15 of the fiscal year) or section 112(d)(3) (allowing the acceleration of all payments for fiscal year 1999) of that Act.

[8] This rule applies to fiscal years after 1996. For fiscal year 1996, this payment was to be made not later than 30 days after the production flexibility contract was entered into.

EFFECTIVE DATE

The provision is effective for production flexibility contract payments made under the FAIR Act in taxable years ending after December 31, 1995.

C. Increase Deduction for Health Insurance Expenses of Self-Employed Individuals (Sec. 203 of the Bill and Sec. 162(l) of the Code)

PRESENT LAW

Under present law, self-employed individuals are entitled to deduct a portion of the amount paid for health insurance, including (within certain limits) long-term care insurance, for the self- employed individual and the individual's spouse and dependents. The deduction for health insurance expenses of self-employed individuals is not available for any month in which the taxpayer is eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse.[9] The deduction is available in the case of self insurance as well as commercial insurance. The self-insured plan must in fact be insurance (e.g., there must be appropriate risk shifting) and not merely a reimbursement arrangement.

The portion of health insurance expenses of self-employed individuals that is deductible is 45 percent for taxable years beginning in 1998 and 1999, 50 percent for taxable years beginning in 2000 and 2001, 60 percent for taxable years beginning in 2002, 80 percent for taxable years beginning in 2003, 2004, and 2005, 90 percent for taxable years beginning in 2006, and 100 percent for taxable years beginning in 2007 and thereafter.

Under present law, employees can exclude from income 100 percent of employer-provided health insurance.

REASONS FOR CHANGE

The Committee believes it appropriate to increase the deduction for health insurance expenses of self-employed individuals in order to reduce the disparity of treatment between such expenses and employer-provided health insurance and to help make health insurance more affordable for self-employed individuals.

EXPLANATION OF PROVISION

The provision increases the deduction for health insurance of self-employed individuals to 75 percent for taxable years beginning in 2002 and to 100 percent for taxable years beginning in 2003 and thereafter.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002.

[9] This rule is applied separately to long-term care insurance and other health insurance.

D. Increase State Volume Limits on Private Activity Tax-Exempt Bonds (Sec. 204 of the Bill and Sec. 146 of the Code)

PRESENT LAW

Interest on bonds issued by States and local governments is excluded from income if the proceeds of the bonds are used to finance activities conducted and paid for by the governmental units (Code sec. 103). Interest on bonds issued by these governmental units to finance activities carried out and paid for by private persons ("private activity bonds") is taxable unless the activities are specified in the Internal Revenue Code. Private activity bonds on which interest may be tax-exempt include bonds for privately operated transportation facilities (e.g., airports, docks and wharves, mass transit, and high speed rail facilities), privately owned and/or provided municipal services (e.g., water, sewer, solid waste disposal, and certain electric and heating facilities), economic development (e.g., small manufacturing facilities and redevelopment in economically depressed areas), and certain social programs (e.g., low-income rental housing, qualified mortgage bonds, student loan bonds, and exempt activities of charitable organizations described in Code sec. 501(c)(3)).

The volume of tax-exempt private activity bonds that States and local governments may issue for most of these purposes in each calendar year is limited by State-wide volume limits. The current annual volume limit for any State is $50 per resident of the State or $150 million if greater. The volume limits do not apply to private activity bonds to finance airports, docks and wharves, certain governmentally owned, but privately operated solid waste disposal facilities, certain high speed rail facilities, and to certain types of private activity tax-exempt bonds that are subject to other limits on their volume (qualified veterans' mortgage bonds and certain "new" empowerment zone and enterprise community bonds).

REASON FOR CHANGE

The Committee determined that a phased adjustment to the annual State private activity bond volume limits to levels comparable to the dollar limits that first applied after enactment of the Tax Reform Act of 1986 is appropriate. Such an adjustment will assist States in meeting long-range infrastructure needs and encouraging economic development and will facilitate continuation of future privatization efforts regarding municipal services such as solid waste disposal, water, and sewer services without reversing the general policy of limiting the use of this Federal subsidy for conduit borrowing in transactions that distort market choice and efficiency.

EXPLANATION OF PROVISION

The bill increases the present-law annual State private activity bond volume limits to $75 per resident of each State or $225 million (if greater) beginning in calendar year 2007. The increase is phased-in as follows, beginning in calendar year 2003:

Calendar Year	Volume limit
2003	$55 per resident ($165 million if greater).
2004	$60 per resident ($180 million if greater).

Calendar Year	Volume limit
2005	$65 per resident ($195 million if greater).
2006	$70 per resident ($210 million if greater).

EFFECTIVE DATE

The provision is effective beginning in calendar year 2003.

E. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBORS (SEC. 205 OF THE BILL AND SEC. 6654 OF THE CODE)

PRESENT LAW

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax shown on the return of the individual for the preceding year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax shown on the return for the current year. The 100 percent of last year's liability safe harbor is generally modified to be a 110 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year, except that it is 105 percent of last year's liability for taxable years beginning in 1999, 2000, and 2001, and 112 percent of last year's liability for taxable years beginning in 2002. If a married individual files a separate return for the year for which an estimated tax installment payment was due, the $150,000 amount becomes $75,000.

REASONS FOR CHANGE

The Committee believes that it is appropriate to adjust the individual estimated tax payment safe harbors.

EXPLANATION OF PROVISION

For taxable years beginning in 2000 and 2001, the 105 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year, is modified to be a 106 percent of last year's liability safe harbor.

EFFECTIVE DATE

The provision is effective for taxable years beginning in 2000 and 2001.

F. STATE ELECTION TO EXEMPT STUDENT EMPLOYEES FROM SOCIAL SECURITY (SEC. 206 OF THE BILL)

PRESENT LAW

The Social Security Amendments of 1972 provided an opportunity for States to obtain exemptions from Social Security coverage for student employees of public schools, colleges, and universities. States choosing to opt out had to do so prior to January 1, 1974. Most States did. Student employees in these States do not have to pay FICA taxes on their wages, allowing them to keep more of their earnings.

REASONS FOR CHANGE

Three States chose not to seek an exemption from Social Security coverage. This provision would provide the opportunity for all student employees to be treated equally under Social Security law and would assist student employees who are working to advance their education.

EXPLANATION OF PROVISION

The proposal would allow a limited window of time (January 1 through March 31, 1999) for States to modify existing State agreements to exempt from Social Security coverage students (including graduate assistants) who are employed by a public school, university, or college in a nonexempted State.

EFFECTIVE DATE

The provision permitting States to modify existing agreement is effective with respect to earnings after June 30, 1999.

TITLE III. REVENUE OFFSET PROVISIONS

A. Treatment of Certain Deductible Liquidating Distributions of Regulated Investment Companies and Real Estate Investment Trusts (Sec. 301 of the Bill and Secs. 332 and 334 of the Code)

PRESENT LAW

Regulated investment companies ("RICs") and real estate investment trusts ("REITs") are allowed a deduction for dividends paid to their shareholders. The deduction for dividends paid includes amounts distributed in liquidation which are properly chargeable to earnings and profits, as well as, in the case of a complete liquidation occurring within 24 months after the adoption of a plan of complete liquidation, any distribution made pursuant to such plan to the extent of earnings and profits. Rules that govern the receipt of dividends from RICs and REITs generally provide for including the amount of the dividend in the income of the shareholder receiving the dividend that was deducted by the RIC or REIT. Generally, any shareholder realizing gain from a liquidating distribution of a RIC or REIT includes the amount of gain in the shareholder's income. However, in the case of a liquidating distribution to a corporation owning 80-percent of the stock of the distributing corporation, a separate rule generally provides that the distribution is tax-free to the parent corporation. The parent corporation succeeds to the tax attributes, including the adjusted basis of assets, of the distributing corporation. Under these rules, a liquidating RIC or REIT might be allowed a deduction for amounts paid to its parent corporation, without a corresponding inclusion in the income of the parent corporation, resulting in income being subject to no tax.

A RIC or REIT may designate a portion of a dividend as a capital gain dividend to the extent the RIC or REIT itself has a net capital gain, and a RIC may designate a portion of the dividend paid to a corporate shareholder as eligible for the 70-percent dividends-received deduction to the extent the RIC itself received dividends from other corporations. If certain conditions are satisfied, a RIC also is permitted to pass through to its shareholders the tax-exempt character of the RIC's net income from tax-exempt obligations through the payment of "exempt interest dividends," though no deduction is allowed for such dividends.

REASONS FOR CHANGE

RICs and REITs are important investment vehicles, particularly for small investors. The RIC and REIT rules are designed to encourage investors to pool their resources and achieve the type of investment opportunities, subject to a single level of tax, that otherwise would be available only to a larger investor. Nonetheless, the Committee understands that some corporations have attempted to use the "dividends paid deduction" for a RIC or REIT in combination with the separate rule that allows a corporate parent to receive property from an 80 percent subsidiary without tax when the subsidiary is liquidating, and have argued that the combination of these two rules permits income deducted by the RIC or REIT and paid to the parent corporation to be entirely tax free during the period of liquidation of the RIC or REIT. The Committee believes that income of a RIC or REIT which is not taxable to the RIC or REIT because of the dividends paid deduction also should not be excluded from the income of the RIC's or REIT's shareholders as a liquidating distribution to a parent shareholder. This legislation will not affect the intended beneficiaries of the RIC and REIT rules.

EXPLANATION OF PROVISION

Any amount which a liquidating RIC or REIT may take as a deduction for dividends paid with respect to an otherwise tax-free liquidating distribution to an 80-percent corporate owner is includible in the income of the recipient corporation. The includible amount is treated as a dividend received from the RIC or REIT. The liquidating corporation may designate the amount distributed as a capital gain dividend or, in the case of a RIC, a dividend eligible for the 70-percent dividends received deduction or an exempt interest dividend, to the extent provided by the RIC or REIT provisions of the Code.

The provision does not otherwise change the tax treatment of the distribution to the parent corporation or to the RIC or REIT. Thus, for example, the liquidating corporation will not recognize gain (if any) on the liquidating distribution and the recipient corporation will hold the assets at a carryover basis, even where the amount received is treated as a dividend.

EFFECTIVE DATE

The provision is effective for distributions on or after May 22, 1998, regardless of when the plan of liquidation was adopted.

No inference is intended regarding the treatment of such transactions under present law.

B. Add Vaccines Against Rotavirus Gastroenteritis to the List of Taxable Vaccines (Sec. 302 of the Bill and Sec. 4132 of the Code)

PRESENT LAW

A manufacturer's excise tax is imposed at the rate of 75 cents per dose (sec. 4131) on the following vaccines routinely recommended for administration to children (sec. 4132): diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, and varicella (chicken pox). The tax applied to any vaccine that is a combination of vaccine components equals 75 cents times the number of components in the combined vaccine.

Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund to finance compensation awards under the Federal Vaccine Injury Compensation Program for individuals who suffer certain injuries following administration of the taxable vaccines. This program provides a substitute Federal, "no fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers. All persons immunized after September 30, 1988, with covered vaccines must pursue compensation under this Federal program before bringing civil tort actions under State law.

REASONS FOR CHANGE

Rotavirus gastroenteritis is a highly contagious disease among young children that can lead to life-threatening diarrhea, cramps, vomiting, and can result in death. In the United States, more than 50,000 children are hospitalized and more than 100 die annually from rotavirus gastroenteritis. The Food and Drug Administration's ("FDA") has approved a vaccine against the disease and the Centers for Disease Control have voted to recommend the vaccine for inoculation of children. The Committee believes American children will benefit from wide use of this new vaccine. The Committee believes that, by including the new vaccine with those presently covered by the Vaccine Injury Compensation Trust Fund, greater application of the vaccine will be promoted. The Committee, therefore, believes it is appropriate to add the vaccine against rotavirus gastroenteritis to the list of taxable vaccines.

EXPLANATION OF PROVISION

The bill adds any vaccine against rotavirus gastroenteritis to the list of taxable vaccines.

EFFECTIVE DATE

The provision is effective for vaccines sold by a manufacturer or importer after the date of enactment. No floor stocks tax is imposed for amounts held for sale on that date. For sales on or before the date of enactment for which delivery is made after the date of enactment, the delivery date is deemed to be the sale date.

C. Clarify and Expand Mathematical Error Procedures (Sec. 303 of the Bill and Sec. 6213(g)(2) of the Code)

PRESENT LAW

Taxpayer identification numbers ("TINs")

The IRS may deny a personal exemption for a taxpayer, the taxpayer's spouse or the taxpayer's dependents if the taxpayer fails to provide a correct TIN for each person for whom the taxpayer claims an exemption. This TIN requirement also indirectly effects other tax benefits currently conditioned on a taxpayer being able to claim a personal exemption for a dependent (e.g., head-of-household filing status and the dependent care credit). Other tax benefits, including the adoption credit, the child tax credit, the Hope Scholarship credit and Lifetime Learning credit, and the earned income credit also have TIN requirements. For most individuals, their TIN is their Social Security Number ("SSN"). The mathematical and clerical error procedure currently applies to the omission of a correct TIN for purposes of personal exemptions and all of the credits listed above except for the adoption credit.

Mathematical or clerical errors

The IRS may summarily assess additional tax due as a result of a mathematical or clerical error without sending the taxpayer a notice of deficiency and giving the taxpayer an opportunity to petition the Tax Court. Where the IRS uses the summary assessment procedure for mathematical or clerical errors, the taxpayer must be given an explanation of the asserted error and a period of 60 days to request that the IRS abate its assessment. The IRS may not proceed to collect the amount of the assessment until the taxpayer has agreed to it or has allowed the 60-day period for objecting to expire. If the taxpayer files a request for abatement of the assessment specified in the notice, the IRS must abate the assessment. Any reassessment of the abated amount is subject to the ordinary deficiency procedures. The request for abatement of the assessment is the only procedure a taxpayer may use prior to paying the assessed amount in order to contest an assessment arising out of a mathematical or clerical error. Once the assessment is satisfied, however, the taxpayer may file a claim for refund if he or she believes the assessment was made in error.

REASONS FOR CHANGE

The Committee believes that it is appropriate to provide additional guidance to the Internal Revenue Service with respect to the application of the TIN requirement. It will also improve compliance to allow the IRS to use date of birth data, from the Social Security Administration, to determine ineligibility for the dependent care credit, the child tax credit and the earned income credit. Once this determination is made, the Committee believes that the IRS should use the mathematical and clerical error procedure to correctly assess the tax due with respect to affected tax returns.

EXPLANATION OF PROVISION

The bill provides in the application of the mathematical and clerical error procedure that a correct TIN is a TIN that was assigned by the Social Security Administration (or in certain limited cases, the IRS) to the individual identified on the return. For this purpose, the IRS is authorized to determine that the individual identified on the tax return corresponds in every aspect (including, name, age, date of birth, and SSN) to the individual to whom the TIN is issued. The IRS also is authorized to use the mathematical and clerical error procedure to deny eligibility for the dependent care tax credit, the child tax credit, and the earned income credit even though a correct TIN has been supplied if the IRS determines that the statutory age restrictions for eligibility for any of the respective credits is not satisfied (e.g., the TIN issued for the child claimed as the basis of the child tax credit identifies the child as over the age of 17 at the end of the taxable year).

EFFECTIVE DATE

The provision is effective for taxable years ending after the date of enactment.

D. RESTRICT 10-YEAR NET OPERATING LOSS CARRYBACK RULES FOR SPECIFIED LIABILITY LOSSES (SEC. 304 OF THE BILL AND SEC. 172(f) OF THE CODE)

PRESENT LAW

Under present law, that portion of a net operating loss that qualifies as a "specified liability loss" may be carried back 10 years rather than being limited to the general two-year carryback period. A specified liability loss includes amounts allowable as a deduction with respect to product liability, and also certain liabilities that arise under Federal or State law or out of any tort of the taxpayer. In the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to the liability must occur at least 3 years before the beginning of the taxable year. In the case of a liability arising out of a tort, the liability must arise out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurred at least three years before the beginning of the taxable year. A specified liability loss cannot exceed the amount of the net operating loss, and is only available to taxpayers that used an accrual method of accounting throughout the period that the acts (or failures to act) occurred.

REASONS FOR CHANGE

The proper interpretation of the specified liability loss provisions has been the subject of controversy. The committee believes it is desirable to lessen controversy by providing a definitive list of items for which the 10-year specified liability loss carryback is available.

EXPLANATION OF PROVISION

Under the provision, specified liability losses are limited to product liability losses and amounts allowable as a deduction (other than a deduction under sec. 468(a)(1) or sec. 468A(a)) that are in satisfaction of a liability under a Federal or State law requiring the reclamation of land, decommissioning of a nuclear power plant (or any unit thereof), dismantlement of a drilling platform, remediation of environmental contamination, or a payment under any workers compensation act (within the meaning of sec. 461(h)(2)(C)(i)), if the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year. As under present law, the specified liability loss (as redefined) cannot exceed the amount of the net operating loss and is only available to taxpayers that used an accrual method of accounting throughout the period that the act (or failure to act) giving rise to the liability occurred. No inference regarding the interpretation of the specified liability loss carryback rules under present law is intended.

EFFECTIVE DATE

The provision is effective for net operating losses arising in taxable years ending after the date of enactment.

TITLE IV. TAX TECHNICAL CORRECTIONS

Except as otherwise provided, the technical corrections contained in the bill generally are effective as if included in the originally enacted related legislation.

A. TECHNICAL CORRECTIONS TO THE 1998 ACT

1. Burden of proof (sec. 402(b) of the bill, sec. 3001 of the 1998 Act, and sec. 7491 (a)(2)(C) of the Code)

PRESENT LAW

The Treasury Secretary has the burden of proof in any court proceeding with respect to a factual issue if the taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the taxpayer's tax liability, provided specified conditions are satisfied (sec. 7491). One of these conditions is that corporations, trusts, and partnerships must meet certain net worth limitations. These net worth limitations do not apply to individuals or to estates.

EXPLANATION OF PROVISION

The provision removes the net worth limitation from certain revocable trusts for the same period of time that the trust would have been treated as part of the estate had the trust made the election under section 645 to be treated as part of the estate.

2. Relief for innocent spouses (sec. 402(c) of the bill, sec. 3201 of the 1998 Act, and secs. 6015(e) and 7421(a) of the Code)

PRESENT LAW

A taxpayer who is no longer married to, is separated from, or has been living apart for at least 12 months from the person with whom he or she originally joined in filing a joint Federal income tax return may elect to limit his or her liability for a deficiency arising from such joint return to the amount of the deficiency that is attributable to items that are allocable to such electing spouse. The election is limited to deficiency situations and only affects the amount of the deficiency for which the electing spouse is liable. Thus, the election cannot be used to generate a refund, to direct a refund to one spouse or the other, or to allocate responsibility for payment where a balance due is reported on, but not paid with, a joint return.

In addition to the election to limit the liability for deficiencies, a taxpayer may be eligible for innocent spouse relief. Innocent spouse relief allows certain taxpayers who joined in the filing of a joint return to be relieved of liability for an understatement of tax that is attributable to items of the other spouse to the extent that the taxpayer did not know or have reason to know of the understatement. The Secretary is also authorized to provide equitable relief in situations where, taking into account all of the facts and circumstances, it is inequitable to hold an individual responsible for all or a part of any unpaid tax or deficiency arising from a joint return. Under certain circumstances, it is possible that a refund could be obtained under this authority.

EXPLANATION OF PROVISION

The provision clarifies that the ability to obtain a credit or refund of Federal income tax is limited to situations where the taxpayer qualifies for innocent spouse relief or where the Secretary exercises his authority to provide equitable relief.

3. Interest netting (sec. 402(d) of the bill and sec. 3301 (c)(2) of the 1998 Act)

PRESENT LAW

For calendar quarters beginning after July 22, 1998, a net interest rate of zero applies where interest is payable and allowable on equivalent amounts of overpayment and underpayment of any tax imposed by the Internal Revenue Code. In addition, the net interest rate of zero applies to periods on or before July 22, 1998, providing (1) the statute of limitations has not expired with respect to either the underpayment or overpayment, (2) the taxpayer identifies the periods of underpayment and overpayment where interest is payable and allowable for which the net interest rate of zero would apply, and (3) on or before December 31, 1999, the taxpayer asks the Secretary to apply the net zero rate.

EXPLANATION OF PROVISION

The provision restores language originally included in the Senate amendment that clarifies that the applicability of the zero net interest rate for periods on or before July 22, 1998 is subject to any applicable statute of limitations not having expired with regard to either a tax underpayment or overpayment.

4. Effective date for elimination of 18-month holding period for capital gains (sec. 402(i) of the bill, sec. 5001 of the 1998 Act, and sec. 1(h) of the Code)

PRESENT LAW

The 1998 Act repealed the provision in the 1997 Act providing a maximum 28-percent rate for the long-term capital gain attributable to property held more than one year but not more than 18 months. Instead, the 1998 Act treated this gain in the same manner as gain from property held more than 18 months. The provision in the 1998 Act is effective for amounts properly taken into account after December 31, 1997. For gains taken into account by a pass-thru entity, such as a partnership, S corporation, trust, estate, RIC or REIT, the date that the entity properly took the gain into account is the appropriate date in applying this provision. Thus, for example, amounts properly taken into account by a pass-thru entity after July 28, 1997, and before January 1, 1998, with respect to property held more than one year but not more than 18 months which are included in income on an individual's 1998 return are taken into account in computing 28-percent rate gain.

EXPLANATION OF PROVISION

Under the provision, in the case of a capital gain dividend made by a RIC or REIT after 1997, no amount will be taken into account in computing the net gain or loss in the 28-percent rate gain category by reason of property being held more than one year but not more than 18 months, other than amounts taken into account by the RIC or REIT from other pass-thru entities (other than in structures, such as a "master-feeder structure", in which the RIC invests a substantial portion of its assets in one or more partnerships holding portfolio securities and having the same taxable year as the RIC). A similar rule applies to amounts properly taken into account by a RIC or REIT by reason of holding, directly or indirectly, an interest in another RIC or REIT to which the rule in the preceding sentence applies.

For example, if a RIC sold stock held more than one year but not more than 18 months on November 15, 1997, for a gain, and makes a capital gain dividend in 1998, the gain is not taken into account in computing 28-percent rate gain for purposes of determining the taxation of the 1998 dividend. (Thus, all the netting and computations made by the RIC need to be redone with respect to all post-1997 capital gain dividends, whether or not dividends of 28-percent rate gain.) If, however, the gain was taken into account by a RIC by reason of holding an interest in a calendar year 1997 partnership which itself sold the stock, the gain will not be recharacterized by reason of this provision (unless the RIC's investment in the partnership satisfies the exception for master-feeder structures). If the gain was taken into account by a RIC be reason of holding an interest in a REIT and the gain was excluded from 28-percent rate gain by reason of the application of this provision to the REIT, the gain will be excluded from 28-percent rate gain in determining the tax of the RIC shareholders.

The provision also corrects a cross reference.

B. Technical Corrections to the 1997 Act

1. Treatment of interest on qualified education loans (sec. 403(a) of the bill, sec. 202 of the 1997 Act, and secs. 221 and 163(h) of the Code)

PRESENT LAW

Present law, as modified by the 1997 Act, provides that certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for such interest expense, up to a maximum dollar amount per year ($1,000 for taxable years beginning in 1998), subject to certain requirements (sec. 221). The maximum deduction is phased out ratably for individual taxpayers with modified AGI between $40,000 and $55,000 ($60,000 and $75,000 for joint returns). Present law also provides that in the case of a taxpayer other than a corporation, no deduction is allowed for personal interest (sec. 163(h)). For this purpose, personal interest means any interest allowable as a deduction, other than certain types of interest listed in the statute. This provision does not specifically provide that otherwise deductible qualified education loan interest is not treated as personal interest.

Present law provides that a qualified education loan does not include any indebtedness owed to a person who is related (within the meaning of sec. 267(b) or 707(b)) to the taxpayer (sec. 221(e)(1)).

EXPLANATION OF PROVISION

The provision clarifies that otherwise deductible qualified education loan interest is not treated as nondeductible personal interest.

The provision also clarifies that, for purposes of section 221, modified AGI is determined after application of section 135 (relating to income from certain U.S. saving bonds) and section 137 (relating to adoption assistance programs).

The provision also provides that a qualified education loan does not include any indebtedness owed to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract purchased under a qualified employer plan (as described in sec. 72(p)(5)).

2. Capital gain distributions of charitable remainder trusts (secs. 402(i)(3) and 403(b) of the bill, sec. 311 of the 1997 Act and sec. 5001 of the 1998 Act, and sec. 1(h) of the Code)

PRESENT LAW

Under present law, the income beneficiary of a charitable remainder trust ("CRT") includes the trust's capital gain in income when the gains are distributed to the beneficiary (sec. 664(b)(2)). Internal Revenue Service Notice 98–20 provides guidance with respect to the categorization of long-term capital gain distributions from a CRT under the capital gain rules enacted by the 1997 Act. Under the Notice, long-term capital gains properly taken into account by the trust before January 1, 1997, are treated as falling in the 20-percent group of gain (i.e., gain not in the 28-percent rate gain or unrecaptured sec. 1250 gain). Long-term capital gains properly taken into account by the trust after December 31, 1996, and before May 7, 1997, are included in 28-percent rate gain. Long-term capital gains properly taken into account by the trust after May 6, 1997, are treated as falling into the category which would apply if the trust itself were subject to tax.

EXPLANATION OF PROVISION

The provision provides that, in the case of a capital gain distribution by a CRT after December 31, 1997, with respect to amounts properly taken into account by the trust during 1997, amounts will not be included in the 28-percent rate gain category solely by reason of being properly taken into account by the trust before May 7, 1997, or by reason of the property being held not more than 18 months. Thus, for example, gain on the sale of stock by a CRT on February 1, 1997, will not be taken into account in determining 28-percent rate gain where the gain is distributed after 1997.[10]

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 1997.

3. Gifts may not be revalued for estate tax purposes after expiration of statute of limitations (sec. 403(c) of the bill, sec. 506 of the 1997 Act, and sec. 2001(f)(2) of the Code)

PRESENT LAW

Basic structure of Federal estate and gift taxes.—The Federal estate and gift taxes are unified so that a single progressive rate schedule is applied to an individual's cumulative gifts and bequests. The tax on gifts made in a particular year is computed by determining the tax on the sum of the taxable gifts made in that year and in all prior years and then subtracting the tax on the prior years taxable gifts and the unified credit. Similarly, the estate tax is computed by determining the tax on the sum of the taxable estate and prior taxable gifts and then subtracting the tax on taxable gifts, the unified credit, and certain other credits.

This structure raises two different, but related, issues: (1) what is the period beyond which additional gift taxes cannot be assessed or collected—generically referred to as the "period of limitations"—and (2) what is the period beyond which the amount of prior transfers cannot be revalued for the purpose of determining the amount of tax on subsequent transfers.

Gift and estate tax period of limitations.—Section 6501(a) provides the general rule that any tax (including gift and estate tax) must be assessed, or a proceeding begun in a court for the collection of such tax without assessment, within three years after the return is filed by the taxpayer. Under section 6501(e)(2), the period for assessments of gift or estate tax is increased to six years where

[10] The bill contains a similar amendment to section 1(h)(13), as amended by section 5001 of the 1998 Act, to provide that, for purposes of taxing the recipient of a distribution made after 1997 by a CRT, amounts will not be taken into account in computing 28-percent rate gain by reason of being properly taken into account before May 7, 1997, or by reason of the property being held for not more than 18 months. Thus, no amount distributed by a CRT after 1997 will be treated as in the 28-percent category (other than by reason of the disposition of collectibles or small business stock).

there is more than a 25 percent omission in the amount of the total gifts or gross estate disclosed on the gift or estate tax return. Section 6501(c)(9) provides an exception to these rules under which gift tax may be assessed, or a proceeding in a court for collection of gift tax may be begun, at any time unless the gift is disclosed on a gift tax return or a statement attached to a gift tax return.

Revaluation of gifts for estate tax purposes.—The value of a gift is its value as finally determined under the rules for purposes of determining the applicable estate tax bracket and available unified credit. The value of a gift is finally determined if (1) the value of the gift is shown on a gift tax return for that gift and that value is not contested by the Treasury Secretary before the expiration of the period of limitations on assessment of gift tax even where the value of the gift as shown on the return does not result in any gift tax being owed (e.g., through use of the unified credit), (2) the value is specified by the Treasury Secretary pursuant to a final notice of redetermination of value (a "final notice") within the period of limitations applicable to the gift for gift tax purposes (generally, three years) and the taxpayer does not timely contest that value, or (3) the value is determined by a court or pursuant of a settlement agreement between the taxpayer and the Treasury Secretary under an administrative appeals process whereby a taxpayer can challenge a redetermination of value by the IRS prior to issuance of a final notice. In the event the taxpayer and the IRS cannot agree on the value of a gift, the 1997 Act provided the U.S. Tax Court with jurisdiction to issue a declaratory judgment on the value of a gift (section 7477). A taxpayer who is mailed a final notice may challenge the redetermined value of the gift (as contained in the final notice) by filing a motion for a declaratory judgment with the U.S. Tax Court. The motion must be filed on or before 90 days from the date that the final notice was mailed. The statute of limitations is tolled during the pendency of the Tax Court proceeding.

Revaluation of gifts for gift tax purposes.—Similarly, under a rule applicable to the computation of the gift tax (sec. 2504(c)), the value of gifts made in prior years is its value as finally determined if the period of limitations for assessment of gift tax on the prior gifts has expired.

EXPLANATION OF PROVISION

The bill clarifies the rules relating to revaluations of prior transfers for computation of the estate or gift tax to provide that the value of a prior transfer cannot be redetermined after the period of limitations if the transfer was disclosed in a statement attached to the gift tax return, as well as on a gift tax return, in a manner to adequately apprise the Treasury Secretary of the nature the transfer, even if there was no gift tax imposed on that transfer.

4. Coordinate Vaccine Injury Compensation Trust Fund expenditure purposes with list of taxable vaccines (sec. 403(d) of the bill, sec. 904 of the 1997 Act, and sec. 9510(c) of the Code)

PRESENT LAW

A manufacturer's excise tax is imposed on certain vaccines routinely recommended for administration to children (sec. 4131). The tax is imposed at a rate of $0.75 per dose on any listed vaccine component. Taxable vaccine components are vaccines against diphtheria, tetanus, pertussis, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, and varicella (chicken pox). Tax was imposed on vaccines against diphtheria, tetanus, pertussis, measles, mumps, rubella, and polio by the Omnibus Budget Reconciliation Act of 1987. Tax was imposed on vaccines against HIB, hepatitis B, and varicella by the 1997 Act.

Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") to finance compensation awards under the Federal Vaccine Injury Compensation Program for individuals who suffer certain injuries following administration of the taxable vaccines. Present law provides that payments from the Vaccine Trust Fund may be made only for vaccines eligible under the program as of December 22, 1987 (sec. 9510(c)(1)). Thus, payments may not be made for injuries related to the HIB, hepatitis B or varicella vaccines.

EXPLANATION OF PROVISION

The provision provides that payments are permitted from the Vaccine Trust Fund for injuries related to the administration of the HIB, hepatitis B, and varicella vaccines. The provision also clarifies that expenditures from the Vaccine Trust Fund may occur only as provided in the Code and makes conforming amendments.

5. Abatement of interest by reason of Presidentially declared disaster (sec. 403(e) of the bill, sec. 915 of the 1997 Act, and sec. 6404(h) of the Code)

PRESENT LAW

The Taxpayer Relief Act of 1997 ("1997 Act") provided that, if the Secretary of the Treasury extends the filing date of an individual tax return for 1997 for individuals living in an area that has been declared a disaster area by the President during 1997, no interest shall be charged as a result of the failure of an individual taxpayer to file an individual tax return, or pay the taxes shown on such return, during the extension.

The Internal Revenue Service Restructuring and Reform Act of 1998 ("1998 Act") contains a similar rule applicable to all taxpayers for tax years beginning after 1997 for disasters declared after 1997. The status of disasters declared in 1998 but that relate to the 1997 tax year is unclear.

EXPLANATION OF PROVISION

The provision amends the 1997 Act rule so that it is available for disasters declared in 1997 or in 1998 with respect to the 1997 tax year.

6. Treatment of certain corporate distributions (sec. 403(f) of the bill, sec. 1012 of the 1997 Act, and secs. 351(c) and 368(a)(2)(H) of the Code)

PRESENT LAW

The 1997 Act (sec. 1012(a)) requires a distributing corporation to recognize corporate level gain on the distribution of stock of a controlled corporation under section 355 of the Code if, pursuant to a plan or series of related transactions, one or more persons acquire a 50-percent or greater interest (defined as 50 percent or more of the voting power or value of the stock) of either the distributing or controlled corporation (Code sec. 355(e)). Certain transactions are excepted from the definition of acquisition for this purpose. Under the technical corrections included in the Internal Revenue Service Restructuring and Reform Act of 1998, in the case of acquisitions under section 355(e)(3)(A)(iv), the acquisition of stock in the distributing corporation or any controlled corporation is disregarded to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.[11]

In the case of a 50-percent or more acquisition of either the distributing corporation or the controlled corporation, the amount of gain recognized is the amount that the distributing corporation would have recognized had the stock of the controlled corporation been sold for fair market value on the date of the distribution. No adjustment to the basis of the stock or assets of either corporation is allowed by reason of the recognition of the gain.[12]

The 1997 Act (as amended by the technical corrections contained in the Internal Revenue Service Restructuring and Reform Act of 1998) also modified certain rules for determining control immediately after a distribution in the case of certain divisive transactions in which a controlled corporation is distributed and the transaction meets the requirements of section 355. In such cases, under section 351 and modified section 368(a)(2)(H) with respect to reorganizations under section 368(a)(1)(D), the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock shall not be taken into account.

The effective date (Act section 1012(d)(1)) states that the relevant provisions of the 1997 Act apply to distributions after April 16, 1997, pursuant to a plan (or series of related transactions) which involves an acquisition occurring after such date (unless certain transition provisions apply).

EXPLANATION OF PROVISION

The provision clarifies the "control immediately after" requirement of section 351(c) and section 368(a)(2)(H) in the case of certain divisive transactions in which a corporation contributes assets to a controlled corporation and then distributes the stock of the

[11] This exception (as certain other exceptions) does not apply if the stock held before the acquisition was acquired pursuant to a plan (or series of related transactions) to acquire a 50-percent or greater interest in the distributing or a controlled corporation.

[12] The 1997 Act does not limit the otherwise applicable Treasury regulatory authority under section 336(e) of the Code. Nor does it limit the otherwise applicable provisions of section 1367 with respect to the effect on shareholder stock basis on gain recognized by an S corporation under this provision.

controlled corporation in a transaction that meets the requirements of section 355 (or so much of section 356 as relates to section 355). In such cases, not only the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, but also the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account.

7. Treatment of affiliated group including formerly tax-exempt organization (sec. 403(g) of the bill and sec. 1042 of the 1997 Act)

PRESENT LAW

Present law provides that an organization described in sections 501(c)(3) or (4) of the Code is exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance. When this rule was enacted in 1986, certain treatment applied to Blue Cross and Blue Shield organizations providing health insurance that were subject to this rule and that met certain requirements. Treasury regulations were promulgated providing rules for filing consolidated returns for affiliated groups including such organizations (Treas. Reg. sec. 1.1502–75(d)(5)).

The 1997 Act repealed the grandfather rules provided in 1986 (permitting the retention of tax-exempt status) that were applicable to that portion of the business of the Teachers Insurance Annuity Association and College Retirement Equities Fund which is attributable to pension business and to the portion of the business of Mutual of America which is attributable to pension business. The 1997 Act did not specifically provide rules for filing consolidated returns for affiliated groups including such organizations.

Present law with respect to consolidated returns provides for an election to treat a life insurance company as an includible corporation, and also provides that a life insurance company may not be treated as an includible corporation for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed (sec. 1504(c)(2)). Present law also provides that a corporation that is exempt from taxation under Code section 501 is not an includible corporation (sec. 1504(b)(1)).

EXPLANATION OF PROVISION

The provision provides rules for filing consolidated returns for affiliated groups including any organization with respect to which the grandfather rule under Code section 501(m) was repealed by section 1042 of the 1997 Act. The provision provides that rules similar to the rules of Treasury Regulation section 1.1502–75(d)(5) apply in the case of such an organization. Thus, an affiliated group including such an organization may make the election described in section 1504(c)(2) (relating to a 5-year period) without regard to whether the organization was previously exempt from tax under Code section 501.

8. Treatment of net operating losses arising from certain eligible losses (sec. 403(h) of the bill, sec. 1082 of the 1997 Act, and sec. 172(b)(1)(F) of the Code)

PRESENT LAW

The 1997 Act changed the general net operating loss ("NOL") carryback period of a taxpayer from three years to two years. The three-year carryback period was retained in the case of an NOL attributable to an eligible loss. An eligible loss is defined as (1) a casualty or theft loss of an individual taxpayer, or (2) an NOL attributable to a Presidentially declared disaster area by a taxpayer engaged in a farming business or a small business. Other special rules apply to real estate investment trusts (REITs) (no carrybacks), specified liability losses (10-year carryback), and excess interest losses (no carrybacks).

EXPLANATION OF PROVISION

The provision coordinates the use of eligible losses with the general rule for NOLs in the same manner as a loss arising from a specified liability loss. Thus, an eligible loss for any year is treated as a separate net operating loss and is taken into account after the remaining portion of the net operating loss for the taxable year.

9. Determination of unborrowed policy cash value under COLI pro rata interest disallowance rules (sec. 403(i) of the bill, sec. 1084 of the 1997 Act, and sec. 264(f) of the Code)

PRESENT LAW

In the case of a taxpayer other than a natural person, no deduction is allowed for the portion of the taxpayer's interest expense that is allocable to unborrowed policy cash surrender values with respect to any life insurance policy or annuity or endowment contract issued after June 8, 1997. Interest expense is allocable to unborrowed policy cash values based on the ratio of (1) the taxpayer's average unborrowed policy cash values of life insurance policies and annuity and endowment contracts, issued after June 8, 1997, to (2) the sum of (a) in the case of assets that are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values and (b) in the case of other assets the average adjusted bases for all such other assets of the taxpayer. The unborrowed policy cash values means the cash surrender value of the policy or contract determined without regard to any surrender charge, reduced by the amount of any loan with respect to the policy or contract. The cash surrender value is to be determined without regard to any other contractual or noncontractual arrangement that artificially depresses the unborrowed policy cash value of a contract.

EXPLANATION OF PROVISION

The provision clarifies the meaning of "unborrowed policy cash value" under section 264(f)(3), with respect to any life insurance, annuity or endowment contract. The technical correction clarifies that under section 264(f)(3), if the cash surrender value (determined without regard to any surrender charges) with respect to any policy or contract does not reasonably approximate its actual value, then the amount taken into account for this purpose is the greater of (1) the amount of the insurance company's liability with respect to the policy or contract, as determined for purposes of the annual statement approved by the National Association or Insurance Commissioners, (2) the amount of the insurance company's reserve with respect to the policy or contract for purposes of such annual statement; or such other amount as is determined by the Treasury Secretary. No inference is intended that such amounts may not be taken into account in determining the cash surrender value of a policy or contract in such circumstances for purposes of any other provision of the Code.

10. Payment of taxes by commercially acceptable means (sec. 403(k) of the bill, sec. 1205 of the 1997 Act, and sec. 6311 (d)(2) of the Code)

PRESENT LAW

The Code generally permits the payment of taxes by commercially acceptable means (such as credit cards) (sec. 6311(d)). The Treasury Secretary may not pay any fee or provide any other consideration in connection with this provision. This fee prohibition may have an unintended impact on Treasury contracts for the provision of services unrelated to the payment of income taxes by commercially acceptable means.

EXPLANATION OF PROVISION

The provision clarifies that the prohibition on paying any fees or providing any other consideration applies to the use of credit, debit, or charge cards for the payment of income taxes.

C. Technical Corrections to the 1984 Act

1. Casualty loss deduction (sec. 404 of the bill, sec. 711(c) of the 1984 Act, and secs. 172(d)(4), 67(b)(3), 68(c)(3), and 873(b) of the Code)

PRESENT LAW

The Tax Reform Act of 1984 ("1984 Act") deleted casualty and theft losses from property connected with a nonbusiness transaction entered into for profit from the list of losses set forth in section 165(c)(3). This amendment was made in order to provide that these losses were deductible in full and not subject to the $100 per casualty limitation or the 10-percent adjusted gross income floor applicable to personal casualty losses. However, the amendment inadvertently eliminated the deduction for these losses from the computation of the net operating loss. Also, the Tax Reform Act of 1986 provided that casualty losses described in section 165(c)(3) are not miscellaneous itemized deductions subject to the 2-percent adjusted gross income floor, and the Revenue Reconciliation Act of 1990 provided that these losses are not treated as itemized deductions in computing the overall limitation on itemized deductions. The losses of nonresident aliens are limited to deductions described in section 165(c)(3). Because of the change made by the 1984 Act, the reference to section 165(c)(3) does not include casualty and theft losses from nonbusiness transactions entered into for profit.

EXPLANATION OF PROVISION

The provision provides that all deductions for nonbusiness casualty and theft losses are taken into account in computing the net operating loss. Also, these deductions are not treated as miscellaneous itemized deductions subject to the 2-percent adjusted gross income floor, or as itemized deductions subject to the overall limitation on itemized deductions, and are allowed to nonresident aliens.

EFFECTIVE DATES

The provision relating to the net operating loss and the deduction for nonresident aliens applies to taxable years beginning after December 31, 1983.

The provision relating to miscellaneous itemized deductions applies to taxable years beginning after December 31, 1986.

The provision relating to the overall limitation on itemized deductions applies to taxable years beginning after December 31, 1990.

D. Disclosure of Tax Return Information to the Department of Agriculture (Sec. 405(a) of the bill and Sec. 6103(j) of the Code)

PRESENT LAW

Tax return information generally may not be disclosed, except as specifically provided by statute. Disclosure is permitted to the Bureau of the Census for specified purposes, which included the responsibility of structuring, conducting, and preparing the census of agriculture (sec. 6103(j)(1)). The Census of Agriculture Act of 1997 (P.L. 105–113) transferred this responsibility from the Bureau of the Census to the Department of Agriculture.

EXPLANATION OF PROVISION

The provision permits the continuation of disclosure of tax return information for the purpose of structuring, conducting, and preparing the census of agriculture by authorizing the Department of Agriculture to receive this information.

EFFECTIVE DATE

The provision is effective on the date of enactment of this technical correction.

E. Technical Corrections to the Transportation Equity Act for the 21st Century (Sec. 405(b) of the bill, Sec. 9004 of the Act, and Sec. 9503(f) of the Code)

PRESENT LAW

The Transportation Equity Act for the 21st Century ("Transportation Equity Act") (P.L. 105–178) extended the Highway Trust Fund and accompanying highway excise taxes. The Transportation Equity Act also changed the budgetary treatment of Highway Trust

Fund expenditures, including repeal of a provision that balances maintained in the Highway Trust Fund pending expenditure earn interest from the General Fund of the Treasury.

EXPLANATION OF PROVISION

The provision clarifies that the Secretary of the Treasury is not required to invest Highway Trust Fund balances in interest-bearing obligations (because any interest paid to the Trust Fund by the General Fund would be immediately returned to the General Fund).

III. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 4738.

Motion to report the bill

The bill, H.R. 4738, as amended, was ordered favorably reported by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the estimated budget effects of H.R. 4738, as reported by the Committee.

The bill, as reported, is estimated to have the following budget effects:

ESTIMATED BUDGET EFFECTS OF H.R. 4738, THE "REVENUE EXTENSION ACT OF 1998," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS ON OCTOBER 9, 1998

[Fiscal Year 1999–2007, in millions of dollars]

Provision	Effective	1999	2000	2001	2002	2003	2004	2005	2006	2007	1999–2002	2003–07	1999–2007
I. Extension of Expiring Provisions:													
A. Extend the R&E Credit (through 12/31/99)	7/1/98	−1,526	−866	−409	−296	−170	−39				−3,097	−209	−3,306
B. Extend Work Opportunity Tax Credit (through 12/31/99)	wpoifibwa 6/30/98	−245	−227	−126	−50	−18	−3				−648	−21	−669
C. Extend Contributions of Appreciated Stock of Private Foundations (permanent); Public Inspection of Private Foundation Annual Returns	7/1/98 [1]	−23	−56	−71	−83	−91	−95	−100	−104	−109	−233	−499	−732
D. 1-Year Modified Extension of Exemption from Subpart F for Active Financing Income (as in H.R. 4579)	tybi 1999	−117	−378								−495		−495
E. Extend the Generalized System of Preferences (through 12/31/99) [2]	7/1/98	−393	−84								−477		−477
F. Permanent Extension of Income Averaging for Farmers	tyba 12/31/00			−2	−21	−22	−22	−23	−24	−24	−23	−115	−138
G. Extension of Tax Information Reporting for Income Contingent Student Loan Program [2]	10/1/98	Negligible Budget Effect											
Subtotal of Extension of Expiring Provisions		−2,304	−1,611	−608	−450	−301	−159	−123	−128	−133	−4,973	−844	−5,815
II. Other Provisions:													
A. Treasury Study on depreciation (due 3/31/00)													
B. Production Flexibility Contract Payments to Farmers Not Included in Income Prior to Receipt	tyea 12/32/95	Negligible Revenue Effect											
C. Self-Employed Health Insurance Deduction—75% in 2002, and 100% in 2003 and thereafter	tyba 12/31/01				−120	−474	−637	−680	−602	−257	−120	−2,649	−2,769
D. Increase Private Activity Bond Volume Cap to the Greater of $55 Per Capita or $165 Million Starting in 2003; Phased in Ratably to the Greater of $75 Million Per Capita or $225 Million in 2007	1/1/03					−11	−44	−111	−177	−252		−595	−595
E. Prior Year Estimated Tax Safe Harbor for Individuals With AGI over $150,000 (106% in 2000 and 2001)	tyba 12/31/99		525		−525								
F. State Election to Exempt Student Employees From Social Security [2]	spa 6/30/99	−4	−46	−47	−49	−51	−52	−54	−56	−58	−146	−271	−417
Subtotal of Other Provisions		−4	479	−47	−694	−536	−733	−845	−835	−567	−266	−3,515	−3,781

III. Revenue Offset Provisions:													
A. Change the Treatment of Certain Deductible Liquidating Distributions of RICs and REITs	dma 5/21/98	2,425	1,109	723	640	672	705	741	778	817	4,897	3,713	8,610
B. Add Vaccines Against Rotavirus Gastroenteritis to the List Taxable Vaccines ($0.75 per dose)	vpa DOE	1	2	3	4	5	6	6	6	7	11	31	42
C. Clarity and Expand Math Error Procedures	tyea DOE	12	25	26	27	28	29	30	31	32	90	150	240
D. Restrict Special Net Operating Loss Carryback Rules for Specified Liability Losses	NOLgi tyea DOE	14	21	29	39	42	40	40	40	42	103	204	308
Subtotal of Revenue Offset Provisions		2,452	1,157	781	710	747	780	817	855	898	5,101	4,098	9,200
IV. Tax Technical Corrections Provisions		No Revenue Effect											
Net total		144	25	126	−434	−90	−112	−151	−108	198	−138	−261	−398

[1] The additional public inspection provisions apply to requests made after the later of the date which is 60 days after the date on which the Treasury Department publishes regulations or 12/31/98.

[2] Estimate provided by the Congressional Budget Office.

Legend for "Effective" column: dma = distributions made after; DOE = date of enactment; NOLgi = net operating losses generated in; spa = services performed after; tyba = taxable years beginning after; tybi = taxable years beginning in; tyea = taxable years ending after; vpa = vaccines purchased after; wpoifibwa = wages paid or incurred for individuals beginning work after.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

B. Budget Authority and Tax Expenditures

Budget authority

In compliance with subdivision (B) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, the Committee states that the bill does not involve new or increased outlays.

Tax expenditures

In compliance with subdivision (B) of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, the Committee states that the income tax reduction provisions (other than the provision relating to farmer production flexibility contract payments) involve increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with subdivision (C) of the clause 2(l)(3) of Rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office ("CBO"), the Committee advises that the CBO has submitted the following statement on the bill as reported.

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 9, 1998.

Hon. Bill Archer,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4738, a bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, provide tax relief for farmers and small businesses, and for other purposes. The estimate reflects two modifications to the reported bill—dropping the change in the health insurance deduction for the self-employed in 2002 and delaying the state election to exempt student employees from Social Security until July 1, 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Noah Meyerson.

Sincerely,

James L. Blum
(For June E. O'Neill, Director).

Enclosure.

H.R. 4738—A bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, provide tax relief for farmers and small businesses, and for other purposes.

Summary: H.R. is a tax bill that would amend existing tax laws and extend numerous tax provisions that have expired recently or are about to expire. The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that H.R. 4738 would increase governmental receipts by $204 million over the 1999–2003 period. The bill would have no effect on direct spending. The estimate reflects two modifications to the reported bill—dropping the change in the health insurance deductions for the self-employed in 2002 and delaying the state election to exempt student employees from Social Security until July 1, 2000.

H.R. 4738 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The bill imposes three new private-sector mandates through changes in the treatment of certain deductible liquidating distributions of regulated investment companies and real estate investment trusts, restrictions on the 10-year net operating loss carryback rules for specified liability losses, and the imposition of taxes on a certain vaccine. The costs of the new mandates would exceed the threshold ($100 million in 1996, adjusted annually for inflation) specific in UMRA in fiscal years 1999–2003.

Description on major provisions: H.R. 4738 would extend certain tax provisions that have recently expired or are about to expire, including:

The reseach and experimentation tax credit through December 31, 1999;

The work opportunity tax credit through December 31, 1999;

The deduction provided for contributions of appreciated stock to private foundations on a permanent basis;

The exemption from Subpart F for active financing income with modifications for one year;

The Generalized System of Preferences through December 31, 1999;

Income averaging for farmers on a permanent basis; and

Tax information reporting for the income-contingent student loan program through September 30, 2003.

H.R. 4738 would also amend certain existing tax laws in order to:

Allows farmers not to include payments from production flexibility contracts in income prior to receipt;

Accelerate the increase in the deduction for health insurance expenses for self-employed individuals to 100 percent in 2003 and thereafter;

Increase state volume limits on private activity tax-exempt bonds and phase in ratably to the greater of $75 million per capita or $225 million in 2007;

Change prior year estimated tax payment rules for individuals with adjusted gross income over $150,000; and

Allow States to amend their Social Security coverage agreements to exempt student employees at state schools.

H.R. 4738 includes several revenue offset provisions that would:

Modify the treatment of certain deductible liquidating distributions of regulated investment companies and real estate investment trusts;

Add vaccines against rotavirus gastroenteritis to the list of taxable vaccines ($0.75 per dose);

Clarify and expand math error procedures; and

Restrict special net operating loss carryback rules for specified liability losses.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4738 is summarized in the following table.

TABLE 1.—SUMMARY OF ESTIMATED BUDGETARY EFFECTS OF H.R. 4738

	1999	2000	2001	2002	2003
REVENUES					
Extension of Expiring Provisions	−2,304	−1,611	−608	−450	−301
Other Provisions	0	520	−47	−574	−268
Revenue Offsets	2,452	1,157	781	710	747
Total	148	66	126	−314	178
CHANGE IN SURPLUS					
Proposed Changes:					
Off-Budget	0	−4	−42	−44	−46
On-Budget	148	70	168	−270	224
Total	148	66	126	−314	178

Sources: Joint Committee on Taxation and Congressional Budget Office.

Basis of estimate: All the estimates for the revenue provisions, with the exception of extension of the Generalized System of Preferences (GSP) and amendment to Social Security law with respect to student employees at state schools, were provided by the JCT.

Generalized system of preferences

H.R. 4738 would renew GSP, which expired on June 30, 1998, through December 31, 1999. Taxpayers could apply for refunds for the period since July 1, 1998. GSP affords nonreciprocal tariff preferences to approximately 140 developing countries to aid their economic development and to diversify and expand their production and exports. Generally, duty-free treatment of imported goods from GSP-designated developing countries is extended to products that are not competitive internationally. The program contains safeguards to protect domestic industries that are sensitive to import competition. CBO estimates that renewing GSP would reduce governmental receipts by $393 million in fiscal year 1999, $84 million in fiscal year 2000, and a total of $477 million over the 1999–2000 period, net of payroll and income tax offsets. This estimate is based on projections of U.S. imports and recent data on collections from beneficiary countries under the GSP program.

Revenue provisions relating to Social Security coverage

H.R. 4738 would also allow states to amend their Social Security coverage agreements to exempt student employees at state schools. In general, under section 3121(b)(10) of the Internal Revenue Code, income earned by students employed by the college or university th ey attend is not subject to FICA tax. However, in the case of state colleges and universities, each state may choose in its agreement for the coverage of state and local employees ("218 agreement") to cover such income. This provision would allow states that currently cover such income—New Jersey, Pennsylvania, and Texas—to amend their 218 agreements to exempt such income from FICA taxes. This exemption would be effective for services performed after June 30, 2000. CBO based its estimate on wage data supplied by most affected schools and published enrollment data. The revenue effects of this provision are shown in Table 2.

TABLE 2.—ESTIMATED REVENUE EFFECTS OF PROVISIONS IN H.R. 4738 RELATING TO SOCIAL SECURITY COVERAGE

	By fiscal years in millions of dollars—									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
On-Budget	0	−5	−0	−5	−5	−5	−5	−6	−6	−6
Off-Budget	0	−4	−42	−44	−46	−47	−49	−50	−52	−54
Total	0	−5	−47	−49	−51	−52	−54	−56	−58	−60

Source: Congressional Budget Office.

Pay-as-you-go considerations: The Balance Budget and Emergency Deficit Control Act of 1985 establishes pay-as-you-go procedures for legislation affecting direct spending or receipts. Only changes affecting on-budget outlays and receipts (that is, those in non-Social Security programs) affect the pay-as-you-go scorecard. For purposes of enforcing pay-as-you-go procedures, only the effects in the current year, budget year, and the succeeding four years are counted (see Table 3).

TABLE 3.—SUMMARY OF PAY-AS-YOU-GO EFFECTS OF H.R. 4738

	By fiscal years, in millions of dollars—									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Change in Outlays	not applicable									
Change in Receipts	148	70	168	−270	224	−65	−102	−58	250	([1])

[1] Not available.

Sources: Congressional Budget Office and Joint Committee on Taxation.

Estimated impact on State, local, and tribal governments: CBO and JCT have determined the provisions of H.R. 4738 are either excluded from consideration under the Unfunded Mandates Reform Act (UMRA) or do not contain intergovernmental mandates as defined in that act.

Estimated impact on the private sector: JCT has determined that H.R. 4738 would impose three new private-sector mandates by changing the treatment of certain deductible liquidating distributions of regulated investment companies and real estate investment trusts, adding the vaccine against rotavirus gastroenteritis to the list of taxable vaccines, and restricting the 10-year net operating loss carryback rules for specified liability losses. The direct costs of the new mandates would exceed the statutory threshold ($100 million in 1996, adjusted annually for inflation) established in UMRA in each of fiscal years 1999 through 2003 (see Table 4). CBO and the JCT have determined that the remaining provisions of the bill either are excluded from a consideration or do not contain private-sector mandates as defined in UMRA.

TABLE 4.—ESTIMATED COST OF PRIVATE-SECTOR MANDATES

	By fiscal years, in millions of dollars—				
	1999	2000	2001	2002	2003
Cost to the Private Sector	2,440	1,132	755	683	719

Source: Joint Committee on Taxation.

Estimate prepared by: Federal revenues: Noah Meyerson and Hester Grippando. Impact on State, local, and tribal governments: Pepper Santalucia. Impact on the Private Sector: Lesley Frymier.

Estimate approved by: Frank Sammartino, Assistant Director for Tax Analysis (Acting) and Paul N. Van de Water, Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was the result of the Committee's oversight activities with respect to extension of certain expired and expiring tax and trade provisions, closing a tax loophole with respect to the treatment of certain deductible liquidating distributions of RICs and REITs, certain other revenue offsets, acceleration of the increased deduction for self-employed health insurance, Treasury study of depreciation, treatment of certain farm production flexibility contract payments, increase in the State private activity bond limit, and necessary tax technical corrections that the Committee concluded that it is appropriate and timely to enact the provisions contained in the bill as reported.

B. Summary of Findings and Recommendations of the Committee on Government Reform and Oversight

With respect to subdivision (D) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee advises that no specific oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in the bill.

C. Constitutional Authority Statement

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 7 ("All bills for raising revenue shall originate in the House of Representatives") and Section 8 ("The Congress shall have the power to lay and collect taxes, duties, imports and excises, to pay the debts of the United States"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the H.R. 4738 contains the following private sector mandates:

Treatment of certain deductible liquidating distributions of regulated investment companies and real estate investment trusts;

Restrict 10-year net operating loss carryback rules for specified liability losses; and

Add vaccines against rotavirus gastroenteritis to the list of taxable vaccines;

In addition, the provision of the bill adding vaccines against rotavirus gastroenteritis to the list of taxable vaccines for purposes of the vaccine excise tax would impose a Federal intergovernmental mandate because certain State governments will be required to pay the requisite taxes.

The Committee finds it necessary to adopt these proposals in order to offset the revenue losses attributable to the extension of certain expiring tax provisions and to provide tax relief to farmers and self-employed individuals.

E. Applicability of House Rule XXI 5(c)

Rule XXI 5(c) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

Subchapter A—Determination of Tax Liability

* * * * * * *

PART I—TAX ON INDIVIDUALS

* * * * * * *

SEC. 1. TAX IMPOSED.

(a) * * *

* * * * * * *

(h) Maximum Capital Gains Rate.—

(1) * * *

* * * * * * *

(13) SPECIAL RULES.—

(A) * * *

(B) DETERMINATION OF UNRECAPTURED SECTION 1250 GAIN.—The amount determined under paragraph ❲(7)(A)❳ *(7)(A)(i)* shall not include gain—

(i) which is properly taken into account for the portion of the taxable year before May 7, 1997; or

(ii) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998.

* * * * * * *

(D) CHARITABLE REMAINDER TRUSTS.—Subparagraphs (A) and (B)(ii) shall not apply to any capital gain distribution made by a trust described in section 664.

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart D—Business Related Credits

* * * * * * *

SEC. 41. CREDIT FOR INCREASING RESEARCH ACTIVITIES.

(a) * * *

* * * * * * *

(h) TERMINATION.—

(1) IN GENERAL.—This section shall not apply to any amount paid or incurred—

(A) after June 30, 1995, and before July 1, 1996, or

(B) after ❲June 30, 1998❳ *December 31, 1999*.

Notwithstanding the preceding sentence, in the case of a taxpayer making an election under subsection (c)(4) for its first taxable year beginning after June 30, 1996, and before July 1, 1997, this section shall apply to amounts paid or incurred during the ❲24-month❳ *42-month* period beginning with the first month of such year. The ❲24 months❳ *42 months* referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.

* * * * * * *

SEC. 45C. CLINICAL TESTING EXPENSES FOR CERTAIN DRUGS FOR RARE DISEASES OR CONDITIONS.

(a) * * *

(b) QUALIFIED CLINICAL TESTING EXPENSES FOR PURPOSES OF THIS SECTION.—

(1) QUALIFIED CLINICAL TESTING EXPENSES.—

(A) * * *

* * * * * * *

(D) SPECIAL RULE.—For purposes of this paragraph, section 41 shall be deemed to remain in effect for periods after June 30, 1995, and before July 1, 1996, and periods after [June 30, 1998] *December 31, 1999*.

* * * * * * *

Subpart F—Rules for Computing Work Opportunity Credit

* * * * * * *

SEC. 51. AMOUNT OF CREDIT.

(a) * * *

* * * * * * *

(c) WAGES DEFINED.—For purposes of this subpart—

(1) * * *

* * * * * * *

(4) TERMINATION.—The term "wages" shall not include any amount paid or incurred to an individual who begins work for the employer—

(A) after December 31, 1994, and before October 1, 1996, or

(B) after [June 30, 1998] *December 31, 1999*.

(d) MEMBERS OF TARGETED GROUPS.—For purposes of this subpart—

(1) * * *

* * * * * * *

(6) VOCATIONAL REHABILITATION REFERRAL.—The term "vocational rehabilitation referral" means any individual who is certified by the designated local agency as—

(A) * * *

(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

(i) an individualized written [rehabilitation plan] *plan for employment* under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

* * * * * * *

PART VI—MINIMUM TAX FOR TAX PREFERENCES

* * * * * * *

SEC. 56. ADJUSTMENTS IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

(a) ADJUSTMENTS APPLICABLE TO ALL TAXPAYERS.—In determining the amount of the alternative minimum taxable income for any taxable year the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) * * *

* * * * * * *

(3) TREATMENT OF CERTAIN LONG-TERM CONTRACTS.—In the case of any long-term contract entered into by the taxpayer on or after March 1, 1986, the taxable income from such contract shall be determined under the percentage of completion method of accounting (as modified by section 460(b)). For purposes of the preceding sentence, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under [section 460(b)(2)] *section 460(b)(1)* by using the simplified procedures for allocation of costs prescribed under [section 460(b)(4)] *section 460(b)(3)*. The first sentence of this paragraph shall not apply to any home construction contract (as defined in section 460(e)(6)).

* * * * * * *

Subchapter B—Computation of taxable income

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

* * * * * * *

SEC. 67. 2-PERCENT FLOOR ON MISCELLANEOUS ITEMIZED DEDUCTIONS.

(a) * * *

(b) MISCELLANEOUS ITEMIZED DEDUCTIONS.—For purposes of this section, the term "miscellaneous itemized deductions" means the itemized deductions other than—

(1) * * *

* * * * * * *

(3) the deduction under section 165(a) [for losses described in subsection (c)(3) or (d) of section 165] *for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)*,

* * * * * * *

SEC. 68. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.

(a) * * *

* * * * * * *

(c) EXCEPTION FOR CERTAIN ITEMIZED DEDUCTIONS.—For purposes of this section, the term "itemized deductions" does not include—

(1) * * *

* * * * * * *

(3) the deduction under section 165(a) [for losses described in subsection (c)(3) or (d) of section 165] *for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)*.

* * * * * * *

SEC. 86. SOCIAL SECURITY AND TIER 1 RAILROAD RETIREMENT BENEFITS.

(a) * * *

(b) TAXPAYERS TO WHOM SUBSECTION (A) APPLIES.—

(1) * * *

(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term "modified adjusted gross income" means adjusted gross income—

(A) determined without regard to this section and sections 135, 137, *221,* 911, 931, and 933, and

* * * * * * *

SEC. 135. INCOME FROM UNITED STATES SAVINGS BONDS USED TO PAY HIGHER.

(a) * * *

* * * * * * *

(c) DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * * * *

(4) MODIFIED ADJUSTED GROSS INCOME.—The term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year determined—

(A) without regard to this section and sections 137, *221,* 911, 931, and 933, and

* * * * * * *

SEC. 137. ADOPTION ASSISTANCE PROGRAMS.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * * * *

(3) DETERMINATION OF ADJUSTED GROSS INCOME.—For purposes of paragraph (2), adjusted gross income shall be determined—

(A) without regard to this section and sections *221,* 911, 931, and 933, and

(B) after the application of sections 86, 135, 219, and 469.

* * * * * * *

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

* * * * * * *

Subpart A—Private Activity Bonds

* * * * * * *

SEC. 146. VOLUME CAP.

(a) * * *

* * * * * * *

(d) STATE CEILING.—For purposes of this section—

⟦(1) IN GENERAL.—The State ceiling applicable to any State for any calendar year shall be the greater of—

⟦(A) an amount equal to $75 multiplied by the State population, or

[(B) $250,000,000.

Subparagraph (B) shall not apply to any possession of the United States.

[(2) ADJUSTMENT AFTER 1987.—In the case of calendar years after 1987, paragraph (1) shall be applied by substituting—

[(A) "$50" for "$75", and

[(B) "$150,000,000" for "$250,000,000".]

(1) IN GENERAL.—The State ceiling applicable to any State for any calendar year shall be the greater of—

(A) an amount equal to the per capita limit for such year multiplied by the State population, or

(B) the aggregate limit for such year.

Subparagraph (B) shall not apply to any possession of the United States.

(2) PER CAPITA LIMIT; AGGREGATE LIMIT.—For purposes of paragraph (1), the per capita limit, and the aggregate limit, for any calendar year shall be determined in accordance with the following table:

Calendar Year	*Per Capita Limit*	*Aggregate Limit*
1999 through 2002	*$50*	*$150,000,000*
2003	*55*	*165,000,000*
2004	*60*	*180,000,000*
2005	*65*	*195,000,000*
2006	*70*	*210,000,000*
2007 and thereafter	*75*	*225,000,000.*

* * * * * * *

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

* * * * * * *

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) * * *

* * * * * * *

(l) SPECIAL RULES FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—

(1) ALLOWANCE OF DEDUCTION.—

(A) * * *

(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined under the following table:

For taxable years beginning in calendar year—	**The applicable percentage is—**
1997	40
1998 and 1999	45
2000 and 2001	50
[2002	60
[2003 through 2005	80
[2006	90
[2007 and thereafter	100.]

2002	*75*
2003 and thereafter	*100.*

* * * * * * *

SEC. 163. INTEREST.

(a) * * *

* * * * * * *

(h) DISALLOWANCE OF DEDUCTION FOR PERSONAL INTEREST.—

(1) * * *

(2) PERSONAL INTEREST.—For purposes of this subsection, the term "personal interest" means any interest allowable as a deduction under this chapter other than—

(A) * * *

* * * * * * *

(D) any qualified residence interest (within the meaning of paragraph (3)), ❲and❳

(E) any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6163❲.❳*, and*

(F) any interest allowable as a deduction under section 221 (relating to interest on educational loans).

* * * * * * *

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) * * *

* * * * * * *

(e) CERTAIN CONTRIBUTIONS OF ORDINARY INCOME AND CAPITAL GAIN PROPERTY.—

(1) * * *

* * * * * * *

(5) SPECIAL RULE FOR CONTRIBUTIONS OF STOCK FOR WHICH MARKET QUOTATIONS ARE READILY AVAILABLE.—

(A) * * *

* * * * * * *

❲(D) TERMINATION.—This paragraph shall not apply to contributions made—

❲(i) after December 31, 1994, and before July 1, 1996, or

❲(ii) after June 30, 1998.❳

* * * * * * *

SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) * * *

* * * * * * *

(d) MODIFICATIONS.—The modifications referred to in this section are as follows:

(1) * * *

* * * * * * *

(4) NONBUSINESS DEDUCTIONS OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a cor-

poration, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) * * *

* * * * * * *

【(C) any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account; and】

(C) any deduction for casualty or theft losses allowable under paragraph (2) or (3) of section 165(c) shall be treated as attributable to the trade or business; and

* * * * * * *

PART IX—ITEMS NOT DEDUCTIBLE

* * * * * * *

SEC. 219. RETIREMENT SAVINGS.

(a) * * *

* * * * * * *

(g) LIMITATION ON DEDUCTION FOR ACTIVE PARTICIPANTS IN CERTAIN PENSION PLANS.—

(1) * * *

* * * * * * *

(3) ADJUSTED GROSS INCOME; APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection—

(A) ADJUSTED GROSS INCOME.—Adjusted gross income of any taxpayer shall be determined—

(i) after application of sections 86 and 469, and

(ii) without regard to sections 135, 137, *221,* and 911 or the deduction allowable under this section.

* * * * * * *

SEC. 221. INTEREST ON EDUCATION LOANS.

(a) * * *

(b) MAXIMUM DEDUCTION.—

(1) * * *

(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

(A) * * *

* * * * * * *

(C) MODIFIED ADJUSTED GROSS INCOME.—The term "modified adjusted gross income" means adjusted gross income determined—

(i) without regard to this section and sections 【135, 137,】 911, 931, and 933, and

(ii) after application of sections 86, *135, 137,* 219, and 469.

⟦For purposes of sections 86, 135, 137, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.⟧

* * * * * * *

(e) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED EDUCATION LOAN.—The term "qualified education loan" means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses—

(A) * * *

* * * * * * *

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term qualified education loan' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer *or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5)*.

* * * * * * *

SEC. 264. CERTAIN AMOUNTS PAID IN CONNECTION WITH INSURANCE CONTRACTS.

(a) * * *

* * * * * * *

(f) PRO RATA ALLOCATION OF INTEREST EXPENSE TO POLICY CASH VALUES.—

(1) * * *

* * * * * * *

(3) UNBORROWED POLICY CASH VALUE.—For purposes of this subsection, the term "unborrowed policy cash value" means, with respect to any life insurance policy or annuity or endowment contract, the excess of—

(A) the cash surrender value of such policy or contract determined without regard to any surrender charge, over

(B) the amount of any loan with respect to such policy or contract.

If the amount described in subparagraph (A) with respect to any policy or contract does not reasonably approximate its actual value, the amount taken into account under subparagraph (A) shall be the greater of the amount of the insurance company liability or the insurance company reserve with respect to such policy or contract (as determined for purposes of the annual statement approved by the National Association of Insurance Commissioners) or shall be such other amount as is determined by the Secretary.

* * * * * * *

Subchapter C—Corporate Distributions and Adjustments

* * * * * * *

PART II—CORPORATE LIQUIDATIONS

* * * * * * *

Subpart A—Effects on Recipients

* * * * * * *

SEC. 332. COMPLETE LIQUIDATIONS OF SUBSIDIARIES.

(a) * * *

(b) LIQUIDATIONS TO WHICH SECTION APPLIES.—For purposes of ⟦subsection (a)⟧ *this section*, a distribution shall be considered to be in complete liquidation only if—

(1) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either

* * * * * * *

(c) DEDUCTIBLE LIQUIDATING DISTRIBUTIONS OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If a corporation receives a distribution from a regulated investment company or a real estate investment trust which is considered under subsection (b) as being in complete liquidation of such company or trust, then, notwithstanding any other provision of this chapter, such corporation shall recognize and treat as a dividend from such company or trust an amount equal to the deduction for dividends paid allowable to such company or trust by reason of such distribution.

* * * * * * *

SEC. 334. BASIS OF PROPERTY RECEIVED IN LIQUIDATIONS.

(a) * * *

(b) LIQUIDATION OF SUBSIDIARY.—

(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which ⟦section 332(a)⟧ *section 332* applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.

* * * * * * *

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

* * * * * * *

Subpart A—Corporate Organizations

* * * * * * *

SEC. 351. TRANSFER TO CORPORATION CONTROLLED BY TRANSFEROR.

(a) * * *

* * * * * * *

(c) SPECIAL RULES WHERE DISTRIBUTION TO SHAREHOLDERS.—

(1) * * *

(2) SPECIAL RULE FOR SECTION 355.—If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock*, or the fact that the corporation whose stock was distributed issues additional stock,* shall not be taken into account in determining control for purposes of this section.

* * * * * * *

Subpart D—Special Rule; Definitions

* * * * * * *

SEC. 368. DEFINITIONS RELATING TO CORPORATE REORGANIZATIONS.

(a) REORGANIZATION.—

(1) * * *

(2) SPECIAL RULES RELATING TO PARAGRAPH (1).—

(A) * * *

* * * * * * *

(H) SPECIAL RULES FOR DETERMINING WHETHER CERTAIN TRANSACTIONS ARE QUALIFIED UNDER PARAGRAPH (1)(D).—For purposes of determining whether a transaction qualifies under paragraph (1)(D)—

(i) in the case of a transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, the term “control” has the meaning given such term by section 304(c), and

(ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock*, or the fact that the corporation whose stock was distributed issues additional stock,* shall not be taken into account.

* * * * * * *

Subchapter D—Deferred Compensation, Etc.

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

* * * * * * *

Subpart A—General rule

* * * * * * *

SEC. 408A. ROTH IRA'S.

(a) * * *

* * * * * * *

(c) TREATMENT OF CONTRIBUTIONS.—

(1) * * *

* * * * * * *

(3) LIMITS BASED ON MODIFIED ADJUSTED GROSS INCOME.—

(A) * * *

* * * * * * *

(C) DEFINITIONS.—For purposes of this paragraph—

(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that—

(I) any amount included in gross income under subsection (d)(3) shall not be taken into account; and

(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i)**[**.**]**, *and*

* * * * * * *

Subchapter E—Accounting periods and methods of accounting

* * * * * * *

PART II—METHODS OF ACCOUNTING

* * * * * * *

Subpart C—Taxable Year for Which Deductions Taken

* * * * * * *

SEC. 469. PASSIVE ACTIVITY LOSSES AND CREDITS LIMITED.

(a) * * *

* * * * * * *

(i) $25,000 OFFSET FOR RENTAL REAL ESTATE ACTIVITIES.—

(1) * * *

* * * * * * *

(3) PHASE-OUT OF EXEMPTION.—

(A) * * *

* * * * * * *

(E) ADJUSTED GROSS INCOME.—For purposes of this paragraph, adjusted gross income shall be determined without regard to—

(i) * * *

* * * * * * *

⟦(iii) any amount allowable as a deduction under section 219, and⟧

(iii) the amounts allowable as a deduction under sections 219 and 221, and

* * * * * * *

Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

* * * * * * *

PART II—REAL ESTATE INVESTMENT TRUSTS

* * * * * * *

SEC. 873. DEDUCTIONS.—

(a) * * *

(b) EXCEPTIONS.—The following deductions shall be allowed whether or not they are connected with income which is effectively connected with the conduct of a trade or business within the United States:

⟦(1) LOSSES.—The deduction for losses allowed by section 165(c)(3), but only if the loss is of property located within the United States.⟧

(1) LOSSES.—The deduction allowed by section 165 for casualty or theft losses described in paragraph (2) or (3) of section 165(c), but only if the loss is of property located within the United States.

* * * * * * *

Subchapter N—Tax Bases on Income From Sources Within or Without the United States

* * * * * * *

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

* * * * * * *

Subpart F—Controlled of Foreign Corporations

* * * * * * *

SEC. 953. INSURANCE INCOME.

⟦(a) GENERAL RULE.—For purposes of section 952(a)(1), the term "insurance income" means any income which—

⟦(1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract—

⟦(A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or

[(B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and

[(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.]

(a) INSURANCE INCOME.—

(1) IN GENERAL.—For purposes of section 952(a)(1), the term "insurance income" means any income which—

(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and

(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

(2) EXCEPTION.—Such term shall not include any exempt insurance income (as defined in subsection (e)).

(b) SPECIAL RULES.—For purposes of subsection (a)—

(1) * * *

* * * * * * *

(3) Reserves for any insurance or annuity contract shall be determined in the same manner as under section 954(i).

[(3)] *(4)* All items of income, expenses, losses, and deductions shall be properly allocated or apportioned under regulations prescribed by the Secretary.

* * * * * * *

(e) EXEMPT INSURANCE INCOME.—For purposes of this section—

(1) EXEMPT INSURANCE INCOME DEFINED.—

(A) IN GENERAL.—The term "exempt insurance income" means income derived by a qualifying insurance company which—

(i) is attributable to the issuing (or reinsuring) of an exempt contract by such company or a qualifying insurance company branch of such company; and

(ii) is treated as earned by such company or branch in its home country for purposes of such country's tax laws.

(B) EXCEPTION FOR CERTAIN ARRANGEMENTS.—Such term shall not include income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract which is not an exempt contract.

(C) DETERMINATIONS MADE SEPARATELY.—For purposes of this subsection and section 954(i), the exempt insurance income and exempt contracts of a qualifying insurance company or any qualifying insurance company branch of

such company shall be determined separately for such company and each such branch by taking into account—

(i) in the case of the qualifying insurance company, only items of income, deduction, gain, or loss, and activities of such company not properly allocable or attributable to any qualifying insurance company branch of such company; and

(ii) in the case of a qualifying insurance company branch, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such branch.

(2) EXEMPT CONTRACT.—

(A) IN GENERAL.—The term "exempt contract" means an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualifying insurance company branch in connection with property in, liability arising out of activity in, or the lives or health of residents of, a country other than the United States.

(B) MINIMUM HOME COUNTRY INCOME REQUIRED.—

(i) IN GENERAL.—No contract of a qualifying insurance company or of a qualifying insurance company branch shall be treated as an exempt contract unless such company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this subparagraph)—

(I) which cover applicable home country risks; and

(II) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)).

(ii) APPLICABLE HOME COUNTRY RISKS.—The term "applicable home country risks" means risks in connection with property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or qualifying insurance company branch, as the case may be, issuing or reinsuring the contract covering the risks.

(C) SUBSTANTIAL ACTIVITY REQUIREMENTS FOR CROSS BORDER RISKS.—A contract issued by a qualifying insurance company or qualifying insurance company branch which covers risks other than applicable home country risks (as defined in subparagraph (B)(ii)) shall not be treated as an exempt contract unless such company or branch, as the case may be—

(i) conducts substantial activity with respect to an insurance business in its home country; and

(ii) performs in its home country substantially all of the activities necessary to give rise to the income generated by such contract.

(3) QUALIFYING INSURANCE COMPANY.—The term "qualifying insurance company" means any controlled foreign corporation which—

(A) is subject to regulation as an insurance (or reinsurance) company by its home country, and is licensed, author-

ized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country;

(B) derives more than 50 percent of its aggregate net written premiums from the issuance or reinsurance by such controlled foreign corporation and each of its qualifying insurance company branches of contracts—

(i) covering applicable home country risks (as defined in paragraph (2)) of such corporation or branch, as the case may be; and

(ii) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3));

except that in the case of a branch, such premiums shall only be taken into account to the extent such premiums are treated as earned by such branch in its home country for purposes of such country's tax laws; and

(C) is engaged in the insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

(4) QUALIFYING INSURANCE COMPANY BRANCH.—The term "qualifying insurance company branch" means a qualified business unit (within the meaning of section 989(a)) of a controlled foreign corporation if—

(A) such unit is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country; and

(B) such controlled foreign corporation is a qualifying insurance company, determined under paragraph (3) as if such unit were a qualifying insurance company branch.

(5) LIFE INSURANCE OR ANNUITY CONTRACT.—For purposes of this section and section 954, the determination of whether a contract issued by a controlled foreign corporation or a qualified business unit (within the meaning of section 989(a)) is a life insurance contract or an annuity contract shall be made without regard to sections 72(s), 101(f), 817(h), and 7702 if—

(A) such contract is regulated as a life insurance or annuity contract by the corporation's or unit's home country; and

(B) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person.

(6) HOME COUNTRY.—For purposes of this subsection, except as provided in regulations—

(A) CONTROLLED FOREIGN CORPORATION.—The term "home country" means, with respect to a controlled foreign corporation, the country in which such corporation is created or organized.

(B) QUALIFIED BUSINESS UNIT.—The term "home country" means, with respect to a qualified business unit (as defined in section 989(a)), the country in which the principal office

of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance, or annuity contracts to persons other than related persons (as defined in section 954(d)(3)) in such country.

(7) ANTI-ABUSE RULES.—For purposes of applying this subsection and section 954(i)—

(A) the rules of section 954(h)(7) (other than subparagraph (B) thereof) shall apply;

(B) there shall be disregarded any item of income, gain, loss, or deduction of, or derived from, an entity which is not engaged in regular and continuous transactions with persons which are not related persons;

(C) there shall be disregarded any change in the method of computing reserves a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of this subsection or section 954(i);

(D) a contract of insurance or reinsurance shall not be treated as an exempt contract (and premiums from such contract shall not be taken into account for purposes of paragraph (2)(B) or (3)) if—

(i) any policyholder, insured, annuitant, or beneficiary is a resident of the United States and such contract was marketed to such resident and was written to cover a risk outside the United States; or

(ii) the contract covers risks located within and without the United States and the qualifying insurance company or qualifying insurance company branch does not maintain such contemporaneous records, and file such reports, with respect to such contract as the Secretary may require;

(E) the Secretary may prescribe rules for the allocation of contracts (and income from contracts) among 2 or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches; and

(F) premiums from a contract shall not be taken into account for purposes of paragraph (2)(B) or (3) if such contract reinsures a contract issued or reinsured by a related person (as defined in section 954(d)(3)).

For purposes of subparagraph (D), the determination of where risks are located shall be made under the principles of section 953.

(8) COORDINATION WITH SUBSECTION (c).—In determining insurance income for purposes of subsection (c), exempt insurance income shall not include income derived from exempt contracts which cover risks other than applicable home country risks.

(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and section 954(i).

(10) APPLICATION.—This subsection and section 954(i) shall apply only to the first taxable year of a foreign corporation beginning after December 31, 1998, and before January 1, 2000, and to taxable years of United States shareholders with or

within which such taxable year of such foreign corporation ends.

(11) CROSS REFERENCE.—

For income exempt from foreign personal holding company income, see section 954(i).

SEC. 954. FOREIGN BASE COMPANY INCOME.

(a) * * *

* * * * * * *

(c) FOREIGN PERSONAL HOLDING COMPANY INCOME.—

(1) IN GENERAL.—For purposes of subsection (a)(1), the term "foreign personal holding company income" means the portion of the gross income which consists of:

(A) DIVIDENDS, ETC.—Dividends, interest, royalties, rents, and annuities.

(B) CERTAIN PROPERTY TRANSACTIONS.—The excess of gains over losses from the sale or exchange of property—

(i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) *other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year*,

(ii) which is an interest in a trust, partnership, or REMIC, or

(iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(1) shall not be taken into account under this subparagraph.

* * * * * * *

(2) EXCEPTION FOR CERTAIN AMOUNTS.—

(A) * * *

* * * * * * *

[(C) EXCEPTION FOR DEALERS.—Except as provided in subparagraph (A), (E), or (G) of paragraph (1) or by regulations, in the case of a regular dealer in property (within the meaning of paragraph (1)(B)), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding income any item of income, gain, deduction, or loss from any transaction (including hedging transactions) entered into in the ordinary course of such dealer's trade or business as such a dealer.]

(C) EXCEPTION FOR DEALERS.—Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(J)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

* * * * * * *

(e) FOREIGN BASE COMPANY SERVICES INCOME.—

(1) * * *

(2) EXCEPTION.—Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, *or*

(B) an offer or effort to sell or exchange such property❲, or❳.

❲(C) in the case of taxable years described in subsection (h)(9), the active conduct by a controlled foreign corporation of a banking, financing, insurance, or similar business, but only if the corporation is predominantly engaged in the active conduct of such business (within the meaning of subsection (h)(3)) or is a qualifying insurance company.❳

Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection (c)(2)(C)(ii), (h), or (i).

* * * * * * *

❲(h) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR BUSINESSES.—

❲(1) IN GENERAL.—For purposes of subsection (c)(1), foreign personal holding company income shall not include income which is—

❲(A) derived in the active conduct by a controlled foreign corporation of a banking, financing, or similar business, but only if the corporation is predominantly engaged in the active conduct of such business,

⟦(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company of its reserves or of 80 percent of its unearned premiums (as both are determined in the manner prescribed under paragraph (4)), or

⟦(C) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company of an amount of its assets equal to—

⟦(i) in the case of contracts regulated in the country in which sold as property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4), and

⟦(ii) in the case of contracts regulated in the country in which sold as life insurance or annuity contracts, the greater of—

⟦(I) 10 percent of the reserves described in subparagraph (B) for such contracts, or

⟦(II) in the case of a qualifying insurance company which is a start-up company, $10,000,000.

⟦(2) PRINCIPLES FOR DETERMINING APPLICABLE INCOME.—

⟦(A) BANKING AND FINANCING INCOME.—The determination as to whether income is described in paragraph (1)(A) shall be made—

⟦(i) except as provided in clause (ii), in accordance with the applicable principles of section 904(d)(2)(C)(ii), except that such income shall include income from all leases entered into in the ordinary course of the active conduct of a banking, financing, or similar business, and

⟦(ii) in the case of a corporation described in paragraph (3)(B), in accordance with the applicable principles of section 1296(b) (as in effect on the day before the enactment of the Taxpayer Relief Act of 1997) for determining what is not passive income.

⟦(B) INSURANCE INCOME.—Under rules prescribed by the Secretary, for purposes of paragraphs (1)(B) and (C)—

⟦(i) in the case of contracts which are separate account-type contracts (including variable contracts not meeting the requirements of section 817, only income specifically allocable to such contracts shall be taken into account, and

⟦(ii) in the case of other contracts, income not allocable under clause (i) shall be allocated ratably among such contracts.

⟦(C) LOOK-THRU RULES.—The Secretary shall prescribe regulations consistent with the principles of section 904(d)(3) which provide that dividends, interest, income equivalent to interest, rents, or royalties received or accrued from a related person (within the meaning of subsection (d)(3)) shall be subject to look-thru treatment for purposes of this subsection.

⟦(3) PREDOMINANTLY ENGAGED.—For purposes of paragraph (1)(A), a corporation shall be deemed predominantly engaged in the active conduct of a banking, financing, or similar business only if—

⟦(A) more than 70 percent of its gross income is derived from such business from transactions with persons which are not related persons (as defined in subsection (d)(3)) and which are located within the country under the laws of which the controlled foreign corporation is created or organized, or

⟦(B) the corporation is—

⟦(i) engaged in the active conduct of a banking or securities business (within the meaning of section 1296(b), as in effect before the enactment of the Taxpayer Relief Act of 1997), or

⟦(ii) a qualified bank affiliate or a qualified securities affiliate (within the meaning of the proposed regulations under such section 1296(b).

⟦(4) METHODS FOR DETERMINING UNEARNED PREMIUMS AND RESERVES.—For purposes of paragraph (1)(B)—

⟦(A) PROPERTY AND CASUALTY CONTRACTS.—The unearned premiums and reserves of a qualifying insurance company with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company were subject to tax under subchapter L.

⟦(B) LIFE INSURANCE AND ANNUITY CONTRACTS.—The reserves of a qualifying insurance company with respect to life insurance or annuity contracts shall be determined under the method described in paragraph (5) which such company elects to apply for purposes of this paragraph. Such election shall be made at such time and in such manner as the Secretary may prescribe and, once made, shall be irrevocable without the consent of the Secretary.

⟦(C) LIMITATION ON RESERVES.—In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign annual statement reserves (less any catastrophe or deficiency reserves).

⟦(5) METHODS.—The methods described in this paragraph are as follows:

⟦(A) U.S. METHOD.—The method which would apply if the qualifying insurance company were subject to tax under subchapter L, except that the interest rate used shall be an interest rate determined for the foreign country in which such company is created or organized and which is calculated in the same manner as the Federal mid-term rate under section 1274(d).

⟦(B) FOREIGN METHOD.—A preliminary term method, except that the interest rate used shall be the interest rate determined for the foreign country in which such company is created or organized and which is calculated in the same manner as the Federal mid-term rate under section

1274(d). If a qualifying insurance company uses such a preliminary term method with respect to contracts insuring risks located in such foreign country, such method shall apply if such company elects the method under this clause.

⟦(C) CASH SURRENDER VALUE.—A method under which reserves are equal to the net surrender value (as defined in section 807(e)(1)(A) of the contract.

⟦(6) DEFINITIONS.—For purposes of this subsection—

⟦(A) TERMS RELATING TO INSURANCE COMPANIES.—

⟦(i) QUALIFYING INSURANCE COMPANY.—The term "qualifying insurance company" means any entity which—

⟦(I) is subject to regulation as an insurance company under the laws of its country of incorporation,

⟦(II) realizes at least 50 percent of its net written premiums from the insurance or reinsurance of risks located within the country in which such entity is created or organized, and

⟦(III) is engaged in the active conduct of an insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

⟦(ii) START-UP COMPANY.—A qualifying insurance company shall be treated as a start-up company if such company (and any predecessor) has not been engaged in the active conduct of an insurance business for more than 5 years as of the beginning of the taxable year of such company.

⟦(B) LOCATED.—For purposes of paragraph (3)(A)—

⟦(i) IN GENERAL.—A person shall be treated as located—

⟦(I) except as provided in subclause (II), within the country in which it maintains an office or other fixed place of business through which it engages in a trade or business and by which the transaction is effected, or

⟦(II) in the case of a natural person, within the country in which such person is physically located when such person enters into a transaction.

⟦(ii) SPECIAL RULE FOR QUALIFIED BUSINESS UNITS.—Gross income derived by a corporation's qualified business unit (within the meaning of section 989(a) from transactions with persons which are not related persons (as defined in subsection (d)(3)) and which are located in the country in which the qualified business unit both maintains its principal office and conducts substantial business activity shall be treated as derived from transactions with persons which are not related persons (as defined in subsection (d)(3)) and which are located within the country under the laws of which the controlled foreign corporation is created or organized.

[(7) ANTI-ABUSE RULES.—For purposes of applying this subsection, there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any change in the method of computing reserves or any other transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection.

[(8) COORDINATION WITH SECTION 953.—This subsection shall not apply to investment income allocable to contracts that insure related party risks or risks located in a foreign country other than the country in which the qualifying insurance company is created or organized.

[(9) APPLICATION.—This subsection shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.]

(h) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR BUSINESSES.—

(1) IN GENERAL.—For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified banking or financing income of an eligible controlled foreign corporation.

(2) ELIGIBLE CONTROLLED FOREIGN CORPORATION.—For purposes of this subsection—

(A) IN GENERAL.—The term "eligible controlled foreign corporation" means a controlled foreign corporation which—

(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

(ii) conducts substantial activity with respect to such business.

(B) PREDOMINANTLY ENGAGED.—A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or

is any other corporation not so registered which is specified by the Secretary in regulations).

(3) QUALIFIED BANKING OR FINANCING INCOME.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified banking or financing income" means income of an eligible controlled foreign corporation which—

(i) is derived in the active conduct of a banking, financing, or similar business by—

(I) such eligible controlled foreign corporation, or

(II) a qualified business unit of such eligible controlled foreign corporation;

(ii) is derived from one or more transactions—

(I) with customers located in a country other than the United States, and

(II) substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country; and

(iii) is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws.

(B) LIMITATION ON NONBANKING AND NONSECURITIES BUSINESSES.—No income of an eligible controlled foreign corporation not described in clause (ii) or (iii) of paragraph (2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such corporation's or unit's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation's or unit's home country.

(C) SUBSTANTIAL ACTIVITY REQUIREMENT FOR CROSS BORDER INCOME.—The term "qualified banking or financing income" shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

(D) DETERMINATIONS MADE SEPARATELY.—For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

(i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation; and

(ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such unit.

(4) LENDING OR FINANCE BUSINESS.—For purposes of this subsection, the term "lending or finance business" means the business of—

(A) making loans;

(B) purchasing or discounting accounts receivable, notes, or installment obligations;

(C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets);

(D) issuing letters of credit or providing guarantees;

(E) providing charge and credit card services; or

(F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—

(i) the corporation (or qualified business unit) rendering services or making facilities available; or

(ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

(5) OTHER DEFINITIONS.—For purposes of this subsection—

(A) CUSTOMER.—The term "customer" means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

(B) HOME COUNTRY.—Except as provided in regulations—

(i) CONTROLLED FOREIGN CORPORATION.—The term "home country" means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

(ii) QUALIFIED BUSINESS UNIT.—The term "home country" means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

(C) LOCATED.—The determination of where a customer is located shall be made under rules prescribed by the Secretary.

(D) QUALIFIED BUSINESS UNIT.—The term "qualified business unit" has the meaning given such term by section 989(a).

(E) RELATED PERSON.—The term "related person" has the meaning given such term by subsection (d)(3).

(6) COORDINATION WITH EXCEPTION FOR DEALERS.—Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

(7) ANTI-ABUSE RULES.—For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection;

(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in regular and continuous transactions with customers which are not related persons;

(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

(i) one or more entities in order to satisfy any home country requirement under this subsection, or

(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection; and

(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

(9) APPLICATION.—This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to the first taxable year of a foreign corporation beginning after December 31, 1998, and before January 1, 2000, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.

(i) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF INSURANCE BUSINESS.—

(1) IN GENERAL.—For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

(2) QUALIFIED INSURANCE INCOME.—The term "qualified insurance income" means income of a qualifying insurance company which is—

(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its un-

earned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

(3) PRINCIPLES FOR DETERMINING INSURANCE INCOME.—Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

(4) METHODS FOR DETERMINING UNEARNED PREMIUMS AND RESERVES.—For purposes of paragraph (2)(A)—

(A) PROPERTY AND CASUALTY CONTRACTS.—The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

(ii) such company or branch shall use the appropriate foreign loss payment pattern.

(B) LIFE INSURANCE AND ANNUITY CONTRACTS.—The amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

(i) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

(ii) the reserve determined under paragraph (5).

(C) LIMITATION ON RESERVES.—In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in de-

termining foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

(5) AMOUNT OF RESERVE.—The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate;

(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall be substituted for the prevailing State assumed interest rate; and

(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

(6) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.

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Subtitle B—Estate and Gift Taxes

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CHAPTER 11—ESTATE TAX

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Subchapter A—Estates of Citizens or Residents

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PART I—TAX IMPOSED

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SEC. 2001. IMPOSITION AND RATE OF TAX.

(a) * * *

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(f) VALUATION OF GIFTS.—

(1) * * *

(2) FINAL DETERMINATION.—For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if—

(A) * * *

* * * * * * *

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

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PART III—GROSS ESTATE

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SEC. 2031. DEFINITION OF GROSS ESTATE.

(a) * * *

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(c) ESTATE TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—

(1) * * *

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(10) APPLICATION OF THIS SECTION TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in ⟦section 2033A(e)(3)⟧ *section 2057(e)(3)*.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART II—TAX RETURNS OR STATEMENTS

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Subpart B—Income Tax Returns

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SEC. 6015. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN.

(a) * * *

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(e) PETITION FOR REVIEW BY TAX COURT.—

(1) * * *

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(3) APPLICABLE RULES.—

(A) ALLOWANCE OF CREDIT OR REFUND.—Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than section 6512(b), 7121, or 7122), credit or refund shall be allowed or made to the extent attributable to the application ⟦of this section⟧ *of subsection (b) or (f)*.

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PART III—INFORMATION RETURNS

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Subpart A—General Requirement

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SEC. 6033. RETURNS BY EXEMPT ORGANIZATIONS.

(a) * * *

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(c) ADDITIONAL PROVISIONS RELATING TO PRIVATE FOUNDATIONS.—In the case of an organization which is a private foundation (within the meaning of section 509(a))—

(1) the Secretary shall by regulations provide that the private foundation shall include in its annual return under this section such information (not required to be furnished by subsection (b) or the forms or regulations prescribed thereunder) as would have been required to be furnished under section 6056 (relating to annual reports by private foundations) as such section 6056 was in effect on January 1, 1979, *and*

⟦(2) a copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual returns), together with proof of publication thereof, shall be filed by the foundation together with the annual return under this section, and⟧

⟦(3)⟧ *(2)* the foundation managers shall furnish copies of the annual return under this section to such State officials, at such times, and under such conditions, as the Secretary may by regulations prescribe.

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Subchapter B—Extensions of Time For Payment

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

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(h) DISCLOSURE TO CERTAIN FEDERAL OFFICERS AND EMPLOYEES FOR PURPOSES OF TAX ADMINISTRATION, ETC.—

(1) * * *

* * * * * * *

[(5)] *(6)* INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—

(A) IN GENERAL.—Notwithstanding paragraph (1), and except as provided in subparagraph (B), no return or return information may be disclosed to any member of the Oversight Board described in subparagraph (A) or (D) of section 7802(b)(1) or to any employee or detailee of such Board by reason of their service with the Board. Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by any such individual to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary, the Treasury Inspector General for Tax Administration, and the Joint Committee on Taxation.

* * * * * * *

(j) STATISTICAL USE.—

(1) * * *

* * * * * * *

(5) DEPARTMENT OF AGRICULTURE.—Upon request in writing by the Secretary of Agriculture, the Secretary shall furnish such returns, or return information reflected thereon, as the Secretary may prescribe by regulation to officers and employees of the Department of Agriculture whose official duties require access to such returns or information for the purpose of, but only to the extent necessary in, structuring, preparing, and conducting the census of agriculture pursuant to the Census of Agriculture Act of 1997 (Public Law 105–113).

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(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) * * *

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(13) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT INCOME CONTINGENT REPAYMENT OF STUDENT LOANS.—

(A) * * *

* * * * * * *

(D) TERMINATION.—This paragraph shall not apply to any request made after September 30, [1998] *2003*.

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(p) PROCEDURE AND RECORDKEEPING.—

(1) * * *

* * * * * * *

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), *(f)(5),* (h)(1), (3)(A), or (4), (i)(4), or (7)(A)(ii), (k)(1), (2), (6), (8), or (9) (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), or (17) (m) or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

* * * * * * *

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), or (5), ⟦(j)(1) or (2)⟧ *(j)(1), (2), or (5)*, (k)(8), (l)(1), (2), (3), (5), (11), (13), (14), or (17) or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (l)(6), (7), (8), (9), (10), (12) or (15) shall, as a condition for receiving returns or return information—

(A) * * *

* * * * * * *

(F) upon completion of use of such returns or return information—

(i) * * *

(ii) in the case of an agency described in subsections (h)(2), (h)(5), (i)(1), (2), (3), or (5), ⟦(j)(1) or (2)⟧ *(j)(1), (2), or (5)*, (k)(8), (l)(1), (2), (3), (5), (10), (11), (12), (13), (14), (15), or (17) or (o)(1), or the General Accounting Office, either—

(I) * * *

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SEC. 6104. PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) * * *

* * * * * * *

⟦(d) PUBLIC INSPECTION OF PRIVATE FOUNDATIONS' ANNUAL RETURNS.—The annual return required to be filed under section 6033 (relating to returns by exempt organizations) by any organization which is a private foundation within the meaning of section 509(a) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the date of the publication of notice of its availability. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper having general circulation in the county in which the principal office of the private foundation is located. The notice shall state that the annual return of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within 180 days after the date of such publication, and shall state the address and the telephone number of the private foundation's principal office and the name of its principal manager.

⟦(e) PUBLIC INSPECTION OF CERTAIN ANNUAL RETURNS AND APPLICATIONS FOR EXEMPTION.—

⟦(1) ANNUAL RETURNS.—

⟦(A) IN GENERAL.—During the 3-year period beginning on the filing date—

⟦(i) a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

⟦(ii) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in clause (ii) must be made in person or in writing. If the request under clause (ii) is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.

⟦(B) ORGANIZATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any organization which—

⟦(i) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), and

⟦(ii) is not a private foundation (within the meaning of section 509(a)).

⟦(C) NONDISCLOSURE OF CONTRIBUTORS.—Subparagraph (A) shall not require the disclosure of the name or address of any contributor to the organization. In the case of an organization described in section 501(d), subparagraph (A) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization.

⟦(D) FILING DATE.—For purposes of subparagraph (A), the term "filing date" means the last day prescribed for filing the return under section 6033 (determined with regard to any extension of time for filing).

⟦(2) APPLICATION FOR EXEMPTION.—

[(A) IN GENERAL.—If—

[(i) an organization described in subsection (c) or (d) of section 501 is exempt from taxation under section 501(a), and

[(ii) such organization filed an application for recognition of exemption under section 501, a copy of such application (together with a copy of any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application) shall be made available by the organization for inspection during regular business hours by any individual at the principal office of the organization and, if the organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office (and, upon request of an individual made at such principal office or such a regional or district office, a copy of the material requested to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1)(A)) to such individual without charge other than reasonable fee for any reproduction and mailing costs).

[(B) NONDISCLOSURE OF CERTAIN INFORMATION.—Subparagraph (A) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D).

[(3) LIMITATION.—Paragraph (1)(A)(ii) (and the corresponding provision of paragraph (2)) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or, the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.]

(d) PUBLIC INSPECTION OF CERTAIN ANNUAL RETURNS AND APPLICATIONS FOR EXEMPTION.—

(1) IN GENERAL.—In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a)—

(A) a copy of—

(i) the annual return filed under section 6033 (relating to returns by exempt organizations) by such organization, and

(ii) if the organization filed an application for recognition of exemption under section 501, the exempt status application materials of such organization,

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

(B) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return and exempt status application materials shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in subparagraph (B) must be made in person or in writing. If such request is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.

(2) 3-YEAR LIMITATION ON INSPECTION OF RETURNS.—Paragraph (1) shall apply to an annual return filed under section 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

(3) EXCEPTIONS FROM DISCLOSURE REQUIREMENT.—

(A) NONDISCLOSURE OF CONTRIBUTORS, ETC.—Paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization. In the case of an organization described in section 501(d), paragraph (1) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization.

(B) NONDISCLOSURE OF CERTAIN OTHER INFORMATION.—Paragraph (1) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D).

(4) LIMITATION ON PROVIDING COPIES.—Paragraph (1)(B) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.

(5) EXEMPT STATUS APPLICATION MATERIALS.—For purposes of paragraph (1), the term "exempt status applicable materials" means the application for recognition of exemption under section 501 and any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application.

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SEC. 6159. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

(a) * * *

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【(d)】 *(e)* CROSS REFERENCE.—

For rights to administrative review and appeal, see section 7122(d).

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CHAPTER 64—COLLECTION

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Subchapter B—Receipt of Payment

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SEC. 6311. PAYMENT OF TAX BY COMMERCIALLY ACCEPTABLE MEANS.

(a) * * *

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(d) PAYMENT BY OTHER MEANS.—

(1) * * *

(2) AUTHORITY TO ENTER INTO CONTRACTS.—Notwithstanding section 3718(f) of title 31, United States Code, the Secretary is authorized to enter into contracts to obtain services related to receiving payment by other means where cost beneficial to the Government. The Secretary may not pay any fee or provide any other consideration ⟦under such contracts⟧ *under any such contract for the use of credit, debit, or charge cards for the payment of taxes imposed by subtitle A*.

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter A—Procedure in General

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SEC. 6404. ABATEMENTS.

(a) * * *

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(h) ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—

(1) * * *

(2) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of paragraph (1), the term "Presidentially declared disaster area" means, with respect to any taxpayer, any area which the President has determined warrants assistance by the Federal Government under the *Robert T. Stafford* Disaster Relief and Emergency Assistance Act.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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PART I—GENERAL PROVISIONS

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SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) * * *

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(c) RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.—

(1) ANNUAL RETURNS UNDER SECTION 6033.—

(A) * * *

* * * * * * *

(C) PUBLIC INSPECTION OF ANNUAL RETURNS.—In the case of a failure to comply with the requirements of ⟦subsection (d) or (e)(1) of section 6104 (relating to public inspection of annual returns)⟧ *section 6104(d) with respect to any annual return* on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the person failing to meet such requirements $20 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $10,000.

(D) PUBLIC INSPECTION OF APPLICATIONS FOR EXEMPTION.—In the case of a failure to comply with the requirements of ⟦section 6104(e)(2) (relating to public inspection of applications for exemption)⟧ *section 6104(d) with respect to any exempt status application materials (as defined in such section)* on the date and in the manner prescribed therefor, there shall be paid by the person failing to meet such requirements $20 for each day during which such failure continues.

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SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) * * *

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(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

(1) AMOUNT.—

(A) * * *

* * * * * * *

(C) LIMITATION ON USE OF PRECEDING YEAR'S TAX.—

(i) IN GENERAL.—If the adjusted gross income shown on the return of the individual for the preceding taxable year beginning in any calendar year exceeds $150,000, clause (ii) of subparagraph (B) shall be applied by substituting the applicable percentage for "100 percent". For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

If the preceding taxable year begins in:	The applicable percentage is:
[1998, 1999, or 2000	105]
1998	*105*
1999 or 2000	*106*
2001	112
2002 or thereafter	110.

This clause shall not apply in the case of a preceding taxable year beginning in calendar year 1997.

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

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SEC. 6685. ASSESSABLE PENALTY WITH RESPECT TO PUBLIC INSPECTION REQUIREMENTS FOR CERTAIN TAX-EXEMPT ORGANIZATIONS.

In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of subsection (d) [or (e)] of section 6104 and who fails to so comply with respect to any return or application, if such failure is willful, shall pay a penalty of $5,000 with respect to each such return or application.

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SEC. 6693. FAILURE TO PROVIDE REPORTS ON CERTAIN TAX-FAVORED ACCOUNTS OR ANNUITIES; PENALTIES RELATING TO DESIGNATED NONDEDUCTIBLE CONTRIBUTIONS

(a) REPORTS.—

(1) * * *

(2) PROVISIONS.—The provisions referred to in this paragraph are—

(A) subsections (i) and (l) of section 408 (relating to individual retirement plans),

(B) section 220(h) (relating to medical savings accounts),

(C) [Section] *section* 529(d) (relating to qualified State tuition programs), and

(D) [Section] *section* 530(h) (relating to education individual retirement accounts).

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CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

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Subchapter A—Crimes

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PART I—GENERAL PROVISIONS

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SEC. 7207. FRAUDULENT RETURNS, STATEMENTS, OR OTHER DOCUMENTS.

Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to subsection (b) of section 6047 or pursuant to subsection (d) ⟦or (e)⟧ of section 6104 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

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CHAPTER 76—JUDICIAL PROCEEDINGS

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Subchapter B—Proceedings by Taxpayers and Third Parties

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SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) TAX.—Except as provided in sections ⟦6015(d)⟧ *6015(e)*, 6212(a) and (c), 6213(a), 6225(b), 6246(b), *6331(i),* 6672(b), 6694(c), 7426(a) and (b)(1), and 7429(b), and 7463 no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

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Subchapter E—Burden of Proof

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SEC. 7491. BURDEN OF PROOF.

(a) BURDEN SHIFTS WHERE TAXPAYER PRODUCES CREDIBLE EVIDENCE.—

(1) * * *

(2) LIMITATIONS.—Paragraph (1) shall apply with respect to an issue only if—

(A) the taxpayer has complied with the requirements under this title to substantiate any item;

(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section 645(b)(1)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section 645(b)(2)).

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Fund

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SEC. 9503. HIGHWAY TRUST FUND.

(a) * * *

* * * * * * *

(f) DETERMINATION OF TRUST FUND BALANCES AFTER SEPTEMBER 30, 1998.—For purposes of determining the balances of the Highway Trust Fund and the Mass Transit Account after September 30, 1998—

(1) the opening balance of the Highway Trust Fund (other than the Mass Transit Account) on October 1, 1998, shall be $8,000,000,000, and

[(2) no interest accruing after September 30, 1998, on any obligation held by such Fund shall be credited to such Fund.]

(2) notwithstanding section 9602(b), obligations held by such Fund after September 30, 1998, shall be obligations of the United States which are not interest-bearing.

The Secretary shall cancel obligations held by the Highway Trust Fund to reflect the reduction in the balance under this subsection.

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SEC. 9510. VACCINE INJURY COMPENSATION TRUST FUND.

(a) * * *

(b) TRANSFERS TO TRUST FUND.—

(1) * * *

* * * * * * *

(3) LIMITATION ON TRANSFERS TO VACCINE INJURY COMPENSATION TRUST FUND.—No amount may be appropriated to the Vaccine Injury Compensation Trust Fund on and after the date of any expenditure from the Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

(c) EXPENDITURES FROM TRUST FUND.—

[(1) IN GENERAL.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on the date of the enactment of this section) for vaccine-related injury or death with respect to vaccines administered after September 30, 1988 or for the payment of all expenses of administration (but not in excess of $6,000,000 for any fiscal year) incurred by the Federal Government in administering such subtitle.]

(1) IN GENERAL.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for—

(A) the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on August 5, 1997) for vaccine-related injury or death with respect to any vaccine—

(i) which is administered after September 30, 1988, and

(ii) which is a taxable vaccine (as defined in section 4132(a)(1)) at the time compensation is paid under such subtitle 2, or

(B) the payment of all expenses of administration (but not in excess of $9,500,000 for any fiscal year) incurred by the Federal Government in administering such subtitle.

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TAXPAYER RELIEF ACT OF 1997

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TITLE IX—MISCELLANEOUS PROVISIONS

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Subtitle B—Revisions Relating to Disasters

* * * * * * *

SEC. 915. ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.

(a) * * *

(b) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of subsection (a), the term "Presidentially declared disaster area" means, with respect to any individual, any area which the President has determined during 1997 *or 1998* warrants assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(c) INDIVIDUAL.—For purposes of this section, the term "individual" shall not include any estate or trust.

[(d) EFFECTIVE DATE.—This section shall apply to disasters declared after December 31, 1996.]

(d) EFFECTIVE DATE.—This section shall apply to taxable years ending with or within calendar year 1997.

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Subtitle D—Provisions Relating to Small Businesses

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SEC. 933. AVERAGING OF FARM INCOME OVER 3 YEARS.

(a) * * *

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(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997[, and before January 1, 2001].

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SECTION 505 OF THE TRADE ACT OF 1974

SEC. 505. DATE OF TERMINATION.

No duty-free treatment provided under this title shall remain in effect after [June 30, 1998] *December 31, 1999*.

INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998

* * * * * * *

TITLE III—TAXPAYER PROTECTION AND RIGHTS

* * * * * * *

Subtitle D—Provisions Relating to Interest and Penalties

SEC. 3301. ELIMINATION OF INTEREST RATE DIFFERENTIAL ON OVERLAPPING PERIODS OF INTEREST ON TAX OVERPAYMENTS AND UNDERPAYMENTS.

(a) * * *

* * * * * * *

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided under paragraph (2), the amendments made by this section shall apply to interest for periods beginning after the date of the enactment of this Act.

(2) SPECIAL RULE.—[The amendments] *Subject to any applicable statute of limitation not having expired with regard to either a tax underpayment or a tax overpayment, the amendments* made by this section shall apply to interest for periods beginning before the date of the enactment of this Act if the taxpayer—

(A) reasonably identifies and establishes periods of such tax overpayments and underpayments for which the zero rate applies; and

(B) not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d) of the Internal Revenue Code of 1986, as added by subsection (a), to such periods.

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Subtitle E—Protections for Taxpayers Subject to Audit or Collection Activities

PART I—DUE PROCESS

SEC. 3401. DUE PROCESS IN INTERNAL REVENUE SERVICE COLLECTION ACTIONS.

(a) * * *

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(c) REVIEW BY SPECIAL TRIAL JUDGES ALLOWED.—

(1) IN GENERAL.—Section [7443(b)] *7443A(b)* (relating to proceedings which may be assigned to special trial judges) is amended by striking "and" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) any proceeding under section 6320 or 6330, and".

(2) AUTHORITY TO MAKE DECISIONS.—Section [7443(c)] *7443A(c)* (relating to authority to make court decisions) is amended by striking "or (3)" and inserting "(3), or (4)".

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