

by applying the principle of fungibility to the taxpayer's worldwide affiliated group (rather than to just the U.S. affiliated group). In addition, under special rules, interest expense incurred by a lower-tier U.S. member of an affiliated group could be allocated by applying the principle of fungibility to the subgroup consisting of the borrower and its direct and indirect subsidiaries. The bill also allows members engaged in the active conduct of a financial services business to be treated as a separate group; this provision reflects an expansion of the present-law bank group rule to other financial services firms which is similar to the expansion that was proposed in the Foreign Income Tax Rationalization and Simplification bill introduced in 1992 by Representatives Rostenkowski and Gradison. Finally, the bill would provide specific regulatory authority for the direct allocation of interest expense in other circumstances where such tracing is appropriate.

Under the bill, a taxpayer would be able to make a one-time election to apply either the interest allocation rules currently contained in section 864(e) or the modified rules reflected in the bill. Such election would be required to be made for the taxpayer's first taxable year to which the bill is applicable and for which it is a member of an affiliated group, and could be revoked only with IRS consent. Such election, if made, would apply to all the members of the affiliated group.

The bill generally is not intended to modify the interpretive guidance contained in the regulations under the present-law interest allocation rules that is relevant to the rules reflected in the bill, and such guidance is intended to continue to be applicable.

#### WORLDWIDE FUNGIBILITY

Under the bill, the taxable income of an affiliated group from sources outside the United States generally would be determined by allocating and apportioning all interest expense of the worldwide affiliated group on a group-wide basis. For this purpose, the worldwide affiliated group would include not only the U.S. members of the affiliated group, but also the foreign corporations that would be eligible to be included in a consolidated return if they were not foreign. Both the interest expense and the assets of all members of the worldwide affiliated group would be taken into account for purposes of the allocation and apportionment of interest expense. Accordingly, interest expense incurred by a foreign subsidiary would be taken into account in determining the initial allocation and apportionment of interest expense to foreign-source income. The interest expense incurred by the foreign subsidiaries would not be deductible on the U.S. consolidated return. Accordingly, the amount of interest expense allocated to foreign-source income on the U.S. consolidated return would then be reduced (but not below zero) by the amount of interest expense incurred by the foreign members of the worldwide group, to the extent that such interest would be allocated to foreign sources if these rules were applied separately to a group consisting of just the foreign members of the worldwide affiliated group. As under the present-law rules for affiliated groups, debt between members of the worldwide affiliated group, and stockholdings in group members, would be eliminated for purposes of determining total interest expense of the worldwide affiliated group, computing asset ratios, and computing the reduction in the allocation to foreign-source income for interest expense incurred by a foreign member.

As under the present-law rules, taxpayers would be required to allocate and apportion interest expense on the basis of assets (rather than gross income). Because foreign mem-

bers would be included in the worldwide affiliated group, the computation would take into account the assets of such foreign members (rather than the stock in such foreign members). For purposes of applying this asset method, as under the present-law rules, if members of the worldwide affiliated group hold at least 10 percent (by vote) of the stock of a corporation (U.S. or foreign) that is not a member of such group, the adjusted basis in such stock would be increased by the earnings and profits that are attributable to such stock and that are accumulated during the period that the members hold such stock. Similarly, the adjusted basis in such stock would be reduced by any deficit in earnings and profits that is attributable to such stock and that arose during such period. However, unlike under the present-law rules, these basis adjustment rules would not be applicable to the stock of the foreign members of the expanded affiliated group (because such members would be included in the group for interest allocation purposes).

Under the bill, interest expense would be allocated and apportioned based on the assets of the expanded affiliated group. For interest allocation purposes, the affiliated group would be determined under section 1504 but would include life insurance companies without regard to whether such companies are covered by an election under section 1504(c)(2) to include them in the affiliated group under section 1504. This definition of affiliated group would be the starting point for the expanded affiliated group. In addition, the expanded affiliated group would include section 936 companies (which are included in the group for interest allocation purposes under present law). The expanded affiliated group also would include foreign corporations that would be included in the affiliated group under section 1504 if they were domestic corporations; consistent with the present-law exclusion of DISCs from the affiliated groups, FSCs would not be included in the expanded affiliated group.

#### SUBGROUP ELECTION

The bill also provides a special method for the allocation and apportionment of interest expense with respect to certain debt incurred by members of an affiliated group below the top tier. Under this method, interest expense attributable to qualified debt incurred by a U.S. member of an affiliated group could be allocated and apportioned by looking just to the subgroup consisting of the borrower and its direct and indirect subsidiaries (including foreign subsidiaries). Debt would qualify for this purpose if it is a borrowing from an unrelated person that is not guaranteed or otherwise directly supported by any other corporation within the worldwide affiliated group (other than another member of such subgroup). Debt that does not qualify because of such a guarantee (or other direct supply) would be treated as debt of the guarantor (or, if the guarantor is not in the same chain of corporations as the borrower, as debt of the common parent of the guarantor and the borrower). If this subgroup method is elected by any member of an affiliated group, it would be required to be applied to the interest expense attributable to all qualified debt of all U.S. members of the group.

When this subgroup method is used, certain transfers from one U.S. member of the affiliated group to another would be treated as reducing the amount of qualified debt. If a U.S. member with qualified debt makes dividend or other distributions in a taxable year to another member of the affiliated group that exceed the greater of its average annual dividend (as a percentage of current earnings and profits) during the five preceding years or 25 percent of its average an-

nual earnings and profits for such period, an amount of its qualified debt equal to such excess would be recharacterized as non-qualified. A similar rule would apply to the extent that a U.S. member with qualified debt deals with a related party on a basis that is not arm's length. Interest attributable to any debt that is recharacterized as non-qualified would be allocated and apportioned by looking to the entire worldwide affiliated group (rather than to the subgroup).

If this subgroup method is used, an equalization rule would apply to the allocation and apportionment of interest expense of members of the affiliated group that is attributable to non-qualified debt. Such interest expense would be allocated and apportioned first to foreign sources to the extent necessary to achieve (to the extent possible) the allocation and apportionment that would have resulted had the subgroup method not been applied.

#### FINANCIAL SERVICES GROUP ELECTION

Under the bill, a modified and expanded version of the special bank group rule of present law would apply. Under this election, the allocation and apportionment of interest expense could be determined separately for the subgroup of the expanded affiliated group that consists solely of members that are predominantly engaged in the active conduct of a banking, insurance, financing or similar business. For this purpose, the determination of whether a member is predominantly so engaged would be made under rules similar to the rules of section 904(d)(2)(C) and the regulations thereunder (relating to the determination of income in the financial services basket for foreign tax credit purposes). Accordingly, a member would be considered to be predominantly engaged in the active conduct of a banking, insurance, financing, or similar business if at least 80 percent of its gross income is active financing income as described in Treas. Reg. sec. 1.904-4(e)(2). As under the subgroup rule, certain transfers of funds from a U.S. member of the financial services group to another member of the affiliated group that is not a member of the financial services group would reduce the interest expense that is allocated and apportioned based on the financial services group. Also as under the subgroup rule, if elected, this rule would apply to all members that are considered to be predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

#### EFFECTIVE DATE

The bill would be effective for taxable years ending after December 31, 1999.

IN MEMORY OF BETTY SUR  
GUERRERO

**HON. ROBERT A. UNDERWOOD**

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 1, 1999*

Mr. UNDERWOOD. Mr. Speaker, the island of Guam bids farewell to an esteemed resident. Betty Sur Guerrero, a colleague in the field of education and public administration, was called to her eternal rest last Monday, June 28, 1999.

The daughter of Chai Kuen and Bok Soo Sur, Betty was born in Honolulu, Hawaii, on June 25, 1926. Having graduated from St. Francis Convent High School in Hawaii, she went on to attend Graceland Junior College in Lamoni, Iowa—earning an A.A. Degree in 1946. Later, in 1948, the Iowa Teachers College in Cedar Falls, Iowa, awarded her a B.S.

Degree in Social Sciences. In 1949, she was conferred an M.A. Degree in Social Sciences from the Colorado State College in Greeley, Colorado.

Betty went on to become active in Guam's political, civic, and community affairs. Having married an island-resident, Joe Castro Guerrero, Betty moved to Guam in the 1950's. From 1951 to 1960, she worked as a teacher in the Guam public school system. Between 1954 and 1957, she also worked as a part-time instructor at the University of Guam. In 1960, prior to being hired as a budget and management analyst for the Government of Guam's Bureau of Budget and Management, she made a move from teaching to school administration. In 1968, she was named director of the Head Start program for the University of Guam and, in 1969, she became the assistant to the President of the University.

From 1969 to 1976, Betty administered the Comprehensive Health Planning Program while, at the same time, serving as Executive Director to the Territorial Planning Council. She worked as a consultant for the Guam Legislature's Committee on Territorial-Federal Affairs from 1977 until 1979, when she was named Director of the Bureau of Planning. She served under this capacity until 1983. In 1984, she resumed work with the Department of Education as an opportunity room teacher. She worked for this program designed to help troubled students until 1987.

Although she might have taken it slow after her Department of Education job, Betty never really retired. She kept herself occupied with a wide range of activities. She was always willing to impart and share her expertise, enthusiasm, and energies to deserving activities and projects. We have been blessed to have her choose to be part of our community. The legacy she leaves behind includes almost five decades of government and community service. She will be greatly missed by all of us on Guam.

On behalf of the people of Guam, I join her children, Leonard, Clarice, and Stephen, who, together with her grandchildren, Nicole, Ashley, Kathleen, Mason, and Stephen II, in celebrating her life and mourning the loss of a mother, a grandmother, and fellow educator. Adios, Betty.

CONSTITUTIONAL AMENDMENT  
AUTHORIZING CONGRESS TO  
PROHIBIT THE PHYSICAL DESE-  
CRATION OF THE FLAG OF THE  
UNITED STATES

SPEECH OF

**HON. STENY H. HOYER**

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, June 24, 1999*

Mr. HOYER. Mr. Speaker, I rise today in opposition to H.J. Res. 33, the proposed constitutional amendment to prohibit the physical desecration of our flag. And, in this respect, I take no pleasure in doing so: Like the vast majority of Americans, I too condemn those malcontents who would desecrate our flag—a universal symbol for democracy, freedom and liberty—to grab attention for themselves and inflame the passions of patriotic Americans.

Further, I fully appreciate and respect the motivations of those who offer and support

this amendment, particularly the patriotic men and women who so faithfully served this Nation in our armed services and in other capacities. Their strong feelings on this issue should neither be questioned nor underestimated. They deserve our respect.

However, I respectfully disagree with them and will oppose this amendment for the reasons so eloquently articulated by Senator Mitch McConnell of Kentucky. In opposing a similar amendment a few years ago, Senator McConnell stated that it "rips the fabric of our Constitution at its very center: the First Amendment." He added, "Our respect and reverence for the flag should not provoke us to damage our Constitution, even in the name of patriotism."

Those of us who oppose this amendment do so not to countenance the actions of a few misfits, but because we believe the question before us today is how we—the United States of America—are to deal with individuals who dishonor our Nation in this manner.

I submit, Mr. Speaker, that a constitutional amendment is neither the appropriate nor best method for dealing with these malcontents. As the late Justice Brennan wrote for the Supreme Court in *Texas v. Johnson*: "The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong. . . . We can imagine no more appropriate response to burning a flag than waving one's own."

Furthermore, it troubles me that this amendment, if approved, would ensconce the vile actions of a few provocateurs into the very document that guarantees freedom of speech, freedom of religion, freedom of the press, freedom of assembly, and freedom to petition the government. That document, of course, is our Constitution.

In more than 200 years, our Constitution has been amended only 27 times, and nearly all of those amendments guarantee or expand rights, liberties and freedoms. Only one amendment—prohibition—constricted freedoms and soon was repealed.

I simply do not believe that our traditions, our values, our democratic principles—all embodied in our Constitution and the Bill of Rights—should be overridden to prohibit this particular manner of speech, even though I completely disagree with it.

Free speech is often a double-edged sword. However, if we value the freedoms that define us as Americans, we should refrain from amending the Constitution to limit those same freedoms to avoid being offended.

Finally, while even one act of flag burning is one too many, I do not believe that flag desecration is rampant in our Nation or so harms the Republic that nothing short of a constitutional amendment is needed.

I remind my colleagues that if we approve this amendment, we put our great Nation in the company of the oppressive regimes in China, Iran, and Cuba—all of whom have similar laws protecting their flags. Needless to say, when it comes to free speech, the United States of America is the world's leader. It does not follow China, Iran or Cuba.

Our flag is far more than a piece of cloth, a few stripes, 50 stars. Our flag is a universal symbol for freedom, liberty, human rights and decency that is recognized throughout the world. The inflammatory actions of a few misfits cannot extinguish those ideals. We can

only do that ourselves. And I submit that a constitutional amendment to restrict speech—even speech such as this—is the surest way to stoke the embers of those who will push for even more restrictions.

HONORING THE 150TH ANNIVERSARY OF THE VILLAGE OF CASEYVILLE

**HON. JERRY F. COSTELLO**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 1, 1999*

Mr. COSTELLO. Mr. Speaker, I rise today in honor of the 150th Anniversary of the Village of Caseyville.

The Village of Caseyville first began to be settled in the 1840's. While today the area is well known for its small town charm, it was recognized in the 19th century as a coal-mining community.

Coal was not only a source of fuel and economic prosperity, but it influenced the further development of the community as well as regional transportation. Indeed, one of the first railroads in St. Clair County began in Caseyville, sponsored by the Illinois Coal Company.

Caseyville has also long been recognized as a quiet force in Illinois politics. The namesake of the town, Zadok Casey, served in the Illinois State Assembly as both a State Representative, State Senator, and Lieutenant Governor. He eventually served in the U.S. Congress before returning to the Illinois Assembly to serve in the State House and State Senate again.

Today, I am proud to represent Caseyville, a close community of churches, civic groups, and businesses. This weekend as the Nation celebrates the anniversary of our country's independence, Caseyville residents will also proudly remember their own place in American History.

Mr. Speaker, I ask my colleagues to join me in recognizing the Village of Caseyville in commemoration of its 150th Anniversary.

THE GENETIC NONDISCRIMINATION IN HEALTH INSURANCE AND EMPLOYMENT ACT

**HON. LOUISE McINTOSH SLAUGHTER**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 1, 1999*

Ms. SLAUGHTER. Mr. Speaker, I am proud to rise today to announce the introduction of the Genetic Nondiscrimination in Health Insurance Employment Act, a bill that will protect all Americans against the misuse of their genetic information.

Genetic information is among the most powerful, personal, and private information we can have about ourselves. Increasingly, genetics can give us insights into the fundamental characteristics that make us individuals—into what makes our eyes blue, our skin freckled, our bones more prone to breaking, our family members unusually long-lived. Yet while genetic information can offer insights, it rarely extends guarantees. Few genes carry an absolute assurance of developing a given condition or disease. Rather, the vast majority of