95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 95-1798

TAXATION OF AMERICANS ABROAD

OCTOBER 15 (legislative day, OCTOBER 14), 1978.—Ordered to be printed

Mr. ULMAN, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 9251]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9251) relating to extensions of time for the existing tax treatment of certain items, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 4, 5, 6, 7, and 8.

That the House recede from its disagreement to the amendment of the Senate numbered 3 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 201. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Foreign Earned Income Act of 1978".

(b) AMENDMENTS OF 1954 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 1954.

SEC. 202. INCOME EARNED BY INDIVIDUALS IN CERTAIN CAMPS.

(a) SECTION 911 EXCLUSION.—Subsection (a) of section 911 (relating to earned income from sources without the United States) is amended to read as follows:

"(a) GENERAL RULE.—In the case of an individual described in section 913(a) who, because of his employment, resides in a camp located in a hardship area, the following items shall not be included in gross income and shall be exempt from taxation under this subtitle.

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"(1) BONA FIDE RESIDENT OF FOREIGN COUNTRY.—If such individual is described in section 913(a)(1), amounts received from sources within a foreign country or countries (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during the period of bona fide residence. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

"(2) PRESENCE IN FOREIGN COUNTRY FOR 17 MONTHS.—If such individual is described in section 913(a)(2), amounts received from sources within qualified foreign countries (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during the 18-month period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

An individual shall not be allowed as a deduction from his gross income or as a credit against the tax imposed by this chapter any credit for the amount of taxes paid or accrued to a foreign country or possession of the United States, to the extent that such deduction or credit is properly allocable to or chargeable against amounts excluded from gross income under this subsection, other than the deductions allowed by sections 217 (relating to moving expenses)."

(b) LIMITATIONS ON AMOUNT OF EXCLUSION.—Paragraph (1) of section 911(c) (relating to special rules) is amended to read as follows:

"(1) LIMITATIONS ON AMOUNT OF EXCLUSION.—

"(A) IN GENERAL.—The amount excluded from the gross income of an individual under subsection (a) for any taxable year shall not exceed an amount which shall be computed on a daily basis at an annual rate of $20,000 for days during which he resides in a camp.

"(B) CAMP.—For purposes of this section, an individual shall not be considered to reside in a camp because of his employment unless the camp constitutes substandard lodging which is—

"(i) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

"(ii) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

"(iii) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees."

"(C) HARDSHIP AREA.—For purposes of this section, the term 'hardship area' has the same meaning as in section 913(h)."

(c) BUSINESS PREMISES OF THE EMPLOYER.—Subsection (c) of section 911 (relating to special rules) is amended by inserting after paragraph (6) the following new paragraph:

"(7) BUSINESS PREMISES OF THE EMPLOYER.—In the case of an individual residing in a camp who elects the exclusion provided in this section for a taxable year, the camp shall be considered to be part of the business premises of the employer for purposes of section 119 for such taxable year."

(d) SECTION NOT TO APPLY.—

(1) IN GENERAL.—Section 911 is amended by striking out subsections (d) and (e) and inserting in lieu thereof the following new subsection:

"(d) SECTION NOT TO APPLY.—An individual entitled to the benefits of this section for a taxable year may elect, in such manner and at such time as shall be prescribed by the Secretary, not to have the provisions of this section apply for the taxable year."

(2) CONFORMING AMENDMENT.—Subsection (f) of section 911 (relating to cross references) is redesignated as subsection (e).

(e) REMOVAL OF REQUIREMENT AS TO PLACE OF RECEIPT.—Paragraph (8) of section 911(c) (relating to requirement as to place of receipt) is hereby repealed.

(f) CLERICAL AMENDMENTS.—

(1) The section heading for section 911 is amended to read as follows:

"SEC. 911. INCOME EARNED BY INDIVIDUALS IN CERTAIN CAMPS."

(2) The table of sections for subpart B of part III of subchapter N of chapter 1 is amended by striking out the item relating to section 911 and inserting in lieu thereof the following:

"Sec. 911. Income earned by individuals in certain camps."

(3) The heading of subpart B of part III of subchapter N of chapter 1 is amended by striking out "citizens" and inserting in lieu thereof "citizens or residents".

(4) The table of subparts for part III of subchapter N of chapter 1 is amended by striking out "citizens" in the item relating to subpart B and inserting in lieu thereof "citizens or residents".

(5) Sections 43(c)(1)(B), 1302(b)(2)(A)(i), 1304(b)(1), 1402(a)(8), 6012(c), and 6091(b)(1)(B)(iii) are each amended by striking out "relating to earned income from sources without the United States" and inserting in lieu thereof "relating to income earned by employees in certain camps".

SEC. 203. DEDUCTION FOR CERTAIN EXPENSES OF LIVING ABROAD.

(a) ALLOWANCE OF DEDUCTION.—Subpart B of part III of subchapter N of chapter 1 (relating to earned income of citizens and residents of United States) is amended by adding at the end thereof the following new section:

"SEC. 913. DEDUCTION FOR CERTAIN EXPENSES OF LIVING ABROAD.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual who is—

"(1) BONA FIDE RESIDENT OF FOREIGN COUNTRY.—A citizen of the United States and who establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

"(2) PRESENCE IN FOREIGN COUNTRY FOR 17 MONTHS.—A citizen or resident of the United States and who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period,

there shall be allowed as a deduction for such taxable year or for any taxable year which contains part of such period, the sum of the amounts set forth in subsection (b).

"(b) AMOUNTS.—The amounts referred to in this subsection are:
"(1) The qualified cost-of-living differential.
"(2) The qualified housing expenses.
"(3) The qualified schooling expenses.
"(4) The qualified home leave travel expenses.
"(5) The qualified hardship area deduction.
"(c) DEDUCTION NOT TO EXCEED NET FOREIGN SOURCE EARNED INCOME.—
"(1) IN GENERAL.—The deduction allowed by subsection (a) to any individual for the taxable year shall not exceed—
"(A) such individual's earned income from sources outside the United States for the portion of the taxable year in which such individual's tax home is in a foreign country, reduced by
"(B) the sum of—
"(i) any earned income referred to in subparagraph (A) which is excluded from gross income under section 119, and
"(ii) the allocable deductions,
"(2) ALLOCABLE DEDUCTIONS DEFINED.—For purposes of paragraph (1)(B)(ii), the term 'allocable deductions' means the deductions properly allocable to or chargeable against the earned income referred to in paragraph (1)(A), other than the deduction allowed by this section.
"(d) QUALIFIED COST-OF-LIVING DIFFERENTIAL.—
"(1) IN GENERAL.—For purposes of this section, the term 'qualified cost-of-living differential' means a reasonable amount determined under tables (or under another method) prescribed by the Secretary establishing the amount (if any) by which the general cost of living in the foreign place in which the individual's tax home is located exceeds the general cost of living for the metropolitan area in the continental United States (excluding Alaska) having the highest general cost of living. The tables (or other method) so prescribed shall be revised at least once during each calendar year.
"(2) SPECIAL RULES.—For purposes of paragraph (1)—
"(A) COMPUTATION ON DAILY BASIS.—The differential shall be computed on a daily basis for the period during which the individual's tax home is in a foreign country.
"(B) DIFFERENTIAL TO BE BASED ON DAILY LIVING EXPENSES.—An individual's cost-of-living differential shall be determined by reference to reasonable daily living expenses (excluding housing and schooling expenses).
"(C) BASIS OF COMPARISON.—The differential prescribed for any foreign place—
"(i) shall vary depending on the composition of the family (spouse and dependents) residing with the individual (or at a qualified second household), and
"(ii) shall reflect the costs of living of a family whose income is equal to the salary of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS–14,
"(D) STATE DEPARTMENT'S INDEX MAY BE TAKEN INTO ACCOUNT.—The Secretary, in determining the qualified cost-of-living differential for any foreign place, may take into account

the Department of State's Local Index of Living Costs Abroad as it relates to such place,

"(E) NO DIFFERENTIAL FOR PERIODS DURING WHICH INDIVIDUAL IS ELIGIBLE UNDER SECTION 119.—Except as provided in subsection (i)(1)(A)(ii) an individual shall not be entitled to any qualified cost-of-living differential for any period for which such individual's meals and lodging are excluded from gross income under section 119.

"(e) QUALIFIED HOUSING EXPENSES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified housing expenses' means the excess of—

"(A) the individual's housing expenses, over

"(B) the individual's base housing amount,

"(2) HOUSING EXPENSES.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'housing expenses' means the reasonable expenses paid or incurred during the taxable year by or on behalf of the individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. Such term—

"(i) except as provided in clause (ii), includes expenses attributable to the housing (such as utilities and insurance), and

"(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

"(B) PORTION WHICH IS LAVISH OR EXTRAVAGANT NOT ALLOWED.—For purposes of subparagraph (A), housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

"(3) BASE HOUSING AMOUNT.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'base housing amount' means 20 percent of the excess of—

"(i) the individual's earned income (reduced by the deductions properly allocable to or chargeable against such earned income (other than the deduction allowed by this section)), over

"(ii) the sum of—

"(I) the housing expenses taken into account under paragraph (1)(A) of this subsection,

"(II) the qualified cost-of-living differential,

"(III) the qualified school expenses,

"(IV) the qualified home leave travel expenses, and

"(V) the qualified hardship area deduction.

"(B) BASE HOUSING AMOUNT TO BE ZERO IN CERTAIN CASES.—If, because of adverse living conditions, the individual maintains a household for his spouse and dependents at a foreign place other than his tax home which is in addition to the household he maintains as his tax home, and if his tax home is in a hardship area as defined in subsection (h), the base housing amount for the household maintained at his tax home shall be zero.

"(4) PERIODS TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—The expenses taken into account under this subsection shall be only those which are attributable to housing during periods for which—

"(i) the individual's tax home is in a foreign country, and

"(ii) except as provided in subsection (i) (1)(B)(iii), the value of the individual's housing is not excluded under section 119.

"(B) DETERMINATION OF BASE HOUSING AMOUNT.—The base housing amount shall be determined for the periods referred to in subparagraph (A) (as modified by subsection (i)(1)(B)(iii)).

"(5) ONLY ONE HOUSE PER PERIOD.—If, but for this paragraph, housing expenses for any individual would be taken into account under paragraph (2) of subsection (b) with respect to more than one abode for any period, only housing expenses with respect to that abode which bears the closest relationship to the individual's tax home shall be taken into account under such paragraph (2) for such period.

"(f) QUALIFIED SCHOOLING EXPENSES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified schooling expenses' means the reasonable schooling expenses paid or incurred by or on behalf of the individual during the taxable year for the education of each dependent of the individual at the elementary or secondary level. For purposes of the preceding sentence, the elementary or secondary level means education which is the equivalent of education from the kindergarten through the 12th grade in a United States-type school.

"(2) EXPENSES INCLUDED.—For purposes of paragraph (1), the term 'schooling expenses' means the cost of tuition, fees, books, and local transportation and of other expenses required by the school. Except as provided in paragraph (3), such term does not include expenses of room and board or expenses of transportation other than local transportation.

"(3) ROOM, BOARD, AND TRAVEL ALLOWED IN CERTAIN CASES.—If an adequate United States-type school is not available within a reasonable commuting distance of the individual's tax home, the expenses of room and board of the dependent and the expenses of the transportation of the dependent each school year between such tax home and the location of the school shall be treated as schooling expenses.

"(4) DETERMINATION OF REASONABLE EXPENSES.—If—

"(A) there is an adequate United States-type school available within a reasonable commuting distance of the individual's tax home, and

"(B) the dependent attends a school other than the school referred to in subparagraph (A),

then the amount taken into account under paragraph (2) shall not exceed the aggregate amount which would be charged for the period by the school referred to in subparagraph (A).

"(5) PERIOD TAKEN INTO ACCOUNT.—An amount shall be taken into account as a qualified schooling expense only if it is attributable to education for a period during which the individual's tax home is in a foreign country.

"(g) QUALIFIED HOME LEAVE TRAVEL EXPENSES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified home leave travel expenses' means the reasonable amounts paid or incurred by or on behalf of an individual for the transportation of such individual, his spouse, and each dependent from the location of the individual's tax home outside the United States to—

"(A) the individual's present (or, if none, most recent) principal residence in the United States, or

"(B) if subparagraph (A) does not apply to the individual, the nearest port of entry in the continental United States (excluding Alaska)

and return.

"(2) ONE TRIP PER 12-MONTH PERIOD ABROAD.—Amounts may be taken into account under paragraph (4) of subsection (b) only with respect to one round trip per person for each continuous period of 12 months for which the individual's tax home is in a foreign country.

"(h) QUALIFIED HARDSHIP AREA DEDUCTION.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified hardship area deduction' means an amount computed on a daily basis at an annual rate of $5,000 for days during which the individual's tax home is in a hardship area.

"(2) HARDSHIP AREA DEFINED.—For purposes of this section, the term 'hardship area' means any foreign place designated by the Secretary of State as a hardship post where extraordinarily difficult living conditions, notably unhealthful conditions, or excessive physical hardships exist and for which a post differential of 15 percent or more—

"(A) is provided under section 5925 of title 5, United States Code, or

"(B) would be so provided if officers and employees of the Government of the United States were present at that place.

"(i) SPECIAL RULES WHERE INDIVIDUAL MAINTAINS SEPARATE HOUSEHOLD FOR SPOUSE AND DEPENDENTS BECAUSE OF ADVERSE LIVING CONDITIONS AT TAX HOME.—

"(1) IN GENERAL.—For any period during which an individual maintains a qualified second household—

"(A) QUALIFIED COST-OF-LIVING DIFFERENTIAL.—

"(i) ALLOWANCE DETERMINED BY REFERENCE TO LOCATION OF QUALIFIED SECOND HOUSEHOLD.—Paragraph (1) of subsection (d) shall be applied by substituting 'the qualified second household' for the individual's tax home'.

"(ii) DISREGARD OF SECTION 119 RULE.—Subparagraph (E) of subsection (d)(2) shall not apply with respect to the spouse and dependents.

"(B) QUALIFIED HOUSING EXPENSES.—

"(i) EXPENSES WITH RESPECT TO QUALIFIED SECOND HOUSEHOLD TAKEN INTO ACCOUNT.—For purposes of subsection (e), the expenses for housing of an individual's spouse and dependents at the qualified second household shall be treated as housing expenses if they would meet the requirements of subsection (e)(2) if the individual resided at such household.

"(ii) SEPARATE APPLICATION OF SUBSECTION (e).—

Subsection (e) shall be applied separately with respect to the housing expenses for the qualified second household; except that, in determining the base housing amount, the housing expenses (if any) of the individual for housing at his tax home shall also be taken into account under subsection (e)(3)(A)(ii).

"(iii) CERTAIN RULES NOT TO APPLY.—Paragraphs (4)(A)(ii) and (5) of subsection (e) shall not apply with respect to housing expenses for the qualified second household.

"(C) REQUIREMENT THAT SPOUSE AND DEPENDENTS RESIDE WITH INDIVIDUAL FOR PURPOSES OF SCHOOLING AND HOME LEAVE.—

"(i) IN GENERAL.—The requirement of subsection (j)(3) that the dependent or spouse of the individual (as the case may be) reside with the individual at his tax home shall be treated as met if such spouse or dependent resides at the qualified second household.

"(ii) SUBSTITUTION OF HOUSEHOLD FOR TAX HOME.—In any case where clause (i) applies, paragraphs (3) and (4) of subsection (f), and paragraph (1) of subsection (g), shall be applied with respect to amounts paid or incurred for the spouse or dependent by substituting the location of the qualified second household for the individual's tax home.

"(2) DEFINITION OF QUALIFIED SECOND HOUSEHOLD.—For purposes of this section, the term 'qualified second household' means any household maintained in a foreign country by an individual for the spouse and dependents of such individual at a place other than the tax home of such individual because of adverse living conditions at the individual's tax home.

"(j) OTHER DEFINITIONS AND SPECIAL RULES.—

"(1) DEFINITIONS.—For purposes of this section—

"(A) EARNED INCOME.—The term 'earned income' has the meaning given to such term by section 911(b) (determined with the rules set forth in paragraphs (2), (3), (4), and (5) of section 911(c)), except that such term does not include amounts paid by the United States or any agency thereof.

"(B) TAX HOME.—The term 'tax home' means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

"(C) RESIDENCE AT TAX HOME.—A household or residence shall be treated as at the tax home of an individual if such household or residence is within a reasonable commuting distance of such tax home.

"(D) ADVERSE LIVING CONDITIONS.—The term 'adverse living conditions' means living conditions which are dangerous, unhealthful, or otherwise adverse.

"(E) UNITED STATES.—The term 'United States,' when used in a geographical sense, includes the possessions of the United States and the areas set forth in paragraph (1) of section 638 and so much of paragraph (2) of section 638 as relates to the possessions of the United States.

"(2) LIMITATION TO COACH OR ECONOMY FARE.—The amount taken into account under this section for any transportation by air shall not exceed the lowest coach or economy rate at the time of such transportation charged by a commercial airline for such transportation during the calendar month in which such transportation is furnished. If there is no such coach or economy rate or if the individual is required to use first-class transportation because of a physical impairment, the preceding sentence shall be applied by substituting 'first-class' for 'coach or economy'.

"(3) REQUIREMENT THAT SPOUSE AND DEPENDENTS RESIDE WITH INDIVIDUAL FOR PURPOSES OF SCHOOLING AND HOME LEAVE.—Except as provided in subsection (i)(1)(C)(i), amounts may be taken into account under subsection (f) with respect to any dependent of the individual, and under subsection (g) with respect to the individual's spouse or any dependent of the individual, only for the period that such spouse or dependent (as the case may be) resides with the individual at his tax home.

"(k) CERTAIN DOUBLE BENEFITS DISALLOWED.—An individual shall not be allowed—

"(1) as a deduction (other than the deduction under section 151),

"(2) as an exclusion, or

"(3) as a credit under section 44A (relating to household and dependent care services),

any amount to the extent that such amount is taken into account under subsection (d), (e), (f), or (g).

"(l) APPLICATION WITH SECTION 911.—An individual shall not be allowed the deduction allowed by subsection (a) for any taxable year with respect to which he elects the exclusion provided in section 911.

"(m) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules.—

"(1) for cases where a husband and wife each have earned income from sources outside the United States, and

"(2) for married individuals filing separate returns."

(b) DEDUCTION ALLOWED IN DETERMINING ADJUSTED GROSS INCOME.—Section 62 (relating to definition of adjusted gross income) is amended by inserting after paragraph (13) the following new paragraph:

"(14) DEDUCTION FOR CERTAIN EXPENSES OF LIVING ABROAD.—The deduction allowed by section 913."

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter N of chapter 1 is amended by adding at the end thereof the following:

"Sec. 913. Deduction for certain expenses of living abroad."

SEC. 204. MOVING EXPENSES.

(a) SPECIAL RULES FOR FOREIGN MOVES.—Section 217 (relating to moving expenses) is amended by redesignating subsection (h) as subsection (j) and by inserting after subsection (g) the following new subsections:

"(h) SPECIAL RULES FOR FOREIGN MOVES.—

"(1) INCREASE IN LIMITATIONS.—In the case of a foreign move—

"(A) subsection (b)(1)(D) shall be applied by substituting '90 consecutive days' for '30 consecutive days',

"(B) subsection (b)(3)(A) shall be applied by substituting '$4,500' for '$1,500' and by substituting '$6,000' for '$3,000', and

"(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: 'In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting "$2,250" for "$4,500", and by substituting "$3,000" for "$6,000".'

"(2) ALLOWANCE OF CERTAIN STORAGE FEES.—In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

"(A) of moving household goods and personal effects to and from storage, and

"(B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

"(3) FOREIGN MOVE.—For purposes of this subsection, the term 'foreign move' means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

"(4) UNITED STATES DEFINED.—For purposes of this subsection and subsection (i), the term 'United States' includes the possessions of the United States.

"(i) ALLOWANCE OF DEDUCTIONS IN CASE OF RETIREES OR DECEDENTS WHO WERE WORKING ABROAD.—

"(1) IN GENERAL.—In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

"(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement of work by the taxpayer as an employee at a new principal place of work located within the United States, and

"(B) the limitations of subsection (c)(2) shall not apply.

"(2) QUALIFIED RETIREE MOVING EXPENSES.—For purposes of paragraph (1), the term 'qualified retiree moving expenses' means any moving expenses—

"(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

"(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

"(3) QUALIFIED SURVIVOR MOVING EXPENSES.—For purposes of paragraph (1), the term 'qualified survivor moving expenses' means moving expenses—

"(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

"(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense."

SEC. 205. MEALS OR LODGING FURNISHED TO EMPLOYEES UNDER CERTAIN CONDITIONS.

Section 119 (relating to meals or lodging furnished for the convenience of the employer) is amended—

(1) by striking out "furnished to him by his employer for the convenience of the employer" and inserting in lieu thereof "furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer", and

(2) by striking out "There shall" and inserting in lieu thereof "(a) MEALS AND LODGING FURNISHED TO EMPLOYEE, HIS SPOUSE, AND HIS DEPENDENTS, PURSUANT TO EMPLOYMENT.—There shall".

SEC. 206. SUSPENSION OF RUNNING OF THE PERIOD UNDER SECTION 1034 FOR PURCHASING A NEW PRINCIPAL RESIDENCE.

Section 1034 (relating to sale or exchange of residence) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection.

"(k) INDIVIDUAL WHOSE TAX HOME IS OUTSIDE THE UNITED STATES.—The running of any period of time specified in subsection (a) or (c) (other than the 18 months referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) has a tax home (as defined in section 913(j)(1)(B)) outside the United States after the date of the sale of the old residence; except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence."

SEC. 207. MISCELLANEOUS AMENDMENTS.

(a) WAGE WITHHOLDING.—Subsection (a) of section 3401 (defining wages) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof "; or" and by adding at the end thereof the following new paragraph:

"(18) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 913 (relating to deduction for certain expenses of living abroad)."

(b) PLACE FOR FILING RETURNS.—Clause (iii) of section 6091 (b)(1)(B) (relating to place for filing tax returns) is amended by inserting "section 913 (relating to deduction for certain expenses of living abroad)," before "section 931".

(c) AUTHORITY TO REQUIRE INFORMATION CONCERNING SECTION 912 ALLOWANCES.—Section 6011 (relating to general requirement of return, statement, or list) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) AUTHORITY TO REQUIRE INFORMATION CONCERNING SECTION 912 ALLOWANCES.—The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate."

SEC. 208. REPORTS BY SECRETARY.

(a) GENERAL RULE.—As soon as practicable after the close of the calendar year 1979 and after the close of each second calendar year thereafter, the Secretary of the Treasury shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate setting forth with respect to the preceding 2 calendar years—

(1) the number, country of residence, and other pertinent characteristics of persons claiming the benefits of sections 911, 912, and 913 of the Internal Revenue Code of 1954,

(2) the revenue cost and economic effects of the provisions of such sections 911, 912, and 913, and

(3) a detailed description of the manner in which the provisions of such sections 911, 912, and 913 have been administered during the preceding 2 calendar years.

(b) INFORMATION FROM FEDERAL AGENCIES.—Each agency of the Federal Government which pays allowances excludable from gross income under section 912 of such Code shall furnish to the Secretary of the Treasury such information as he determines to be necessary to carry out his responsibility under subsection (a).

SEC. 209. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as provided in subsections (b) and (c) the amendments made by this title shall apply to taxable years beginning after December 31, 1977.

(b) WAGE WITHHOLDING.—The amendment made by section 207(a) shall apply to remuneration paid after the date of the enactment of this Act.

(c) ELECTION OF PRIOR LAW.—

(1) A taxpayer may elect not to have the amendments made by this title apply with respect to any taxable year beginning after December 31, 1977, and before January 1, 1979.

(2) An election under this subsection shall be filed with a taxpayer's timely filed return for the first taxable year beginning after December 31, 1977.

SEC. 210. APPLICATION OF TITLE I.

(a) IN GENERAL.—Title I of this Act (other than sections 4 and 5 thereof) shall cease to have effect on the day after the date of the enactment of this Act.

(b) SPECIAL RULE FOR SECTION 5.—Section 5 of this Act shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978.

And the Senate agree to the same.

Amend the title so as to read:

An Act to change the tax treatment of income earned abroad by United States citizens and residents, and for other purposes.

AL ULLMAN,
DAN ROSTENKOWSKI,
CHARLES A. VANIK,
JOE D. WAGGONNER, JR.,
JAMES C. CORMAN,
BARBER B. CONABLE, JR.,
BILL FRENZEL,
Managers on the Part of the House.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 9251) to amend the Internal Revenue Code of 1954 to provide for extensions of time for the existing tax treatment of certain items, submit the following joint statement to the House and the Senate as an explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

A. Tax Treatment of Americans Working Abroad

1. DELAY OF EFFECTIVE DATE OF 1976 ACT

House bill.—The House bill delays the effective date of the changes made by the 1976 act to the taxation of individuals working abroad so that the changes do not apply until taxable years beginning after December 31, 1977. However, the provision permits those individuals who do not claim the exclusion to claim both the foreign tax credit and the zero bracket amount (that is, the standard deduction) in 1977.

Senate amendment.—The Senate amendment is the same as the House bill.

Conference substitute.—The conference substitute follows the House bill and the Senate amendment.

2. EARNED INCOME EXCLUSION FOR EMPLOYEES IN CAMPS

House bill.—The House would repeal the changes in the earned income exclusion (section 911) made by the 1976 act. The exclusion would generally be calculated under methods in effect prior to enactment of the 1976 act. However, the exclusion would generally be available only to persons working in countries other than Canada or those in Western Europe.

Senate amendment.—The Senate amendment would repeal the earned income exclusion.

Conference substitute.—The conference substitute would allow a $20,000 annual exclusion to employees residing in camps in hardship areas who are bona fide residents of a foreign country for the entire taxable year or who are present in a foreign country 17 out of 18 months. Employees who elect the benefits of this exclusion are ineligible for the deductions for excess foreign living costs provided by the conference substitute.

3. DEDUCTION FOR EXCESS FOREIGN LIVING COSTS

The House bill, the Senate amendment, and the conference substitute all provide for a deduction for excess foreign living costs, the specific terms of which are as follows:

(*a*) *Eligibility*

House bill.—The House bill provides that those persons eligible for the deduction are citizens and residents of the United States whose "tax home" is in a foreign country (including Canada or the Western European countries). Resident aliens may qualify.

Senate amendment.—The Senate amendment provides that those persons eligible for the deduction will generally be the same as are now eligible for the earned income exclusion (those present overseas for 17 out of 18 months or bona fide residents overseas).

Conference substitute.—The conference substitute provides that those persons eligible for the deduction are individuals who are bona fide residents of a foreign country or are present (including resident aliens) in a foreign country 17 out of 18 months.

(*b*) *Excess cost of living*

House bill.—The House bill provides that this element of the deduction consists of an amount determined under IRS tables showing the excess cost of living in various foreign places for families of various sizes. It is based on the excess of costs in the foreign place over costs in the highest cost metropolitan area in the continental United States (excluding Alaska). The deduction would be proportional to the spendable income of the taxpayer (that is, larger for high-income taxpayers than for low-income taxpayers).

Senate amendment.—The Senate amendment is substantially the same as the House bill, except that the deduction is based on the excess of costs in the foreign place over costs in the United States, and the deduction would be based on the spendable income of a person paid the salary of a GS–12, step 1 (currently $23,087), regardless of the taxpayer's actual income.

Conference substitute.—The conference substitute provides that the deduction would be based on the spendable income of a person paid the salary of a GS–14, step 1 (currently $32,442,) regardless of the taxpayer's actual income. It would be determined with reference to the highest cost metropolitan area in the continental United States (excluding Alaska).

(*c*) *Excess housing costs*

House bill.—The House bill provides that this element of the deduction is an amount equal to the excess of the individual's housing expenses over the individual's base housing amount.

The individual's "base housing amount" is generally one-sixth of the individual's "base compensation" under any qualified pension plan which covers the taxpayer (or would cover him but for age or service requirements). If no pension plan applies, his base housing amount is one-eleventh of the excess of his earned income (minus certain allocable business deductions) over his deductible excess foreign living costs (that is, one-eleventh of his net earned income).

A deduction is allowed for the full cost of the taxpayer's own housing rather than just the excess over his base amount if the individual maintains a separate household for his spouse and dependents because of living conditions which are dangerous, unhealthful, or otherwise adverse or for the convenience of his employer.

In addition, the taxpayer receives a deduction for the excess costs of maintaining the qualified second household.

Senate amendment.—The Senate amendment is generally the same as the House bill, except that the individual's "base housing amount" is one-sixth of the excess of his earned income (minus certain allocable business deductions) over his deductible excess foreign living costs (that is, one-sixth of his net earned income), and there is no provision for separate households.

Conference substitute.—The conference substitute generally follows the House bill, but adopts the Senate version of the base housing amount. The provision for separate households is to be available if the taxpayer's tax home is in a hardship area and the taxpayer's family does not live in the United States. This provision is available where the employee maintains a separate household for his family because of adverse living conditions of his place of employment and it is intended that this requirement be liberally construed.

(*d*) *Educational costs*

House bill.—The House bill provides that this element of the deduction consists of the reasonable schooling expenses for the education of the taxpayer's dependents at the elementary and secondary level. Generally, the cost of tuition, fees, books, and local transportation and of other expenses required by the school are deductible. Reasonable schooling expenses are determined with reference to the least expensive adequate U.S.-type school available within a reasonable commuting distance of the individual's tax home.

If an adequate U.S.-type school is not available within a reasonable commuting distance, deductible schooling expenses include room and board and transportation costs. Generally, the deduction is allowed only if dependent lives with taxpayer, but if there is no adequate school, the dependent may attend school anywhere in the world.

Senate amendment.—The Senate amendment provides that, generally, the amount deductible is the cost of tuition, books, and local transportation but limited to the amount set forth in an IRS table showing reasonable educational costs for that foreign place.

If an adequate U.S.-type school is not available, costs of room and board are also deductible. The deduction is allowed if the dependent attends school anywhere outside the United States.

Conference substitute.—The conference substitute follows the House bill.

(*e*) *Home leave transportation*

House bill.—The bill provides that this element of the deduction consists of the reasonable costs of one round trip annually for the taxpayer, his spouse, and each dependent from the location of his tax home outside the United States to any place in the United States. The deduction is limited to coach fare when available.

Senate amendment.—No provision.

Conference substitute.—The conference substitute generally follows the House bill, but a deduction is allowed for transportation to the location of the taxpayer's last principal residence in the United States or, if there is none, to the nearest port of entry in the continental United States (other than Alaska) and return.

(*f*) *Hardship post deduction*

House bill.—No provision. However, the House bill provides an exclusion from gross income of $20,000 or $25,000 annually for individuals who are bona fide residents of, or are present 17 out of 18 months in, foreign countries other than Canada or those in Western Europe.

Senate amendment.—No provision.

Conference substitute.—The conference substitute provides a hardship deduction of $5,000 a year for employees working in hardship areas. Hardship areas are those areas where U.S. Government employees would qualify for a postdifferential of 15 percent or more of salary.

(*g*) *Special rules*

House bill.—The House bill provides special rules that apply if the taxpayer maintains a separate household for his spouse and dependents in a foreign country at a place other than his tax home because of living conditions at his tax home which are dangerous, unhealthful, or otherwise adverse. In general, the special rules base the computations of the various elements of the deduction on the qualified second household, rather than the tax home.

The House bill does not limit the deduction to amounts reimbursed by the employer.

Senate amendment.—The Senate amendment provides that each element of the deduction would be limited to the amount reimbursed by the taxpayer's employer for that purpose in excess of the taxpayer's normal compensation. Employer certification of the amounts reimbursed would be required. Special rules apply to self-employed individuals and employees of foreign businesses (other than U.S.-controlled foreign businesses).

The Senate amendment does not provide rules for separate households.

Conference substitute.—The conference substitute follows the House bill.

(*h*) *Interaction with zero-bracket amount* (*standard deduction*)

House bill.—The House bill makes the deduction for excess foreign living costs a deduction from gross income in determining adjusted gross income. As a result, a taxpayer will be able to claim the deduction for additional foreign living costs. without being required to itemize deductions.

Senate amendment.—Same as the House bill.

Conference substitute.—The conference substitute follows the House bill and the Senate amendment.

4. INDIVIDUALS RESIDING IN CAMPS

House bill.—The House bill provides that the value of meals or lodging furnished to an employee at a foreign location by or on behalf of his employer is to be excluded from gross income if either the general requirements of section 119 are satisfied, or the meals or lodging are camp-style meals or lodging.

Lodging is camp-style lodging if the requirements of any of the following three provisions are met:

(1) Two or more unrelated employees are required by the employer to share the same living quarters.

(2) The lodging is furnished in a common area not available to the public which common area normally accommodates 10 or more employees.

(3) In the case of housing located outside Canada and Western Europe, (*a*) the housing is assigned on the basis of family size or

other nonincome, nonjob description bases, (*b*) the employer assigns housing in the immediate geographic area to 100 or more employees who are U.S. citizens or residents, and (*c*) the employee lives in housing occupied solely by employees (and their families) of the employer.

Meals are camp-style meals if (1) they are furnished in a common eating area which normally serves 10 or more employees and is not available to the public and (2) the employee is furnished lodging the value of which is excludable from gross income.

Senate amendment.—Employees who reside in camps because of their employment, and employees who would qualify under section 119 for exclusion of employer-supplied housing, are provided (instead of their actual reimbursed excess foreign living costs) a deduction equal to the average deductions claimed for cost of living, housing, and education by all other taxpayers in that foreign place for the previous year (the educational deduction is limited to the amount actually expended). Appropriate average deduction tables are to be issued by the IRS.

These average deductions are available only if an election is made not to claim the section 119 exclusion for meals and lodging.

In order to qualify for the special treatment, the value of the camp housing provided must qualify for exclusion from the employee's income under section 119 in all respects other than location on the business premises of the employer, and the camp must be located, as near as practicable, in the vicinity of the employer's business premises or the place where the taxpayer renders services.

In addition to satisfying all the requirements of section 119 other than the business premises test, housing in fact must be camp-type housing in order to qualify for the special treatment. Camp housing means housing furnished in a common area or enclave of employees apart from housing in foreign cities or towns. Camp housing includes living quarters which the employee is required by the employer to share with unrelated coemployees (for example, barracks). However, camp housing is not intended to be limited to temporary structures.

Conference substitute.—The conference substitute provides an election for employees in camps to claim an exclusion for the value of their lodging and an annual exclusion of $20,000 (as described above in "2. EARNED INCOME EXCLUSION FOR EMPLOYEES IN CAMPS") in lieu of the excess foreign living expense deductions. A camp for this purpose refers to substandard housing provided in enclaves in remote hardship areas close to the jobsite where alternative housing is not available on the open market.

5. DEDUCTION FOR MOVING EXPENSES

House bill.—In the case of moves to foreign work locations, the House bill would increase the period during which the cost of temporary living arrangements are allowed as deductible moving expenses from 30 days to 90 days, and would raise the ceiling on those temporary living costs from $1,500 to $4,500. Moving expenses would include the cost of storing goods while abroad. The moving expense deduction is also expanded to permit bona fide retirees returning to the United States after working abroad and survivors of Americans who die while working overseas to deduct the cost of moving back to the United States, subject to the regular limitations.

Senate amendment.—No provision.

Conference substitute.—The conference substitute follows the House bill.

6. SUSPENSION OF PERIOD TO REINVEST PROCEEDS FROM SALE OF HOME

House bill.—The House bill provides that, in general, the running of the 18- or 24-month time periods is to be suspended during any time that the taxpayer has a tax home outside the United States; except that the suspension period is not to extend more than 4 years after the date of the sale of the old residence.

Senate amendment.—No provision.

Conference substitute.—The conference substitute follows the House bill.

7. REPORTS ON EXCLUSIONS AND DEDUCTIONS OF PRIVATE AND CIVILIAN GOVERNMENT EMPLOYEES WORKING ABROAD

House bill.—The House bill requires that, as soon as possible after the close of 1979 and after the close of every second year thereafter, the Treasury submit a report to the tax-writing committees setting forth the number of, and the countries of residence of, persons benefiting from the provisions dealing with the taxation of Americans working abroad (sections 911, 912, and 913) and the revenue cost and the economic effects of those provisions.

The bill would authorize the Treasury to require by regulations that civilian employees of the U.S. Government provide information on their returns disclosing the amount and type of any allowances they receive which are excluded from gross income under section 912.

Senate amendment.—No provision.

Conference substitute.—The conference substitute follows the House bill.

8. EFFECTIVE DATE

House bill.—The House bill provides that the law prior to the 1976 act would be extended through taxable years beginning in 1977; and the other changes in the tax treatment of Americans working abroad would be effective for taxable years beginning after December 31, 1977.

Senate amendment.—Same as the House bill.

Conference substitute.—The conference substitute follows the House bill and the Senate amendment, but, for taxable years beginning in 1978, taxpayers may elect to be taxed under the law in effect prior to date of enactment (that is, the law as amended by the Tax Reform Act of 1976).

In the case of taxpayers affected by the change in law applicable to 1977, it is anticipated that the Internal Revenue Service will not impose late filing penalties under section 6651(a) if the returns are filed within a reasonable time after enactment of this bill.

B. Tax Treatment of Awards Under the Public Health Services Act

House bill.—No provision.

Senate bill.—The bill provides that National Research Service Awards are to be treated as scholarships or fellowships under section 117 of the code.

(A Senate floor amendment to the Revenue Act of 1978, H.R. 13511, is substantially the same as this provision but would apply to amounts received under awards first made during calendar years 1974 through 1979.)

Conference substitute.—The conference substitute omits this provision.

C. Commuting Expenses

House bill.—The House bill requires that the income tax, FICA, FUTA, and withholding provisions relating to the treatment of transportation expenses paid or incurred after 1976 and before May 1, 1978, in traveling between a taxpayer's residence and place of work, are to be applied without regard to Revenue Ruling 76–453 and fully in accordance with the rules in effect prior to the issuance of Revenue Ruling 76–453.

Senate amendment.—Same as the House bill.

Conference substitute.—The conference substitute omits this provision.

D. Salary Reduction Plans, Cash, or Deferred Profit-Sharing Plans, and Cafeteria Plans

House bill.—On December 6, 1972, the Internal Revenue Service issued proposed regulations which would have changed the tax treatment of employees under salary reduction plans, and which called into question the tax treatment of employees under cash or deferred profit-sharing plans and so-called cafeteria plans. The Employee Retirement Income Security Act of 1974 froze the tax treatment of these plans for 2 years, and the Tax Reform Act of 1976 extended the freeze until December 31, 1977.

Under the House bill, the "freeze" on existing tax treatment of salary reduction plans, cash, or deferred profit-sharing plans and cafeteria plans is extended until January 1, 1980.

Senate amendment.—Same as the House bill.

Conference substitute.—The conference substitute follows the House bill and the Senate amendment, but the freeze is not to apply to are any type of plan for any period for which rules for that type of plan provided by the Revenue Act of 1978.

E. Special Limitations on Net Operating Loss Carryovers

House bill.—The House bill postpones for 2 years the effective dates of provisions of the Tax Reform Act of 1976 concerning limitations on carryovers of net operating losses. Thus, the 1976 act provisions would not take effect until January 1, 1980, with respect to plans of reorganization adopted on or after that date, or until June 30, 1980, with respect to sales or exchanges in taxable years beginning after that date.

Senate amendment.—Same as the House bill.

Conference substitute.—The conference substitute omits this provision.

F. Employee Fringe Benefit Regulations

House bill.—The House bill precluded the IRS from issuing final regulations prior to July 1, 1978, which would govern the income tax treatment of fringe benefits. (Public Law 95–427 precludes the IRS from issuing regulations affecting the taxation of fringe benefits prior to 1980.)

Senate amendment.—Same as the House bill.

Conference substitute.—The conference substitute omits this provision.

G. Application of Section 117 to Certain Education Programs for Members of the Uniformed Services

House bill.—During calendar years 1973, 1974, 1975, and 1976, amounts received from appropriated funds as a scholarship (including the value of contributed services and accommodations) by a member of a uniformed service who was receiving training under the Armed Forces health professions scholarship program (or any other similar program, as determined by the Secretary of the Treasury) were specifically excluded from gross income by congressional action.

The 1976 exclusion was adopted in the Tax Reform Act of 1976, which provided that students entering the scholarship program in 1976 could exclude such health professions scholarship through 1979.

The House bill extends the exclusion for new entrants for 2 more years, so that amounts received in 1977 through 1982 will be excluded from income by members enrolling in the program before 1979.

This provision has already been enacted as Public Law 95–171.

Senate amendment.—No provision.

Conference substitute.—The conference substitute omits the provision.

H. Extension of 5-Year Amortization for Low-Income Rental Housing

House bill.—Under the code, special depreciation rules are provided for expenditures to rehabilitate low-income rental housing (section 167(k)) under which taxpayers can elect to compute depreciation on certain rehabilitation expenditures under a straight line method over a period of 60 months if the additions or improvements have a useful life of 5 years or more. The House bill would extend the expiration date for this provision from December 31, 1977, to December 31, 1978.

This provision has already been enacted as Public Law 95–171.

Senate amendment.—No provision.

Conference substitute.—The conference substitute omits this provision.

I. State Legislators Travel Expenses Away From Home

House bill.—No provision.

Senate amendment.—Extends for 1 year the period during which a State legislator may elect to treat his place of residence in his legislative district as his tax home.

This provision was enacted as Public Law 95–258.

Conference substitute.—The conference substitute omits this provision.

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