

federal benefit start before any state-financed extended benefit.

As the Senators from Washington know, the Senate put forward a bill in February that provided a simple 13-week extension to all States, which would begin immediately after the exhaustion of regular UI benefits.

There are a number of States that did act in providing State-financed extended benefits before the House finally agreed to send us this compromise legislation, and those States deserve the maximum federal benefit.

This is about giving workers a chance to get back on their feet.

We have worked hard to recognize the technical concerns of the Senators from Washington and ensure that we were providing the maximum assistance to all States.

So I will say clearly that it was the Congress' intent to provide the federal benefit immediately after regular UI and I will work with the Senators to ensure that the Department conforms with that intent.

INCOME FORECAST METHOD

Mr. DASCHLE. Mr. President, I would like to engage in a brief colloquy with the distinguished chairman and ranking member of the Finance Committee, Senator BAUCUS and Senator GRASSLEY, regarding a tax issue that I had hoped to clarify as part of this legislation, which will have serious economic ramifications for several important industries.

Recently, some uncertainty has arisen regarding the proper tax treatment of residuals and participations under the income forecast method of depreciation. I would ask the distinguished chairman and ranking member if they could clarify this issue.

Mr. BAUCUS. In 1993, the United States Court of Appeals for the Ninth Circuit held in *Transamerica Corporation v U.S.* that, for purposes of the income forecast depreciation method, the anticipated cost of participations and residuals should be included in a property's cost basis at the beginning of the property's depreciable life.

As the Ninth Circuit determined in *Transamerica*, inclusion of participations and residuals in a property's initial cost basis is necessary to properly match the income and expenses associated with the property and to clearly reflect income. Yet, it is my understanding that the IRS is not currently permitting such treatment. To eliminate the current uncertainty, Senator GRASSLEY and I have encouraged Treasury to consider regulations clarifying that participations and residuals may be included in a property's initial cost basis for purposes of the income forecast method of depreciation.

Mr. GRASSLEY. I agree with Senator BAUCUS. Excluding participations and residuals from a property's initial depreciable cost basis under the income forecast method results in a mismatching of income from the property and the expenses incurred in producing the property. The Ninth Circuit reached this conclusion in *Trans-*

america. Moreover, I would note that including participations and residuals in the initial depreciable cost basis is consistent with industry standards in computing income for financial accounting purposes. We should remove this uncertainty to avoid needless disputes and to ensure the accurate reflection of taxpayers' income.

Mr. DASCHLE. I want to thank both of my distinguished colleagues for this important clarification. I understand that Treasury is considering this issue currently as part of its 2001 Priority Guidance Plan. For the record, I would note that Senators BAUCUS and GRASSLEY previously sent a letter to Treasury Secretary O'Neill asking him to consider regulations that eliminate the current uncertainty by clarifying that participations and residuals may be included in a property's initial cost basis for purposes of the income forecast method of depreciation. I agree with my colleagues and urge Treasury to issue such regulations.

Mr. BREAU. Mr. President, I completely agree with the previous colloquy of my distinguished colleagues on the income forecast method of depreciation. The motion picture industry presently is facing a legal cloud that has serious economic implications for the industry. The cloud concerns the tax treatment of residual and participation payments under the income forecast method of accounting, the predominant method of accounting for the industry.

In 1993, the Ninth Circuit held in *Transamerica Corporation v U.S.* that participations and residuals are included in the initial cost basis of a property for purposes of the income forecast method. Yet, despite this clear result, I understand that the Internal Revenue Service is beginning to challenge that treatment. Simply put, this is wrong—as a matter of law, as a matter of policy, and as a matter of fairness.

The *Transamerica* decision continues to remain the proper result under present law. As the *Transamerica* Court found, the inclusion of participations and residuals in the film's costs is necessary in order to match income and expenses property and to clearly reflect income.

I believe we must quickly lift this cloud of uncertainty from one of our most critical industries. I am in agreement with my colleagues that Treasury should issue regulations which eliminate the current uncertainty this year as part of its 2001 Priority Guidance Plan.

CLARIFICATION REGARDING THE FIVE-YEAR CARRYBACK OF NET OPERATING LOSSES

Mr. HATCH. Mr. President, the Job Creation and Worker Assistance Act of 2002, being considered by the Senate today, contains an important provision to extend the general net operating loss ("NOL") carryback provision to 5 years (from 2 years) for NOLs arising in taxable years ending in 2001 and 2002.

The Joint Committee on Taxation's Technical Explanation of the Act contains a footnote indicating that the NOL provision "does not affect the terms and conditions that the Internal Revenue Service may impose on a taxpayer seeking approval for a change in its annual accounting period."

I want to clarify with the distinguished chairman of the Finance Committee, Senator BAUCUS, that this footnote was not intended to limit the Internal Revenue Service's authority to alter or modify the terms and conditions that may have been imposed on taxpayers that had already received permission to change accounting periods, particularly under circumstances where the events of September 11, 2001, have resulted in unanticipated and severe hardships, and the waiver or modification would not result in the planning activity that the NOL Condition was intended to prevent.

Specifically, I want to clarify that the IRS has authority to permit an NOL incurred in a short taxable year to be carried back notwithstanding that the taxpayer may have agreed as a condition to securing the change to carry over the NOL only to future years.

Mr. BAUCUS. I would agree that the relevant footnote merely restates the Internal Revenue Service's present authority, and is not intended to limit that authority in cases where modification of an approval is sought, and such a modification would be consistent with the government's overall response to September 11.

AIRCRAFT

Mr. BROWNBACK. Mr. President, I would like to engage my colleagues, Senator BAUCUS and Senator GRASSLEY in a colloquy. I have a question regarding the special depreciation allowance provisions of H.R. 3090, the "Job Creation and Worker Assistance Act of 2002." Do the depreciation provisions in the bill cover all aircraft?

Mr. BAUCUS. It is our intention to cover all types of aircraft, including commercial, chartered, privately-owned, or crop-dusting aircraft, to the extent the aircraft is otherwise eligible for depreciation.

Mr. GRASSLEY. I agree with Senator BAUCUS' remarks. These special depreciation allowance provisions are intended to cover all aircraft.

Mr. BROWNBACK. I thank my colleagues for that clarification.

HATE CRIMES: WHY WE CAN'T WAIT

Mrs. FEINSTEIN. Mr. President, if you were to walk past the driveway at 222 West Micheltorena Street in Santa Barbara, California today you would see a makeshift memorial of flowers and candles. On a tree nearby, you