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HAWAIIAN TELESCOPE

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Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 1319]

The Committee on Finance, to which was referred the bill (H.R. 1319) to extend the period for duty-free entry of a 3.60-meter telescope and associated articles for use of the International Telescope Project in Hawaii, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is shown in the text of the bill in italic.

House bill.—H.R. 1319, as it passed the House, provided for the duty-free entry of a telescope and certain other related articles for use of the International Telescope Project in Hawaii.

Committee bill.— The committee amendment deletes the provision relating to the duty-free entry of the telescope and other articles for use in Hawaii, and adds provisions relating to (1) tax treatment of gain on the sale of U.S. real property interests by foreign investors, (2) tax treatment of employees of charities working abroad, (3) method of depreciation for railroad track assets, (4) transitional rule for services provided by a private foundation as a trustee, and (5) tax treatment under the Rhode Island Indian Claims Settlement Act. (The Subcommittee on Taxation and Debt Management Generally of the Committee on Finance held public hearings relating to tax treatment of gains on sale of U.S. real property by foreign investors (S. 192 and S. 208 on June 25, 1979), tax treatment of employees of charities working abroad (S. 1703 on October 31, 1979), method of depreciation for railroad track assets (S. 1467 on October 22, 1979), and tax treatment under the Rhode Island Indian Claims Settlement Act (S. 687 on September 17, 1979).)

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I. SUMMARY

As passed the House, this bill would provide for the duty-free entry of a telescope and other articles for use of the International Telescope Project in Hawaii. (The committee added the substance of the House provision as an amendment to H.R. 3122.) In lieu of the House provision, the committee reported the bill with an amendment in the nature of a substitute with the following tax provisions.

Title I. Tax Treatment of Gain on Sale of U.S. Real Property by Foreign Investors

Under present law, capital gains realized by foreign investors on the sale of U.S. property are generally not subject to U.S. tax unless the property is held in connection with a U.S. trade or business.

The committee amendment would subject foreign investors to tax at a rate equal to one-third of the equivalent taxation on gains on the sale or other disposition of U.S. real property. (When added together to similar taxes imposed at a rate equal to one-third of the equivalent taxation under committee amendments to H.R. 2297 and H.R. 1212, the three provisions would subject foreign investors to the full tax on the sale or other disposition of U.S. real estate.) Foreign investors also would be taxed at this rate on gains realized through the sale or exchange of an interest in a corporation, trust, or partnership formed or availed of to hold U.S. real property interests. Reporting requirements would be established to identify when taxable transactions had occurred. The tax would be collected through withholding requirements and related enforcement provisions.

The provision would be effective for sales or other dispositions of U.S. real property interests occurring on or after January 1, 1980. However, to the extent that a provision conflicts with a U.S. treaty obligation, the provision would not take effect until after 1984.

Title II. Other Provisions

Sec. 201. Tax treatment of employees of charities working abroad

The Foreign Earned Income Act of 1978 generally replaced the previous $20,000 foreign earned income exclusion with a new system of itemized deductions for the excess costs of working overseas and an additional $5,000 deduction for employees working in hardship areas. As an exception to these new rules, the 1978 Act permits employees who reside in camps in hardship areas to elect to claim a $20,000 earned income exclusion in lieu of the new excess living cost and hardship area deductions.

The committee amendment would allow individuals meeting the foreign residence or presence tests who perform "qualified charitable

services" in less developed countries to elect, in lieu of the deduction for excess foreign living costs, an exclusion of $20,000 from gross income on the same basis as employees residing in camps in hardship areas. The amendment would be effective for taxable years beginning after December 31, 1978.

Sec. 202. Method of depreciation for railroad track assets

The railroad industry generally uses what is called the retirement-replacement-betterment (RRB) method of depreciation for railroad track and ties and certain other items in the track accounts. Although the RRB method is not specifically included as an allowable method of depreciation under the Internal Revenue Code, it has been allowed in court decisions and is recognized by the Internal Revenue Service in revenue rulings. The IRS' application of this method for tax purposes is based on the application of this method by the Interstate Commerce Commission (ICC) under its requirement that the RRB method be used for rate-making purposes. The committee understands that the ICC is presently considering a change to require the use of ratable depreciation.

The committee amendment would specifically provide for the use of the retirement-replacement-betterment method of accounting for railroad track assets as an acceptable method of depreciation for Federal income tax purposes even if the ICC changes its requirements for rate-making purposes. The provisions would be effective for taxable years ending after December 31, 1953 (the general effective date of the Internal Revenue Code of 1954).

Sec. 203. Extension of transitional rule for certain services provided by a private foundation as trustee

Under present law, the furnishing of services by a private foundation to a "disqualified person" generally is classified as an act of "self-dealing" and is effectively prohibited through the imposition of excise taxes, whether or not the foundation receives reasonable compensation for the services it performs. A transitional rule permits the continuation until 1980, without imposition of self-dealing excise taxes, of certain services which are shared between a private foundation and a disqualified person.

The committee amendment would provide that, for taxable years beginning after December 31, 1979, and on or before December 31, 1980, the furnishing of services by a private foundation to a disqualified person is not an act of self-dealing if (1) the services are furnished in the capacity of trustee for an irrevocable trust established prior to October 9, 1969, designating the private foundation as trustee; (2) the foundation may not, under the laws of the State of its incorporation, act as trustee of a trust other than one in which it possesses a beneficial interest; (3) the private foundation receives compensation from the trust for the services performed as trustee which is reasonable in light of the facts and circumstances; and (4) the disqualified person attained that status solely because of the operation of a trust instrument which was irrevocable prior to October 9, 1969. The provision would apply to the Hormel Foundation, incorporated in Minnesota, and certain trusts of which it is trustee.

Sec. 204. Tax treatment under the Rhode Island Indian Claims Settlement Act

In 1975, the Narragansett Indian Tribe brought suit against the State of Rhode Island and private landowners based on the Tribe's claims to certain land. Pursuant to a settlement of the suit and the Rhode Island Indian Claims Settlement Act passed in 1978, the Tribe's land claims have been extinguished. A public corporation has been created under Rhode Island law which is to receive 1,060 acres of State land. Also, a fund of $3.5 million has been established in the U.S. Treasury to purchase 900 acres of privately held land which will be conveyed to the corporation.

The committee amendment would generally provide that the settlement lands will not be subject to any form of Federal, State, or local taxation (except for income-producing activities occurring on the settlement lands). Further, the committee amendment would provide that, for Federal income tax purposes, any sale or disposition of private settlement lands pursuant to the terms and conditions of the settlement agreement is to be treated as an involuntary conversion. This would permit the sellers to defer gain on the sale to the extent allowed by Code section 1033.

The provisions would be effective as of September 30, 1978.

II. EXPLANATION OF THE BILL

A. Tax Treatment of Gain on Sale of U.S. Real Property by Foreign Investors

(Title I of the bill and New Secs. 897 and 1444 of the Code)

Present Law

General

Under the Code, nonresident aliens and foreign corporations engaged in a U.S. trade or business are generally taxed on the U.S. source income of that business in the same manner, and at the same rates, as U.S. persons. (However, their foreign source income not connected with that business is not taken into account in determining the applicable rates of U.S. tax.)

In contrast, the U.S. source income of a nonresident alien or foreign corporation which is not effectively connected with a U.S. business is generally subject to a different tax regime. The Code provides that a foreign individual or corporation is ordinarily subject to a 30-percent withholding tax on the *gross* amount of certain passive income such as rents, dividends, and interest, which is received from U.S. sources and is not effectively connected with a U.S. business. This withholding tax generally satisfies the taxpayer's U.S. income tax liability on the income. Capital gains not effectively connected with a U.S. business are not subject to any U.S. income tax, except in the limited situation of nonresident individuals who were present in the United States 183 days or more during the year, who are taxed at the flat rate of 30 percent on the gains.

Foreign investment in U.S. property

Whether a foreign investor in U.S. real property is engaged in a U.S. trade or business depends on all the facts and circumstances. For example, a foreign investor who enters into a single long-term net lease (under which the lessee is responsible for operation of the property and pays the expenses) probably would not be engaged in a U.S. trade or business, whereas a taxpayer who owns and manages a number of commercial buildings would be so engaged.

If a foreign taxpayer is not actually engaged in a U.S. trade or business, he is permitted under the Code to elect to be treated as if he were so engaged with respect to all his real property held for the production of income. This election is provided because rental income, unlike other types of passive income, ordinarily has associated with it significant expenses. Therefore, a tax equal to 30 percent of the gross rentals could frequently exceed the entire economic income from the property. If the election is made, the taxpayer may reduce his gross income from the real property by the deductible expenses, such as depreciation, mortgage interest, and real property taxes. The tax-

payer is then taxed on the net income at the graduated rates which generally apply to U.S. taxpayers rather than paying 30 percent on his gross rental income. Often, as a result of the election, the investor will pay no tax on the current income because depreciation, mortgage interest, real property taxes and other expenses exceed gross income. (This result would be the same if a U.S. person owned the property.) However, by making the election, the taxpayer will also subject himself to U.S. tax on any capital gains from the sale or exchange of the property. The election, once made, is binding on the taxpayer in all subsequent years unless consent to revoke it is obtained from the Internal Revenue Service.

Apart from the Code election, a number of planning techniques exist whereby a foreign investor may obtain the advantages of being taxed on current income from real property on a net basis. However, unlike the Code election, these techniques also offer the opportunity to avoid tax on the capital gain which would result on the sale of the property. Also, unlike the Code election, they may be employed on a property-by-property basis. For example, a foreign investor who is actually engaged in a U.S. real estate business will be taxed on current income from the property on a net basis (which might result in no current tax because of the allowable deductions). He may sell the property on the installment basis and receive most or all of the payments in years following the year of the sale. If he is not actually engaged in a U.S. trade or business in later years when the installment payments are received (and has not made the election to be treated as if he were), the gain would not be treated as effectively connected with a trade or business in the later years and would therefore go untaxed.

Secondly, a foreign investor could generally exchange his U.S. real property held for productive use or investment for other property of a like kind, whether within or without the U.S., without recognition of gain. If the property he acquired in the exchange were outside the U.S., the gain he would recognize on the ultimate sale of the property received in the exchange would not be subject to U.S. tax. This would be the case even if the investor were actually engaged in a U.S. trade or business or had made the election to be so treated.

A taxpayer may also obtain the benefits of current taxation on a net basis and exemption from tax on the gain by investing in U.S. real property indirectly through a foreign holding company which either is actually engaged in U.S. business or makes the election. The holding company would be subject to tax on the income it receives from the property, but, as noted earlier, often there would be no taxable income on a current basis. Moreover, the corporation often could reduce or eliminate its taxable income by paying deductible interest to its investors. Ordinarily, dividends and interest paid by a foreign corporation deriving most of its income from U.S. sources are subject to U.S. withholding taxes. However, these taxes are sometimes waived on a reciprocal basis under tax treaties between the United States and other countries. If the corporation is entitled to such a treaty benefit, income paid currently by the corporation would escape that U.S. tax. (Foreign investors frequently utilize U.S. treaties applicable to the Netherlands Antilles and British Virgin Islands because the treaties contain the necessary waivers or reductions and because these jurisdictions impose low or no taxes on the income.)

The investors in the holding company could avoid U.S. tax on the gain from the sale of the property by either of two methods. First, if the corporation sells the property and follows a plan of liquidation meeting certain requirements, the corporation will not be taxable on the gain under a general rule of the Code which exempts liquidating corporations from tax on gains from the sale of property (sec. 337). Moreover, the shareholders and security holders will generally not be taxable when they exchange their stock and securities in liquidation for the proceeds of the sale of the real property because, as foreign investors, they generally are not subject to U.S. capital gains tax. Even though the corporation is engaged in a U.S. trade or business, that business is not imputed to its investors. Since mere ownership or sale of stock is generally not a trade or business, the gains ordinarily would not be effectively connected with a U.S. business and thus would escape U.S. tax.

Second, if the investors instead sell their stock or securities, they would generally not be subject to tax on the gain for the same reasons that they would generally not recognize gain in a liquidation. Assuming that the sales price reflected the appreciated value of the real property, the purchaser of the corporation, even if a U.S. person, could then liquidate it without realizing a gain subject to U.S. tax because his basis in the stock for purposes of determining his gain on the liquidation would be his purchase price for the stock. He would also get a stepped-up basis for the real property equal to his purchase price for the stock.

Finally, some U.S. tax treaties (such as the treaties with the Netherlands Antilles and the British Virgin Islands) provide for a real property election similar to that in the Code, but the election may be made on year-by-year basis. A foreign investor entitled to the benefits of such a treaty and not actually engaged in a U.S. business could use the treaty election to be taxed on a net basis in years prior to the year of sale. In the year of sale, the taxpayer would not make the treaty election and would not be taxed on the gain on the sale of the property because of the absence of a U.S. trade or business.

A number of U.S. tax treaties (not including, however, the protocols with the Netherlands Antilles or the British Virgin Islands) contain reciprocal provisions which prevent the United States from taxing certain types of U.S. source capital gains of foreign investors who are entitled to the treaty benefits. While these provisions reciprocally exempting capital gains generally do not apply with respect to real estate (that is, they do not restrict either country from taxing gains on sales of its real estate derived by residents of the other), they generally would apply with respect to stock in corporations formed or availed of to hold real estate. The Code provides that these treaty exemptions are to prevail if they require the exclusion from gross income of gains which the United States would otherwise tax (sec. 894(a); *cf.* also sec. 7852(d)).

Reasons for Change

The committee believes that it is essential to establish equity of tax treatment in U.S. real property between foreign and domestic investors. The committee does not intend by the provisions of this bill to im-

pose a penalty on foreign investors or to discourage foreign investors from investing in the United States. However, the committee believes that the United States should not continue to provide an inducement through the tax laws for foreign investment in U.S. real property which affords the foreign investor a number of mechanisms to minimize or eliminate his tax on income from the property while at the same time effectively exempting him from U.S. tax on the gain realized on disposition of the property.

The committee further believes that the tax should generally be imposed at a flat rate of one-third of 28 percent, currently the maximum rate which a U.S. investor would pay on long-term capital gains. It is not appropriate to allow foreign investors to be taxed on part or all of the gain at the lower graduated rates at which a U.S. investor might pay tax because foreign investors generally are taxed only on their U.S. source income. Their foreign source income would not be taken into account in determining the rates at which the U.S. tax would be imposed. However, if because part or all of the gain is treated as ordinary income, tax at one-third of the amount of tax which would be imposed if the full amount of the gain were subject to tax graduated rates would be higher than one-third of 28 percent, tax at the lower flat rate allowed for long-term capital gain would be inappropriate.

In order to impose a tax on gains from the sale of U.S. real estate, it is also necessary to impose a similar tax on gain from the disposition of interests in entities which hold substantial U.S. real property. Otherwise, a foreign investor could, as under present law, avoid tax on the gain by holding the real estate through a corporation, partnership, or trust and disposing of his interest in that entity rather than having the entity itself sell the real estate.

Finally, the committee believes that, to assure effective enforcement, it is necessary to provide for withholding of the tax by the purchaser. This withholding mechanism is similar in many respects to the withholding system now in effect for other types of investment income, such as interest and dividends, paid to foreign investors. However, to protect the U.S. purchaser from liability in cases of unintentional failure to withhold, the obligation only arises if he knows that the seller is a foreign investor or receives a notice to that effect. Moreover, to prevent interference with routine transactions, the withholding obligation will not apply in the case of certain sales of personal residences or the trading of stock in an established securities market.

Explanation of Provisions

General

Under the provision, foreign investors would be taxed on gains on the disposition of U.S. real property. Foreign investors would also be taxed on gains realized through the sale or exchange of an interest in a real property holding organization (RPHO). An RPHO generally is a closely held corporation, trust, or partnership at least half of the assets of which are U.S. real property interests. Reporting requirements would be established to identify when taxable transactions had occurred.

The tax would be collected through withholding requirements and related enforcement provisions. Foreign investors would be required

to notify purchasers of their U.S. real property interests of their status prior to the sale. Where such notice is given (or where the purchaser knows that the seller is a foreign person), the purchaser generally would be required to withhold the smallest of (a) one-third of 28 percent of the purchase price, (b) one-third of the tax on the seller's gain plus the full amount of any tax which was not paid on a previous sale of the property by a foreign person, or (c) the proceeds under his control. This withholding requirement could be waived (or reduced) if a certificate were obtained from the IRS indicating that no tax was due (e.g., there was no gain on the sale or adequate security had been provided to the IRS) or allowing withholding in a reduced amount.

No withholding would be required in the case of a sale of a single-family residence to be used as the purchaser's principal residence unless the gross sales price exceeded $150,000. No withholding would be required in the case of RPHO stock sold on an established securities market.

Tax imposed on seller

Amount of tax

In the case of any nonresident alien individual or foreign corporation, the tax imposed by the provision for each taxable year generally is equal to one-third of 28 percent of the excess (if any) of (i) the amount of the gain realized by the taxpayer during the taxable year from the sale of U.S. real property interests, over (ii) the amount of the loss realized by the taxpayer during the taxable year from the sale of U.S. real property interests. However, no tax is due if the excess is $5,000 or less. Gains of certain related parties are aggregated for purposes of the $5,000 exception. In the case of an installment sale, the entire amount to be realized is taken into account in the year of the sale for purposes of one exception.

"U.S. real property interests" include both U.S. real property held directly and interests in U.S. real property holding organizations, as described below. The tax is imposed separately from, and in addition to, other U.S. taxes which may be imposed on the foreign investor's income. In order to prevent double taxation in the case of a sale of a U.S. real property interest which is effectively connected with a U.S. trade or business (or which the foreign investor has elected to have so treated), any gain or loss realized on the sale of a U.S. real property interest is not to be taken into account for purposes of applying the provisions governing effectively connected gains (secs. 871 and 882). However, in order to prevent a foreign investor from paying less tax than one-third of the amount that he would have been required to pay if the gain were treated as effectively connected with a U.S. trade or business, the tax imposed under the provision will be at least equal to one-third of the tax that would be paid if the income were effectively connected and subject to graduated tax rates (after allowance of the long-term capital gains deduction where it is appropriate).

For purposes of imposing the tax, any disposition of a U.S. real property interest will be treated as a sale. Moreover, because the tax is imposed on the amount realized, the tax is imposed without regard to any provisions of the Code providing for nonrecognition of realized income unless nonrecognition for purposes of this tax is provided for

by regulations. It is anticipated that, for example, if nonrecognition treatment is otherwise available, and if collection of the tax imposed by the provision would not be jeopardized, a foreign person would be permitted under the regulations to exchange one U.S. real property interest for another without recognition of gain and payment of the tax. The tax would not be payable on dispositions by gift or inheritance because there is no amount realized.

The tax is imposed on the beneficial owner of the property, rather than the nominee, trustee, executor, etc., who holds record title. However, the record title holder may be a "seller's agent" under the withholding provisions (discussed below).

Direct interest in U.S. real property

The tax is imposed on gains from the sale of interests in real property (including an interest in a mine, well, or other natural deposit) located in the United States. The term "interest in real property" includes fee ownership and co-ownership of land or improvements, leasements, and options to acquire leaseholds of land or improvements. Such an interest would, for example, include a mineral royalty. Moreover, the term includes partial interests such as life estates, remainders, reversions, and rights of refusal in real property. Movable walls, furnishings, and other similar personal property associated with the use of real property are considered real property for purposes of the bill.

U.S. real property holding organizations

Also included in the definition of U.S. real property interests are certain holdings in a U.S. real property holding organization (RPHO). Thus, gain on the sale of such holdings would be subject to the tax.

Generally, the holdings subject to the tax are stock in a corporation, or an interest (other than solely as a creditor) in a partnership or trust, which, during the shorter of the period during which the taxpayer held his interest or the 5 years preceding his sale of the interest, is or was an RPHO. However, the interest would not be a U.S. real property interest if the RPHO recognized gain on all its U.S. real property interests prior to sale of the interest in the RPHO. Since convertible debt of an RPHO is an interest in an RPHO other than solely as a creditor, such convertible debt would be a U.S. real property interest.

An RPHO is a corporation, partnership, or trust, whether domestic or foreign, if at any time during the taxable year, (i) a controlling interest in the organization is owned by or for not more than 10 persons, and (ii) U.S. real property interests constituted at least 50 percent of the assets of the organization. For purposes of 10-owner rule, if the organization cannot identify holders of interests (e.g., bearer shares), it is intended that the unidentified interests will be presumed to be held by one person unless shown otherwise. In addition, to the extent that their effect is to make an organization an RPHO, attribution rules similar to those applied to ownership of personal holding companies will be applied under regulations. A "controlling interest" is, in the case of a corporation, 50 percent or more of the total combined voting power of all classes of stock or 50 percent or more of the fair

market value of all classes of stock; in the case of a partnership, 50 percent or more of the capital or profits interest; and, in the case of a trust, 50 percent or more of the beneficial interests (actuarially determined). For purposes of applying the assets test, cash, certain savings deposits, marketable securities, accounts or notes receivable, or other assets which are readily marketable, in excess of a reasonable amount of working capital, are not counted. This rule is intended to prevent the investors in an RPHO from converting it into a non-RPHO merely by infusing liquid assets.

The Treasury Department is to prescribe regulations setting forth "look through" rules under which, if a person controls an entity, that person is deemed to own directly a pro rata share of the assets of the entity.

Tax withheld by purchaser

Requirement of withholding

To enforce the provision, withholding obligations are imposed on purchasers of a United States real property interest (and certain other persons involved in the transactions) who know or receive a notice (described below) that the seller is foreign. As discussed below, in certain situations a withholding obligation is also imposed on certain other persons involved in the disposition of a U.S. real property interest. The purchaser or other withholding agent is to deduct and withhold a tax equal to the smallest of (i) one-third of 28 percent of the amount realized on the disposition, (ii) the "seller's maximum tax liability" (discussed below), or (iii) the fair market value of that portion of the sale proceeds which is within the withholder's control. The "seller's maximum tax liability" is the maximum amount which the Treasury determines that the seller could owe as his tax under the provision as a result of the disposition of a United States real property interest, plus any unsatisfied prior withholding tax liabilities of foreign persons under the provision with respect to that interest. Thus, for example, if a U.S. person sells a U.S. real property interest to a foreign investor for $1 million, if that foreign investor sells the property for $1.5 million to a second foreign investor and no tax under this provision is paid, and if that second foreign investor in turn sells the propery to a third foreign investor for $2 million and again no tax is paid, the unsatisfied prior withholding liability on the subsequent sale of the property by the third foreign investor would be one-third of $280,000 (assuming the gain of the first two foreign investors is long-term capital gain)—the sum of the unsatisfied withholding tax liabilities of the second and third foreign investors (which would be the amount of the maximum tax liabilities of the previous holders). Therefore, if the third investor sold the property for $2.5 million, his "maximum tax liability" would be one-third of $420,000—one-third of the sum of his $280,000 unsatisfied prior withholding liability plus the $140,000 tax due by reason of his disposition.

The limitation to the value of the proceeds in the withholder's control limits the amount of withholding in sales where part of the consideration is the assumption of a mortgage or where payments are to be made in installments. If the amount withheld exceeds the seller's liability for failure to withhold on a prior transaction and for gain

on the sale, the excess is refundable to the seller. The purchaser is indemnified against any claims by the seller if he withholds the lesser of one-third of 28 percent of the amount realized or the amount set forth in a "qualifying statement" (discussed below) from the IRS. If a purchaser fails to withhold when he had a duty to do so, he is relieved of liability to the extent that the tax is paid by the seller or some other person.

A person receiving a U.S. real property interest from a foreign person in an exchange is considered to be the purchaser of the interest for purposes of this provision and is required to withhold the appropriate amount of tax from the property transferred to the foreign person in the exchange. Thus, for example, in the case of a liquidation of an RPHO, the liquidating corporation is treated as the purchaser of stock exchanged by foreign shareholders for the liquidating distribution and is required to withhold from the liquidating distribution.

Where there are multiple sellers, the withholding rules apply to the portion of the proceeds which reflect the interests of sellers who are foreign persons. Where there are multiple purchasers, the withholding liability of each is limited, as described above, to the proceeds under his control.

Knowledge or notice requirement

The withholding requirement is not to apply to a purchaser of a United States real property interest unless, as of the time for settling the transaction, he knows that the seller is a foreign person or has received a notice from the seller or the seller's agent that the seller is a foreign person. However, if after the time for settling the transaction, the purchaser has any portion of the sale proceeds under his control and, immediately before the purchaser pays any of those proceeds to the seller, he knows or receives notice from the seller or the seller's agent that the seller is a foreign person, then the purchaser will be required to withhold with respect to the later payment.

The seller is required to notify the purchaser that the seller is a foreign person. The seller's agent (which can be the seller's nominee, broker, settlement attorney or any person holding any of the sale proceeds) is also required to notify the purchaser that the seller is a foreign person if, as of the time for settling the transaction, the agent has reason to believe that the seller may be a foreign person. The notice requirement for both the seller and his agents will be satisfied if at least one party gives the purchaser the required notice.

Other withholding agents

A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate will be required to deduct and withhold from distributions to foreign partners or beneficiaries to the extent that the distributions are attributable to the sale of a U.S. real property interest.

Failure to give notice

If a seller's agent is required to notify the purchaser of a U.S. real property interest that the seller is a foreign person and fails to give the notice, the agent is liable for the amount of the unpaid tax which the purchaser would have been required to withhold if the agent had given the purchaser the required notice. As in the case of other

withholders under this provision, the liability of the seller's agent is limited to the proceeds under his control. For this purpose, however, compensation received by the agent in connection with the transaction is treated as proceeds under his control. A seller's agent who fails to make reasonable inquiry is treated as required to give notice.

Exemptions from and reductions of withholding

A purchaser will not be required to withhold if: (i) the seller furnishes a "qualifying statement" (described below) to the person required to withhold, (ii) the property being sold is a single family residence which is to be used by the purchaser as his principal residence and the amount realized by the seller on the sale is $150,000 or less, or (iii) the property being sold is stock of a corporation and the sales transaction takes place on an established securities market. For this purpose, "established securities market" would generally include those included for purposes of section 453(b)(3) and also any comparable foreign securities market. It would not include negotiated transactions. A "qualifying statement" is a statement by the Treasury that the seller either (i) has reached agreement with the Treasury on the payment of the tax imposed by section 897 and has satisfied or provided adequate security for unsatisfied prior tax liabilities under section 897, or (ii) is exempt from tax imposed by section 897 and has satisfied or provided adequate security for unsatisfied prior tax liabilities under section 897. The Treasury may prescribe a reduced amount to be withheld if the Treasury, upon request by the purchaser or the seller, determines that such reduced amount or reduced tax will not jeopardize the collection of the withholding tax or the tax under section 897.

Related legislation

The committee intends that the taxes imposed under similar provisions of H.R. 2297 and H.R. 1212 are to be paid in addition to the taxes imposed under this provision.

Reporting requirements

Requirement to file a return

If, at any time during a calendar year, (i) a corporation, partnership, or trust has United States real property interests which constitute more than 40 percent of the fair market value of its assets, (ii) 10 or fewer persons have a controlling interest (other than solely as a creditor) in the entity, and (iii) at least one foreign person has an interest in the entity, the entity is required to file an information return for the year. The return is to set forth the following information: (i) the name and address of any person who held an interest (other than solely as a creditor) in the entity at any time during the calendar year, (ii) the composition of the assets of the entity at such time or times during the calendar year as the Treasury may prescribe by regulations, (iii) any information with respect to transfers during the calendar year of interests in the entity which the Treasury may prescribe by regulations, (iv) whether such entity is a United States RPHO at any time during the calendar year, and (v) any other information which the Treasury may prescribe by regulations.

In addition to the information return, the reporting entity is also required to furnish a written statement to every person who held an interest (other than solely as a creditor) in the entity during the calendar year setting forth the name and address of the entity making the return, whether the entity is a United States RPHO at any time during the calendar year and any other information that the Treasury may prescribe through regulations. The return will be furnished to the person having the interest no later than January 31 of the year following the year for which the return was made.

Failure to make a return or furnish a statement

A penalty for failure to file a tax return or to furnish a statement will be imposed in an amount equal to the greater of (i) $25 for each day during which such failure continues but not to exceed $25,000, or (ii) the amount of the tax imposed by section 897 which is not paid and which is attributable to transfers (other than those made in an established securities market) occurring during the calendar year for which the return or statement was required. However, if it is shown that the failure to file the return or to furnish the notice is due to reasonable cause and not to willful neglect, no penalty will be imposed.

Miscellaneous amendments

Source of income.—Income from the disposition of a United States real property interest will be United States source income.

Examination of taxpayer.—Section 7605(b) will not apply to an inspection of a taxpayer's books of account for purposes of sections 897 or 1444.

Effective date

The amendments made by the provision will generally apply to dispositions after December 31, 1979. However, for a 5-year period, gain will not be taxed to the extent required by treaty obligations of the United States. After that 5-year period for the renegotiation of conflicting treaty provisions (i.e., after December 31, 1984), the provision will prevail over any conflicting treaty provisions remaining in effect.

Revenue effect

It is estimated that this provision will increase budget receipts by $25 million in fiscal year 1980, $35 million in 1981, $39 million in 1982, $43 million in 1983 and $47 million in fiscal year 1984.

B. Tax Treatment of Employees of Charities Working Abroad

(Sec. 201 of the bill and Sec. 911 of the Code)

Present law

General

United States citizens and residents are generally taxed by the United States on their worldwide income with the allowance of a foreign tax credit for foreign taxes paid. However, for years prior to 1978, U.S. citizens working abroad could exclude up to $20,000 of earned income a year if they were present in a foreign country for 17 out of 18 months or they were *bona fide* residents of a foreign country for a period which included an entire taxable year (Code sec. 911). In the case of individuals who had been *bona fide* residents of foreign countries for three years or more, the exclusion was increased to $25,-000 of earned income. In addition, under the law prior to 1978, foreign taxes paid on the excluded income were creditable against the U.S. tax on any foreign income above the $20,000 (or $25,000) limit.

The Tax Reform Act of 1976 would generally have reduced the earned income exclusion for individuals working abroad to $15,000 per year. However, the Act would have retained a $20,000 exclusion for employees of domestic charitable organizations. (The term "charitable" as used in this explanation includes educational, religious, scientific, literary, etc., purposes for which an exemption is allowed under Code section 501(c)(3).) In addition, the Act would have made certain modifications in the computation of the exclusion.

These amendments made by the 1976 Act never went into general effect because the Foreign Earned Income Act of 1978 generally replaced the section 911 earned income exclusion for years beginning after December 31, 1977, with a new system of itemized deductions for the excess costs of working overseas. (The basic eligibility requirements for the deduction are generally the same as for the prior earned income exclusion.) However, because the provisions of the 1978 Act were effective on January 1, 1978, and the Act did not become law until November 8, 1978, taxpayers were permitted to elect for 1978 to be taxed under the new provisions or under prior law (the exclusion as amended by the Tax Reform Act of 1976) so that the 1978 Act would not have any mandatory retroactive effect. It was anticipated that this election would be of particular interest to employees of domestic charitable organizations, since under the 1976 Act they would continue to be eligible for a $20,000 exclusion, even though it would be subject to the new computation rules of the 1976 Act.

Excess living cost deduction

The new excess living cost deduction (new Code sec. 913) provided by the 1978 Act consists of separate elements for the general cost of liv-

ing, housing, education, and home leave costs. Employees of charitable organizations are allowed these deductions on the same basis as other individuals. The cost-of-living element of the deduction is generally the amount by which the cost of living in the taxpayer's foreign tax home exceeds the cost of living in the highest cost metropolitan area in the continental United States (other than Alaska). The deduction is based on the spendable income of a person paid the salary of a Federal employee at grade level GS-14 step 1, regardless of the taxpayer's actual income. The housing element is the excess of the taxpayer's reasonable housing expenses over his base housing amount (generally one-sixth of his net income). The education deduction is generally the reasonable schooling expenses for the education of the taxpayer's dependents at the elementary and secondary levels. The deduction for annual home leave consists of the reasonable cost of coach fare transportation for the taxpayer, his spouse, and his dependents from his tax home outside the United States to his most recent place of residence within the United States.

In addition, taxpayers living and working in certain hardship areas are allowed a special $5,000 deduction in order to compensate them for the hardships involved and to encourage U.S. citizens to accept employment in these areas. For this purpose, hardship areas are generally those designated by the State Department as hardship posts where the hardship post allowance paid government employees is 15 percent or more of their base pay.

Exclusion for employees in hardship area camps

As an exception to these new rules, the Act permits employees who reside in camps in hardship areas to elect to claim a $20,000 earned income exclusion (under sec. 911) in lieu of the new excess living cost and hardship area deductions. No foreign tax credit would be allowed for foreign taxes attributable to the excluded amount. Lodging is not a "camp" unless it is substandard lodging which is (i) provided by or on behalf of the employer for the convenience of the employer because the place at which the 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 the 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. The term "hardship area" has the same meaning for purposes of this provision as for the deduction for excess foreign living costs (sec. 913).

Reasons for change

Many charitable employees working abroad are eligible for a deduction for excess foreign living costs which is considerably less than $20,000 annually. Because these employees generally do not reside in camps, they may not elect the $20,000 annual exclusion. This change from prior law has resulted in a substantial increase in the tax liabilities of these individuals. For the most part, the committee believes that this increase is consistent with the intent of Congress in its refinement, through the Foreign Earned Income Act of 1978, of the tax relief afforded to Americans working abroad. However, the committee also believes that charitable employees in developing countries gen-

erally are performing services which the United States has a special interest in supporting. Accordingly, these employees should be afforded an incentive along the lines of that provided for employees in hardship area camps under the 1978 Act.

Explanation of provision

The provision would allow individuals meeting the foreign residence or presence tests in certain developing countries who perform "qualified charitable services" to elect, in lieu of the deduction for excess foreign living costs, an exclusion of $20,000 from gross income on the same basis as employees residing in camps in hardship areas. "Qualified charitable services" are defined to mean services performed by an employee for an employer which meets the requirements of section 501(c)(3). The developing countries for which the provision applies are those countries other than (i) the countries listed in the first sentence of section 502(d) of the Trade Act of 1974 or (ii) countries designated by the President as not being lesser developed countries.

Effective date

The provision would apply to taxable years beginning after December 31, 1978.

Revenue effect

It is estimated that this provision will reduce budget receipts by $23 million in fiscal year 1980, $17 million in 1981, $18 million in 1982, $19 million in 1983, and $21 million in fiscal year 1984.

C. Method of Depreciation for Railroad Track Assets

(Sec. 202 of the Bill and Sec. 167 of the Code)

Present law

If a taxpayer acquires an asset with a useful life of more than one year for use in a trade or business or for the production of income, a current deduction of the cost generally is not allowed. Rather, the cost of the asset must be capitalized. If the asset is property which is subject to wear and tear, to decay or decline from natural causes, to exhaustion and to obsolescence, the acquisition cost (less salvage value in excess of 10-percent of cost) generally can be deducted over the asset's useful life either ratably or pursuant to a permissible accelerated method under which larger deductions are allowable in the earlier years of use. This approach to the recovery of the cost of an asset is referred to as ratable depreciation.

The railroad industry, for tax purposes however, generally uses what is called the retirement-replacement-betterment, (RRB) method of depreciation for railroad track (rail) and ties, and other items in the track accounts such as ballast, fasteners, other materials, and labor costs. Although the RRB method is not specifically recognized as an allowable method of depreciation under the Internal Revenue Code, it has been allowed in court decisions as the equivalent to ratable depreciation and is recognized by the Internal Revenue Service in revenue rulings.[1] The Service's application of this method for tax purposes is based upon the application of this method by the Interstate Commerce Commission (ICC) for rate-making purposes. Although the ICC now requires use of the RRB method, it is presently considering a change to require the use of ratable depreciation.

For assets accounted for under the RRB method, when a new railroad line is laid, the costs (both materials and labor) of the line are capitalized. No depreciation is claimed on the original installation, but these original costs may be written off if this line is retired or abandoned. If the original installation is replaced with components (tracks, ties, etc.) of a like kind or quality, the costs of the replacements (both materials and labor) are deducted as current expense. When the replacement is of an improved quality, it generally is treated as a betterment, under which the betterment portion of the replacement is capitalized and the remainder is expensed.[2] Where rail and other track assets are retired, the salvage value (measured by fair

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[1] Rev. Rul. 67-22, 67-1 C.B. 52; Rev. Rul. 67-145, 67-1 C.B. 54; Rev. Rul. 78-199, 78-1 C.B. 66.

[2] Railroads may also claim the regular 10-percent investment credit on their track costs, includng both costs which are capitalized as costs of a new line (or a betterment) and those which are currently deducted replacement costs (Code secs. 48(a)(1)(B) and 48(a)(9), Regs. § 1.48-1(d)(4)).

market value) of the recovered materials is reflected as ordinary income.[3]

The operation of the RRB method can be illustrated by the following examples. If the original installation of a new rail line included a railroad tie which cost $3, this cost is capitalized and no ratable depreciation is allowed. When this tie is replaced with a tie which currently costs $20, the $3 original cost remains frozen and the $20 replacement cost is deducted currently. Where a betterment is involved, for example, where 100-pound rail is replaced with 150-pound rail which costs $120, under the RRB method the betterment portion ($40)[4] is capitalized and the $80 replacement portion (assuming no salvage value on the recoverd old rail) is deducted currently.

Reasons for change

The committee is aware that the RRB method has been used by the railroad industry for many years and that this method provides an important incentive to replace and modernize the nation's railroad track system. Consequently, the committee has concluded that this method should be codified so that a change from the RRB method, as may be required by the Interstate Commerce Commission, does not cause a change from this method of depreciation for tax purposes.

Explanation of provision

This provision codifies the retirement-replacement-betterment method of accounting for railroad track assets as an acceptable method of depreciation for Federal income tax purposes.

Effective date

This provision will be effective for taxable years ending after December 31, 1953 (the general effective date of the Internal Revenue Code of 1954).

Revenue effect

It is estimated that this provision will have no effect on budget receipts. The estimate is based on the assumption that the Internal Revenue Service would not use its administrative authority to require a change in the method of accounting for tax purposes to a ratable depreciation method from the presently accepted retirement-replacement-betterment method.

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[3] See e.g., *Seaboard Coast Line Railroad Company, Successor by Merger to Atlantic Coast Line Railroad Company* v. *Commissioner*, 72 T.C. ——, No. 76 (August 22, 1979), and cases cited therein.

[4] The $40 betterment portion is computed as follows:

$$\frac{\text{150-lb. new rail less 100-lb. old rail}}{\text{150-lb. new rail}} \times \text{\$120 cost of new rail} = \text{\$40}$$

D. Extension of Transitional Rule for Certain Services Provided by Private Foundation as Trustee

(Sec. 203 of the Bill and Sec. 4941 of the Code)

Present law

The 1969 Tax Reform Act in effect prohibited certain transactions between a private foundation and "disqualified persons" with respect to that foundation, such as substantial contributors to the foundation. These prohibited transactions include the furnishing of services between a private foundation and disqualified persons (sec. 4941(d)(1)(C) of the Internal Revenue Code). If disqualified persons hold more than 35 percent of the beneficial interest in a trust, the trust is a disqualified person (sec. 4946(a)(1)(G)).

The 1969 Act also provided a transitional rule permitting continuation—until taxable years beginning after December 31, 1979—of otherwise prohibited sharing of certain services between a private foundation and a disqualified person. This 10-year transitional rule applies if the services are pursuant to an arrangement in effect before October 9, 1969 and that arrangement was not at the time it was made a "prohibited transaction," as defined in section 503(b) or the corresponding provisions of prior law, and does not at any time thereafter or during the 10-year transitional period become a prohibited transaction, as determined as if section 503(b) continued to apply (sec. 101 (l)(2)(D) of P.L. 91–172).

Reasons for change

The Hormel Foundation, a tax-exempt private foundation incorporated in Minnesota, serves as trustee of certain trusts in which the Foundation has beneficial interests, and which trusts constitute "disqualified persons" with respect to the Foundation. The committee understands that the Internal Revenue Service takes the position that if the requirements for the shared-services transitional rule (sec. 101 (l)(2)(D) of the 1969 Act) are satisfied, such trustee services furnished by the Hormel Foundation for taxable years beginning before January 1, 1980 do not constitute taxable acts of self-dealing.

The committee believes that although self-dealing arrangements between private foundations and disqualified persons generally should be prohibited, it is appropriate, in light of the particular circumstances involving the Hormel Foundation, to provide an additional one-year transitional exception with respect to certain trustee services furnished by the Hormel Foundation to "disqualified person" trusts if the services are furnished in the capacity of trustee for a pre-1969 irrevocable trust designating the foundation as trustee and if the foundation receives reasonable compensation for such services.

Explanation of provision

The bill would provide that, for taxable years beginning after December 31, 1979 and on or before December 31, 1980, the furnishing of services by a private foundation to a disqualified person is not an act of self-dealing if (1) the services are furnished in the capacity of trustee for an irrevocable trust established prior to October 9, 1969, designating the private foundation as trustee; (2) the foundation may not, under the laws of the State of its incorporation, act as trustee of a trust, other than one in which it possesses a beneficial interest; (3) the private foundation receives compensation from the trust for the services performed as trustee which is reasonable in light of the facts and circumstances; and (4) the disqualified person attained that status solely because of the operation of a trust instrument which was irrevocable prior to October 9, 1969.[1]

The intended beneficiaries of this provision are the Hormel Foundation, incorporated in Minnesota, and certain trusts of which it is trustee.

Effective date

The provision would apply to services furnished in taxable years beginning after December 31, 1979, and on or before December 31, 1980.

Revenue effect

The effect on budget receipts of enactment of the provision depends on whether, absent enactment of the provision, the Hormel Foundation would continue to serve as trustee of "disqualified person" trusts after expiration of the 10-year transitional rule. If the Foundation would discontinue such trustee services absent enactment of the provision, the enactment of the provision permitting continuation of such trustee services will have no effect on budget receipts. If such trustee services would be continued even if the provision were not enacted, the enactment will reduce budget receipts by less than $100,000 for fiscal year 1981 only, assuming that only the initial excise taxes would be involved.

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[1] The provision sets forth requirements which must be met for taxable years beginning after December 31, 1979 and on or before December 31, 1980, in order for the one-year extension of the self-dealing transitional rule to be available. To qualify for this transitional rule for a taxable year beginning after December 31, 1979, and on or before December 31, 1980, a private foundation must satisfy the requirements of the provision for such taxable year, without regard to whether or not the foundation satisfied a statutory self-dealing exception or a transitional rule for a prior year or years. The provision of the bill does not apply to years ending before or after the taxable years specified in the provision.

E. Tax Treatment Under the Rhode Island Indian Claims Settlement Act

(Sec. 204 of the Bill)

Present law

In 1975, the Narragansett Indian Tribe brought suit against the State of Rhode Island and private landowners based on the Tribe's claims to certain land in Charlestown, Rhode Island. The Tribe argued that these lands had been alienated by it in 1880 in violation of the Trade and Intercourse Act of 1790. The Interior Department has held that the Tribe's claim is "credible." Prior to trial, the parties to the suit entered into a settlement agreement which required both State and Federal legislation for its implementation. Pursuant to the settlement and the implementing legislation, the Tribe's land claims have been extinguished. A public corporation (which is not a part of the State government) has been created under Rhode Island law with 5 directors to be appointed by the Tribe and 4 by State and local officials (the "Corporation"). The Corporation is to receive 1,060 acres of land now belonging to the State. Also pursuant to the settlement legislation, a fund of $3.5 million has been established in the U.S. Treasury for the purpose of purchasing 900 acres of privately held land in Charlestown at fair market value from its owners. Recently, 510 acres were acquired for $2.1 million. The land when acquired by the Secretary of the Interior with the proceeds of the fund is to be conveyed to the Corporation.

All land owned by the Corporation is to be held in trust for the benefit of the Tribe. All of the land contributed by the State, and at least 75 percent of the land acquired from private owners, is to be permanently dedicated to conservation purposes. It is anticipated that the Tribe may use the remaining land in other ways which reflect its heritage, or to provide housing for poor or aged members of the Tribe.

The settlement agreement further provided "That the parties to the Lawsuits will support efforts to obtain deferral of both State and Federal income taxes resulting from the conveyance of privately held portions of the Settlement Lands."

The Federal Government's participation in the settlement is under the authority of the Rhode Island Indian Claims Settlement Act, passed in 1978. That law provided for the extinguishment of aboriginal Indian title, creation of the fund for the purchase of the privately held land, and transfer of that land to the Corporation to be formed under the settlement agreement. It did not deal with any of the tax consequences of the settlements.[1]

[1] As introduced, H.R. 12860, 95th Congress, contained tax provisions identical to this provision. It is understood that these tax provisions were eliminated from H.R. 12860 to expedite passage in the brief time which remained in the 95th Congress after consideration of the legislation in 1978.

While the Federal Government was not directly involved in drafting the settlement agreement itself, the Administration (through the White House, the Office of Management and Budget, and the Interior Department), the staffs of the House Interior and Insular Affairs Committee, the Senate Indian Affairs Committee, and the staffs of the Rhode Island Congressional delegation took part, along with the parties to the settlement agreement, in drafting the 1978 Settlement Act. Thus, these participants supported, with certain exceptions, the entire agreement of the parties, including the tax provisions.

It is unclear whether, as the facts and circumstances develop, the Corporation could qualify for general exemption from Federal income tax (Code sec. 501). Also, the Corporation's receipt of land in settlement of the Tribe's damage claim might not be subject to income taxation.

Recognition of gain on the sale of property which is involuntarily converted (e.g., sold under the threat or imminence of condemnation) may generally be deferred if the taxpayer, for the purposes of replacing the property, purchases property similar or related in service or use to the converted property. Recognition of gain is limited to the amount by which the amount realized from the conversion exceeds the cost of the replacement property. (Code sec. 1033.) Generally, the replacement must occur within 2 years after the first year in which gain is realized. However, in the case of certain real property held for productive use in a trade or business or for investment, up to 3 years for replacement may be permitted.

Reasons for change

The committee believes that it is desirable to clarify the tax treatment with respect to land received by the Corporation. In addition, the committee believes that under the particular facts, and in the context of the overall settlement, treatment of the sales of the privately held property as an involuntary conversion would be appropriate. However, each disposition of Indian claims under the various lawsuits which have been brought will involve its own unique elements. Accordingly, the committee does not intend that this provision may be looked upon to any extent as a precedent for the appropriate tax treatment of other dispositions of Indian claims.

Explanation of provision

The provision generally would provide that the settlement land received by the Corporation shall not be subject to any form of Federal, State, or local taxation while held by the Corporation. Thus, for example, the Corporation would not realize income on receipt of the land and the land would be exempt from local property taxes. (An exemption from local property taxes is also provided in the Rhode Island legislation creating the Corporation.) However, the general exemption rule would not apply to any income-producing activities occurring on the settlement lands, and nothing in the bill would prevent the making of payments in lieu of taxes by the Corporation for services provided in connection with the settlement lands. The provision would not affect the question of whether the Corporation otherwise qualifies for exemption from Federal income taxation.

The provision also would provide that, for Federal income tax purposes, any sale or disposition of private settlement lands pursuant to the terms and conditions of the settlement agreement is to be treated as an involuntary conversion. This would permit the sellers to defer gain on the sale to the extent allowed by section 1033.

Effective date

The provision would be effective as of September 30, 1978, the date of enactment of the Rhode Island Indian Claims Settlement Act.

Revenue effect

It is estimated that this provision will decrease budget receipts by less than $500,000 for the period 1980 through 1983.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL AS AMENDED

Budget Effect

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made about the effect on the budget of this bill, H.R. 1319, as amended. The committee estimates that the amendments contained in the bill will increase budget receipts by $2 million in fiscal year 1980; $18 million in fiscal year 1981; $21 million in fiscal year 1982; $24 million in fiscal year 1983; and $26 million in fiscal year 1984.

The Treasury Department agrees with this statement.

New Budget Authority and Tax Expenditures

In accordance with section 308 of the Budget Act, after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill involve no new budget authority or new tax expenditures but would involve a net decrease in existing tax expenditures of $2 million for fiscal year 1980, $18 million in fiscal year 1981, $21 million in fiscal year 1982, $24 million in fiscal year 1983, and $26 million in fiscal year 1984. (See revenue effects under *Explanation of the Bill*, parts A and B, for the specific amounts that were aggregated to arrive at these net tax expenditure amounts.)

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated above) and agrees with the methodology used and the resulting revenue estimates.

Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made about the vote of the committee on the motion to report the bill, as amended. The bill, H.R. 1319, as amended, was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the following statement is made concerning the regulatory impact that might be incurred in carrying out the provisions of this bill, H.R. 1319, as reported by the committee.

Individuals and businesses regulated and economic impact of regulation.—The bill does not regulate any individuals or businesses, but amends certain provisions of the tax law. One provision (title I of the bill) would impose a tax on a portion of the gain on the sale of U.S. real property by foreign investors. Under this provision, certain reporting requirements would be established to identify when taxable transactions had occurred. The tax would be collected through withholding requirements and related tax enforcement provisions. A second provision (sec. 201) would permit employees of charities working abroad in less developed countries to elect to claim a $20,000 exclusion from gross income in lieu of the present deduction for excess foreign living costs. A third provision (sec. 202) would codify existing IRS rules regarding the method of depreciation for railroad track assets. A fourth provision (sec. 203) would extend for one year the present transitional rule for services provided by a private foundation as a trustee. A fifth provision (sec. 204) would generally provide for tax exemption or deferral regarding certain lands under the Rhode Island Indian Claims Settlement Act.

Impact on personal privacy.—The provision in title I of the bill (relating to tax on gain on sale of U.S. real estate by foreign investors) will involve some possible impact on the privacy of those involved in reporting and withholding with respect to the imposition and collection of the tax. The other provisions of the bill will have minimal impact on personal privacy.

Determination of paperwork involved.—The provisions in title I of the bill (relating to tax on gain on sale of U.S. real estate by foreign investors) will involve some additional paperwork with respect to the reporting, withholding, and other related tax enforcement provisions regarding the imposition and collection of the tax. The provision providing for a $20,000 exclusion for certain employees of charities working abroad will reduce their tax return-related paperwork by allowing them to elect the exclusion in lieu of the present itemized deductions for excess foreign living costs. The other provisions will have little, if any, net effect on paperwork of taxpayers.

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

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, H.R. 1319, as reported by the committee).