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HOUSE OF REPRESENTATIVES
REPORT
108–23

ARMED FORCES TAX FAIRNESS ACT OF 2003

MARCH 5, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 878]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 878) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Armed Forces Tax Fairness Act of 2003".

(b) 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.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—ARMED FORCES

SEC. 101. SPECIAL RULE FOR MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE AND PEACE CORPS VOLUNTEERS AND EMPLOYEES IN DETERMINING EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (d) of section 121 (relating to exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

"(10) MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE AND PEACE CORPS VOLUNTEERS AND EMPLOYEES.—

"(A) IN GENERAL.—At the election of an individual with respect to a property, the running of the 5-year period referred to in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty as a member of the uniformed services or of the Foreign Service or as a Peace Corps volunteer or an employee of the Peace Corps.

"(B) MAXIMUM PERIOD OF SUSPENSION.—Such 5-year period shall not be extended more than 5 years by reason of subparagraph (A).

"(C) QUALIFIED OFFICIAL EXTENDED DUTY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified official extended duty' means any extended duty while serving at a duty station which is at least 150 miles from such property or while residing under Government orders in Government quarters.

"(ii) UNIFORMED SERVICES.—The term 'uniformed services' has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

"(iii) FOREIGN SERVICE.—The term 'member of the Foreign Service' has the meaning given the term 'member of the Service' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

"(iv) EXTENDED DUTY.—The term 'extended duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 180 days or for an indefinite period.

"(v) RULES RELATING TO THE PEACE CORPS.—

"(I) EXTENDED DUTY.—In the case of a Peace Corps volunteer, the term 'extended duty' means any period of active duty assigned to a Peace Corps volunteer under the Peace Corps Act for a period in excess of 180 days or for an indefinite period.

"(II) PEACE CORPS VOLUNTEER.—The term 'Peace Corps volunteer' means an individual enrolled as a volunteer or volunteer leader under the Peace Corps Act.

"(III) EMPLOYEE OF THE PEACE CORPS.—The term 'employee of the Peace Corps' means a person employed in the Peace Corps under section 7 of the Peace Corps Act.

"(IV) REFERENCES TO PEACE CORPS ACT.—References in this clause to the Peace Corps Act mean references to the Peace Corps Act (22 U.S.C. 2501 et seq.) as in effect on the date of the enactment of this clause.

"(D) SPECIAL RULES RELATING TO ELECTION.—

"(i) ELECTION LIMITED TO 1 PROPERTY AT A TIME.—An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

"(ii) REVOCATION OF ELECTION.—An election under subparagraph (A) may be revoked at any time.".

(b) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendment made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 102. RESTORATION OF FULL EXCLUSION FROM GROSS INCOME OF DEATH GRATUITY PAYMENT.

(a) IN GENERAL.—Paragraph (3) of section 134(b) (relating to qualified military benefit) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FOR DEATH GRATUITY ADJUSTMENTS MADE BY LAW.—Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted before December 31, 1991.".

(b) CONFORMING AMENDMENT.—Section 134(b)(3)(A) is amended by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring after September 10, 2001.

SEC. 103. EXCLUSION FOR AMOUNTS RECEIVED UNDER DEPARTMENT OF DEFENSE HOMEOWNERS ASSISTANCE PROGRAM.

(a) IN GENERAL.—Subsection (a) of section 132 (relating to certain fringe benefits) is amended by striking "or" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", or" and by adding at the end the following new paragraph:

"(8) qualified military base realignment and closure fringe.".

(b) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—Section 132 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified military base realignment and closure fringe' means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of this subsection).

"(2) LIMITATION.—With respect to any property, such term shall not include any payment referred to in paragraph (1) to the extent that the sum of all such payments related to such property exceeds the amount described in clause (1) of subsection (c) of such section (as in effect on such date).".

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

SEC. 104. EXPANSION OF COMBAT ZONE FILING RULES TO CONTINGENCY OPERATIONS.

(a) IN GENERAL.—Subsection (a) of section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone) is amended—

(1) by inserting "or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law" after "section 112",

(2) by inserting in the first sentence "or at any time during the period of such contingency operation" after "for purposes of such section",

(3) by inserting "or operation" after "such an area", and

(4) by inserting "or operation" after "such area".

(b) CONFORMING AMENDMENTS.—

(1) Section 7508(d) is amended by inserting "or contingency operation" after "area".

(2) The heading for section 7508 is amended by inserting "or contingency operation" after "combat zone".

(3) The item relating to section 7508 in the table of sections for chapter 77 is amended by inserting "or contingency operation" after "combat zone".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any period for performing an act which has not expired before the date of the enactment of this Act.

SEC. 105. MODIFICATION OF MEMBERSHIP REQUIREMENT FOR EXEMPTION FROM TAX FOR CERTAIN VETERANS' ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 501(c)(19) (relating to list of exempt organizations) is amended by striking "or widowers" and inserting ", widowers, ancestors, or lineal descendants".

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

SEC. 106. CLARIFICATION OF THE TREATMENT OF CERTAIN DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Subsection (b) of section 134 (defining qualified military benefit) is amended by adding at the end the following new paragraph:

"(4) CLARIFICATION OF CERTAIN BENEFITS.—For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).".

(b) CONFORMING AMENDMENTS.—

(1) Section 134(b)(3)(A) (as amended by section 102) is further amended by inserting "and paragraph (4)" after "subparagraphs (B) and (C)".

(2) Section 3121(a)(18) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(3) Section 3306(b)(13) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(4) Section 3401(a)(18) is amended by striking "or 129" and inserting ", 129, or 134(b)(4)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 107. CLARIFICATION RELATING TO EXCEPTION FROM ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS, ETC., ON ACCOUNT OF ATTENDANCE AT MILITARY ACADEMY.

(a) IN GENERAL.—Subparagraph (B) of section 530(d)(4) (relating to exceptions from additional tax for distributions not used for educational purposes) is amended by striking "or" at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

"(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect for taxable years beginning after December 31, 2002.

SEC. 108. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.—

"(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

"(2) TERRORIST ORGANIZATIONS.—An organization is described in this paragraph if such organization is designated or otherwise individually identified—

"(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

"(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

"(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

"(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

"(ii) such Executive order refers to this subsection.

"(3) PERIOD OF SUSPENSION.—With respect to any organization described in paragraph (2), the period of suspension—

"(A) begins on the later of—

"(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

"(ii) the date of the enactment of this subsection, and

"(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

"(4) DENIAL OF DEDUCTION.—No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

"(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

"(6) ERRONEOUS DESIGNATION.—

"(A) IN GENERAL.—If—

"(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

"(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

"(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

"(B) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

"(7) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to designations made before, on, or after the date of the enactment of this Act.

SEC. 109. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT TRAVEL EXPENSES OF NATIONAL GUARD AND RESERVE MEMBERS.

(a) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

"(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such services.".

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Paragraph (2) of section 62(a) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

"(E) CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, not in excess of $500, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. TAX RELIEF AND ASSISTANCE FOR FAMILIES OF ASTRONAUTS WHO LOSE THEIR LIVES ON A SPACE MISSION.

(a) INCOME TAX RELIEF.—

(1) IN GENERAL.—Subsection (d) of section 692 (relating to income taxes of members of Armed Forces and victims of certain terrorist attacks on death) is amended by adding at the end the following new paragraph:

"(5) RELIEF WITH RESPECT TO ASTRONAUTS.—The provisions of this subsection shall apply to any astronaut whose death occurs while on a space mission, except that paragraph (3)(B) shall be applied by using the date of the death of the astronaut rather than September 11, 2001.".

(2) CONFORMING AMENDMENTS.—

(A) Section 5(b)(1) is amended by inserting ", astronauts," after "Forces".

(B) Section 6013(f)(2)(B) is amended by inserting ", astronauts," after "Forces".

(3) CLERICAL AMENDMENTS.—

(A) The heading of section 692 is amended by inserting ", astronauts," after "forces".

(B) The item relating to section 692 in the table of sections for part II of subchapter J of chapter 1 is amended by inserting ", astronauts," after "Forces".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to any astronaut whose death occurs after December 31, 2002.

(b) DEATH BENEFIT RELIEF.—

(1) IN GENERAL.—Subsection (i) of section 101 (relating to certain death benefits) is amended by adding at the end the following new paragraph:

"(4) RELIEF WITH RESPECT TO ASTRONAUTS.—The provisions of this subsection shall apply to any astronaut whose death occurs while on a space mission.".

(2) CLERICAL AMENDMENT.—The heading for subsection (i) of section 101 is amended by inserting "OR ASTRONAUTS" after "VICTIMS".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid after December 31, 2002, with respect to deaths occurring after such date.

(c) ESTATE TAX RELIEF.—

(1) IN GENERAL.—Subsection (b) of section 2201 (defining qualified decedent) is amended by striking "and" at the end of paragraph (1)(B), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) any astronaut whose death occurs while on a space mission.".

(2) CLERICAL AMENDMENTS.—

(A) The heading of section 2201 is amended by inserting ", deaths of astronauts," after "forces".

(B) The item relating to section 2201 in the table of sections for subchapter C of chapter 11 is amended by inserting ", deaths of astronauts," after "Forces".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to estates of decedents dying after December 31, 2002.

SEC. 202. INCOME AVERAGING FOR FARMERS NOT TO INCREASE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 55 (defining regular tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) COORDINATION WITH INCOME AVERAGING FOR FARMERS.—Solely for purposes of this section, section 1301 (relating to averaging of farm income) shall not apply in computing the regular tax.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2002.

SEC. 203. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking "retains an economic interest in such timber" and inserting "either retains an economic interest in such timber or makes an outright sale of such timber".

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 631(b) is amended by striking "The date of disposal" and inserting "In the case of disposal of timber with a retained economic interest, the date of disposal".

(2) The heading for section 631(b) is amended by striking "WITH A RETAINED ECONOMIC INTEREST".

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

SEC. 204. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) RULES FOR REPLACEMENT OF INVOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

(1) by striking "CONDITIONS.—For purposes" and inserting "CONDITIONS.—

"(1) IN GENERAL.—For purposes", and

(2) by adding at the end the following new paragraph:

"(2) EXTENSION OF REPLACEMENT PERIOD.—

"(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting '4 years' for '2 years'.

"(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the ap-

plication of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.".

(b) INCOME INCLUSION RULES.—Subsection (e) of section 451 (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

"(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.

SEC. 205. SIMPLIFICATION OF EXCISE TAX IMPOSED ON BOWS AND ARROWS.

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

"(1) BOWS.—

"(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

"(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

"(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

"(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (3),

a tax equal to 11 percent of the price for which so sold.".

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

"(3) ARROWS.—

"(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

"(B) EXCEPTION.—The tax imposed by subparagraph (A) on an arrow shall not apply if the arrow contains an arrow shaft subject to the tax imposed by paragraph (2).

"(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (2) to which additional components are attached.".

(c) CONFORMING AMENDMENT.—The heading of section 4161(b)(2) is amended by striking "ARROWS.—" and inserting "ARROW COMPONENTS.—".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after the 90th day after the date of the enactment of this Act.

SEC. 206. REPEAL OF EXCISE TAX ON FISHING TACKLE BOXES.

(a) REPEAL.—Paragraph (6) of section 4162(a) (defining sport fishing equipment) is amended by striking subparagraph (C) and by redesignating subparagraphs (D) through (J) as subparagraphs (C) through (I), respectively.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 30 days after the date of the enactment of this Act.

SEC. 207. REDUCED MOTOR FUEL EXCISE TAX ON CERTAIN MIXTURES OF DIESEL FUEL.

(a) IN GENERAL.—Clause (iii) of section 4081(a)(2)(A) is amended by inserting before the period "(19.7 cents per gallon in the case of a diesel-water fuel emulsion at least 14 percent of which is water)".

(b) REFUNDS FOR TAX-PAID PURCHASES.—

(1) IN GENERAL.—Section 6427 (relating to fuels not used for taxable purchases) is amended by redesignating subsections (m) through (p) as subsections (n) through (q), respectively, and by inserting after subsection (l) the following new subsection:

"(m) DIESEL FUEL USED TO PRODUCE EMULSION.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(A) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means the aggregate rate of tax imposed by section 4081 determined without regard to the parenthetical in section 4081(a)(2)(A).

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means the aggregate rate of tax imposed by section 4081 determined with regard to the parenthetical in section 4081(a)(2)(A).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2003.

SEC. 208. EXPANSION OF HUMAN CLINICAL TRIALS QUALIFYING FOR ORPHAN DRUG CREDIT.

(a) IN GENERAL.—Paragraph (2) of section 45C(b) (relating to qualified clinical testing expenses) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF CERTAIN EXPENSES INCURRED BEFORE DESIGNATION.—For purposes of subparagraph (A)(ii)(I), if a drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act not later than the due date (including extensions) for filing the return of tax under this subtitle for the taxable year in which the application for such designation of such drug was filed, such drug shall be treated as having been designated on the date that such application was filed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 209. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) CONSUMER OPTIONS.—Paragraph (2) of section 35(e) is amended by inserting at the end the following new subparagraph:

"(C) WAIVER BY ELIGIBLE INDIVIDUALS.—With respect to any month which ends before January 1, 2005, this paragraph shall not apply with respect to any eligible individual and such individual's qualifying family members if such eligible individual elects to waive the application of this paragraph with respect to such month.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months beginning after the date of the enactment of this Act.

SEC. 210. TREATMENT UNDER AT-RISK RULES OF PUBLICLY TRADED NONRECOURSE DEBT.

(a) IN GENERAL.—Subparagraph (A) of section 465(b)(6) (relating to qualified nonrecourse financing treated as amount at risk) is amended by striking "share of" and all that follows and inserting "share of—

"(i) any qualified nonrecourse financing which is secured by real property used in such activity, and

"(ii) any other financing which—

"(I) would (but for subparagraph (B)(ii)) be qualified nonrecourse financing,

"(II) is qualified publicly traded debt, and

"(III) is not borrowed by the taxpayer from a person described in subclause (I), (II), or (III) of section 49(a)(1)(D)(iv).".

(b) QUALIFIED PUBLICLY TRADED DEBT.—Paragraph (6) of section 465(b) is amended by adding at the end the following new subparagraph:

"(F) QUALIFIED PUBLICLY TRADED DEBT.—For purposes of subparagraph (A), the term 'qualified publicly traded debt' means any debt instrument which is readily tradable on an established securities market. Such term shall not include any debt instrument which has a yield to maturity which equals or exceeds the limitation in section 163(i)(1)(B).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act.

SEC. 211. EXCLUSION OF INCOME DERIVED FROM CERTAIN WAGERS ON HORSE RACES FROM GROSS INCOME OF NONRESIDENT ALIEN INDIVIDUALS.

(a) IN GENERAL.—Subsection (b) of section 872 (relating to exclusions) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and inserting after paragraph (4) the following new paragraph:

"(5) INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race in the United States.".

(b) CONFORMING AMENDMENT.—Section 883(a)(4) is amended by striking "(5), (6), and (7)" and inserting "(6), (7), and (8)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceeds from wagering transactions after September 30, 2003.

SEC. 212. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following: "For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

SEC. 213. PILOT PROJECT FOR FOREST CONSERVATION ACTIVITIES.

(a) TAX-EXEMPT BOND FINANCING.—

(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, any qualified forest conservation bond shall be treated as an exempt facility bond under section 142 of such Code.

(2) QUALIFIED FOREST CONSERVATION BOND.—For purposes of this section, the term "qualified forest conservation bond" means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3) of such Code) of such issue are to be used for qualified project costs,

(B) such bond is an obligation of the State of Washington or any political subdivision thereof and is issued for the Evergreen Forest Trust, and

(C) such bond is issued before October 1, 2004.

(3) LIMITATION ON AGGREGATE AMOUNT ISSUED.—The maximum aggregate face amount of bonds which may be issued under this section shall not exceed $250,000,000.

(4) QUALIFIED PROJECT COSTS.—For purposes of this subsection, the term "qualified project costs" means the sum of—

(A) the cost of acquisition by the Evergreen Forest Trust from an unrelated person of forests and forest land—

(i) which are located in the State of Washington, and

(ii) which at the time of acquisition or immediately thereafter are subject to a conservation restriction described in subsection (c)(2),

(B) capitalized interest on the qualified forest conservation bonds for the 3-year period beginning on the date of issuance of such bonds, and

(C) credit enhancement fees which constitute qualified guarantee fees (within the meaning of section 148 of such Code).

(5) SPECIAL RULES.—In applying the Internal Revenue Code of 1986 to any qualified forest conservation bond, the following modifications shall apply:

(A) Section 146 of such Code (relating to volume cap) shall not apply.

(B) For purposes of section 147(b) of such Code (relating to maturity may not exceed 120 percent of economic life), the land and standing timber acquired with proceeds of qualified forest conservation bonds shall have an economic life of 35 years.

(C) Subsections (c) and (d) of section 147 of such Code (relating to limitations on acquisition of land and existing property) shall not apply.

(D) Section 57(a)(5) of such Code (relating to tax-exempt interest) shall not apply to interest on qualified forest conservation bonds.

(6) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (2)(C) and (3) shall not apply to any bond (or series of bonds) issued to refund a qualified forest conservation bond issued before October 1, 2004, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of such Code.

(7) EFFECTIVE DATE.—This subsection shall apply to obligations issued after the date of the enactment of this Act.

(b) ITEMS FROM QUALIFIED HARVESTING ACTIVITIES NOT SUBJECT TO TAX OR TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Income, gains, deductions, losses, or credits from a qualified harvesting activity conducted by the Evergreen Forest Trust shall not be subject

to tax or taken into account under subtitle A of the Internal Revenue Code of 1986.

(2) QUALIFIED HARVESTING ACTIVITY.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term "qualified harvesting activity" means the sale, lease, or harvesting, of standing timber—

(i) on land owned by the Evergreen Forest Trust which was acquired with proceeds of qualified forest conservation bonds, and

(ii) pursuant to a qualified conservation plan adopted by the Evergreen Forest Trust.

(B) EXCEPTIONS.—

(i) CESSATION AS QUALIFIED ORGANIZATION.—The term "qualified harvesting activity" shall not include any sale, lease, or harvesting during any period that the Evergreen Forest Trust is not a qualified organization.

(ii) EXCEEDING LIMITS ON HARVESTING.—The term "qualified harvesting activity" shall not include any sale, lease, or harvesting of standing timber on land acquired with proceeds of qualified forest conservation bonds to the extent that—

(I) the average annual area of timber harvested from such land exceeds 2.5 percent of the total area of such land, or

(II) the quantity of timber removed from such land exceeds the quantity which can be removed from such land annually in perpetuity on a sustained-yield basis with respect to such land.

The limitations under subclauses (I) and (II) shall not apply to salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack.

(3) TERMINATION.—This subsection shall not apply to any qualified harvesting activity occurring after the date on which there is no outstanding qualified forest conservation bond or any such bond ceases to be a tax-exempt bond.

(4) PARTIAL RECAPTURE OF BENEFITS IF HARVESTING LIMIT EXCEEDED.—If, as of the date that this subsection ceases to apply under paragraph (3), the average annual area of timber harvested from the land exceeds the requirement of paragraph (2)(B)(ii)(I), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be increased, under rules prescribed by the Secretary, by the sum of the tax benefit attributable to such excess and interest at the underpayment rate under section 6621 for the period of the underpayment.

(c) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED CONSERVATION PLAN.—The term "qualified conservation plan" means a multiple land use program or plan which—

(A) is designed and administered primarily for the purposes of protecting and enhancing wildlife and fish, timber, scenic attributes, recreation, and soil and water quality of the forest and forest land,

(B) mandates that conservation of forest and forest land is the single-most significant use of the forest and forest land,

(C) requires that timber harvesting be consistent with—

(i) restoring and maintaining reference conditions for the Westside Douglas Fir forest type,

(ii) restoring and maintaining a representative sample of young, mid, and late successional forest age classes,

(iii) maintaining or restoring the resources' ecological health for purposes of preventing damage from fire, insect, or disease,

(iv) maintaining or enhancing wildlife or fish habitat,

(v) enhancing research opportunities in sustainable renewable resource uses, or

(vi) preserving or protecting open space.

(2) CONSERVATION RESTRICTION.—The conservation restriction described in this paragraph is a restriction which—

(A) is granted in perpetuity to an unrelated person which is described in section 170(h)(3) of such Code and which, in the case of a nongovernmental unit, is organized and operated for conservation purposes,

(B) meets the requirements of clause (ii) or (iii)(II) of section 170(h)(4)(A) of such Code,

(C) obligates the Evergreen Forest Trust to pay the costs incurred by the holder of the conservation restriction in monitoring compliance with such restriction, and

(D) requires an increasing level of conservation benefits to be provided whenever circumstances allow it.

(3) QUALIFIED ORGANIZATION.—The term "qualified organization" means an organization—

(A) which is a nonprofit organization organized and operated exclusively for charitable, scientific, or educational purposes including but not limited to acquiring, protecting, restoring, managing, and developing forest lands and other renewable resources for the long-term charitable, educational, scientific, and public benefit of the State of Washington,

(B) more than half of the value of the property of which consists of forests and forest land acquired with the proceeds from qualified forest conservation bonds,

(C) which periodically conducts educational programs designed to inform the public of environmentally sensitive forestry management and conservation techniques,

(D) which has a board of directors that at all times is comprised of 9 members—

(i) at least 2 of whom represent the holders of the conservation restriction described in paragraph (2), and

(ii) at least 2 of whom are public officials,

(E) of which not more than one-third of the members of the board of directors is comprised of individuals who are or were at any time within 5 years before the beginning of a term of membership on the board, an employee of, independent contractor with respect to, officer of, director of, or held a material financial interest in, a commercial forest products enterprise with which the Evergreen Forest Trust has a contractual or other financial arrangement,

(F) the bylaws of which require at least two-thirds of the members of the board of directors to vote affirmatively to approve the qualified conservation program and any change thereto, and

(G) upon dissolution, is required to dedicate its assets to—

(i) an organization described in section 501(c)(3) of such Code which is organized and operated for conservation purposes, or

(ii) a governmental unit described in section 170(c)(1) of such Code.

(4) EVERGREEN FOREST TRUST.—The term "Evergreen Forest Trust" means a nonprofit corporation known as the Evergreen Forest Trust which was incorporated on February 25, 2000, under chapter 24.03 of the Revised Code of Washington and which, on May 11, 2001, was recognized as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

(5) UNRELATED PERSON.—The term "unrelated person" means a person who is not a related person.

(6) RELATED PERSON.—A person shall be treated as related to another person if—

(A) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or 707(b)(1), of such Code, determined by substituting "25 percent" for "50 percent" each place it occurs therein, and

(B) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

SEC. 214. PROTECTION OF SOCIAL SECURITY.

The amounts transferred to any trust fund under title II of the Social Security Act shall be determined as if this title (other than this section) and title I of this Act had not been enacted.

TITLE III—REVENUE PROVISIONS

SEC. 301. INDIVIDUAL EXPATRIATION TO AVOID TAX.

(a) EXPATRIATION TO AVOID TAX.—

(1) IN GENERAL.—Subsection (a) of section 877 (relating to treatment of expatriates) is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—

"(1) IN GENERAL.—Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

"(2) INDIVIDUALS SUBJECT TO THIS SECTION.—This section shall apply to any individual if—

"(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $122,000,

"(B) the net worth of the individual as of such date is $2,000,000 or more, or

"(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2003, such $122,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '2002' for '1992' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.".

(2) REVISION OF EXCEPTIONS FROM ALTERNATIVE TAX.—Subsection (c) of section 877 (relating to tax avoidance not presumed in certain cases) is amended to read as follows:

"(c) EXCEPTIONS.—

"(1) IN GENERAL.—Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

"(2) DUAL CITIZENS.—

"(A) IN GENERAL.—An individual is described in this paragraph if—

"(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

"(ii) the individual has had no substantial contacts with the United States.

"(B) SUBSTANTIAL CONTACTS.—An individual shall be treated as having no substantial contacts with the United States only if the individual—

"(i) was never a resident of the United States (as defined in section 7701(b)),

"(ii) has never held a United States passport, and

"(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

"(3) CERTAIN MINORS.—An individual is described in this paragraph if—

"(A) the individual became at birth a citizen of the United States,

"(B) neither parent of such individual was a citizen of the United States at the time of such birth,

"(C) the individual's loss of United States citizenship occurs before such individual attains age 18 ½, and

"(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.".

(3) CONFORMING AMENDMENT.—Section 2107(a) is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).".

(b) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—An individual who would not (but for this subsection) be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States until such individual—

"(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

"(2) provides a statement in accordance with section 6039G.".

(c) PHYSICAL PRESENCE IN THE UNITED STATES FOR MORE THAN 30 DAYS.—Section 877 (relating to expatriation to avoid tax) is amended by adding at the end the following new subsection:

"(g) PHYSICAL PRESENCE.—This section shall not apply to any individual for any taxable year during the 10-year period referred to in subsection (a) in which such individual is present in the United States for more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States for such taxable year.".

(d) TRANSFERS SUBJECT TO GIFT TAX.—Subsection (a) of section 2501 (relating to taxable transfers) is amended by adding at the end the following:

"(6) TRANSFERS OF CERTAIN STOCK.—

"(A) IN GENERAL.—Paragraph (3) shall not apply to the transfer of stock described in subparagraph (B) by any individual to whom section 877(b) applies, and section 2511(a) shall be applied without regard to whether such stock is property which is situated within the United States.

"(B) VALUATION.—For purposes of subparagraph (A), the value of stock shall be determined as provided in section 2103, except that—

"(i) if the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

"(ii) if such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

"(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(II) the total value of the stock of such corporation,then that proportion of the fair market value of the stock of such foreign corporation owned (within the meaning of section 958(a)) by such donor at the time of such transfer, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of such transfer, bears to the total fair market value of all assets owned by such foreign corporation at the time of such transfer, shall be included in the value of such property.

For purposes of the preceding sentence, a donor shall be treated as owning stock of a foreign corporation at the time of such transfer if, at such time, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.".

(e) ENHANCED INFORMATION REPORTING FROM INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

(1) IN GENERAL.—Subsection (a) of section 6039G is amended to read as follows:

"(a) IN GENERAL.—Notwithstanding any other provision of law, any individual to whom section 877(b) applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).".

(2) INFORMATION TO BE PROVIDED.—Subsection (b) of section 6039G is amended to read as follows:

"(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

"(1) the taxpayer's TIN,

"(2) the mailing address of such individual's principal foreign residence,

"(3) the foreign country, in which such individual is residing,

"(4) the foreign country of which such individual is a citizen,

"(5) information detailing the assets and liabilities of such individual,

"(6) the number of days that the individual was present in the United States during the taxable year, and

"(7) such other information as the Secretary may prescribe.".

(3) INCREASE IN PENALTY.—Subsection (d) of section 6039G is amended to read as follows:

"(d) PENALTY.—If—

"(1) an individual is required to file a statement under subsection (a) for any taxable year, and

"(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of $5,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.".

(4) CONFORMING AMENDMENT.—Section 6039G is amended by striking subsections (c), (f), and (g) and by redesignating subsections (d) and (e) as subsection (c) and (d), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who expatriate after February 27, 2003.

SEC. 302. VACCINE TAX TO APPLY TO HEPATITIS A VACCINE.

(a) IN GENERAL.—Paragraph (1) of section 4132(a) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

"(I) Any vaccine against hepatitis A."

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by subsection (a) shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 878, as amended, provides needed tax relief to the Armed Forces and makes other necessary changes to the tax laws.

The bill provides net tax reductions of over $402 million over fiscal years 2003–2008.

B. BACKGROUND AND NEED FOR LEGISLATION

The Committee believes that consideration should be paid to the men and women who are leading America's response and serving our country. These men and women include: (1) members of the Armed Forces deployed overseas; (2) members of the National Guard protecting our borders and airports; and (3) Foreign Service officers serving in dangerous diplomatic posts.

The Committee believes that in addition to receiving our thoughts and thanks, these individuals deserve to be treated appropriately under the tax laws. The modest sensible provisions included in this legislation are the result of a bipartisan effort to correct the tax treatment of those individuals serving their country in the uniformed services, reserves and Foreign Service.

The bill also contains various other provisions to reduce complexity and eliminate inequitable effects in the tax law.

The bill also contains two provisions that raise revenue to offset the cost of the other provisions. In the case of the provision to modify the treatment of certain individual expatriates, the provision seems especially fitting to offset the improved tax treatment of the men and women serving their country. The provision relating to individual expatriates replaces the present law subjective test with a more administrable objective test. The provision relating to vaccines extends the protection of the Vaccine Injury Compensation Program to families of Hepatitis A vaccine recipients.

C. LEGISLATIVE HISTORY

The House Committee on Ways and Means marked up the Armed Forces Tax Fairness Act of 2003 on February 27, 2003, and ordered the bill, as amended, favorably reported by voice vote.

II. EXPLANATION OF THE BILL

TITLE I. IMPROVING TAX EQUITY FOR MILITARY PERSONNEL

A. Exclusion of Gain on Sale of a Principal Residence by a Member of the Uniformed Services, the Foreign Service or the Peace Corps

(Sec. 101 of the bill and sec. 121 of the Code)

PRESENT LAW

Under present law, an individual taxpayer may exclude up to $250,000 ($500,000, if married filing a joint return) of gain realized on the sale or exchange of a principal residence. To be eligible for the exclusion, the taxpayer must have owned and used the residence as a principal residence for at least two of the five years ending on the sale or exchange. A taxpayer who fails to meet these requirements by reason of a change of place of employment, health, or, to the extent provided under regulations, unforeseen circumstances is able to exclude an amount equal to the fraction of the $250,000 ($500,000, if married filing a joint return) that is equal to the fraction of the two years that the ownership and use requirements are met. There are no special rules relating to members of the uniformed services or the Foreign Service of the United States.

REASONS FOR CHANGE

The Committee believes that members of the uniformed services, the Foreign Service of the United States, or the Peace Corps who would otherwise qualify for the exclusion of the gain on the sale of a principal residence should not be deprived the exclusion because of service to their country. The Committee believes that it is unfair that members of the uniform services and Foreign Service of the United States are unable to avail themselves of the exclusion due to relocations required by service to their country.

EXPLANATION OF PROVISION

Under the bill, an individual may elect to suspend for a maximum of five years the five-year test period for ownership and use during certain absences due to service in the uniformed services, the Foreign Service of the United States, or as Peace Corps volunteers or employees. The uniformed services include: (1) the Armed forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service. If the election is made, the five-year period ending on the date of the sale or exchange of a principal residence does not include any period up to five years during which the taxpayer or the taxpayer's spouse is on qualified official extended duty as a member of the uniformed services, in Foreign Service of the United States, or on active duty assigned to a Peace Corps volun-

teer under the Peace Corps Act[1] or an employee of the Peace Corps. For these purposes, qualified official extended duty is any period of extended duty by a member of the uniformed services, or the Foreign Service of the United States while serving at a place of duty at least 150 miles away from the taxpayer's principal residence or under orders compelling residence in Government furnished quarters. Extended duty is defined as any period of duty pursuant to a call or order to such duty for a period in excess of 180 days or for an indefinite period. Active duty for Peace Corps volunteers means a period in excess of 180 days or for an indefinite period. The election may be made with respect to only one property for a suspension period.

EFFECTIVE DATE

The provision is effective for sales or exchanges after May 6, 1997.

B. Exclusion from Gross Income of Certain Death Gratuity Payments

(Sec. 102 of the bill and sec. 134 of the Code)

PRESENT LAW

Present law provides that qualified military benefits are not included in gross income. Generally, a qualified military benefit is any allowance or in-kind benefit (other than personal use of a vehicle) which: (1) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services; and (2) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date. Generally, other than certain cost of living adjustments, no modification or adjustment of any qualified military benefit after September 9, 1986, is taken into account for purposes of this exclusion from gross income. Qualified military benefits include certain death gratuities. The amount of death gratuity was increased to $6,000 but the amount of the exclusion was not increased to take into account this change.

REASONS FOR CHANGE

The Committee believes that the amount of the exclusion for death gratuities provided to military personnel should be conformed to the present-law levels of such death gratuities.

EXPLANATION OF PROVISION

The bill extends the exclusion from gross income to any adjustment to the amount of the death gratuity payable under Chapter 75 of Title 10 of the United States Code that is pursuant to a provision of law enacted before December 31, 1991, with respect to the death of certain members of the Armed services on active duty, inactive duty training, or engaged in authorized travel. Therefore the amount of the exclusion is increased to $6,000.

[1] 22 U.S.C. 2501 et. seq.

EFFECTIVE DATE

The provision is effective with respect to deaths occurring after September 10, 2001.

C. Exclusion for Amounts Received Under Department of Defense Homeowners Assistance Program

(Sec. 103 of the bill and sec. 132 of the Code)

PRESENT LAW

HAP payment

The Department of Defense Homeowners Assistance Program ("HAP") provides payments to certain employees and members of the Armed Forces to offset the adverse effects on housing values that result from military base realignment or closure. The payments are authorized under the provisions of Title 42 U.S.C. section 3374.

In general, under HAP eligible individuals either (1) receive a cash payment as compensation for losses that may be or have been sustained in a private sale, in an amount not to exceed the difference between (a) 95 percent of the fair market value of their property prior to public announcement of intention to close all or part of the military base or installation and (b) the fair market value of such property at the time of the sale, or (2) as the purchase price for their property, an amount not to exceed 90 percent of the prior fair market value as is determined by the Secretary of Defense, or the amount of the outstanding mortgages.

Tax treatment

Unless specifically excluded, gross income for Federal income tax purposes includes all income from whatever source derived. Amounts received under HAP are received in connection with the performance of services. These amounts are includible in gross income as compensation for services to the extent such payments exceed the fair market value of the property relinquished in exchange for such payments. Additionally, such payments are wages for Federal Insurance Contributions Act ("FICA") tax purposes (including Medicare).

REASONS FOR CHANGE

The Committee believes that the exclusion from gross income and FICA taxes is necessary to provide full compensation for the losses in home values incurred as a result of military base realignment or closure.

EXPLANATION OF PROVISION

The bill generally exempts from gross income amounts received under the HAP (as in effect on the date of enactment of this bill). Amounts received under the program also are not considered wages for FICA tax purposes (including Medicare). The excludable amount is limited to the reduction in the fair market value of property.

EFFECTIVE DATE

The provision is effective for payments made after the date of enactment.

D. EXPANSION OF COMBAT ZONE FILING RULES TO CONTINGENCY OPERATIONS

(Sec. 104 of the bill and sec. 7508 of the Code)

PRESENT LAW

General time limits for filing tax returns

Individuals generally must file their Federal income tax returns by April 15 of the year following the close of a taxable year. The Secretary may grant reasonable extensions of time for filing such returns. Treasury regulations provide an additional automatic two-month extension (until June 15 for calendar-year individuals) for United States citizens and residents in military or naval service on duty on April 15 of the following year (the otherwise applicable due date of the return) outside the United States. No action is necessary to apply for this extension, but taxpayers must indicate on their returns (when filed) that they are claiming this extension. Unlike most extensions of time to file, this extension applies to both filing returns and paying the tax due.

Treasury regulations also provide, upon application on the proper form, an automatic four-month extension (until August 15 for calendar-year individuals) for any individual timely filing that form and paying the amount of tax estimated to be due.

In general, individuals must make quarterly estimated tax payments by April 15, June 15, September 15, and January 15 of the following taxable year. Wage withholding is considered to be a payment of estimated taxes.

Suspension of time periods

In general, the period of time for performing various acts under the Code, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, is suspended for any individual serving in the Armed Forces of the United States in an area designated as a "combat zone" during the period of combatant activities. An individual who becomes a prisoner of war is considered to continue in active service and is therefore also eligible for these suspension of time provisions. The suspension of time also applies to an individual serving in support of such Armed Forces in the combat zone, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the Armed Forces in support of those Forces. The designation of a combat zone must be made by the President in an Executive Order. The President must also designate the period of combatant activities in the combat zone (the starting date and the termination date of combat).

The suspension of time encompasses the period of service in the combat zone during the period of combatant activities in the zone, as well as (1) any time of continuous qualified hospitalization re-

sulting from injury received in the combat zone[2] or (2) time in missing in action status, plus the next 180 days.

The suspension of time applies to the following acts:

(1) Filing any return of income, estate, or gift tax (except employment and withholding taxes);

(2) Payment of any income, estate, or gift tax (except employment and withholding taxes);

(3) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(4) Allowance of a credit or refund of any tax;

(5) Filing a claim for credit or refund of any tax;

(6) Bringing suit upon any such claim for credit or refund;

(7) Assessment of any tax;

(8) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(9) Collection of the amount of any liability in respect of any tax;

(10) Bringing suit by the United States in respect of any liability in respect of any tax; and

(11) Any other act required or permitted under the internal revenue laws specified by the Secretary of the Treasury.

Individuals may, if they choose, perform any of these acts during the period of suspension. Spouses of qualifying individuals are entitled to the same suspension of time, except that the spouse is ineligible for this suspension for any taxable year beginning more than two years after the date of termination of combatant activities in the combat zone.

REASONS FOR CHANGE

The Committee believes that military personnel deployed outside the United States away from their permanent duty station while participating in a contingency operation should be entitled to utilize the same suspension of time provisions as military personnel deployed in a combat zone.

EXPLANATION OF PROVISION

The bill applies the special suspension of time period rules to persons deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation or that becomes a contingency operation. A contingency operation is defined[3] as a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force, or results in the call or order to (or reten-

[2] Two special rules apply to continuous hospitalization inside the United States. First, the suspension of time provisions based on continuous hospitalization inside the United States are applicable only to the hospitalized individual; they are not applicable to the spouse of such individual. Second, in no event do the suspension of time provisions based on continuous hospitalization inside the United States extend beyond five years from the date the individual returns to the United States. These two special rules do not apply to continuous hospitalization outside the United States.

[3] The definition is done by cross-reference to 10 U.S.C. 101.

tion on) active duty of members of the uniformed services during a war or a national emergency declared by the President or Congress.

EFFECTIVE DATE

The provision applies to any period for performing an act that has not expired before the date of enactment.

E. Modification of Membership Requirement for Exemption From Tax for Certain Veterans' Organizations

(Sec. 105 of the bill and sec. 501(c)(19) of the Code)

PRESENT LAW

Under present law, a veterans' organization as described in section 501(c)(19) of the Code generally is exempt from taxation. The Code defines such an organization as a post or organization of past or present members of the Armed Forces of the United States: (1) that is organized in the United States or any of its possessions; (2) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (3) that meets certain membership requirements. The membership requirements are that (1) at least 75 percent of the organization's members are past or present members of the Armed Forces of the United States, and (2) substantially all of the remaining members are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets. No more than 2.5 percent of an organization's total members may consist of individuals who are not veterans, cadets, or spouses, widows, or widowers of such individuals.

Contributions to an organization described in section 501(c)(19) may be deductible for Federal income or gift tax purposes if the organization is a post or organization of war veterans.

REASONS FOR CHANGE

As the membership of veterans' organizations changes due to aging and the deaths of members, veterans' organizations that currently qualify for tax exemption under section 501(c)(19) may cease to qualify for exempt status under that section, even though the membership, apart from changes due to deaths, remains the same. The Committee believes that a limited expansion of the membership of veterans' organizations will enable certain of such organizations to retain exempt status, which might otherwise be in jeopardy, and will not unduly expand the membership base beyond persons with a close connection to members of the Armed Forces or cadets.

EXPLANATION OF PROVISION

The bill permits ancestors or lineal descendants of past or present members of the Armed Forces of the United States or of cadets to qualify as members for purposes of the "substantially all" test. The bill does not change the requirement that 75 percent of the organization's members must be past or present members of the Armed Forces of the United States.

EFFECTIVE DATE

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

F. Clarification of Treatment of Certain Dependent Care Assistance Programs Provided to Members of the Uniformed Services of the United States

(Sec. 106 of the bill and sec. 134 of the Code)

PRESENT LAW

Present law provides that qualified military benefits are not included in gross income. Generally, a qualified military benefit is any allowance or in-kind benefit (other than personal use of a vehicle) which: (1) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services; and (2) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date. Generally, other than certain cost of living adjustments, no modification or adjustment of any qualified military benefit after September 9, 1986, is taken into account for purposes of this exclusion from gross income.

REASONS FOR CHANGE

The Committee believes that it is important to remove any uncertainty regarding the tax treatment of dependent care assistance provided to members of the uniformed services.

EXPLANATION OF PROVISION

The bill clarifies that dependent care assistance provided under a dependent care assistance program (as in effect on the date of enactment of this bill) for a member of the uniformed services by reason of such member's status or service as a member of the uniformed services is excludable from gross income as a qualified military benefit subject to the present-law rules. The uniformed services include: (1) the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service. Amounts received under the program also are not considered wages for Federal Insurance Contributions Act tax purposes (including Medicare).

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002. No inference is intended as to the tax treatment of such amounts for prior taxable years.

G. Treatment of Service Academy Appointments as Scholarships for Purposes of Qualified Tuition Programs and Coverdell Education Savings Accounts

(Sec. 107 of the bill and secs. 529 and 530 of the Code)

PRESENT LAW

The Code provides tax-exempt status to qualified tuition programs, meaning programs established and maintained by a State or agency or instrumentality thereof or by one or more eligible educational institutions under which a person (1) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or (2) in the case of a program established by and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account. Contributions to qualified tuition programs may be made only in cash. Qualified tuition programs must have adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of amounts necessary to provide for the qualified higher education expenses of the beneficiary.

The Code provides tax-exempt status to Coverdell education savings accounts ("ESAs"), meaning certain trusts or custodial accounts which are created or organized in the United States exclusively for the purpose of paying the qualified education expenses of a designated beneficiary. Contributions to ESAs may be made only in cash. Annual contributions to ESAs may not exceed $2,000 per beneficiary (except in cases involving certain tax-free rollovers) and may not be made after the designated beneficiary reaches age 18.

Earnings on contributions to an ESA or qualified tuition program generally are subject to tax when withdrawn. However, distributions from an ESA or qualified tuition program are excludable from the gross income of the distributee to the extent that the total distribution does not exceed the qualified education expenses incurred by the beneficiary during the year the distribution is made.

If the qualified education expenses of the beneficiary for the year are less than the total amount of the distribution from an ESA or qualified tuition program, then the qualified education expenses are deemed to be paid from a pro-rata share of both the principal and earnings components of the distribution. In such a case, only a portion of the earnings is excludable (i.e., the portion of the earnings based on the ratio that the qualified education expenses bear to the total amount of the distribution) and the remaining portion of the earnings is includible in the beneficiary's gross income.

The earnings portion of a distribution from an ESA or qualified tuition program that is includible in income is generally subject to an additional 10 percent tax. The 10 percent additional tax does not apply if a distribution is made on account of the death or disability of the designated beneficiary, or on account of a scholarship received by the designated beneficiary (to the extent it does not exceed the amount of the scholarship).

Service obligations are required of recipients of appointments to the United States Military Academy, the United States Naval

Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy. Because of these service obligations, appointments to the Academies are not considered scholarships for purposes of the waiver of the additional 10 percent tax on withdrawals from ESAs and qualified tuition programs that are not used for qualified education purposes.

REASONS FOR CHANGE

The Committee believes that it is appropriate to treat appointments to a United States Service Academy in a manner similar to the treatment of qualified scholarships. Accordingly, the Committee believes that it is appropriate to waive the additional 10 percent tax on withdrawals from ESAs and qualified tuition programs that are not used for qualified education purposes because the designated beneficiary received an appointment to a United States Service Academy.

The Committee believes that imposing an additional tax on earnings from educational savings accounts and qualified tuition plans is inappropriate in the case of individuals who choose to serve their country as a member of the military and who, as a part of that service, obtain their education at one of the Service Academies.

EXPLANATION OF PROVISION

The bill permits penalty-free withdrawals from Coverdell education savings accounts and qualified tuition programs made on account of the attendance of the beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy.

The amount of funds that can be withdrawn penalty free is limited to the costs of advanced education as defined in 10 United States Code section 2005(e)(3) (as in effect on the date of the enactment of the bill) at such Academies.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2002.

H. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS

(Sec. 108 of the bill and sec. 501 of the Code)

PRESENT LAW

Under present law, the Internal Revenue Service generally issues a letter revoking recognition of an organization's tax-exempt status only after (1) conducting an examination of the organization, (2) issuing a letter to the organization proposing revocation, and (3) allowing the organization to exhaust the administrative appeal rights that follow the issuance of the proposed revocation letter. In the case of an organization described in section 501(c)(3), the revocation letter immediately is subject to judicial review under the declaratory judgment procedures of section 7428. To sustain a revocation of tax-exempt status under section 7428, the IRS must dem-

onstrate that the organization is no longer entitled to exemption. There is no procedure under present law for the IRS to suspend the tax-exempt status of an organization.

To combat terrorism, the Federal government has designated a number of organizations as terrorist organizations or supporters of terrorism under the Immigration and Nationality Act, the International Emergency Economic Powers Act, and the United Nations Participation Act of 1945.

REASONS FOR CHANGE

An organization that has been designated or otherwise identified by the Federal government as a terrorist organization pursuant to certain authority should not be exempt from federal income tax and contributions to such organizations should not be deductible for Federal income tax purposes. The Committee believes that the Federal government's designation or identification of an organization as a terrorist organization is ground for suspension of tax-exempt status, and that in such cases a separate investigation of the organization by the Internal Revenue Service is not necessary. Further, because a terrorist organization may challenge the Federal government's designation or identification of the organization under the law authorizing the designation or identification, recourse to the declaratory judgment procedures of the Internal Revenue Code to challenge the suspension of tax-exemption is not appropriate.

EXPLANATION OF PROVISION

The bill suspends the tax-exempt status of an organization that is exempt from tax under section 501(a) for any period during which the organization is designated or identified by U.S. Federal authorities as a terrorist organization or supporter of terrorism. The bill also makes such an organization ineligible to apply for tax exemption under section 501(a). The period of suspension runs from the date the organization is first designated or identified (or from the date of enactment of the bill, whichever is later) to the date when all designations or identifications with respect to the organization have been rescinded pursuant to the law or Executive order under which the designation or identification was made.

The bill describes a terrorist organization as an organization that has been designated or otherwise individually identified (1) as a terrorist organization or foreign terrorist organization under the authority of section 212(a)(3)(B)(vi)(II) or section 219 of the Immigration and Nationality Act; (2) in or pursuant to an Executive order that is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act for the purpose of imposing on such organization an economic or other sanction; or (3) in or pursuant to an Executive order that refers to the bill and is issued under the authority of any Federal law if the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989). During the period of suspension, no deduction is allowed under the

bill for any contribution to a terrorist organization under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

No organization or other person may challenge, under section 7428 or any other provision of law, in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person, the suspension of tax-exemption, the ineligibility to apply for tax-exemption, a designation or identification described above, the timing of the period of suspension, or a denial of deduction described above. The suspended organization may maintain other suits or administrative actions against the agency or agencies that designated or identified the organization, for the purpose of challenging such designation or identification (but not the suspension of tax-exempt status under this provision).

If the tax-exemption of an organization is suspended and each designation and identification that has been made with respect to the organization is determined to be erroneous pursuant to the law or Executive order making the designation or identification, and such erroneous designation results in an overpayment of income tax for any taxable year with respect to such organization, a credit or refund (with interest) with respect to such overpayment shall be made. If the operation of any law or rule of law (including res judicata) prevents the credit or refund at any time, the credit or refund may nevertheless be allowed or made if the claim for such credit or refund is filed before the close of the one-year period beginning on the date that the last remaining designation or identification with respect to the organization is determined to be erroneous.

The bill directs the IRS to update the listings of tax-exempt organizations to take account of organizations that have had their exemption suspended and to publish notice to taxpayers of the suspension of an organization's tax-exemption and the fact that contributions to such organization are not deductible during the period of suspension.

EFFECTIVE DATE

The bill is effective for designations made before, on, or after the date of enactment.

I. Above-the-Line Deduction for Overnight Travel Expenses of National Guard and Reserve Members

(Sec. 109 of the bill and sec. 162 of the Code)

PRESENT LAW

National Guard and Reserve members may claim itemized deductions for their nonreimbursable expenses for transportation, meals, and lodging when they must travel away from home (and stay overnight) to attend National Guard and Reserve meetings. These overnight travel expenses are combined with other miscellaneous itemized deductions on Schedule A of the individual's income tax return and are deductible only to the extent that the aggregate of these deductions exceeds two percent of the taxpayer's adjusted gross income. No deduction is generally permitted for commuting expenses to and from drill meetings.

REASONS FOR CHANGE

The Committee believes that all National Guard and Reserve members incurring unreimbursed overnight expenses to attend National Guard and Reserve meetings should be able to deduct these expenses from their income, not just those who itemize their deductions. Accordingly, the Committee provides an above-the-line deduction for a portion of these expenses.

EXPLANATION OF PROVISION

The bill provides an above-the-line deduction for the overnight transportation, meals, and lodging expenses of National Guard and Reserve members who must travel away from home more than 100 miles (and stay overnight) to attend National Guard and Reserve meetings. Accordingly, these individuals incurring these expenses can deduct them from gross income regardless of whether they itemize their deductions. The amount of the expenses that may be deducted may not exceed $500 for any period during which the individual is more than 100 miles from home in connection with such services.

EFFECTIVE DATE

The provision is effective with respect to amounts paid or incurred after December 31, 2002.

TITLE II. MISCELLANEOUS PROVISIONS

A. EXTENSION OF CERTAIN TAX RELIEF PROVISIONS TO ASTRONAUTS

(Sec. 201 of the bill and secs. 101, 692, and 2201 of the Code)

PRESENT LAW

In general

The Victims of Terrorism Tax Relief Act of 2001, (the "Victims Bill") provided certain income and estate tax relief to individuals who die from wounds or injury incurred as a result of the terrorist attacks against the United States on September 11, 2001, and April 19, 1995 (the bombing of the Alfred P. Murrah Federal Building in Oklahoma City) or as a result of illness incurred due to an attack involving anthrax that occurred on or after September 11, 2001, and before January 1, 2002.

Income tax relief

The Victims Bill extended relief similar to the present-law treatment of military or civilian employees of the United States who die as a result of terrorist or military activity outside the United States to individuals who die as a result of wounds or injury which were incurred as a result of the terrorist attacks that occurred on September 11, 2001, or April 19, 1995, and individuals who die as a result of illness incurred due to an attack involving anthrax that occurs on or after September 11, 2001, and before January 1, 2002. Under the Victims Bill, such individuals generally are exempt from income tax for the year of death and for prior taxable years beginning with the taxable year prior to the taxable year in which the

wounds or injury occurred.[4] The exemption applies to these individuals whether killed in an attack (e.g., in the case of the September 11, 2001, attack in one of the four airplanes or on the ground) or in rescue or recovery operations.

Present law provides a minimum tax relief benefit of $10,000 to each eligible individual regardless of the income tax liability of the individual for the eligible tax years. If an eligible individual's income tax for years eligible for the exclusion under the provision is less than $10,000, the individual is treated as having made a tax payment for such individual's last taxable year in an amount equal to the excess of $10,000 over the amount of tax not imposed under the provision.

Subject to rules prescribed by the Secretary, the exemption from tax does not apply to the tax attributable to (1) deferred compensation which would have been payable after death if the individual had died other than as a specified terrorist victim, or (2) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001. Thus, for example, the exemption does not apply to amounts payable from a qualified plan or individual retirement arrangement to the beneficiary or estate of the individual. Similarly, amounts payable only as death or survivor's benefits pursuant to deferred compensation preexisting arrangements that would have been paid if the death had occurred for another reason are not covered by the exemption. In addition, if the individual's employer makes adjustments to a plan or arrangement to accelerate the vesting of restricted property or the payment of nonqualified deferred compensation after the date of the particular attack, the exemption does not apply to income received as a result of that action.[5] Also, if the individual's beneficiary cashed in savings bonds of the decedent, the exemption does not apply. On the other hand, the exemption does apply, for example, to a final paycheck of the individual or dividends on stock held by the individual when paid to another person or the individual's estate after the date of death but before the end of the taxable year of the decedent (determined without regard to the death). The exemption also applies to payments of an individual's accrued vacation and accrued sick leave.

The tax relief does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

Exclusion of death benefits

The Victims Bill generally provides an exclusion from gross income for amounts received if such amounts are paid by an employer (whether in a single sum or otherwise[6]) by reason of the death of an employee who dies as a result of wounds or injury which were incurred as a result of the terrorist attacks that occurred on September 11, 2001, or April 19, 1995, or as a result of illness incurred due to an attack involving anthrax that occurs on or after September 11, 2001, and before January 1, 2002. Subject

[4] Present law does not provide relief from self-employment tax liability.

[5] Such amounts may, however, be excludable from gross income under the death benefit exclusion provided in section 102 of the Victims Bill.

[6] Thus, for example, payments made over a period of years could qualify for the exclusion.

to rules prescribed by the Secretary, the exclusion does not apply to amounts that would have been payable if the individual had died for a reason other than the attack. The exclusion does apply, however, to death benefits provided under a qualified plan that satisfy the incidental benefit rule.

For purposes of the exclusion, self-employed individuals are treated as employees. Thus, for example, payments by a partnership to the surviving spouse of a partner who died as a result of the September 11, 2001, attacks may be excludable under the provision.

The tax relief does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

Estate tax relief

Present law provides a reduction in Federal estate tax for taxable estates of U.S. citizens or residents who are active members of the U.S. Armed Forces and who are killed in action while serving in a combat zone (sec. 2201). This provision also applies to active service members who die as a result of wounds, disease, or injury suffered while serving in a combat zone by reason of a hazard to which the service member was subjected as an incident of such service.

In general, the effect of section 2201 is to replace the Federal estate tax that would otherwise be imposed with a Federal estate tax equal to 125 percent of the maximum State death tax credit determined under section 2011(b). Credits against the tax, including the unified credit of section 2010 and the State death tax credit of section 2011, then apply to reduce (or eliminate) the amount of the estate tax payable.

Generally, the reduction in Federal estate taxes under section 2201 is equal in amount to the "additional estate tax." The additional estate tax is the difference between the Federal estate tax imposed by section 2001 and 125 percent of the maximum State death tax credit determined under section 2011(b) as in effect prior to its repeal by the Economic Growth and Tax Relief Reconciliation Act of 2001.

The Victims Bill generally treats individuals who die from wounds or injury incurred as a result of the terrorist attacks that occurred on September 11, 2001, or April 19, 1995, or as a result of illness incurred due to an attack involving anthrax that occurred on or after September 11, 2001, and before January 1, 2002, in the same manner as if they were active members of the U.S. Armed Forces killed in action while serving in a combat zone or dying as a result of wounds or injury suffered while serving in a combat zone for purposes of section 2201. Consequently, the estates of these individuals are eligible for the reduction in Federal estate tax provided by section 2201. The tax relief does not apply to any individual identified by the Attorney General to have been a participant or conspirator in any terrorist attack to which the provision applies, or a representative of such individual.

The Victims bill also changes the general operation of section 2201, as it applies to both the estates of service members who qualify for special estate tax treatment under present and prior law

and to the estates of individuals who qualify for the special treatment only under the Act. Under the Victims bill, the Federal estate tax is determined in the same manner for all estates that are eligible for Federal estate tax reduction under section 2201. In addition, the executor of an estate that is eligible for special estate tax treatment under section 2201 may elect not to have section 2201 apply to the estate. Thus, in the event that an estate may receive more favorable treatment without the application of section 2201 in the year of death than it would under section 2201, the executor may elect not to apply the provisions of section 2201, and the estate tax owed (if any) would be determined pursuant to the generally applicable rules.

Under the Victims bill, section 2201 no longer reduces Federal estate tax by the amount of the additional estate tax. Instead, the Victims bill provides that the Federal estate tax liability of eligible estates is determined under section 2001 (or section 2101, in the case of decedents who were neither residents nor citizens of the United States), using a rate schedule that is equal to 125 percent of the pre-EGTRRA maximum State death tax credit amount. This rate schedule is used to compute the tax under section 2001(b) or section 2101(b) (i.e., both the tentative tax under section 2001(b)(1) and section 2101(b), and the hypothetical gift tax under section 2001(b)(2) are computed using this rate schedule). As a result of this provision, the estate tax is unified with the gift tax for purposes of section 2201 so that a single graduated (but reduced) rate schedule applies to transfers made by the individual at death, based upon the cumulative taxable transfers made both during lifetime and at death.

In addition, while the Victims bill provides an alternative reduced rate table for purposes of determining the tax under section 2001(b) or section 2101(b), the amount of the unified credit nevertheless is determined as if section 2201 did not apply, based upon the unified credit as in effect on the date of death. For example, in the case of victims of the September 11, 2001, terrorist attack, the applicable unified credit amount under section 2010(c) would be determined by reference to the actual section 2001(c) rate table.

REASONS FOR CHANGE

The Committee wishes to honor the bravery of individuals who lost their lives in the space shuttle Columbia disaster by providing these tax relief measures to those individuals and their families.

EXPLANATION OF PROVISION

The bill extends the exclusion from income tax, the exclusion for death benefits, and the estate tax relief available under the Victims of Terrorism Tax Relief Act of 2001 to astronauts who lose their lives on a space mission (including the individuals who lost their lives in the space shuttle Columbia disaster).

EFFECTIVE DATE

The provision is generally effective for qualified individuals whose lives are lost in the line of duty after December 31, 2002.

B. Coordinate Farmers Income Averaging and the Alternative Minimum Tax

(Sec. 202 of the bill and sec. 55 of the Code)

PRESENT LAW

An individual taxpayer engaged in a farming business as defined by section 263A(e)(4) may elect to compute his or her current year tax liability by averaging, over the prior three-year period, all or a portion of his or her taxable income from the trade or business of farming. The averaging election is not coordinated with the alternative minimum tax. Thus, some farmers may become subject to the alternative minimum tax solely as a result of the averaging election.

REASONS FOR CHANGE

The Committee believes that farmer income averaging should be coordinated with the alternative minimum tax so that a farmer's alternative minimum tax liability is not increased solely because he or she elects income averaging.

DESCRIPTION OF PROPOSAL

The bill coordinates farmers income averaging with the alternative minimum tax. Under the bill, a farmer would owe alternative minimum tax only to the extent he or she would owe alternative minimum tax had averaging not been elected. This result is achieved by excluding the impact of the election to average farm income from the calculation of both regular tax and tentative minimum tax, solely for the purpose of determining alternative minimum tax.

EFFECTIVE DATE

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

C. Capital Gains Treatment to Apply to Outright Sales of Timber by Landowner

(Sec. 203 of the bill and sec. 631(b) of the Code)

PRESENT LAW

Under present law, a taxpayer disposing of timber held for more than one year is eligible for capital gains treatment in three situations. First, if the taxpayer sells or exchanges timber that is a capital asset (sec. 1221) or property used in the trade or business (sec. 1231), the gain generally is long-term capital gain; however, if the timber is held for sale to customers in the taxpayer's business, the gain will be ordinary income. Second, if the taxpayer disposes of the timber with a retained economic interest, the gain is eligible for capital gain treatment (sec. 631(b)). Third, if the taxpayer cuts standing timber, the taxpayer may elect to treat the cutting as a sale or exchange eligible for capital gains treatment (sec. 631(a)).

REASONS FOR CHANGE

The Committee believes that the requirement that the owner of timber retain an economic interest in the timber in order to obtain capital gain treatment under section 631(b) results in poor timber management because the buyer, when cutting and removing timber, has no incentive to protect young or other uncut trees because the buyer only pays for the timber that is cut and removed. Therefore, the Committee bill eliminates this requirement and provides for capital gain treatment under section 631(b) in the case of outright sales of timber.

EXPLANATION OF PROVISION

Under the bill, in the case of a sale of timber by the owner of the land from which the timber is cut, the requirement that a taxpayer retain an economic interest in the timber in order to treat gains as capital gain under section 631(b) does not apply. Outright sales of timber by the landowner will qualify for capital gains treatment in the same manner as sales with a retained economic interest qualify under present law, except that the usual tax rules relating to the timing of the income from the sale of the timber will apply (rather than the special rule of section 631(b) treating the disposal as occurring on the date the timber is cut).

EFFECTIVE DATE

The provision is effective for sales of timber after the date of enactment.

D. Special Rules for Livestock Sold on Account of Weather-Related Conditions

(Sec. 204 of the bill and secs. 1033 and 451 of the Code)

PRESENT LAW

Generally, a taxpayer recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

Under section 1033, gain realized by a taxpayer from an involuntary conversion of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within the applicable period. The taxpayer's basis in the replacement property generally is the same as the taxpayer's basis in the converted property, decreased by the amount of any money or loss recognized on the conversion, and increased by the amount of any gain recognized on the conversion.

The applicable period for the taxpayer to replace the converted property begins with the date of the disposition of the converted property (or if earlier, the earliest date of the threat or imminence of requisition or condemnation of the converted property) and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized (the "replacement period"). Special rules extend the replacement period for certain real property and principal residences damaged by a Presidentially declared

disaster to three years and four years, respectively, after the close of the first taxable year in which gain is realized.

Section 1033(e) provides that the sale of livestock (other than poultry) that is held for draft, breeding, or dairy purposes in excess of the number of livestock that would have been sold but for drought, flood, or other weather-related conditions is treated as an involuntary conversion. Consequently, gain from the sale of such livestock could be deferred by reinvesting the proceeds of the sale in similar property within a two-year period.

In general, cash-method taxpayers report income in the year it is actually or constructively received. However, section 451(e) provides that a cash-method taxpayer whose principal trade or business is farming who is forced to sell livestock due to drought, flood, or other weather-related conditions may elect to include income from the sale of the livestock in the taxable year following the taxable year of the sale. This elective deferral of income is available only if the taxpayer establishes that, under the taxpayer's usual business practices, the sale would not have occurred but for drought, flood, or weather-related conditions that resulted in the area being designated as eligible for Federal assistance. This exception is generally intended to put taxpayers who receive an unusually high amount of income in one year in the position they would have been in absent the weather-related condition.

REASONS FOR CHANGE

The Committee is aware of situations in which cattlemen sold livestock in excess of the their usual business practice as a result of weather-related conditions, but have been unable to purchase replacement property because the weather-related conditions have continued. The Committee believes it is appropriate to extend the time period for cattlemen to purchase replacement property in such situations.

EXPLANATION OF PROVISION

The provision extends the applicable period for a taxpayer to replace livestock sold on account of drought, flood, or other weather-related conditions from two years to four years after the close of the first taxable year in which any part of the gain on conversion is realized. The extension is only available if the taxpayer establishes that, under the taxpayer's usual business practices, the sale would not have occurred but for drought, flood, or weather-related conditions that resulted in the area being designated as eligible for Federal assistance. In addition, the Secretary of the Treasury is granted authority to further extend the replacement period on a regional basis should the weather-related conditions continue longer than 3 years. Also, for property eligible for the provision's extended replacement period, the provision provides that the taxpayer can make an election under section 451(e) until the period for reinvestment of such property under section 1033 expires.

EFFECTIVE DATE

The provision is effective for any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.

E. Simplification of Excise Tax Imposed on Bows and Arrows

(Sec. 205 of the bill and sec. 4161 of the Code)

PRESENT LAW

The Code imposes an excise tax of 11 percent on the sale by a manufacturer, producer or importer of any bow with a draw rate of 10 pounds or more.[7] An excise tax of 12.4 percent is imposed on the sale by a manufacturer or importer of any shaft, point, nock, or vane designed for use as part of an arrow which after its assembly (1) is over 18 inches long, or (2) is designed for use with a taxable bow (if shorter than 18 inches).[8] No tax is imposed on finished arrows. An 11-percent excise tax also is imposed on any part of an accessory for taxable bows and on quivers for use with arrows (1) over 18 inches long or (2) designed for use with a taxable bow (if shorter than 18 inches).[9]

REASONS FOR CHANGE

Under present law, foreign manufacturers and importers of arrows avoid the 12.4 percent excise tax paid by domestic manufacturers because the tax is placed on arrow components rather than finished arrows. As a result, arrows assembled outside of the United States have a price advantage over domestically manufactured arrows. The Committee believes it is appropriate to close this loophole. The Committee also believes that adjusting the minimum draw weight for taxable bows from ten pounds to 30 pounds will better target the excise tax to actual hunting use by eliminating the excise tax on instructional ("youth") bows.

EXPLANATION OF PROVISION

The bill increases the minimum draw weight for a taxable bow from 10 pounds to 30 pounds. The bill also imposes an excise tax of 12 percent on arrows generally. An arrow for this purpose is defined as an arrow shaft to which additional components are attached. The present law 12.4-percent excise tax on certain arrow components is unchanged by the proposal. The bill provides that the 12-percent excise tax on arrows will not apply if the arrow contains an arrow shaft that was subject to the tax on arrow components. Finally, the bill subjects certain broadheads (a type of arrow point) to an excise tax equal to 11 percent of the sales price instead of 12.4 percent.

EFFECTIVE DATE

The provision is effective for articles sold by the manufacturer, producer, or importer 90 days after the date of enactment.

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[7] Sec. 4161(b)(1)(A).
[8] Sec. 4161(b)(2).
[9] Sec. 4161(b)(1)(B).

F. Repeal Excise Tax on Fishing Tackle Boxes

(Sec. 206 of the bill and sec. 4162 of the Code)

Present Law

Under present law, a 10-percent manufacturer's excise tax is imposed on specified sport fishing equipment. Examples of taxable equipment include fishing rods and poles, fishing reels, artificial bait, fishing lures, line and hooks, and fishing tackle boxes. Revenues from the excise tax on sport fishing equipment are deposited in the Sport Fishing Account of the Aquatic Resources Trust Fund. Monies in the fund are spent, subject to an existing permanent appropriation, to support Federal-State sport fish enhancement and safety programs.

REASONS FOR CHANGE

The Committee observes that fishing "tackle boxes" are little different in design and appearance from "tool boxes," yet the former are subject to a Federal excise tax at a rate of 10-percent, while the latter are not subject to Federal excise tax. This excise tax can create a sufficiently large price difference that some fishermen will choose to use a "tool box" to hold their hooks and lures rather than a traditional "tackle box." The Committee finds that such a distortion of consumer choice places an inappropriate burden on the manufacturers and purchasers of traditional tackle boxes, particularly in comparison to the modest amount of revenue raised by the present-law provision, and that this burden warrants repeal of the tax. The Committee also believes that elimination of the excise tax on tackle boxes will provide some modest simplification of the tax system for both taxpayers and the Internal Revenue Service.

EXPLANATION OF PROVISION

The excise tax on fishing tackle boxes is repealed.

EFFECTIVE DATE

The provision is effective beginning 30 days after the date of enactment.

G. Btu-Based Rate for Diesel/Water Emulsion Fuel

(Sec. 207 of the bill and secs. 4081 and 6427 of the Code)

PRESENT LAW

A 24.3 cents per gallon excise tax is imposed on diesel fuel to finance the Highway Trust Fund. Gasoline and most special motor fuels are subject to tax at 18.3 cents per gallon for the Trust Fund. The statutory rate for certain special motor fuels is determined on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane)	13.6 cents per gallon.
Liquefied natural gas	11.9 cents per gallon.
Methanol derived from petroleum or natural gas	9.15 cents per gallon.
Compressed natural gas	48.54 cents per MCF.

No special tax rate is provided for diesel fuel blended in a water emulsion fuel.

REASONS FOR CHANGE

The Highway Trust Fund taxes are structured to reflect use of the highway system. Because diesel/water emulsion fuels have fewer Btu's, larger quantities must be purchased to travel the same number of miles as regular diesel fuel. A Btu-based tax rate better correlates highway use and tax paid, and is consistent with the present law principle of taxing special motor fuels based on their energy content. The Committee further understands that the diesel fuel/water emulsion fuel may reduce air pollutants relative to regular diesel fuel and believes that the Btu-based rate, by removing a tax disadvantage to use of the fuel, will be beneficial to the environment.

EXPLANATION OF PROVISION

A special tax rate of 19.7 cents per gallon is provided for diesel fuel blended with water into a diesel/water emulsion fuel to reflect the reduced Btu content per gallon resulting from the water. Emulsion fuels eligible for the special rate must consist of not more than 86 percent diesel fuel (and other minor chemical additives to enhance combustion) and at least 14 percent water.

EFFECTIVE DATE

The provision applies to fuels removed after September 30, 2003.

H. Expand Human Clinical Trials Expenses Qualifying for the Orphan Drug Tax Credit

(Sec. 208 of the bill and sec. 280C of the Code)

PRESENT LAW

Taxpayers may claim a 50-percent orphan drug tax credit for expenses related to human clinical testing of drugs for the treatment of certain rare diseases and conditions, generally those that afflict less than 200,000 persons in the United States. Qualifying expenses are those paid or incurred by the taxpayer after the date on which the drug is designated as a potential treatment for a rare disease or disorder by the Food and Drug Administration ("FDA") in accordance with section 526 of the Federal Food, Drug, and Cosmetic Act.

REASONS FOR CHANGE

The Committee understands that approval for human clinical testing and designation as a potential treatment for a rare disease or disorder require separate reviews within the FDA. As a result, in some cases, a taxpayer may be permitted to begin human clinical testing prior to a drug being designated as a potential treatment for a rare disease or disorder. If the taxpayer delays human clinical testing in order to obtain the benefits of the orphan drug tax credit, which currently may be claimed only for expenses incurred after the drug is designated as a potential treatment for a rare disease or disorder, valuable time will have been lost and Congress's original intent in enacting the orphan drug tax credit

will have been partially thwarted. Because taxpayers generally seek designation of a potential drug as a treatment for a rare disease or disorder at the time they seek approval to clinically test such drugs, the Committee believes it is appropriate to make such expenses related to human clinical testing that the taxpayer incurs prior to FDA designation eligible for the orphan drug tax credit to help speed cures to such insidious diseases.

The Committee also observed that the staff of the Joint Committee on Taxation recommended this change as part of its 2001 simplification study.[10]

EXPLANATION OF PROVISION

The bill expands qualifying expenses to include those expenses related to human clinical testing incurred after the date on which the taxpayer files an application with the FDA for designation of the drug under section 526 of the Federal Food, Drug, and Cosmetic Act as a potential treatment for a rare disease or disorder. As under present law, the credit may only be claimed for such expenses related to drugs designated as a potential treatment for a rare disease or disorder by the FDA in accordance with section 526 of such Act.

EFFECTIVE DATE

The provision is effective for expenditures paid or incurred after the date of enactment.

I. Consumer Options Under the Refundable Credit for Health Insurance Costs of Eligible Individuals

(Sec. 209 of the bill and sec. 35 of the Code)

PRESENT LAW

Refundable health insurance credit: in general

In the case of taxpayers who are eligible individuals, a refundable tax credit is provided for 65 percent of the taxpayer's expenses for qualified health insurance of the taxpayer and qualifying family members for each eligible coverage month beginning in the taxable year. The credit is available only with respect to amounts paid by the taxpayer. The credit is available in taxable years beginning after December 31, 2002.

Qualifying family members are the taxpayer's spouse and any dependent of the taxpayer with respect to whom the taxpayer is entitled to claim a dependency exemption.[11] Any individual who has other specified coverage is not a qualifying family member.

Persons eligible for the credit

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if, as of the first

[10] Joint Committee on Taxation, *Study of the Overall State of the Federal Tax System and Recommendations for Simplification, Pursuant to Section 8022(3)(b) of the Internal Revenue Code of 1986, Vol. II* (JCS–3–01), April 2001, p. 310.

[11] Present and prior law allows the custodial parent to release the right to claim the dependency exemption for a child to the noncustodial parent. In addition, if certain requirements are met, the parents may decide by agreement that the noncustodial parent is entitled to the dependency exemption with respect to a child. In such cases, the provision treats the child as the dependent of the custodial parent for purposes of the credit.

day of the month, the taxpayer (1) is an eligible individual, (2) is covered by qualified health insurance, (3) does not have other specified coverage, and (4) is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements. An eligible month must begin more than 90 days after the date of enactment of the Trade Act of 2002.[12]

An eligible individual is (1) an eligible TAA recipient, (2) an eligible alternative TAA recipient, and (3) an eligible PBGC pension recipient.

An individual is an eligible TAA recipient during any month if the individual (1) is receiving for any day of such month a trade adjustment allowance [13] or who would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance and (2) with respect to such allowance, is covered under a certification issued under subchapter A or D of chapter 2 of title II of the Trade Act of 1974. An individual is treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is an eligible alternative TAA recipient during any month if the individual (1) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and (2) is receiving a benefit for such month under section 246(a)(2) of such Act. An individual is treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is a PBGC pension recipient for any month if he or she (1) is age 55 or over as of the first day of the month, and (2) is receiving a benefit any portion of which is paid by the Pension Benefit Guaranty Corporation (the "PBGC").

An otherwise eligible taxpayer is not eligible for the credit for a month if, as of the first day of the month the individual has other specified coverage. Other specified coverage is (1) coverage under any insurance which constitutes medical care (except for insurance substantially all of the coverage of which is for excepted benefits) [14] if at least 50 percent of the cost of the coverage is paid by an employer [15] (or former employer) of the individual or his or her spouse or (2) coverage under certain governmental health programs.[16] A

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[12] The date of enactment is August 6, 2002.

[13] Part I of subchapter B, or subchapter D, of chapter 2 of title II of the Trade Act of 1974.

[14] Excepted benefits are: (1) coverage only for accident or disability income or any combination thereof; (2) coverage issued as a supplement to liability insurance; (3) liability insurance, including general liability insurance and automobile liability insurance; (4) worker's compensation or similar insurance; (5) automobile medical payment insurance; (6) credit-only insurance; (7) coverage for on-site medical clinics; (8) other insurance coverage similar to the coverages in (1)–(7) specified in regulations under which benefits for medical care are secondary or incidental to other insurance benefits; (9) limited scope dental or vision benefits; (10) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and (11) other benefits similar to those in (9) and (10) as specified in regulations; (12) coverage only for a specified disease or illness; (13) hospital indemnity or other fixed indemnity insurance; and (14) Medicare supplemental insurance.

[15] An amount is considered paid by the employer if it is excludable from income. Thus, for example, amounts paid for health coverage on a salary reduction basis under an employer plan are considered paid by the employer.

[16] Specifically, an individual is not eligible for the credit if, as of the first day of the month, the individual is (1) entitled to benefits under Medicare Part A, enrolled in Medicare Part B, or enrolled in Medicaid or SCHIP, (2) enrolled in a health benefits plan under the Federal Em-

Continued

rule aggregating plans of the same employer applies in determining whether the employer pays at least 50 percent of the cost of coverage. A person is not an eligible individual if he or she may be claimed as a dependent on another person's tax return. A special rule applies with respect to alternative TAA recipients.

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) COBRA continuation coverage; (2) State based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by a State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; and (9) coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date the individual became separated from the employment which qualified the individual for the TAA allowance, the benefit for an eligible alternative TAA recipient, or a pension benefit from the PBGC, whichever applies.[17]

Qualified health insurance does not include any State-based coverage (i.e., coverage described in (2)–(8) in the preceding paragraph), unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain requirements. Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must be the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals. A qualifying individual is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage[18] of three months or longer, does not have other specified coverage, and who is not imprisoned. A qualifying indi-

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ployees Health Benefit Plan, or (3) entitled to receive benefits under chapter 55 of title 10 of the United States Code (relating to military personnel). An individual is not considered to be enrolled in Medicaid solely by reason of receiving immunizations.

[17] For this purpose, "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

[18] Creditable coverage is determined under the Health Care Portability and Accountability Act (Code sec. 9801(c)).

vidual also includes qualified family members of such an eligible individual.

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is of excepted benefits.

Other rules

Amounts taken into account in determining the credit may not be taken into account in determining the amount allowable under the itemized deduction for medical expenses or the deduction for health insurance expenses of self-employed individuals. Amounts distributed from a medical savings account are not eligible for the credit. The amount of the credit available through filing a tax return is reduced by any credit received on an advance basis. Married taxpayers filing separate returns are eligible for the credit; however, if both spouses are eligible individuals and the spouses file a separate return, then the spouse of the taxpayer is not a qualifying family member.

The Secretary of the Treasury is authorized to prescribe such regulations and other guidance as may be necessary or appropriate to carry out the provision.

Advance payment of refundable health insurance credit; reporting requirements

The credit is to be payable on an advance basis (i.e., prior to the filing of the taxpayer's return) pursuant to a program to be established by the Secretary of the Treasury no later than August 1, 2003. The disclosure of return information of certified individuals to providers of health insurance information is permitted to the extent necessary to carry out the advance payment mechanism. Any person who receives payments during a calendar year for qualified health insurance and claims a reimbursement for an advance credit amount is required to file an information return with respect to each individual from whom such payments were received or for whom such a reimbursement is claimed.

REASONS FOR CHANGE

The laws of most States do not impose the requirements necessary for State-based coverage to qualify as qualified health insurance eligible for the refundable health insurance tax credit. Otherwise eligible individuals in some State pools are not able to receive the tax credit unless the States affirmatively change their requirements. Given the relatively small number of individuals otherwise eligible for the heath insurance tax credit in any particular State, the Committee believes that it is unlikely that States will affirmatively change their laws. Therefore, few individuals are able to access the tax credit for State-based coverage.

EXPLANATION OF PROVISION

The bill allows State-based coverage to meet the definition of qualified health insurance eligible for the refundable health insurance tax credit if the eligible individual elects to waive the requirements for State-based coverage, including the requirements that the State-based coverage would otherwise have to meet with re-

spect to guaranteed issue, preexisting conditions, premiums, and similar benefits.

EFFECTIVE DATE

The provision is effective for eligible coverage months beginning after the date of enactment and before January 1, 2005.

J. MODIFY AT-RISK RULES FOR PUBLICLY TRADED NONRECOURSE DEBT

(Sec. 210 of the bill and sec. 465(b)(6) of the Code)

PRESENT LAW

Present law provides an at-risk limitation on losses from business and income-producing activities, applicable to individuals and certain closely held corporations.[19] Under the at-risk rules, a taxpayer generally is not considered at risk with respect to borrowed amounts if the taxpayer is not personally liable for repayment of the debt (e.g., nonrecourse loans), and in certain other circumstances.

In the case of the activity of holding real property, however, an exception is provided for qualified nonrecourse financing that is secured by real property used in the activity.[20] The qualified nonrecourse financing rules require, among other things, that the financing be borrowed by the taxpayer from a qualified person or from certain governmental entities. For this purpose, a qualified person is one that is actively and regularly engaged in the business of lending money (and that is not a related person with respect to the taxpayer, is not a person from whom the taxpayer acquired the property or a related person, and is not a person that receives a fee with respect to the taxpayer's investment or a related person.[21] A related person is one with certain types of relationships to the taxpayer defined by statute.[22] The qualified nonrecourse financing rules also require that the financing be secured by real property used in the activity.[23]

REASONS FOR CHANGE

The Committee understands that the rule requiring that the financing be borrowed from a person that is actively and regularly engaged in the business of lending money hinders the use of publicly traded debt in real estate financing to which the at-risk rules apply, because absent restrictions on sale of the debt, the holders of publicly traded debt could be persons other than those who are actively and regularly engaged in the business of lending money (even though such persons are not related persons). In addition, the Committee understands that publicly traded debt may often be debt that is not mortgage debt and is not otherwise secured by real property used in the real estate activity. Nevertheless, the Committee is aware that seller financing and related-party financing can give rise to deduction shifting and overvaluation problems that

[19] Sec. 465.
[20] Sec. 465(b)(6).
[21] Sec. 49(a)(1)(D)(iv).
[22] Sec. 465(b)(3)(C).
[23] Sec. 465(b)(6)(A).

the at-risk rules are designed to address. Thus, the Committee bill provides that qualified nonrecourse financing in the case of the activity of holding real property can include certain publicly traded debt that is not borrowed from a person who is actively and regularly engaged in the business of lending money, and that is not secured by property used in the real estate activity, so long as the present-law prohibitions against seller financing and related party financing continue to apply. In addition, to address concerns about shifting deductions among taxpayers through the use of relatively risky debt with a relatively high yield, which may tend to resemble an equity investment, the yield on the publicly traded debt under the provision is limited in the same manner as the yield under high-yield debt obligations under present law.

EXPLANATION OF PROVISION

The bill modifies the rules relating to qualified nonrecourse financing to provide that, in the case of an activity of holding real property, a taxpayer is considered at risk with respect to the taxpayer's share of certain financing that is not borrowed from a person that is regularly engaged in the business of lending money, and that is not secured by real property used in the activity, if the financing is qualified publicly traded debt.

The financing may not be borrowed from a person that is a related person with respect to the taxpayer, that is a person from whom the taxpayer acquired the property or a related person, or that is a person that receives a fee with respect to the taxpayer's investment or a related person.

Qualified publicly traded debt generally means any debt instrument that is readily tradable on an established securities market. However, qualified publicly traded debt does not include any debt instrument, the yield to maturity on which equals or exceeds the applicable Federal rate of interest for the calendar month in which it is issued, plus 5 percentage points. The applicable Federal rate is the rate determined under section 1274(d) with respect to the term of the debt instrument. Under the bill, it is intended that "readily tradable on an established securities market" have the same meaning as under section 453(f)(5).

EFFECTIVE DATE

The provision is effective for debt instruments issued after the date of enactment.

K. Exclusion of Certain Horse-Racing Gambling Winnings From the Income of Nonresident Noncitizen Individuals

(Sec. 211 of the bill and sec. 872(b) of the Code)

PRESENT LAW

Under section 871, certain items of gross income received by a nonresident noncitizen from sources within the United States are subject to a flat 30–percent withholding tax. Gambling winnings received by a nonresident noncitizen from wagers placed in the United States are U.S.-source and thus generally are subject to this withholding tax, unless exempted by treaty. Currently, several U.S. income tax treaties exempt U.S.-source gambling winnings of resi-

dents of the other treaty country from U.S. withholding tax. In addition, no withholding tax is imposed under section 871 on the nonbusiness gambling income of a nonresident noncitizen from wagers on the following games (except to the extent that the Secretary determines that collection of the tax would be administratively feasible): blackjack, baccarat, craps, roulette, and big-6 wheel. Various other (non-gambling-related) items of income of a nonresident noncitizen are excluded from gross income under section 872(b) and are thereby exempt from the 30-percent withholding tax, without any authority for the Secretary to impose the tax by regulation. In cases in which a withholding tax on gambling winnings applies, section 1441(a) of the Code requires the party making the winning payout to withhold the appropriate amount and makes that party responsible for amounts not withheld.

With respect to gambling winnings of a nonresident noncitizen resulting from a wager initiated outside the United States on a pari-mutuel[24] event taking place within the United States, the source of the winnings, and thus the applicability of the 30-percent U.S. withholding tax, depends on the type of wagering pool from which the winnings are paid. If the payout is made from a separate foreign pool, maintained completely in a foreign jurisdiction (e.g., a pool maintained by a racetrack or off-track betting parlor that is showing in a foreign country a simulcast of a horse race taking place in the United States), then the winnings paid to a nonresident noncitizen generally would not be subject to withholding tax, because the amounts received generally would not be from sources within the United States. However, if the payout is made from a "merged" or "commingled" pool, in which betting pools in the United States and the foreign country are combined for a particular event, then the portion of the payout attributable to wagers placed in the United States could be subject to withholding tax. The party making the payment, in this case a racetrack or off-track betting parlor in a foreign country, would be responsible for withholding the tax.

REASONS FOR CHANGE

The Committee recognizes that there is significant interest in American horse racing around the world. Because of the barriers in present law, the wagers of nonresident noncitizens generally are not placed in U.S. pari-mutuel wagering pools. Thus, while the domestic horse industry is "exporting" their product via simulcasting of their races, they are doing so to a market effectively limited by the 30 percent withholding rule. Specifically, the host track is deprived of the 2–3 percent fees on additional amounts that would be wagered if nonresident noncitizens could participate in larger and more stable pools. These funds increase the purses for horse owners and support the seven million jobs directly and indirectly supported by the domestic horse industry. Passage of this legislation will increase horse industry revenue and the jobs it supports. Ac-

[24] In pari-mutuel wagering (common in horse racing), odds and payouts are determined by the aggregate bets placed. The money wagered in placed into a pool, the party maintaining the pool takes a percentage of the total, and the bettors effectively bet against each other. Pari-mutuel wagering may be contrasted with fixed-odds wagering (common in sports wagering), in which odds (or perhaps a point spread) are agreed to by the bettor and the party taking the bet and are not affected by the bets placed by other bettors.

cordingly, the Committee believes the structure of present law, which discourages nonresident noncitizens from placing wagers on U.S. horse races, is an impediment to the continued growth of this domestic industry.

EXPLANATION OF PROVISION

The bill provides an exclusion from gross income under section 872(b) for winnings paid to a nonresident noncitizen resulting from a legal wager initiated outside the United States in a pari-mutuel pool on a live horse race in the United States, regardless of whether the pool is a separate foreign pool or a merged U.S.-foreign pool.

EFFECTIVE DATE

The provision applies to proceeds from wagering transactions after September 30, 2003.

L. Payment of Dividends on Stock of Cooperatives Without Reducing Patronage Dividends

(Sec. 212 of the bill and sec. 1388 of the Code)

PRESENT LAW

Under present law, cooperatives generally are treated similarly to pass-through entities in that a cooperative is not subject to corporate income tax to the extent the cooperative timely pays patronage dividends. In general, patronage dividends are comprised of amounts that are paid to patrons (1) on the basis of the quantity or value of business done with or for patrons, (2) under a valid enforceable written obligation to the patron that was in existence before the cooperative received such amounts, and (3) which are determined by reference to the net earnings of the cooperative from business done with or for patrons.

Treasury Regulations provide that net earnings are reduced by dividends paid on capital stock or other proprietary capital interests (referred to as the "dividend allocation rule").[25] The effect of this rule is to reduce the amount of earnings that a cooperative can treat as patronage income and, thus, the amount that the cooperative can deduct as patronage dividends.

REASONS FOR CHANGE

The Committee believes that the dividend allocation rule should not apply to the extent that the organizational documents of a cooperative provide that capital stock dividends do not reduce the amounts owed to patrons as patronage dividends. To the extent that capital stock dividends are in addition to amounts paid under the cooperative's organizational documents to patrons as patronage dividends, the Committee believes that those capital stock dividends are not being paid from earnings from patronage business.

In addition, the Committee believes cooperatives should be able to raise needed equity capital by issuance of capital stock without dividends paid on such capital stock causing taxation of the cooperative on a portion of its patronage income.

[25] Treas. Reg. sec. 1.1388–1(a)(1).

EXPLANATION OF PROVISION

The bill provides a special rule for dividends on capital stock of a cooperative. To the extent provided in organizational documents of the cooperative, dividends on capital stock do not reduce patronage income.

EFFECTIVE DATE

The provision is effective for distributions made in taxable years beginning after the date of enactment.

M. Pilot Project for Forest Conservation Activities

(Sec. 213 of the bill)

PRESENT LAW

Tax-exempt bonds

In general

Interest on debt incurred by States or local governments is excluded from income if the proceeds of the borrowing are used to carry out governmental functions of those entities or the debt is repaid with governmental funds (section 103). Interest on bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such a private person is taxable unless the purpose of the borrowing is approved specifically in the Code or in a non-Code provision of a revenue Act. These bonds are called "private activity bonds." The term "private person" includes the Federal Government and all other individuals and entities other than States or local governments.

Private activities eligible for financing with tax-exempt private activity bonds

Present law includes several exceptions permitting States or local governments to act as conduits providing tax-exempt financing for private activities. Both capital expenditures and limited working capital expenditures of charitable organizations described in section 501(c)(3) of the Code may be financed with tax-exempt bonds ("qualified 501(c)(3) bonds").

States or local governments may issue tax-exempt "exempt-facility bonds" to finance property for certain private businesses. Business facilities eligible for this financing include transportation (airports, ports, local mass commuting, and high speed intercity rail facilities); privately owned and/or privately operated public works facilities (sewage, solid waste disposal, local district heating or cooling, and hazardous waste disposal facilities); privately owned and/or operated low-income rental housing;[26] and certain private facilities for the local furnishing of electricity or gas. A further provision allows tax-exempt financing for "environmental enhancements of hydro-electric generating facilities." Tax-exempt financing also is authorized for capital expenditures for small manufacturing facilities and land and equipment for first-time farmers ("qualified

[26] Residential rental projects must satisfy low-income tenant occupancy requirements for a minimum period of 15 years.

small-issue bonds"), local redevelopment activities ("qualified redevelopment bonds"), and eligible empowerment zone and enterprise community businesses. Tax-exempt private activity bonds also may be issued to finance limited non-business purposes: certain student loans and mortgage loans for owner-occupied housing ("qualified mortgage bonds" and "qualified veterans" mortgage bonds").

With the exception of qualified 501(c)(3) bonds, private activity bonds may not be issued to finance working capital requirements of private businesses. In most cases, the aggregate volume of tax-exempt private activity bonds that may be issued in a State is restricted by annual volume limits.

Several additional restrictions apply to the issuance of tax-exempt bonds. First, private activity bonds (other than qualified 501(c)(3) bonds) may not be advance refunded. Governmental bonds and qualified 501(c)(3) bonds may be advance refunded one time. An advance refunding occurs when the refunded bonds are not retired within 90 days of issuance of the refunding bonds.

Issuance of private activity bonds is subject to restrictions on use of proceeds for the acquisition of land and existing property, use of proceeds to finance certain specified facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores) and use of proceeds to pay costs of issuance (e.g., bond counsel and underwriter fees). Additionally, the term of the bonds generally may not exceed 120 percent of the economic life of the property being financed and certain public approval requirements (similar to requirements that typically apply under State law to issuance of governmental debt) apply under Federal law to issuance of private activity bonds. Present and prior law precludes substantial users of property financed with private activity bonds from owning the bonds to prevent their deducting tax-exempt interest paid to themselves. Finally, owners of most private-activity-bond-financed property are subject to special "change-in-use" penalties if the use of the bond-financed property changes to a use that is not eligible for tax-exempt financing while the bonds are outstanding.

Taxation of income from timber harvesting

In general, gross income for Federal income tax purposes means all income from whatever source derived, including gross income derived from a trade or business. An organization exempt from taxation generally is subject to tax on its unrelated business taxable income, generally defined to mean gross income (less deductions) derived from a trade or business, the conduct of which is not substantially related to the exercise or performance of the organization's exempt purposes or functions, that is regularly carried on by the organization. Special unrelated trade or business income rules applicable to the cutting of timber are contained in sections 512(b)(5) and 631. Under these rules, the determination of whether income derived from the cutting of timber constitutes unrelated trade or business income depends upon a variety of factors.

REASONS FOR CHANGE

Many forests have a higher fair market value as land to be developed for residential purposes than as working forests or as forests dedicated to conservation purposes. These increased fair market

values oftentimes make it difficult or impossible for nonprofit conservation organizations or governments to acquire forests so that they can be used and managed consistent with long-term conservation purposes. The Committee believes that it is appropriate to provide certain tax incentives to further the goal of permanently setting aside working forests for qualified conservation purposes. The Committee believes that providing tax-exempt financing to nonprofit organizations for the purpose of acquiring forests and forest lands to be dedicated to qualified conservation purposes will increase their ability to purchase such properties from commercial owners and operators, and that providing limited exclusions from income tax to such nonprofit organizations will enable them to conduct charitable and conservation activities as they make debt service payments on the bonds.

EXPLANATION OF PROVISION

Exempt facility bonds

The bill permits the Evergreen Forest Trust[27] to acquire forest and forest land in the State of Washington using up to $250 million of tax-exempt bonds. The bill creates a new category of tax-exempt bonds, the qualified forest conservation bond. A qualified forest conservation bond means any bond issued as part of an issue if: (1) 95 percent or more of the net proceeds of such issue are to be used for qualified project costs; (2) such bond is an obligation of the State of Washington or any political subdivision thereof and is issued for the Evergreen Forest Trust; and (3) such bond is issued before October 1, 2004.

Qualified project costs include the cost of acquisition by the Evergreen Forest Trust, from an unrelated person, of forest and forest land that are located in the State of Washington and that, at the time of acquisition or immediately thereafter, are subject to a conservation restriction. Qualified project costs also include interest on the qualified forest conservation bonds for the three-year period beginning on the date of issuance of such bonds, and credit enhancement fees that constitute qualified guarantee fees.

Subject to the following exceptions and modifications, issuance of these tax-exempt bonds is subject to the general rules applicable to issuance of exempt-facility private activity bonds:

(1) Issuance of the bonds is not subject to the aggregate annual State private activity bond volume limits (section 146);

(2) The restrictions on acquisition of land and existing property do not apply (section 147(c) and (d));

(3) For purposes of section 147(b) (relating to the rule that maturity may not exceed 120 percent of economic life) the land and standing timber acquired with the proceeds of the bonds is treated as having an economic life of 35 years; and

(4) Interest on the bonds is not a preference item for purposes of the alternative minimum tax preference for private activity bond interest (section 57(a)(5)).

Qualified forest conservation bonds may be currently refunded if certain circumstances are met, but may not be advance refunded.

[27] The Evergreen Forest Trust is a nonprofit corporation incorporated on February 25, 2000, under chapter 24.03 of the Revised Code of Washington, recognized as an organization described under section 501(c)(3) on May 11, 2001.

Exclusion of certain income from income tax

Under the bill, income, gains, deductions, losses, or credits from a qualified harvesting activity conducted by the Evergreen Forest Trust are not subject to tax or taken into account for Federal income tax purposes. A qualified harvesting activity means the sale, lease, or harvesting of standing timber on land acquired by the trust with the qualified forest conservation bond proceeds and pursuant to a qualified conservation plan. The exclusion of income derived from a qualified harvesting activity generally applies so long as the trust retains its status as a nonprofit entity organized and operated for charitable and conservation purposes, and the qualified forest conservation bonds are outstanding and qualify as section 142 bonds.

Timber cutting and the sale or lease of timber is not a qualified harvesting activity during any period the trust fails to satisfy certain organizational requirements (i.e., it ceases to be a qualified organization). Further, timber cutting and the sale or lease of timber is not a qualified harvesting activity to the extent the timber cutting exceeds certain prescribed limits. For this purpose, the average annual area of timber harvested cannot exceed 2.5 percent of the total area of the land acquired with the qualified forest conservation bonds, and the quantity of timber removed from the land cannot violate sustained-yield principles (i.e., the removal of timber cannot diminish the forest's timber yield potential on an ongoing basis). Certain deviations from these restrictions are permitted to protect the forest from catastrophic danger.

A qualified conservation plan means a multiple use plan (a) designed and administered primarily for specific conservation purposes, including the protection of wildlife, fish, timber, scenic attributes, recreation, and soil and water quality of the forest and forest land, (b) mandates that forest conservation is the single-most significant use of the forest and land, and (c) requires that timber harvesting be consistent with restoring and maintaining the forest to its historic condition as to types and ages of trees, preventing damage from fire, insect and disease, promoting certain forestry management research, and protecting or preserving wildlife, fish, and open space.

The Evergreen Forest Trust remains a qualified organization so long as (a) it is a nonprofit entity organized and operated exclusively for charitable purposes, specifically with respect to forest lands and other renewable resources, (b) more than one half of the value of property of which consists of forest and forest lands acquired with the qualified forest conservation bonds, (c) it periodically conducts public education programs, (d) its board satisfies certain board composition requirements designed to ensure that it represents public conservation interests, (e) a supermajority vote is required to approve and amend the trust's qualified conservation plan, and (f) upon dissolution, the trust's assets must be dedicated to a qualified conservation organization exempt from tax under section 501(c)(3) or a governmental unit.

Once the qualified forest conservation bonds are no longer outstanding (or cease to qualify as section 142 bonds), the trust is liable for a recapture of tax benefits (plus interest) it derived from the bill's special exclusion rules, to the extent the trust's harvesting activities exceeded the 2.5 percent average annual area limitation.

EFFECTIVE DATE

The provision is effective for obligations issued after the date of enactment.

N. No Impact on Social Security Trust Funds Under Title II of the Social Security Act

(Sec. 214 of the bill)

PRESENT LAW

Present law provides for the transfer of Social Security taxes and certain self-employment taxes to the Social Security trust funds. In addition, the income tax collected with respect to a portion of Social Security benefits included in gross income is transferred to the Social Security trust funds.

EXPLANATION OF PROVISION

The bill provides that any amounts to be transferred to any trust fund under Title II of the Social Security Act are determined as if this bill has not been enacted. This will ensure that the income and balances of those Social Security trust funds are not reduced as a result of this bill.

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE III. REVENUE PROVISIONS

A. Modification of the Tax Treatment of Citizenship Relinquishment and Residency Termination

(Sec. 301 of the bill and secs. 877, 2107, 2501, and 6039G of the Code)

PRESENT LAW

Since 1966, special tax rules have applied to a U.S. citizen who relinquishes U.S. citizenship with a principal purpose of avoiding U.S. taxes. These rules are referred to as the "alternative tax regime." In 1996, several significant changes were made to the alternative tax regime. These amendments followed press reports and Congressional hearings indicating that a small number of very wealthy individuals had relinquished their U.S. citizenship to avoid U.S. income, estate, and gift taxes, while nevertheless maintaining significant contacts with the United States.

Under present law, the alternative tax regime applies both to U.S. citizens who relinquish citizenship and long-term residents who terminate residency with a principal purpose of avoiding U.S. taxes. A U.S. citizen who relinquishes citizenship or a long-term resident who terminates residency is treated as having done so with a principal purpose of tax avoidance (and, thus, generally is subject to the alternative tax regime) if: (1) the individual's average annual U.S. Federal income tax liability for the five taxable years preceding citizenship relinquishment or residency termination exceeds $100,000; or (2) the individual's net worth on the date of citizenship relinquishment or residency termination equals or exceeds

$500,000. These amounts are adjusted annually for inflation. Certain categories of individuals may avoid being deemed to have a tax avoidance purpose for relinquishing citizenship or terminating residency by submitting a ruling request to the IRS regarding whether the individual relinquished citizenship or terminated residency principally for tax reasons.

Under present law, the Immigration and Nationality Act governs the determination of when a U.S. citizen is treated for U.S. Federal tax purposes as having relinquished citizenship. Similarly, an individual's U.S. residency is considered terminated for U.S. Federal tax purposes when the individual ceases to be a lawful permanent resident under the immigration law (or is treated as a resident of another country under a tax treaty and does not waive the benefits of such treaty). In view of this reliance on immigration-law status, it is possible in many instances for a U.S. citizen or resident to convert his or her Federal tax status to that of a nonresident noncitizen without notifying the IRS.

Under the alternative tax regime, a former citizen or long-term resident is subject to an alternative method of income taxation for 10 years following citizenship relinquishment or residency termination. For the 10-year period, the individual is subject to tax only on U.S.-source income at the rates applicable to U.S. citizens, rather than the rates applicable to noncitizens who are nonresidents. However, for this purpose, U.S.-source income has a broader scope than it does for normal U.S. Federal tax purposes and includes, for example, gain from the sale of U.S. corporate stock or debt obligations. The alternative tax regime applies only if it results in a higher U.S. tax liability than the liability that would result if the individual were taxed as a noncitizen who is a nonresident.

In addition, the alternative tax regime includes special estate and gift tax rules. Under present law, estates of nonresident noncitizens are subject to U.S. estate tax on U.S.-situated property. For these purposes, stock in a foreign corporation generally is not treated as U.S.-situated property, even if the foreign corporation itself owns U.S.-situated property. However, a special estate tax rule (sec. 2107) applies to former citizens and former long-term residents who are subject to the alternative tax regime. Under this rule, certain closely-held foreign stock owned by the former citizen or former long-term resident is includible in his or her gross estate to the extent that the foreign corporation owns U.S.-situated assets, if the former citizen or former long-term resident dies within 10 years of citizenship relinquishment or residency termination. This rule prevents former citizens and former long-term residents who are subject to the alternative tax regime from avoiding U.S. estate tax through the expedient of transferring U.S.-situated assets to a foreign corporation (subject to income tax on any appreciation under section 367). In addition, under the alternative tax regime, the individual is subject to gift tax on gifts of U.S.-situated intangibles, such as U.S. stock, made during the 10 years following citizenship relinquishment or residency termination.

Anti-abuse rules are provided to prevent circumvention of the alternative tax regime through conversion of U.S.-source income or property to foreign-source income or property. Thus, the alternative tax regime applies to foreign property acquired in nonrecognition transactions. Amounts earned by former citizens and former long-

term residents through controlled foreign corporations are subject to the alternative tax regime. The 10-year liability period is suspended during any time at which a former citizen's or former long-term resident's risk of loss with respect to property subject to the alternative tax regime is substantially diminished, among other measures.

Individuals subject to the alternative tax regime are required to provide certain tax information, including tax identification numbers, upon relinquishment of citizenship or termination of residency. The penalty for failure to provide the required tax information is the greater of $1,000 or five percent of the tax imposed under the alternative tax regime for the year. In addition, the U.S. Department of State and other governmental agencies are required to provide this information to the IRS.

Under present law, U.S. citizens who relinquish citizenship and long-term residents who terminate residency generally are required to provide information about their assets held at the time of their citizenship relinquishment or residency termination. If the collective fair market value of the former citizen's or former long-term resident's assets exceeds $500,000, then detailed information about the individual's assets must be provided. However, this information generally is required to be provided only once.

Former citizens and former long-term residents who are subject to the alternative tax regime also are required to file annual income tax returns, but only in the event that they owe U.S. Federal income tax. If a tax return is required, the former citizen or former long-term resident is required to provide the IRS with a statement setting forth (generally by category) all items of U.S.-source and foreign-source gross income, but no detailed information with respect to all assets held by the individual.

REASONS FOR CHANGE

One of the major difficulties in administering the present-law alternative tax regime is that the IRS is required to determine the subjective intent of taxpayers who relinquish citizenship or terminate residency. The present-law presumption of a tax-avoidance purpose in cases in which objective income tax liability or net worth thresholds are exceeded mitigates this problem to some extent. However, the present-law rules still require the IRS to make subjective determinations of intent in cases involving taxpayers who fall below these thresholds, as well for certain taxpayers who exceed these thresholds but are nevertheless allowed to seek a ruling from the IRS to the effect that they did not have a principal purpose of tax avoidance. The Committee believes that the replacement of the subjective determination of tax avoidance as a principal purpose for citizenship relinquishment or residency termination with objective rules will result in easier administration of the tax regime for individuals who relinquish their citizenship or terminate residency.[28]

Although individuals who relinquish their citizenship or terminate their residency are required to provide tax information statements (e.g., IRS Form 8854), difficulties have been encountered in

[28] These provisions reflect recommendations contained in Joint Committee on Taxation, Review of the Present Law Tax and Immigration Treatment of Relinquishment of Citizenship and Termination of Long-Term Residency, (JCS–2–03), February 2003.

enforcing this requirement, and in many cases the IRS does not receive timely information that it needs to administer the alternative tax regime. In these cases, an individual may become a non-resident non-citizen of the United States for Federal tax purposes—and enjoy reductions in U.S. taxes from such tax status—despite failing to provide the tax information statements necessary for the IRS to monitor and enforce compliance with the alternative tax regime. Thus, the Committee believes that the tax benefits of citizenship relinquishment or residency termination should be denied unless and until the information necessary for the IRS to enforce the alternative tax regime is provided.

Individuals who relinquish citizenship or terminate residency for tax reasons often do not want to fully sever their ties with the United States. In other words, they hope to retain some of the benefits of citizenship or residency without being subject to the U.S. tax system as a citizen or U.S. resident. These individuals generally may continue to spend significant amounts of time in the United States following citizenship relinquishment or residency termination—approximately four months every year—without being treated as a U.S. resident. The Committee believes that provisions in the bill that impose full U.S. taxation if the individual is present in the United States for more than 30 days in a calendar year will substantially reduce the incentives to relinquish citizenship or terminate residency for individuals who desire to maintain significant ties to the United States.

The Committee is concerned that the present-law estate and gift tax rules under the alternative tax regime do not adequately address opportunities for avoidance of tax on the value of assets held by a foreign corporation whose stock the individual transfers. Thus, the Committee bill imposes gift tax under the alternative tax regime in the case of gifts of certain stock of a closely held foreign corporation.

The Committee believes that the present-law information-reporting and return-filing provisions under the alternative tax regime fail to provide the IRS sufficient information to enable it to monitor effectively the compliance of former citizens and former long-term residents. The Committee bill consequently adds a reporting requirement and a penalty for failure to comply with the reporting requirement.

EXPLANATION OF PROVISION

In general

The provision provides: (1) objective standards for determining whether former citizens or former long-term residents are subject to the alternative tax regime; (2) tax-based (instead of immigration-based) rules for determining when an individual is no longer a U.S. citizen or long-term resident for U.S. Federal tax purposes; (3) the imposition of full U.S. taxation for individuals who are subject to the alternative tax regime and who return to the United States for extended periods; (4) imposition of U.S. gift tax on gifts of stock of certain closely-held foreign corporations that hold U.S.-situated property; and (5) an annual return-filing requirement for individuals who are subject to the alternative tax regime, for each of the

10 years following citizenship relinquishment or residency termination.

Objective rules for the alternative tax regime

The provision replaces the subjective determination of tax avoidance as a principal purpose for citizenship relinquishment or residency termination under present law with objective rules.[29] Under the provision, a former citizen or former long-term resident would be subject to the alternative tax regime for a 10-year period following citizenship relinquishment or residency termination, unless the former citizen or former long-term resident: (1) establishes that his or her average annual net income tax liability for the five preceding years does not exceed $122,000 (adjusted for inflation after 2003) and his or her net worth does not exceed $2 million, or alternatively satisfies limited, objective exceptions for dual citizens and minors who have had no substantial contact with the United States; and (2) certifies under penalties of perjury that he or she has complied with all U.S. Federal tax obligations for the preceding five years and provides such evidence of compliance as the Secretary of the Treasury may require.

The monetary thresholds under the provision replace the present-law inquiry into the taxpayer's intent. In addition, the provision eliminates the present-law process of IRS ruling requests.

The alternative tax regime does not apply to a former citizen who is a dual citizen or a minor with no substantial contacts with the United States prior to relinquishing citizenship. These exceptions for dual citizens and minors retain the present-law definitions of such individuals found in sections 877(c)(2)(A) and 877(c)(2)(C). If a former citizen or former long-term resident exceeds the monetary thresholds, that person is excluded from the alternative tax regime if he or she falls within one of the specified exceptions (provided that the requirement of certification and proof of compliance with Federal tax obligations is met). These exceptions provide relief to individuals who have never had any substantial connections with the United States, as measured by certain objective criteria, and eliminate IRS inquiries as to the subjective intent of such taxpayers.

In order to be excepted from the application of the alternative tax regime under the provision, whether by reason of falling below the net worth and income tax liability thresholds or qualifying for the dual-citizen or minor exceptions, the former citizen or former long-term resident also is required to certify, under penalties of perjury, that he or she has complied with all U.S. Federal tax obligations for the five years preceding the relinquishment of citizenship or termination of residency and to provide such documentation as the Secretary of the Treasury may require evidencing such compliance (*e.g.*, tax returns, proof of tax payments). Until such time, the individual remains subject to the alternative tax regime. It is intended that the IRS should continue to verify that the information submitted was accurate, and it is intended that the IRS should randomly audit such persons to assess compliance.

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[29] Section 877(a).

Termination of U.S. citizen or long-term resident status for U.S. Federal income tax purposes

Under the provision, an individual continues to be treated as a U.S. citizen or long-term resident for U.S. Federal tax purposes, including for purposes of section 7701(b)(10), until the individual: (1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, respectively; and (2) files a complete and accurate tax information statement with the IRS.

Sanction for individuals subject to the individual tax regime who return to the United States for extended periods

The provision provides that a former citizen or former long-term resident who is subject to the alternative tax regime and who is present in the United States for more than 30 days in any calendar year during the 10-year period following citizenship relinquishment or residency termination is treated as a U.S. resident for that calendar year and thus is subject to U.S. Federal income tax on a worldwide basis.

Similarly, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any year during the 10-year period following citizenship relinquishment or residency termination, and the individual dies during that year, he or she is treated as U.S. resident, and the individual's worldwide estate is subject to U.S. estate tax. Likewise, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any year during the 10-year period following citizenship relinquishment or residency termination, the individual is subject to U.S. gift tax on any transfer of his or her worldwide assets by gift during that year.

For purposes of these rules, an individual is treated as present in the United States on any day if such individual is physically present in the United States at any time during that day, with no exceptions. The present-law exceptions from being treated as present in the United States for residency purposes [30] do not apply for this purpose.

Imposition of gift tax with respect to stock of certain closely held foreign corporations

The provision provides that gifts of stock of certain closely-held foreign corporations by a former citizen or former long-term resident who is subject to the alternative tax regime are subject to gift tax, if the gift is made within the 10-year period after citizenship relinquishment or residency termination. The gift tax rule applies if: (1) the former citizen or former long-term resident, before making the gift, directly or indirectly owns 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation; and (2) directly or indirectly, is considered to own more than 50 percent of (a) the total combined voting power of all classes of stock entitled to vote in the foreign corporation, or (b) the total value of the stock of such corporation. If this stock ownership test is met, then taxable gifts of the former citizen

[30] Sections 7701(b)(3)(D), 7701(b)(5) and 7701(b)(7)(B)–(D).

or former long-term resident include that proportion of the fair market value of the foreign stock transferred by the individual, at the time of the gift, which the fair market value of any assets owned by such foreign corporation and situated in the United States (at the time of gift) bears to the total fair market value of all assets owned by such foreign corporation (at the time of gift).

This gift tax rule applies to a former citizen or former long-term resident who is subject to the alternative tax regime and who owns stock in a foreign corporation at the time of the gift, regardless of how such stock was acquired (*e.g.*, whether issued originally to the donor, purchased, or received as a gift or bequest).

Annual return

The provision requires former citizens and former long-term residents to file an annual return for each year following citizenship relinquishment or residency termination in which they are subject to the alternative tax regime. The annual return is required even if no U.S. Federal income tax is due. The annual return requires certain information, including information on the permanent home of the individual, the individual's country of residency, the number of days the individual was present in the United States for the year, and detailed information about the individual's income and assets that are subject to the alternative tax regime.

Former citizens and former long-term residents who are subject to the alternative tax regime are required to provide annual income and balance sheet information on their U.S. assets, as well as foreign assets that are subject to U.S. tax under the alternative tax regime. This requirement includes information relating to foreign stock potentially subject to the special estate tax rule of section 2107(b) and the gift tax rules of this provision.

If the individual fails to file the statement in a timely manner or fails correctly to include all the required information, the individual is required to pay a penalty of $5,000. The $5,000 penalty does not apply if it is shown that the failure is due to reasonable cause and not to willful neglect.

EFFECTIVE DATE

The provisions apply to individuals who relinquish citizenship or terminate long-term residency after February 27, 2003.

B. Add Vaccines Against Hepatitis A 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 [31] on the following vaccines routinely recommended for administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, varicella (chicken pox), rotavirus gastroenteritis, and streptococcus pneumoniae. The tax applied to any vaccine that is a com-

[31] Sec. 4131

bination 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

The Committee is aware that the Centers for Disease Control and Prevention have recommended that children in 17 highly endemic States be inoculated with a hepatitis A vaccine. The population of children in the effected States exceeds 20 million. Several of the effected States mandate childhood vaccination against hepatitis A. The Committee is aware that the Advisory Commission on Childhood Vaccines has recommended that the vaccine excise tax be extended to cover vaccines against hepatitis A. For these reasons, the Committee believes it is appropriate to include vaccines against hepatitis A as part of the Vaccine Injury Compensation Program. Making the hepatitis A vaccine taxable is a first step.[32] In the unfortunate event of an injury related to this vaccine, families of injured children are eligible for the no-fault arbitration system established under the Vaccine Injury Compensation Program rather than going to Federal Court to seek compensatory redress.

EXPLANATION OF PROVISION

The bill adds any vaccine against hepatitis A to the list of taxable vaccines. The bill also makes a conforming amendment to the trust fund expenditure purposes.

EFFECTIVE DATE

The provision is effective for vaccines sold beginning on the first day of the first month beginning more than four weeks after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII 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. 878.

MOTION TO REPORT THE BILL

The bill, H.R. 878, as amended, was ordered favorably reported by voice vote (with a quorum being present).

[32] The Committee recognizes that, to become covered under the Vaccine Injury Compensation Program, the Secretary of Health and Human Services also must list the hepatitis A vaccine on the Vaccine Injury Table.

VOTES ON AMENDMENTS

A roll call vote was conducted on the following amendments to the Chairman's amendment in the nature of a substitute.

An amendment by Mrs. Johnson, which would strengthen current law by providing an objective test to determine if a U.S. citizen renounced their citizenship or a long-term resident terminated their residency for tax avoidance reasons, was agreed to by a roll call vote of 40 yeas to 0 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel	X		
Mr. Crane	X			Mr. Stark	X		
Mr. Shaw	X			Mr. Matsui	X		
Mrs. Johnson	X			Mr. Levin	X		
Mr. Houghton	X			Mr. Cardin	X		
Mr. Herger	X			Mr. McDermott	X		
Mr. McCrery	X			Mr. Kleczka	X		
Mr. Camp	X			Mr. Lewis (GA)	X		
Mr. Ramstad	X			Mr. Neal	X		
Mr. Nussle	X			Mr. McNulty			
Mr. Johnson	X			Mr. Jefferson	X		
Ms. Dunn	X			Mr. Tanner	X		
Mr. Collins	X			Mr. Becerra	X		
Mr. Portman	X			Mr. Doggett	X		
Mr. English	X			Mr. Pomeroy	X		
Mr. Hayworth	X			Mr. Sandlin	X		
Mr. Weller	X			Ms. Tubbs Jones	X		
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						
Mr. Cantor	X						

An amendment by Mr. Herger, which would allow payment of dividends on stock of cooperatives without reducing patronage dividends, was agreed to by a roll call vote of 22 yeas to 16 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel		X	
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw				Mr. Matsui		X	
Mrs. Johnson	X			Mr. Levin		X	
Mr. Houghton	X			Mr. Cardin		X	
Mr. Herger	X			Mr. McDermott		X	
Mr. McCrery	X			Mr. Kleczka		X	
Mr. Camp	X			Mr. Lewis (GA)		X	
Mr. Ramstad				Mr. Neal		X	
Mr. Nussle		X		Mr. McNulty			
Mr. Johnson	X			Mr. Jefferson		X	
Ms. Dunn	X			Mr. Tanner		X	
Mr. Collins	X			Mr. Becerra		X	
Mr. Portman	X			Mr. Doggett		X	
Mr. English	X			Mr. Pomeroy	X		
Mr. Hayworth	X			Mr. Sandlin		X	
Mr. Weller	X			Ms. Tubbs Jones		X	
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Cantor	X						

An amendment by Mr. McCrery, which would permit an individual to access a 65-percent health care tax credit through state-arranged pooling options, by allowing them to waive pre-existing conditions and guaranteed issue requirements, was agreed to by a roll call vote of 23 yeas to 15 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel		X	
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw	X			Mr. Matsui		X	
Mrs. Johnson	X			Mr. Levin		X	
Mr. Houghton	X			Mr. Cardin		X	
Mr. Herger	X			Mr. McDermott		X	
Mr. McCrery	X			Mr. Kleczka		X	
Mr. Camp	X			Mr. Lewis (GA)		X	
Mr. Ramstad				Mr. Neal		X	
Mr. Nussle		X		Mr. McNulty		X	
Mr. Johnson	X			Mr. Jefferson			
Ms. Dunn	X			Mr. Tanner		X	
Mr. Collins	X			Mr. Becerra		X	
Mr. Portman	X			Mr. Doggett		X	
Mr. English	X			Mr. Pomeroy	X		
Mr. Hayworth	X			Mr. Sandlin			
Mr. Weller	X			Ms. Tubbs Jones		X	
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						
Mr. Cantor	X						

An amendment by Mr. McCrery, which would correct a flaw in the tax code that prevents non-resident aliens from placing wagers on U.S. horse races as part of a merged pool of wagers, was agreed to by a roll call vote of 20 yeas to 18 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel		X	
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw		X		Mr. Matsui		X	
Mrs. Johnson	X			Mr. Levin		X	
Mr. Houghton	X			Mr. Cardin		X	
Mr. Herger	X			Mr. McDermott		X	
Mr. McCrery	X			Mr. Kleczka		X	
Mr. Camp	X			Mr. Lewis (GA)		X	
Mr. Ramstad				Mr. Neal		X	
Mr. Nussle		X		Mr. McNulty		X	
Mr. Johnson	X			Mr. Jefferson		X	
Ms. Dunn	X			Mr. Tanner		X	
Mr. Collins	X			Mr. Becerra			
Mr. Portman	X			Mr. Doggett		X	
Mr. English	X			Mr. Pomeroy		X	
Mr. Hayworth	X			Mr. Sandlin		X	
Mr. Weller	X			Ms. Tubbs Jones		X	
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Cantor							

An ammendment by Mr. McDcDermott, which would add Peace Corps personnel to the list of members who could use a special rule to determine the exclusion of gain from the sale of a principal residence, was agreed to by a roll call vote of 24 yeas to 12 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui			
Mrs. Johnson	X			Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger				Mr. McDermott	X		
Mr. McCrery	X			Mr. Kleczka	X		
Mr. Camp	X			Mr. Lewis (GA)	X		
Mr. Ramstad	X			Mr. Neal	X		
Mr. Nussle		X		Mr. McNulty	X		
Mr. Johnson		X		Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner			
Mr. Collins		X		Mr. Becerra			
Mr. Portman	X			Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy	X		
Mr. Hayworth		X		Mr. Sandlin	X		
Mr. Weller		X		Ms. Tubbs Jones	X		
Mr. Hulshof		X					
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady		X					
Mr. Ryan	X						
Mr. Cantor							

Mr. Neal offered an amendment that would add a new section to disregard for U.S. tax purposes corporate expatriation transactions completed after September 11, 2001. Corporations that completed expatriation transactions on or before September 11, 2001, would be taxed as U.S. corporations beginning after December 31, 2003. This amendment was defeated by a roll call vote of 15 yeas to 19 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui			
Mrs. Johnson				Mr. Levin	X		
Mr. Houghton	X			Mr. Cardin	X		
Mr. Herger				Mr. McDermott			
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle	X			Mr. McNulty	X		
Mr. Johnson		X		Mr. Jefferson			
Ms. Dunn		X		Mr. Tanner	X		
Mr. Collins		X		Mr. Becerra			
Mr. Portman		X		Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy	X		
Mr. Hayworth		X		Mr. Sandlin			
Mr. Weller		X		Ms. Tubbs Jones	X		
Mr. Hulshof		X					
Mr. McInnis	X						
Mr. Lewis (KY)		X					

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					
Mr. Cantor		X					

An amendment by Mr. Neal that would add a new section to disregard for U.S. tax purposes corporate expatriation transactions completed after September 11, 2001, was defeated by a roll call vote of 14 yeas to 21 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui			
Mrs. Johnson	X			Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger				Mr. McDermott			
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle	X			Mr. McNulty	X		
Mr. Johnson		X		Mr. Jefferson			
Ms. Dunn		X		Mr. Tanner	X		
Mr. Collins		X		Mr. Becerra			
Mr. Portman		X		Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy	X		
Mr. Hayworth		X		Mr. Sandlin			
Mr. Weller		X		Ms. Tubbs Jones	X		
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					
Mr. Cantor		X					

IV. BUDGET EFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 878 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2003–2008:

ESTIMATED BUDGET EFFECTS OF H.R. 878, THE ''ARMED FORCES TAX FAIRNESS ACT OF 2003,'' AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 2003–2008, in millions of dollars]

Provision	Effective	2003	2004	2005	2006	2007	2008	2003–08
Improving tax equity for Military Personnel:								
1. Exclusion of gain on sale of a principal residence by a member of the uniformed services, the foreign service, or the Peace Corp.	soea 5/6/97	−66	−13	−14	−14	−15	−16	−140
2. Exclusion from gross income of certain death gratuity payments	doa 9/10/01	−1	−1	−1	−1	−1	−1	−6
3. Exclusion for amounts received under Department of Defense Homeowners Assistance Program.	pma DOE	[1]	−2	−2	−2	−2	−2	−11
4. Expansion of combat zone filing rules to contingency operations	(2)	−9	(1)	(1)	(1)	(1)	−1	−11
5. modification of membership requirement for exemption from tax for certain veterans' organizations.	tyba DOE	−1	−1	−1	−1	−2	−2	−8
6. Clarification of treatment of certain dependent care assistance programs provided to members of the uniformed services of the United States.	tyba 12/31/02			No Revenue Effect				
7. Treatment of service academy appointments as scholarships for purposes of qualified tuition programs and Coverdell Education Savings Accounts.	tyba 12/31/02	(1)	(1)	(1)	(1)	(1)	(1)	−1
8. Suspension of tax-exempt status of designated terrorist organizations	(3)			Negligible Revenue Effect				
9. Above-the-line deduction of up to $500 for overnight travel expenses of National Guard and reserve members traveling more than 100 miles from home.	apoia 12/31/02	−4	−19	−19	−19	−19	−19	−96
Total of Improving Tax Equity for Military Personnel		−81	−36	−37	−37	−39	−41	−273
Miscellaneous Provisions:								
1. Tax relief and assistance for families of astronauts who lose their lives on a space mission.	(4)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
2. Coordinate farmers income averaging and the alternative minimum tax	tyba 12/31/02	(1)	−2	−2	−2	−3	−4	−13
3. Capital gain treatment under section 631(b) to apply to outright sales by landowners	sota DOE			Negligible Revenue Effect				
4. Special rules for livestock sold on account of weather-related conditions—Increase reinvestment period from 2 to 4 years for involuntary conversion of livestock due to result of drought, floor, or other weather-related conditions.	trda 12/31/02			−18	−7	−4	−3	−32
5. Simplification of excise taxes imposed on bows and arrows	asbmpoi 90da DOE	−1	−1	−1	−1	−1	−1	−4
6. Repeal excise tax on fishing tackle boxes	30da DOE	−1	−3	−3	−3	−3	−3	−17
7. Btu-based rate for diesel/water emulsion fuel	fra 9/30/03	(1)	(1)	(1)	(1)	(1)	(1)	(1)
8. Expand of human clinical trials expenses qualifying for the orphan drug tax credit	epoia DOE	−6	−15	−16	−16	−17	−18	−88
9. Consumer options under the refundable credit for health insurance costs of eligible individuals.	before 1/1/05	−4	−40	−13				−57
10. Modify at-risk rules publicly traded nonrecourse debt	diia DOE	−1	−2	−3	−5	−6	−8	−25

11. Exclusion of certain horse-racing gambling winnings from the income of nonresident noncitizen individuals.	wta 9/30/03	.....	−1	−2	−2	−2	−2	−10
12. Payment of dividends on stock of cooperatives without reducing patronage dividends	dmi tyba DOE	[1]	[1]	[1]	−1	−1	−1	−3
13. Pilot project for forest conservation activities	oia DOE	14	12	−18	−18	−13	−10	−34
14. No impact on Social Security Trust Funds	DOE	No Revenue Effect						
Total of Miscellaneous Provisions	.....	1	−52	−76	−55	−50	−50	−283
Revenue Provisions:								
1. Modification of the tax treatment of citizenship relinquishment and residency termination.	[5]	3	16	18	21	24	28	110
2. Add Hepatitis A to the list of taxable vaccines	[6]	3	8	9	9	9	9	45
Total of Revenue Provisions	.....	6	24	27	30	33	37	155
Net total	.....	−74	−64	−86	−62	−56	−54	−401

[1] Loss of less than $500,000

[2] The provision applies to any period for performing an act that has not expired before the date of enactment.

[3] Effective for organizations that are designated or identified as a terrorist organization before, on, or after the date of enactment.

[4] Generally effective for qualified individuals whose lives are lost in the line of duty after December 31, 2002.

[5] Effective for individuals who relinquish citizenship or terminate long-term residency after February 27, 2003.

[6] Effective for vaccines sold beginning on the first day of the first month beginning more than four weeks after the date of enactment.

Legend for ''Effective'' column: apola=amounts paid or incurred after; asbmpoi=articles sold by the manufacturer, producer, or importer; diia=debt instruments issued after; dmi=distributions made in; doa=deaths occurring after; DOE=date of enactment; ecmba=eligible coverage months beginning after; epola=expenditures paid or incurred after; fra=fuel removed after; oia=obligations issued after; pma=payments made after; soea=sales or exchanges after; sota=sales of timber after; trda=tax returns due after; tyba=taxable years beginning after; wta=wagering transactions after; 30da=30 days after; 90da=90 days after.

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

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue reducing income tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 5, 2003.

Hon. William "Bill" M. Thomas,
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. 878, the Armed Forces Tax Fairness Act of 2003.

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

Sincerely,

Douglas Holtz-Eakin,
Director.

Enclosure.

H.R. 878—Armed Forces Tax Fairness Act of 2003

Summary: H.R. 878, the Armed Forces Tax Fairness Act of 2003, would raise the exclusion for death gratuity payments for the military and provide military and foreign service homeowners with relief from capital gains taxes. In addition, the bill would provide individual taxpayers serving in the National Guard and Reserve with a deduction for up to $500 dollars of certain overnight travel expenses, including meals and overnight lodging, incurred while attending National Guard and Reserve meetings. The bill contains several miscellaneous provisions that would also reduce revenues. In addition, the bill would raise revenue by modifying the tax treatment of individuals who expatriate and by adding Hepatitis A to the list of taxable vaccines. H.R. 878 would increase on-budget federal outlays and reduce off-budget outlays by the same amounts by requiring a new general fund payment to the Social Security trust funds to replace any loss of payroll taxes that would result from the bill.

The Joint Committee on Taxation (JCT) estimates that enacting the bill would reduce revenues by $74 million in 2003, by $401 million over the 2003–2008 period, and by $615 million over the 2003–2013 period. CBO estimates that the bill would have no effect on total direct spending, but it would both increase on-budget direct spending and decrease off-budget direct spending by $5 million

over the 2003–2008 period, and by $10 million over the 2003–2013 period.

JCT has determined that the bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), and would not affect the budgets of state, local, or tribal governments. JCT has also determined that the provision revising the alternative tax regime for individuals who expatriate contains a private-sector mandate. The total cost of complying with the mandate would not exceed the threshold established by UMRA ($117 million in 2003, adjusted annually for inflation).

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 878 is shown in the following table.

	By fiscal year, in millions of dollars					
	2003	2004	2005	2006	2007	2008
CHANGES IN REVENUES						
Tax relief from capital gains for military and foreign service homeowners	−66	−13	−14	−14	−15	−16
Above-the-line deduction for up to $500 of overnight travel expenses	−4	−19	−19	−19	−19	−19
Other tax relief for military personnel	−11	−4	−4	−4	−5	−6
Expansion of human clinical trials expenses qualifying for orphan drug tax credit	−6	−15	−16	−16	−17	−18
Modification of tax treatment of individuals who expatriate	3	16	18	21	24	28
Add Hepatitis A to the list of taxable vaccines	3	8	9	9	9	9
Other provisions	7	−37	−60	−39	−33	−32
Total changes:						
On-budget	−74	−63	−85	−61	−55	−53
Off-budget	(*)	−1	−1	−1	−1	−1
Total	−74	−64	−86	−62	−56	−54
CHANGES IN DIRECT SPENDING						
On-budget	(*)	1	1	1	1	1
Off-budget	(*)	−1	−1	−1	−1	−1
Total	0	0	0	0	0	0

Sources. CBO and the Joint Committee on Taxation.
*=Change of less than $500,000.
Details do not add to totals due to rounding.

Basis of Estimate

Revenues

All estimates were provided by JCT. A number of provisions would reduce revenues if enacted, and two would increase revenues. All together, the bill's provisions would reduce revenues by $74 million in 2003, by $401 million over the 2003–2008 period, and by $615 million over the 2003–2013 period.

H.R. 878 contains nine provisions intended to provide tax relief for military personnel, seven of which would reduce federal receipts. Most of the reduction in revenues would occur from the provisions providing military and foreign service homeowners relief from taxation of capital gains and reservists with a deduction allowance for up to $500 of travel expenses. The deduction for qualifying travel expenses would be "above the line." Such deductions are statutorily allowed subtractions from gross income that are used to compute adjusted gross income and may be taken by both taxpayers who itemize their deductions and those who do not.

Other tax relief for military personnel includes provisions that would raise the exclusion for death gratuity payments for individuals in the military, provide an exclusion for amounts received under the Department of Defense (DOD) Homeowners Assistance Program, expand combat zone filing rules to include contingency operations, extend section 501(c)(19) membership to certain relatives of military personnel, and permit service academy appointments to be treated as scholarships for certain purposes. As estimated by JCT, all of these provisions together would reduce revenues by $81 million in 2003, by $273 million over the 2003–2008 period, and by $482 million over the 2003–2013 period. A small portion of those reductions would apply to off-budget receipts. The exclusion for amounts received under the Homeowners Assistance Program would reduce off-budget receipts by $5 million over the 2003–2008 period and by $10 million over the 2003–2013 period.

In addition to the above provisions intended to provide tax relief for military personnel, H.R. 878 contains fourteen other miscellaneous provisions that would also affect federal receipts. Of these, the provision expanding human clinical trials that qualify for the orphan drug tax credit would have the largest effect on revenues. JCT estimates that, together, these miscellaneous provisions would decrease revenues by $283 million over the 2003–2008 period and by $552 million over the 2003–2013 period.

Two other provisions contained in H.R. 878 would both increase revenues. JCT estimates that these provisions, which would modify the tax treatment of individuals who expatriate and add Hepatitis A to the list of taxable vaccines, would increase revenues by $6 million in 2003, by $155 million over the 2003–2008 period, and by $419 million over the 2003–2013 period.

Direct spending

Section 214 of the bill would require that amounts transferred to the Social Security trust funds be determined as if H.R. 878 were not enacted. The Treasury Department transfers the estimated amount of payroll tax collections to the trust funds as the withholding payments are received. CBO and JCT estimate that providing an exclusion for amounts received under the Department of Defense Homeowners Assistance Program would reduce Social Security revenues by $1 million in each of the years from 2004 through 2013. Therefore, CBO estimates that comparable amounts would be transferred to the Social Security trust funds during those years as a result of section 214. Those transfers would be recorded as on-budget outlays and off-budget receipts.

Effect on revenues and direct spending: The overall effect of H.R. 878 on on-budget revenues and direct spending is shown in the table below.

	By fiscal year, in millions of dollars										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in receipts ...	−74	−63	−85	−61	−55	−53	−51	−48	−38	−35	−38
Changes in outlays	0	1	1	1	1	1	1	1	1	1	1

Sources: CBO and the Joint Committee on Taxation.

Estimated impact on State, Local and Tribal Governments: JCT has determined that the bill contains no intergovernmental man-

dates as defined in UMRA, and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: JCT has determined that the provision revising the alternative tax regime for individuals who expatriate contains a private-sector mandate. The total cost of complying with the mandate would not exceed the threshold established by UMRA ($117 million in 2003, adjusted annually for inflation).

Previous CBO estimate: On February 10, 2003, CBO transmitted a cost estimate for the Armed Forces Tax Fairness Act of 2003, as ordered reported by the Senate Committee on Finance. That version of the bill would reduce increase revenues by $6 million over the 2003–2013 period, whereas the Committee on Ways and Means' version of the bill has an estimated revenue loss of $615 million over the same period. A major difference is the inclusion of additional revenue-reducing provisions in the Ways and Means' version. Another significant difference is the inclusion of several revenue-raising provisions in the Finance Committee's version, namely the extension of IRS user fees and imposition of a mark-to-market tax on individuals who expatriate. The Ways and Means' version imposes a more limited penalty for expatriation.

Estimate prepared by: Annie Bartsch.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

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

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax burden on military personnel that the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII 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 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises. . . "), 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 bill contains one Federal mandate on the private sector—the revisions to the alternative tax regime for individuals who expatriate. The costs required to comply with the private sector mandate generally are no greater than the aggregate estimated budget effects of the provision as reflected in Part IV.A., above. Benefits from the provision include improved administration of the tax laws and a more accurate measurement of income for Federal income tax purposes. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." 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 increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

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

In compliance with clause 3(e) 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 omit-

ted 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. 5. CROSS REFERENCES RELATING TO TAX ON INDIVIDUALS.

(a) * * *

(b) SPECIAL LIMITATIONS ON TAX.—

(1) For limitation on tax in case of income of members of Armed Forces*, astronauts,* and victims of certain terrorist attacks on death, see section 692.

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart C—Refundable Credits

* * * * * * *

SEC. 35. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) * * *

* * * * * * *

(e) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

(1) * * *

(2) REQUIREMENTS FOR STATE-BASED COVERAGE.—

(A) * * *

* * * * * * *

(C) WAIVER BY ELIGIBLE INDIVIDUALS.—With respect to any month which ends before January 1, 2005, this paragraph shall not apply with respect to any eligible individual and such individual's qualifying family members if such eligible individual elects to waive the application of this paragraph with respect to such month.

* * * * * * *

Subpart D—Business Related Credits

* * * * * * *

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) * * *

(2) CLINICAL TESTING.—

(A) * * *

* * * * * * *

(C) TREATMENT OF CERTAIN EXPENSES INCURRED BEFORE DESIGNATION.—For purposes of subparagraph (A)(ii)(I), if a drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act not later than the due date (including extensions) for filing the return of tax under this subtitle for the taxable year in which the application for such designation of such drug was filed, such drug shall be treated as having been designated on the date that such application was filed.

* * * * * * *

PART VI—MINIMUM TAX FOR TAX PREFERENCES

* * * * * * *

SEC. 55. ALTERNATIVE MINIMUM TAX IMPOSED.

(a) * * *

* * * * * * *

(c) REGULAR TAX.—

(1) * * *

(2) COORDINATION WITH INCOME AVERAGING FOR FARMERS.—Solely for purposes of this section, section 1301 (relating to averaging of farm income) shall not apply in computing the regular tax.

[(2)**]** *(3)* CROSS REFERENCES.—

For provisions providing that certain credits are not allowable against the tax imposed by this section, see sections 26(a), 29(b)(6), 30(b)(3) and 38(c).

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

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

* * * * * * *

SEC. 62. ADJUSTED GROSS INCOME DEFINED.

(a) GENERAL RULE.—For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) * * *

(2) CERTAIN TRADE AND BUSINESS DEDUCTIONS OF EMPLOYEES.—

(A) * * *

* * * * * * *

(E) CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, not in excess of $500, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

* * * * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

* * * * * * *

SEC. 101. CERTAIN DEATH BENEFITS.

(a) * * *

* * * * * * *

(i) CERTAIN EMPLOYEE DEATH BENEFITS PAYABLE BY REASON OF DEATH OF CERTAIN TERRORIST VICTIMS *OR ASTRONAUTS*.—

(1) * * *

* * * * * * *

(4) RELIEF WITH RESPECT TO ASTRONAUTS.—The provisions of this subsection shall apply to any astronaut whose death occurs while on a space mission.

* * * * * * *

SEC. 121. EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.

(a) * * *

* * * * * * *

(d) SPECIAL RULES.—

(1) * * *

* * * * * * *

(10) MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE AND PEACE CORPS VOLUNTEERS AND EMPLOYEES.—

(A) IN GENERAL.—At the election of an individual with respect to a property, the running of the 5-year period referred to in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty as a member of the uniformed services or of the Foreign Service or as a Peace Corps volunteer or an employee of the Peace Corps.

(B) MAXIMUM PERIOD OF SUSPENSION.—Such 5-year period shall not be extended more than 5 years by reason of subparagraph (A).

(C) QUALIFIED OFFICIAL EXTENDED DUTY.—For purposes of this paragraph—

(i) IN GENERAL.—The term "qualified official extended duty" means any extended duty while serving at a duty station which is at least 150 miles from such property or while residing under Government orders in Government quarters.

(ii) UNIFORMED SERVICES.—The term "uniformed services" has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

(iii) FOREIGN SERVICE.—The term "member of the Foreign Service" has the meaning given the term "member of the Service" by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

(iv) EXTENDED DUTY.—The term "extended duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 180 days or for an indefinite period.

(v) RULES RELATING TO THE PEACE CORPS.—

(I) EXTENDED DUTY.—In the case of a Peace Corps volunteer, the term "extended duty" means any period of active duty assigned to a Peace Corps volunteer under the Peace Corps Act for a period in excess of 180 days or for an indefinite period.

(II) PEACE CORPS VOLUNTEER.—The term "Peace Corps volunteer" means an individual enrolled as a volunteer or volunteer leader under the Peace Corps Act.

(III) EMPLOYEE OF THE PEACE CORPS.—The term "employee of the Peace Corps" means a person employed in the Peace Corps under section 7 of the Peace Corps Act.

(IV) REFERENCES TO PEACE CORPS ACT.—References in this clause to the Peace Corps Act mean references to the Peace Corps Act (22 U.S.C. 2501 et seq.) as in effect on the date of the enactment of this clause.

(D) SPECIAL RULES RELATING TO ELECTION.—

(i) ELECTION LIMITED TO 1 PROPERTY AT A TIME.—An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

(ii) REVOCATION OF ELECTION.—An election under subparagraph (A) may be revoked at any time.

* * * * * * *

SEC. 132. CERTAIN FRINGE BENEFITS.

(a) EXCLUSION FROM GROSS INCOME.—Gross income shall not include any fringe benefit which qualifies as a—

(1) * * *

* * * * * * *

(6) qualified moving expense reimbursement, [or]
(7) qualified retirement planning services[.], *or*
(8) qualified military base realignment and closure fringe.

* * * * * * *

(n) QUALIFIED MILITARY BASE REALIGNMENT AND CLOSURE FRINGE.—

(1) IN GENERAL.—For purposes of this section, the term "qualified military base realignment and closure fringe" means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of this subsection).

(2) LIMITATION.—With respect to any property, such term shall not include any payment referred to in paragraph (1) to the extent that the sum of all such payments related to such property exceeds the amount described in clause (1) of subsection (c) of such section (as in effect on such date).

[(n)] *(o)* REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

* * * * * * *

SEC. 134. CERTAIN MILITARY BENEFITS.

(a) * * *

(b) QUALIFIED MILITARY BENEFIT.—For purposes of this section—

(1) * * *

* * * * * * *

(3) LIMITATIONS ON MODIFICATIONS.—

(A) IN GENERAL.—Except as provided in [subparagraph (B)] *subparagraphs (B) and (C) and paragraph (4)*, no modification or adjustment of any qualified military benefit after September 9, 1986, shall be taken into account.

* * * * * * *

(C) EXCEPTION FOR DEATH GRATUITY ADJUSTMENTS MADE BY LAW.—Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted before December 31, 1991.

(4) CLARIFICATION OF CERTAIN BENEFITS.—For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).

* * * * * * *

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

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SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) * * *

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(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of

subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such services.

[(p)] *(q)* CROSS REFERENCES.—

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

* * * * * * *

Subchapter E—Accounting Periods and Methods of Accounting

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PART II—METHODS OF ACCOUNTING

* * * * * * *

Subpart B—Taxable Year for Which Items of Gross Income Included

* * * * * * *

SEC. 451. GENERAL RULE FOR TAXABLE YEAR OF INCLUSION.

(a) * * *

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(e) SPECIAL RULE FOR PROCEEDS FROM LIVESTOCK SOLD ON ACCOUNT OF DROUGHT, FLOOD, OR OTHER WEATHER-RELATED CONDITIONS

(1) * * *

* * * * * * *

(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.

* * * * * * *

Subpart C—Taxable Year for Which Deductions Taken

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SEC. 465. DEDUCTIONS LIMITED TO AMOUNT AT RISK.

(a) * * *

(b) AMOUNTS CONSIDERED AT RISK.—

(1) * * *

* * * * * * *

(6) QUALIFIED NONRECOURSE FINANCING TREATED AS AMOUNT AT RISK.—For purposes of this section—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, in the case of an activity of holding real property, a taxpayer shall be considered at risk with respect to the taxpayer's [share of any qualified nonrecourse financing which is secured by real property used in such activity.] *share of—*

(i) any qualified nonrecourse financing which is secured by real property used in such activity, and

(ii) any other financing which—

(I) would (but for subparagraph (B)(ii)) be qualified nonrecourse financing,

(II) is qualified publicly traded debt, and

(III) is not borrowed by the taxpayer from a person described in subclause (I), (II), or (III) of section 49(a)(1)(D)(iv).

* * * * * * *

(F) QUALIFIED PUBLICLY TRADED DEBT.—For purposes of subparagraph (A), the term "qualified publicly traded debt" means any debt instrument which is readily tradable on an established securities market. Such term shall not include any debt instrument which has a yield to maturity which equals or exceeds the limitation in section 163(i)(1)(B).

* * * * * * *

Subchapter F—Exempt Organizations

* * * * * * *

PART I—GENERAL RULE

* * * * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) * * *

* * * * * * *

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) * * *

* * * * * * *

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) * * *

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, **[**or widowers**]***, widowers, ancestors, or lineal descendants* of past or present members of the Armed Forces of the United States or of cadets, and

* * * * * * *

(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.—

(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a),

shall be suspended during the period described in paragraph (3).

(2) TERRORIST ORGANIZATIONS.—An organization is described in this paragraph if such organization is designated or otherwise individually identified—

(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

(ii) such Executive order refers to this subsection.

(3) PERIOD OF SUSPENSION.—With respect to any organization described in paragraph (2), the period of suspension—

(A) begins on the later of—

(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

(ii) the date of the enactment of this subsection, and

(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

(4) DENIAL OF DEDUCTION.—No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

(6) ERRONEOUS DESIGNATION.—

(A) IN GENERAL.—If—

(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

(ii) each designation and identification described in paragraph (2) which has been made with respect to

such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

(B) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

(7) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.

[(p)] *(q)* CROSS REFERENCE.—

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

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PART VIII—HIGHER EDUCATION SAVINGS ENTITIES

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SEC. 530. COVERDELL EDUCATION SAVINGS ACCOUNTS.

(a) * * *

* * * * * * *

(d) TAX TREATMENT OF DISTRIBUTIONS.—

(1) * * *

* * * * * * *

(4) ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR EDUCATIONAL EXPENSES.—

(A) * * *

(B) EXCEPTIONS.—Subparagraph (A) shall not apply if the payment or distribution is—

(i) * * *

* * * * * * *

(iii) made on account of a scholarship, allowance, or payment described in section 25A(g)(2) received by the account holder to the extent the amount of the payment or distribution does not exceed the amount of the scholarship, allowance, or payment, [or]

(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Ma-

rine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or

[(iv)**]** *(5)* an amount which is includible in gross income solely by application of paragraph (2)(C)(i)(II) for the taxable year.

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Subchapter I—Natural Resources

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PART III—SALES AND EXCHANGES

* * * * * * *

SEC. 631. GAIN OR LOSS IN THE CASE OF TIMBER, COAL, OR DOMESTIC IRON ORE.

(a) * * *

(b) DISPOSAL OF TIMBER **[**WITH A RETAINED ECONOMIC INTEREST**]**.—In the case of the disposal of timber held for more than 1 year before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner **[**retains an economic interest in such timber**]** *either retains an economic interest in such timber or makes an outright sale of such timber*, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. **[**The date of disposal**]** *In the case of disposal of timber with a retained economic interest, the date of disposal* of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

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Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

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PART II—INCOME IN RESPECT OF DECEDENTS

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SEC. 692. INCOME TAXES OF MEMBERS OF ARMED FORCES, *ASTRONAUTS,* AND VICTIMS OF CERTAIN TERRORIST ATTACKS ON DEATH.

(a) * * *

* * * * * * *

(d) INDIVIDUALS DYING AS A RESULT OF CERTAIN ATTACKS.—

(1) * * *

* * * * * * *

(5) RELIEF WITH RESPECT TO ASTRONAUTS.—The provisions of this subsection shall apply to any astronaut whose death occurs while on a space mission, except that paragraph (3)(B) shall be applied by using the date of the death of the astronaut rather than September 11, 2001.

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Subchapter N—Tax Based on Income from Sources Within or Without the United States

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PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

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Subpart A—Nonresident Alien Individuals

* * * * * * *

SEC. 872. GROSS INCOME.

(a) * * *

(b) EXCLUSIONS.—The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) * * *

* * * * * * *

(5) INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race in the United States.

[(5)**]** *(6)* CERTAIN RENTAL INCOME.—Income to which paragraphs (1) and (2) apply shall include income which is derived from the rental on a full or bareboat basis of a ship or ships or aircraft, as the case may be.

[(6)**]** *(7)* APPLICATION TO DIFFERENT TYPES OF TRANSPORTATION.—The Secretary may provide that this subsection be applied separately with respect to income from different types of transportation.

[(7)] *(8)* TREATMENT OF POSSESSIONS.—To the extent provided in regulations, a possession of the United States shall be treated as a foreign country for purposes of this subsection.

* * * * * * *

SEC. 877. EXPATRIATION TO AVOID TAX.

[(a) TREATMENT OF EXPATRIATES.—

[(1) IN GENERAL.—Every nonresident alien individual who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

[(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if—

[(A) the average annual net income tax (as defined in section 38(c)(1) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $100,000, or

[(B) the net worth of the individual as of such date is $500,000 or more.

In the case of the loss of United States citizenship in any calendar year after 1996, such $100,000 and $500,000 amounts shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "1994" for "1992" in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.]

(a) TREATMENT OF EXPATRIATES.—

(1) IN GENERAL.—Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(2) INDIVIDUALS SUBJECT TO THIS SECTION.—This section shall apply to any individual if—

(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $122,000,

(B) the net worth of the individual as of such date is $2,000,000 or more, or

(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the

5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2003, such $122,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "2002" for "1992" in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.

* * * * * * *

[(c) TAX AVOIDANCE NOT PRESUMED IN CERTAIN CASES.—

[(1) IN GENERAL.—Subsection (a)(2) shall not apply to an individual if—

[(A) such individual is described in a subparagraph of paragraph (2) of this subsection, and

[(B) within the 1-year period beginning on the date of the loss of United States citizenship, such individual submits a ruling request for the Secretary's determination as to whether such loss has for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B.

[(2) INDIVIDUALS DESCRIBED.—

[(A) DUAL CITIZENSHIP, ETC.—An individual is described in this subparagraph if—

[(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, or

[(ii) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship) a citizen of the country in which—

[(I) such individual was born,

[(II) if such individual is married, such individual's spouse was born, or

[(III) either of such individual's parents were born.

[(B) LONG-TERM FOREIGN RESIDENTS.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship, the individual was present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.

[(C) RENUNCIATION UPON REACHING AGE OF MAJORITY.—An individual is described in this subparagraph if the individual's loss of United States citizenship occurs before such individual attains age 18-½.

[(D) INDIVIDUALS SPECIFIED IN REGULATIONS.—An individual is described in this subparagraph if the individual is described in a category of individuals prescribed by regulation by the Secretary.]

(c) EXCEPTIONS.—

(1) IN GENERAL.—Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

(2) DUAL CITIZENS.—

(A) IN GENERAL.—An individual is described in this paragraph if—

(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

(ii) the individual has had no substantial contacts with the United States.

(B) SUBSTANTIAL CONTACTS.—An individual shall be treated as having no substantial contacts with the United States only if the individual—

(i) was never a resident of the United States (as defined in section 7701(b)),

(ii) has never held a United States passport, and

(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(3) CERTAIN MINORS.—An individual is described in this paragraph if—

(A) the individual became at birth a citizen of the United States,

(B) neither parent of such individual was a citizen of the United States at the time of such birth,

(C) the individual's loss of United States citizenship occurs before such individual attains age 18 ½, and

(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

* * * * * * *

(g) PHYSICAL PRESENCE.—This section shall not apply to any individual for any taxable year during the 10-year period referred to in subsection (a) in which such individual is present in the United States for more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States for such taxable year.

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Subpart B—Foreign Corporations

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SEC. 883. EXCLUSIONS FROM GROSS INCOME.

(a) INCOME OF FOREIGN CORPORATIONS FROM SHIPS AND AIRCRAFT.—The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) * * *

* * * * * * *

(4) SPECIAL RULES.—The rules of paragraphs **[**(5), (6), and (7)**]** *(6), (7), and (8)* of section 872(b) shall apply for purposes of this subsection.

* * * * * * *

Subchapter O—Gain or Loss on Disposition of Property

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PART III—COMMON NONTAXABLE EXCHANGES

* * * * * * *

SEC. 1033. INVOLUNTARY CONVERSIONS.

(a) * * *

* * * * * * *

(e) LIVESTOCK SOLD ON ACCOUNT OF DROUGHT, FLOOD, OR OTHER WEATHER-RELATED [CONDITIONS.—For purposes] *CONDITIONS.—*

(1) IN GENERAL.—For purposes of this subtitle, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought, flood, or other weather-related conditions.

(2) EXTENSION OF REPLACEMENT PERIOD.—

(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting "4 years" for "2 years".

(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.

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Subchapter T—Cooperatives and Their Patrons

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PART III—DEFINITIONS; SPECIAL RULES

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SEC. 1388. DEFINITIONS; SPECIAL RULES.

(a) PATRONAGE DIVIDEND.—For purposes of this subchapter, the term "patronage dividend" means an amount paid to a patron by an organization to which part I of this subchapter applies—

(1) * * *

* * * * * * *

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts

are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions. *For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.*

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Subtitle B—Estate and Gift Taxes

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CHAPTER 11—ESTATE TAX

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Subchapter B—Estates of Nonresidents Not Citizens

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SEC. 2107. EXPATRIATION TO AVOID TAX.

[(a) TREATMENT OF EXPATRIATES.—

[(1) RATE OF TAX.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A—

[(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—

[(A) IN GENERAL.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

[(B) EXCEPTION.—Subparagraph (A) shall not apply to a decedent meeting the requirements of section 877(c)(1).]

(a) TREATMENT OF EXPATRIATES.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).

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Subchapter C—Miscellaneous

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SEC. 2201. COMBAT ZONE-RELATED DEATHS OF MEMBERS OF THE ARMED FORCES*, DEATHS OF ASTRONAUTS,* AND DEATHS OF VICTIMS OF CERTAIN TERRORIST ATTACKS.

(a) * * *

(b) QUALIFIED DECEDENT.—For purposes of this section, the term "qualified decedent" means—

(1) any citizen or resident of the United States dying while in active service of the Armed Forces of the United States, if such decedent—

(A) * * *

(B) died as a result of wounds, disease, or injury suffered while serving in a combat zone (as determined under section 112(c)), and while in the line of duty, by reason of a hazard to which such decedent was subjected as an incident of such service, **[**and**]**

(2) any specified terrorist victim (as defined in section 692(d)(4))**[**.**]***, and*

(3) any astronaut whose death occurs while on a space mission.

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CHAPTER 12—GIFT TAX

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Subchapter A—Determination of Tax Liability

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SEC. 2501. IMPOSITION OF TAX.

(a) TAXABLE TRANSFERS.—

(1) * * *

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(6) TRANSFERS OF CERTAIN STOCK.—

(A) IN GENERAL.—Paragraph (3) shall not apply to the transfer of stock described in subparagraph (B) by any individual to whom section 877(b) applies, and section 2511(a) shall be applied without regard to whether such stock is property which is situated within the United States.

(B) VALUATION.—For purposes of subparagraph (A), the value of stock shall be determined as provided in section 2103, except that—

(i) if the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

(ii) if such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation,then that proportion of the fair market value of the stock of such foreign corporation owned (within the meaning of section 958(a)) by such donor at the time of such transfer, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of such transfer, bears to the total fair market value of all assets owned by such foreign corporation at the time of such transfer, shall be included in the value of such property.

For purposes of the preceding sentence, a donor shall be treated as owning stock of a foreign corporation at the time of such transfer if, at such time, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.

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Subtitle C—Employment Taxes

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CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

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Subchapter C—General Provisions

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SEC. 3121. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) * * *

* * * * * * *

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 [or 129]*, 129, or 134(b)(4)*;

* * * * * * *

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

* * * * * * *

SEC. 3306. DEFINITIONS.

(a) * * *

(b) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) * * *

* * * * * * *

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 [or 129]*, 129, or 134(b)(4)*;

* * * * * * *

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

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Subchapter A—Withholding from Wages

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SEC. 3401. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) * * *

* * * * * * *

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 [or 129]*, 129, or 134(b)(4)*;

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter A—Automotive and Related Items

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PART III—PETROLEUM PRODUCTS

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Subpart A—Gasoline and Diesel Fuel

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SEC. 4081. IMPOSITION OF TAX.

(a) TAX IMPOSED.—

(1) * * *

(2) RATES OF TAX.—

(A) IN GENERAL.—The rate of the tax imposed by this section is—

(i) * * *

* * * * * * *

(iii) in the case of diesel fuel or kerosene, 24.3 cents per gallon *(19.7 cents per gallon in the case of a diesel-water fuel emulsion at least 14 percent of which is water)*.

* * * * * * *

Subchapter C—Certain Vaccines

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SEC. 4132. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS RELATING TO TAXABLE VACCINES.—For purposes of this subchapter—

(1) TAXABLE VACCINE.—The term "taxable vaccine" means any of the following vaccines which are manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing:

(A) * * *

* * * * * * *

(I) Any vaccine against hepatitis A.

[(I)**]** *(J)* Any vaccine against hepatitis B.

[(J)**]** *(K)* Any vaccine against chicken pox.

[(K)**]** *(L)* Any vaccine against rotavirus gastroenteritis.

[(L)**]** *(M)* Any conjugate vaccine against streptococcus pneumoniae.

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Subchapter D—Recreational Equipment

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PART I—SPORTING GOODS

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SEC. 4161. IMPOSITION OF TAX.

(a) * * *

(b) BOWS AND ARROWS, ETC.—

[(1) BOWS.—

[(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a draw weight of 10 pounds or more, a tax equal to 11 percent of the price for which so sold.

[(B) PARTS AND ACCESSORIES.—There is hereby imposed upon the sale by the manufacturer, producer, or importer—

[(i) of any part of accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

[(ii) of any quiver suitable for use with arrows described in paragraph (2), a tax equivalent to 11 percent of the price for which so sold.]

(1) BOWS.—

(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (3),

a tax equal to 11 percent of the price for which so sold.

(2) [ARROWS] *ARROW COMPONENTS*.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any shaft, point, nock, or vane of a type used in the manufacture of any arrow which after its assembly—

(A) * * *

* * * * * * *

(3) ARROWS.—

(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

(B) EXCEPTION.—The tax imposed by subparagraph (A) on an arrow shall not apply if the arrow contains an arrow shaft subject to the tax imposed by paragraph (2).

(C) ARROW.—For purposes of this paragraph, the term "arrow" means any shaft described in paragraph (2) to which additional components are attached.

[(3)] *(4)* COORDINATION WITH SUBSECTION (A).—No tax shall be imposed under this subsection with respect to any article taxable under subsection (a).

* * * * * * *

SEC. 4162. DEFINITIONS; TREATMENT OF CERTAIN RESALES.

(a) SPORT FISHING EQUIPMENT DEFINED.—For purposes of this part, the term "sport fishing equipment" means—

(1) * * *

* * * * * * *

(6) the following items of fishing supplies and accessories—

(A) fish stringers,

(B) creels,

[(C) tackle boxes,]

[(D)] *(C)* bags, baskets, and other containers designed to hold fish,

[(E)] *(D)* portable bait containers,

[(F)] *(E)* fishing vests,

[(G)] *(F)* landing nets,

[(H)] *(G)* gaff hooks,

[(I)] *(H)* fishing hook disgorgers, and

[(J)] *(I)* dressing for fishing lines and artificial flies,

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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. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

(a) * * *

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(f) JOINT RETURN WHERE INDIVIDUAL IS IN MISSING STATUS.—For purposes of this section and subtitle A—

(1) * * *

(2) EFFECT OF ELECTION.—If the spouse of an individual described in paragraph (1)(A) elects to file a joint return under subsection (a) for a taxable year, then, until such election is revoked—

(A) such election shall be valid even if such individual died before the beginning of such year, and

(B) except for purposes of section 692 (relating to income taxes of members of the Armed Forces*, astronauts,* and victims of certain terrorist attacks on death), the income tax liability of such individual, his spouse, and his estate shall

be determined as if he were alive throughout the taxable year.

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PART III—INFORMATION RETURNS

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Subpart A—Information Concerning Persons Subject to Special Provisions

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SEC. 6039G. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.

[(a) IN GENERAL.—Notwithstanding any other provision of law, any individual who loses United States citizenship (within the meaning of section 877(a) shall provide a statement which includes the information described in subsection (b). Such statement shall be—

[(1) provided not later than the earliest date of any act referred to in subsection (c), and

[(2) provided to the person or court referred to in subsection (c) with respect to such act.

[(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

[(1) the taxpayer's TIN,

[(2) the mailing address of such individual's principal foreign residence,

[(3) the foreign country, in which such individual is residing,

[(4) the foreign country of which such individual is a citizen.

[(5) in the case of an individual having a net worth of at least the dollar amount applicable under section 877(a)(2)(B), information detailing the assets and liabilities of such individual, and

[(6) such other information as the Secretary may prescribe.

[(c) ACTS DESCRIBED.—For purposes of this section, the acts referred to in this subsection are—

[(1) the individual's renunciation of his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

[(2) the individual's furnishing to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

[(3) the issuance by the United States Department of State of a certificate of loss of nationality to the individual, or

[(4) the cancellation by a court of the United States of a naturalized citizen's certificate of naturalization.

[(d) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty for each year (of the 10-year period beginning on the date of loss of United States citizenship) during any portion of which such failure continues in an amount equal to the greater of—

[(1) 5 percent of the tax required to be paid under section 877 for the taxable year ending during such year, or

[(2) $1,000,unless it is shown that such failure is due to reasonable cause and not to willful neglect.]

(a) IN GENERAL.—Notwithstanding any other provision of law, any individual to whom section 877(b) applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).

(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

(1) the taxpayer's TIN,

(2) the mailing address of such individual's principal foreign residence,

(3) the foreign country, in which such individual is residing,

(4) the foreign country of which such individual is a citizen,

(5) information detailing the assets and liabilities of such individual,

(6) the number of days that the individual was present in the United States during the taxable year, and

(7) such other information as the Secretary may prescribe.

(c) PENALTY.—If—

(1) an individual is required to file a statement under subsection (a) for any taxable year, and

(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of $5,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.

[(e)] *(d)* INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law—

(1) * * *

* * * * * * *

[(f) REPORTING BY LONG-TERM LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—In lieu of applying the last sentence of subsection (a), any individual who is required to provide a statement under this section by reason of section 877(e)(1) shall provide such statement with the return of tax imposed by chapter 1 for the taxable year during which the event described in such section occurs.

[(g) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section.]

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter B—Rules of Special Application

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SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) * * *

* * * * * * *

(m) DIESEL FUEL USED TO PRODUCE EMULSION.—

(1) IN GENERAL.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(A) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) REGULAR TAX RATE.—The term "regular tax rate" means the aggregate rate of tax imposed by section 4081 determined without regard to the parenthetical in section 4081(a)(2)(A).

(B) INCENTIVE TAX RATE.—The term "incentive tax rate" means the aggregate rate of tax imposed by section 4081 determined with regard to the parenthetical in section 4081(a)(2)(A).

[(m)**]** *(n)* REGULATIONS.—The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

[(n)**]** *(o)* PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a).

[(o)**]** *(p)* GASOHOL USED IN NONCOMMERCIAL AVIATION.—Except as provided in subsection (k), if—

(1) * * *

* * * * * * *

[(p)**]** *(q)* CROSS REFERENCES.—

(1) * * *

* * * * * * *

CHAPTER 77—MISCELLANEOUS PROVISIONS

SEC. 7508. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF SERVICE IN COMBAT ZONE *OR CONTINGENCY OPERATION*.

(a) TIME TO BE DISREGARDED.—In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for purposes of section 112 *or when deployed outside the United States*

away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law, at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section *or at any time during the period of such contingency operation*, or hospitalized as a result of injury received while serving in such an area *or operation* during such time, the period of service in such area *or operation*, plus the period of continuous qualified hospitalization attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) * * *

* * * * * * *

(d) MISSING STATUS.—The period of service in the area *or contingency operation* referred to in subsection (a) shall include the period during which an individual entitled to benefits under subsection (a) is in a missing status, within the meaning of section 6013(f)(3).

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CHAPTER 79—DEFINITIONS

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SEC. 7701. DEFINITIONS.

(a) * * *

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(n) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—An individual who would not (but for this subsection) be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States until such individual—

(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

(2) provides a statement in accordance with section 6039G.

[(n)**]** *(o)* CROSS REFERENCES.—

(1) * * *

VII. ADDITIONAL VIEWS

We support immediate enactment of the Armed Services Tax Fairness Act of 2003. H.R. 878 would provide important tax relief to the men and women serving in our military and show our support for their personal sacrifices in defense of our Nation.

This legislation should have been approved by the Congress and sent to the President for signature last year. However, it was not completed then because of the Republicans' refusal to support the Senate's provision to address individual expatriates leaving the country to avoid taxes.

As the Committee on Ways and Means considered the legislation this year, unfortunately, we found that it had been designated as the "2003 tax Christmas tree" where Members could add-on whatever unrelated tax provisions they wanted. This is just plain irresponsible and an insult to our Armed Forces.

H.R. 878, as introduced and presented to the Committee for approval, was a noncontroversial, bipartisan bill. Its sole purpose and goal was to provide tax relief to men and women in the uniformed services serving abroad. We do not agree with the Committee Chairman's decision to throw out the bipartisan spirit and support for the bill—just to give his Republican Members a chance in 2003 to put forward any tax amendment, even if totally unrelated to military tax relief. This decision puts real tax relief for the men and women of our Armed Services at great risk. These games are being played at the very time our Armed Forces may be asked to sacrifice their lives in order to defend our Nation.

A much better approach to consideration of this bill would have been to pass H.R. 878 without amendment or to pass the bill as approved by the Senate Finance Committee earlier this year. The Democrats' substitute amendment would have accomplished this goal. Had our amendment been adopted, significant tax relief for our military could have moved quickly through the Senate and to the President for signature.

We were not alone in our concern that the Armed Services Tax Fairness Act should not be used as a special interest "gameboard." Even the Republican House Budget Committee Chairman joined us in calling repeatedly for the Committee to refrain from offering totally extraneous amendments that could delay tax relief to the men and women serving our Country. Together we argued that it was critically important that we do not jeopardize tax relief for members of the Armed Services who potentially could be fighting in Iraq within a month.

Our calls for restraint were ignored. More than $300 million in unrelated, special interest tax breaks were added to the bill by the Republicans. Among those offered and approved were (1) a tax break for foreigners who place bets outside the United States on U.S. horse races, (2) a special tax rate on fuel that is a blend of

diesel fuel and water benefitting the few companies that manufacture such fuels, (3) a tax break to benefit manufacturers of fishing tackle boxes, (4) a tax break to benefit landowners who sell timber from their land, (5) an extension of the time allowed for ranchers to utilize a tax break for the weather-related sale of livestock, and (6) a tax break for several varieties of archery bows. While some may believe in the merits of one or more of these amendments, the Armed Services Tax Fairness Act is not the proper place or time for their consideration.

One particularly offensive amendment, which was described when offered as a "technical correction" to the health tax credit provisions included in the Trade Act of 2002, is nothing more than a thinly-veiled attempt to gut the few consumer protections that were included in that legislation. The practical effect of this amendment is to negate a carefully constructed compromise reached during the conference negotiation on the Trade Act which specified the coverage options available for individuals who are eligible for the Trade Adjustment Assistance (TAA) health tax credit and required insurance companies and other sponsors of coverage under specified state pooling arrangements to (1) issue a policy without exclusions for pre-existing conditions, (2) limit the premium to what would be charged to other similarly situated individuals, and (3) to offer benefits to TAA-eligibles that are substantially similar to those offered to other individuals. These protections, which would substantially limit the ability of insurance companies to turn down applicants or otherwise seek to cover only the healthiest individuals, are critical if persons with any type of current or potential health condition are to be able to actually use the tax credit toward the purchase of meaningful coverage. Under the guise of consumer choice, this amendment overrides these important federal protections. All Republican members of the Committee voted for these safeguards just seven months ago.

Further, the bill, as passed the Committee, includes $662 million less tax relief than the similar Senate Finance Committee-passed bill for National Guard and Reserve members who have to travel more than 100 miles from home. The Committee's bill caps the deduction for overnight travel expenses at $500. The Senate Finance Committee's bill covers all such expenses.

We strongly believe that tax relief for the military needs to move forward, but do not believe it was appropriate to use this vehicle, H.R. 878, to enact provisions unrelated to Americans serving overseas. The Committee should have approved legislation identical to that reported by the Senate Finance Committee. If we had done that, the bill could have been on the President's desk in a short period of time and tax relief for our Armed Services a reality.

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JERRY KLECZKA.
XAVIER BECERRA.
JIM MCDERMOTT.
STEPHANIE TUBBS JONES.
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