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SENATE

{ REPORT  
No. 96-1007

**TAX TREATMENT EXTENSION ACT OF 1980**

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REPORT  
OF THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE  
ON  
H.R. 6975



SEPTEMBER 30 (legislative day, JUNE 12), 1980.—Ordered to be printed

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**TAX TREATMENT EXTENSION ACT OF 1980**


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

**R E P O R T**

[To accompany H.R. 6975]

The Committee on Finance, to which was referred the bill (H.R. 6975) for the elimination of duties on wood veneers, 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. 6975, as it passed the House, would eliminate the duties on wood veneers.

Committee bill.—The committee amendment deletes the provision relating to the elimination of duties on wood veneers, and adds provisions extending the expiration dates of certain tax provisions, dealing with the tax treatment of certain Federal scholarship grants, and revising the rules allowing deductions for contributions made for conservation purposes.

**I. SUMMARY**

As passed by the House, this bill would eliminate the duties on wood veneers. In lieu of this provision (the substance of which was added by the committee to H.R. 5047), the committee added as an amendment in the nature of a substitute the following tax provisions.

***Sec. 1. Employment Tax Status of Independent Contractors***

In general, under present law, taxpayers who had a reasonable basis for not treating workers as employees in prior years may continue to do so for periods ending before January 1, 1981, without incurring employment tax liabilities. The bill would extend present law through June 30, 1982.

### ***Sec. 2. Extension of Provisions Relating to Historic Preservation***

Under present law, taxpayers may amortize over a 60-month period the capital expenditures incurred in a certified rehabilitation of a certified historic structure. Alternatively, taxpayers may use accelerated depreciation methods to depreciate substantially rehabilitated historic structures. In general, taxpayers may not deduct the costs of or any loss sustained in the demolition of a certified historic structure or a structure located in a registered historic district. Present law also provides that accelerated depreciation methods may not be used with respect to real property constructed on a site that has been occupied by a certified historic structure (or by any structure in a registered historic district, except in limited circumstances) that has been demolished or substantially altered (other than by virtue of a certified rehabilitation). The bill would extend these provisions through December 31, 1983.

### ***Sec. 3. 60-Month Amortization for Expenditures to Rehabilitate Low-Income Rental Housing***

Under present law, certain expenditures made to rehabilitate low-income rental housing may, at the election of the taxpayer, be depreciated over a 60-month period. Rehabilitation expenditures made pursuant to a binding contract entered into before January 1, 1982 qualify for this special treatment. The bill would extend this provision to any qualifying rehabilitation expenditures made through December 31, 1983 (including rehabilitations which had begun before that date and are still in process after that date).

### ***Sec. 4. Extension of Credit or Refund of Tax on Fuels Used in Certain Taxicabs***

Under present law, certain taxicab use of motor fuels is exempt (through refund or credit) from the 4-cents per gallon excise taxes on gasoline and other motor fuels. This exemption currently applies for calendar years 1979 and 1980. The bill would extend the present fuels tax exemption for qualified taxicab services through December 31, 1982.

### ***Sec. 5. Certain Federal Scholarship Grants and National Research Service Awards***

Present law generally excludes from gross income amounts received as scholarship or fellowship grants unless, as a condition to receiving such amounts, the recipient must agree to perform services for the grantor. In addition, temporary legislation provides tax-exempt treatment as scholarships or fellowships for National Research Service Awards made through 1980.

The bill, in general, would exclude from gross income scholarships received under Federal programs which require future Federal service by the recipients. In addition, the bill would extend the tax-exempt treatment of National Research Service Awards as scholarships or fellowships through 1981.

### ***Sec. 6. Deductions for Contributions for Conservation Purposes***

This provision revises the provisions of current law allowing deductions for charitable contributions of easements and other partial interests in real estate contributed for conservation purposes. The provision would expand the types of partial interests which qualify to

include the entire interest of the donor in real property other than the rights to subsurface minerals. It also would limit contributions eligible for the deduction to those contributed to a governmental unit, publicly supported charitable organization, or an entity controlled by one of these two kinds of organizations. Conservation purposes, as amended by this provision, would be defined as: (1) the preservation of land areas for outdoor recreation by, or the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or of a similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State or local governmental policy and will yield a significant public benefit; or (4) the preservation of a historically important land area or a certified historic structure. Finally, the bill would make these provisions permanent.

## II. EXPLANATION OF THE BILL

### ***A. 18-Month Extension of Provisions Relating to Employment Status for Employment Taxes: Independent Contractor Interim Relief (Sec. 1 of the bill)***

#### ***Present law***

The Revenue Act of 1978 provided interim relief for certain taxpayers involved in controversies with the IRS concerning the proper classification of workers for employment tax purposes. In general, the Act terminated taxpayers' potential liabilities for Federal income tax withholding, social security and FUTA taxes in cases where taxpayers have a reasonable basis for treating workers other than as employees. In addition, the Act prohibited the issuance of Treasury regulations and revenue rulings on common law employment status before 1980.

The temporary prohibition on reclassifications and the issuance of new rulings or regulations by the Internal Revenue Service was extended through December 31, 1980, by Public Law 96-167.

#### ***Reasons for change***

Because of the complexity of developing a permanent, substantive solution to the controversy about employment tax status rules, the committee believes the temporary, interim relief legislation should be extended to protect taxpayers until the Congress adopts new classification rules.

#### ***Explanation of provision***

The bill extends the temporary interim relief legislation and the prohibition on the issuance of new rulings or regulations by the Internal Revenue Service for 18 months, through June 30, 1982.

#### ***Effective date***

The bill will be effective upon enactment and will extend the present law relief provisions through June 30, 1982.

#### ***Revenue effect***

The revenue effect of this provision cannot be estimated because the provisions affect IRS asserted employment tax liabilities which were

contested by taxpayers in both administrative and judicial proceedings.

***B. Extension of Historic Structures Provisions (sec. 2 of the bill and secs. 167(n), 167(o), 191 and 280B of the Code)***

***Present law***

In 1976, rules were enacted to create tax incentives for the preservation of historic structures and reduce the tax advantages of the demolition of historic structures and construction of replacement structures. These provisions expire in 1981.

Under one of the provisions, taxpayers may amortize over a 60-month period the capital expenditures incurred in a certified rehabilitation of a certified historic structure (Code sec. 191). This provision applies with respect to additions to capital account made after June 14, 1976, and before June 15, 1981. Alternatively, taxpayers may use accelerated depreciation methods to depreciate substantially rehabilitated historic structures (Code sec. 167(o)). This provision applies with respect to additions to capital account occurring after June 30, 1976, and before July 1, 1981.

In addition, taxpayers may not deduct (except under limited circumstances) the costs of or any loss sustained in the demolition of a certified historic structure or, except in limited circumstances, a structure located in a registered historic district (Code sec. 280B). This provision applies to demolitions commencing after June 30, 1976, and before January 1, 1981. Present law also provides that accelerated depreciation methods may not be used with respect to real property constructed on a site that has been occupied by a certified historic structure (or by any structure in a registered historic district, except in limited circumstances) that has been demolished or substantially altered (other than by virtue of a certified rehabilitation) (Code sec. 167(n)). This provision applies to that portion of the basis attributable to construction, reconstruction, or erection after December 31, 1975, and before January 1, 1981.

***Reasons for change***

The committee believes the preservation of historic structures is important, and preliminary data indicates that these provisions have encouraged the preservation of historic structures throughout the country. Therefore, the committee agreed to extend the provisions for three years, which will allow the Departments of Interior and Treasury to complete a study of the provisions currently in progress.

***Explanation of bill***

The bill extends through December 31, 1983, the sunset dates for provisions enacted in 1976 that encourage the preservation of historic structures (Code secs. 167(n), 167(o), 191, and 280B).

***Effective date***

The provisions in the bill will be effective upon enactment.

***Revenue estimate***

This provision is expected to reduce fiscal year budget receipts by \$2 million in 1981, \$21 million in 1982, \$66 million in 1983, \$111 million in 1984, and \$131 million in 1985.



***C. Five-Year Amortization for Low-Income Rental Housing (sec. 3 of the bill and sec. 167(k) of the Code)***

***Present law.***

Under the Code, special depreciation rules are provided for expenditures to rehabilitate low-income rental housing (sec. 167(k)). Low-income rental housing includes buildings or other structures that are used to provide living accommodations for families and individuals of low or moderate income. Occupants of a dwelling unit are considered families and individuals of low or moderate income only if their income does not exceed certain limits, as determined by the Secretary of Treasury in a manner consistent with the limits established for the Leased Housing Program under section 8 of the United States Housing Act of 1937, as amended.

Under the special depreciation rules for low-income rental property, 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. Under present law, only the aggregate rehabilitation expenditures for any housing which do not exceed \$20,000 per dwelling unit qualify for the 60-month depreciation. In addition, for the 60-month depreciation to be available, the sum of the rehabilitation expenditures for 2 consecutive taxable years—including the taxable year—must exceed \$3,000 per dwelling unit.

***Reasons for change***

The special tax incentive for rehabilitation expenditures for low- and moderate-income rental housing under present law expires on December 31, 1981. In order to avoid discouraging this rehabilitation, the committee believes that the special depreciation provision for low-income rental housing should be extended for an additional two years.

***Explanation of provision***

The bill provides a two-year extension of the special 5-year depreciation rule for expenditures to rehabilitate low-income rental housing. Under the bill, rehabilitation expenditures that are made pursuant to a binding contract entered into before January 1, 1984, will qualify for the 5-year depreciation rule even though the expenditures actually are made after December 31, 1983.

***Effective date***

The two-year extension applies to expenditures paid or incurred with respect to low- and moderate-income rental housing after December 31, 1981, and before January 1, 1984 (including expenditures made pursuant to a binding contract entered into before January 1, 1984).

***Revenue effect***

This provision will have no effect on budget receipts in fiscal year 1981 but will reduce them by \$1 million in fiscal year 1982, \$8 million in 1983, \$18 million in 1984, and \$26 million in 1985.

***D. Two-Year Extension of Fuels Tax Exemption for Certain Taxicabs (sec. 4 of the bill and sec. 6427(e) of the Code)***

***Present law***

Under present law (enacted in the Highway Revenue Act of 1978), certain taxicab use of motor fuels is exempt (through refund or credit) from the 4 cents a gallon excise tax on gasoline and other motor fuels. The fuel is exempt if (1) taxicabs are not prohibited from ride sharing (under company policy or the rules of a Federal, State or local authority having jurisdiction over a substantial portion of the transportation) and (2) for 1978 and later model taxicabs acquired after 1978, the fuel economy of the model type of vehicle must exceed the fleet average fuel economy standard applicable under the Motor Vehicle Information and Cost Savings Act, as amended. However, the latter requirement does not apply to vehicles manufactured by certain small manufacturers (that is, those that produce less than 10,000 vehicles per year and which have been granted an exemption under section 502(c) of that Act).

A purchaser who uses the fuel for qualified taxicab services may file for a refund for the first three quarters of his taxable year if the refund of tax due is \$50 or more as of the end of a quarter. Any amounts not otherwise refunded may be claimed as a credit on the purchaser's tax return.

The exemption applies for calendar years 1979 and 1980. Under the conference report for the Highway Revenue Act of 1978, a Treasury report is to be submitted concerning the effectiveness of the exemption in encouraging more energy-efficient taxicabs and in removing barriers to ride sharing.

***Reasons for change***

Due to time lags necessary to collect and evaluate data, the Treasury Department has not yet submitted its report on the effectiveness of this provision. Accordingly, the committee decided to extend this exemption for two years so that ample time would be available for the Treasury Department to collect data and for the Congress to evaluate thoroughly the effectiveness of this exemption.

***Explanation of provision***

The bill will extend the present fuels tax exemption for qualified taxicab services for two years, or through December 31, 1982.

***Effective date***

The bill applies to fuels used after December 31, 1980, and before January 1, 1983.

***Revenue Effect***

It is estimated that this bill will reduce budget receipts by \$10 million in fiscal year 1981, \$30 million in fiscal year 1982, \$20 million in fiscal year 1983, and a negligible amount thereafter. These receipts otherwise would remain in the Highway Trust Fund.

***E. Extension of Certain Provisions Relating to Exclusion of Scholarship Income (sec. 5 of the bill and sec. 117 of the Code)***

***Present law***

Section 117 provides that amounts received as scholarships at educational institutions and up to \$300 per month for 36 months of any amounts received as fellowship grants generally are excluded from gross income. This exclusion also applies to incidental amounts received to cover expenses for travel, research, clerical help, and equipment. However, the exclusion for scholarships and fellowship grants is restricted to educational grants by relatively disinterested grantors who do not require any significant consideration from the recipient. Educational grants are not excludable from gross income if they represent compensation for past, present, or future services, or if the studies or research are primarily for the benefit of the grantor or are under the supervision of the grantor (Treas. Reg. § 1.117-4(c)).

Special legislation provides that members of a uniformed service participating in the Armed Forces Health Professions Scholarship Program, the Public Health Services Program, and similar programs may exclude from gross income amounts received as scholarships under these programs. Participants in these programs must agree to work for their funding service after completion of their studies. This temporary exclusion will not apply to scholarships awarded students entering these programs after December 31, 1980.

Under a separate provision applicable to National Research Service Awards made through 1980, the recipients of such awards may treat them as excludible scholarships or fellowships.

***Reasons for change***

The committee believes that Federal awards granted in return for future services generally should be excludable to the extent they are used for direct educational expenses. The committee believes that the temporary special tax rules governing National Research Service awards should be extended for another year so that appropriate permanent rules for their treatment can be developed.

***Explanation of the bill***

*General rule.*—The bill provides that an amount which is received by an individual as a grant under a Federal program and which would be excludable from gross income as a scholarship or fellowship grant, but for the fact that the recipient must perform future service as a Federal employee, is not includable in gross income if the individual establishes that the amount was used for qualified tuition and related expenses.

The excludable qualified tuition and related expenses are the amount used for tuition and fees required for the enrollment or attendance of the student at an institution of higher education and for fees, books, supplies, and equipment required for courses of instruction at that institution.

The bill defines an "institution of higher education" as a public or other nonprofit educational institution in any State which: (1) admits as regular students only individuals who have a certificate of graduation from a high school (or the recognized equivalent of such a certificate); (2) is legally authorized within the State to provide a program of education beyond high school; and (3) provides an educational program for which it awards a bachelor's or higher degree, provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized health profession.

*National Research Service Awards.*—The bill extends for one year the temporary treatment of National Research Service Awards as excludable scholarships or fellowships.

#### ***Effective date***

The exclusion provided for Federal grants requiring future services applies to taxable years beginning after December 31, 1980.

The extension of the special provision for National Research Service Awards applies to awards made during calendar year 1981.

#### ***Revenue effect***

The exclusion from gross income for amounts received as scholarships under the Armed Forces Health Professions Scholarship Program, the Public Health Services Program and similar programs will reduce budget receipts by \$3 million in fiscal year 1981, \$8 million in fiscal year 1982, \$14 million in fiscal year 1983, \$20 million in fiscal year 1984, and \$24 million in fiscal year 1985.

It is estimated that the one-year extension for National Research Service Awards will reduce budget receipts by less than \$1 million in fiscal year 1981, \$8 million in fiscal year 1982, \$8 million in fiscal year 1983, and less than \$5 million in fiscal year 1984.

### ***F. Charitable Deduction for Certain Contributions of Real Property for Conservation Purposes (sec. 6 of the bill and sec. 170 of the Code)***

#### ***Present law***

As a general rule, a deduction is not allowed for income, estate, or gift tax purposes for contributions to charity of less than the taxpayer's entire interest in the contributed property. This restriction was enacted by Congress in the Tax Reform Act of 1969 to prevent certain tax-avoidance transactions in which the taxpayer could obtain a deduction for a gift to a charity of the use of part of his property. Exceptions allowing deductions for charitable contributions of partial interests in property were provided in the 1969 Act for the contribution of (1) a remainder interest in a personal residence or farm; (2) an undivided portion of the taxpayer's entire interest in the property; (3) certain interests in trust; and (4) interests not transferred in trust that would be deductible if made in trust (Code secs. 170(f), 2055(e)(2), and 2522(c)(2)).

The Conference Report on the Tax Reform Act of 1969 states that a gift of an open space easement in gross is to be considered a gift of an undivided interest in property if the easement is in perpetuity. On the basis of that Conference Report language, the Internal Revenue Service issued Regulations providing that a deduction would be al-

lowed for the value of a restrictive easement gratuitously conveyed to a charitable organization in perpetuity whereby the donor agrees to restrictions on the use of his property, such as restrictions on the type and height of buildings that may be erected, the removal of trees, the erection of utility lines, the dumping of trash, and the use of signs (Treas. Reg. § 1.170A-7(b)(1)(ii)). In addition, the IRS has issued public rulings allowing deductions, under the undivided interest exception, for contributions of certain kinds of perpetual easements, including open space, historical, and recreational easements.<sup>1</sup> The undivided interest exception did not, however, extend to situations where taxpayers transferred their fee interest in property to a charitable organization while retaining valuable mineral rights.<sup>2</sup>

Explicit statutory exceptions for charitable contributions made "exclusively for conservation purposes" were provided in the Tax Reform Act of 1976 (and modified by the Tax Reduction and Simplification Act of 1977). Under these exceptions, a deduction is permitted for the contribution to a charitable organization, exclusively for conservation purposes, of (a) lease on, option to purchase, or easement with respect to real property granted in perpetuity or (b) a remainder interest in real property.<sup>3</sup> (Code secs. 170(f)(3)(B)(iii) and (iv).) The exceptions for these partial interests contributed for conservation purposes only apply to contributions made before June 14, 1981.

Regulations have not yet been promulgated under the explicit deductions for conservation easements added to the Code by the 1976 and 1977 Acts, and the Regulations promulgated under the Tax Reform Act of 1969 and in accordance with the Conference Report language are still outstanding (Treas. Reg. § 1.170A-7(b)(1)(ii)). It is unclear whether Congress intended the statutory provisions enacted in 1976 and modified in 1977 to supersede the statements made in the 1969 Conference Report.

### *Reasons for change*

The committee believes that the preservation of our country's natural resources and cultural heritage is important, and the committee recognizes that conservation easements now play an important role in preservation efforts. The committee also recognizes that it is not in the country's best interest to restrict or prohibit the development of all land areas and existing structures. Therefore, the committee believes that provisions allowing deductions for conservation easements should be directed at the preservation of unique or otherwise significant land areas or structures. Accordingly, the committee has agreed to extend the expiring provisions of present law on a permanent basis and modify those provisions in several respects.

In particular, the committee found it appropriate to expand the types of transfers which will qualify as deductible contributions in certain cases where the contributions are likely to further significant conservation goals without presenting significant potential for abuse. In

<sup>1</sup> Rev. Rul. 74-583, 1974-2 C.B. 80; Rev. Rul. 75-358, 1975-2 C.B. 76; Rev. Rul. 75-373, 1975-2 C.B. 77.

<sup>2</sup> Compare Rev. Rul. 76-331, 1976-2 C.B. 52 with Rev. Rul. 77-148, 1977-1 C.B. 63 and Rev. Rul. 75-373, 1975-2 C.B. 77.

<sup>3</sup> Prior to their modification by the 1977 Act, the provisions added by the 1976 Act also allowed deductions for term easements having a duration of at least 30 years.

addition, the committee bill would restrict the qualifying contributions where there is no assurance that the public benefit, if any, furthered by the contribution would be substantial enough to justify the allowance of a deduction. In addition, the committee decided that the treatment of open space easements should be clarified.

### ***Explanation of provision***

#### ***Qualified real property interests***

Under the bill, the types of partial interests which may qualify as a deductible conservation contribution are expanded to include the contribution of a taxpayer's entire interest in real property other than his interest in subsurface oil, gas, or other minerals and the right of access to such minerals. The committee intends that a contribution will not qualify under this new provision if the donor has reduced his "entire interest in real property" before the contribution is made by, for example, transferring part of his interest in the real property to a related person in order to retain control of more than a qualified mineral interest in the real property or reduce the real property interest donated.<sup>4</sup>

The types of partial interests which may qualify for a charitable deduction are also modified by replacing the present category covering a lease on option to purchase, or easement on real property granted in perpetuity with a general category covering "a restriction (granted in perpetuity) on the use which may be made of the real property." This new language would cover easements and other interests in real property that under State property laws have similar attributes (e.g., a restrictive covenant). The bill does not modify the other category of partial interests, remainder interests in real property, which may qualify for a deductible conservation contribution.

#### ***Conservation purpose***

The bill revises in several respects the present definition of conservation purposes. The bill defines the term "conservation purpose" to include four objectives. Although many contributions may satisfy more than one of these objectives (it is possible, for example, that the protection of a wild and scenic river could further more than one of the objectives), it is only necessary for a contribution to further one of the four.

First, conservation purpose includes the preservation of land areas for outdoor recreation by the general public or for the education of the general public. Thus, conservation purposes would include, for example, the preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.

Second, conservation purpose includes the protection of a relatively natural fish, wildlife or plant habitat, or similar ecosystem. Under this provision, a contribution would be considered to be made for conservation purposes if it will operate to protect or enhance the viability of an area or environment in which a fish, wildlife, or plant community normally lives or occurs. It would include the preservation of a habitat or environment which to some extent had been altered by human activity if the fish, wildlife, or plants exist there in a relatively natural state; for example, the preservation of a lake formed by a man-made

<sup>4</sup> See e.g., Treas. Reg. § 1.170A-7(a)(2)(1).

dam or a salt pond formed by a man-made dike if the lake or pond is a natural feeding area for a wildlife community that includes rare, endangered or threatened native species. The committee intends that contributions for this purpose will protect and preserve significant natural habitats and ecosystems, in the United States. Examples include habitats for rare, endangered, or threatened native species of animals, fish or plants; natural areas that represent high quality examples of a native ecosystem terrestrial community, or aquatic community; and natural areas which are included in, or which contribute to the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area or other similar conservation area. These natural habitats and ecosystems might be protected by easements or other restrictions regarding, for example, the development or use of property that would affect the habitat or ecosystem to be protected.

Third, conservation purposes would include the preservation of open space (including farmland and forest land) where such preservation (1) is for the scenic enjoyment of the general public and will yield a significant public benefit or (2) is pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit. The requirements of this conservation purpose are intended to insure that deductions are permitted only for open space easements that provide significant benefits to the public. The bill permits a deduction for an open space easement only if it meets the requirements imposed by this provision. Thus, a deduction for an open space easement in gross is not allowable under the undivided portion exception in Code section 170(f)(3)(B)(ii).

To satisfy the requirement of scenic enjoyment by the general public, visual, not physical, access by the general public to the property is sufficient. Thus, preservation of land may be for the scenic enjoyment of the general public if development of the property would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, historic structure or land area, and such area or transportation way is open to, or utilized by, the public.

Open space easements also may qualify even if the property has no significant scenic value as long as the preservation or conservation of the property is pursuant to a clearly delineated Federal, State, or local governmental preservation or conservation policy. This provision is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation. For example, this requirement would be satisfied by a Federal executive order pursuant to a Federal statute establishing a conservation program or a state statute or local ordinance establishing a funded conservation program for a scenic river or other identified conservation project. A program need not be funded to satisfy this requirement, but the program must involve a significant commitment by the government with respect to the conservation project. A broad declaration by a single official, (for example, a county executive) or a legislative body, for example (a state legislature), that land should be conserved is not sufficient, but the governmental conservation policy need not be a certification program that identifies particular lots or small parcels of individually owned property.

All contributions made for the preservation of open space must yield a significant public benefit. Public benefit will be evaluated by considering all information germane to the contribution; factors germane to the evaluation of public benefit from one contribution may be irrelevant in determining public benefit from another contribution. Factors that may be considered include (but are not limited to) the following:

- (1) the uniqueness of the property;
- (2) the intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);
- (3) the consistency of the proposed open space use with public programs (whether Federal, State, or local) for conservation in the region, including programs for water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area; and
- (4) the opportunity for the general public to enjoy the use of the property or to appreciate its scenic values.

The preservation of an ordinary tract of land would not, in and of itself, yield a significant public benefit, but the preservation of ordinary land areas in conjunction with other factors that demonstrate significant public benefit or the preservation of a unique land area for public enjoyment would yield a significant public benefit. For example, the preservation of a vacant downtown lot would not by itself yield a significant public benefit, but the preservation of the downtown lot as a public garden would, absent countervailing factors, yield a significant public benefit. The following are other examples of contributions which would, absent countervailing factors, yield a significant public benefit: (1) the preservation of farmland pursuant to a State program for flood prevention and control; (2) the preservation of a unique natural land formation for the enjoyment of the general public; (3) the preservation of woodland along a Federal highway pursuant to a government program to preserve the appearance of the area so as to maintain the scenic view from the highway; and (4) the preservation of a stretch of undeveloped oceanfront property located between a public highway and the ocean so as to maintain the scenic ocean view from the highway.

Finally, conservation purpose also includes the preservation of an historically important land area or a certified historic structure. The term "historically important land area" is intended to include independently significant land areas (for example, a civil war battlefield) and historic sites and related land areas, the physical or environmental features of which contribute to the historic or cultural importance and continuing integrity of certified historic structures such as Mount Vernon, or historic districts, such as Waterford, Virginia, or Harper's Ferry, West Virginia. For example, the integrity of a certified historic structure may be protected under this provision by perpetual restrictions on the development of such a related land area. The term "certified historic structure" for purposes of this charitable contribution deduction generally has the same meaning as in present Code section 191(d)(1) (dealing with 5-year amortization of expenditures incurred in the rehabilitation of certified historic structures). However,



a "structure" for this purpose means any structure whether or not it is depreciable. Thus, for example, easements on private residences may qualify under this provision. In addition, a structure would be considered to be a certified historic structure if it satisfied the certification requirements either at the time the transfer was made or at the due date (including extensions) for filing the donor's return for the year in which the contribution was made.

In view of the need of potential donors to be secure in their knowledge that a contemplated contribution will qualify for a deduction, the committee expects that taxpayers may obtain a prior administrative determination as to whether the contemplated contribution will be considered to have been made for a qualifying conservation purpose. In addition, the committee expects that regulations under this section will be classified among those regulation projects having the highest priority, and that, to the extent possible, issues that may arise in the interpretation of the statute will be resolved before publication of regulations by the issuance of administrative determinations.

*Exclusively for conservation purposes*

The bill retains the present law requirement that contributions be made "exclusively for conservation purposes." Moreover, the bill explicitly provides that this requirement is not satisfied unless the conservation purpose is protected in perpetuity. The contribution must involve legally enforceable restrictions on the interest in the property retained by the donor that would prevent uses of the retained interest inconsistent with the conservation purposes. In the case of a contribution of a remainder interest, the contribution will not qualify if the tenants, whether they are tenants for life or a term of years, can use the property in a manner that diminishes the conservation values which are intended to be protected by the contribution.

In addition, this requirement is not met if the contribution would accomplish one of the enumerated conservation purposes, but would allow uses of the property that would be destructive of other significant conservation interests. For example, the preservation of farmland would not qualify under the open space purpose if a natural ecosystem has been or, under the terms of the contribution, can be significantly injured or destroyed by the use of pesticides in the operation of the farm. This requirement is not intended to prohibit uses of the property, such as the selective cutting of timber or farming, if under the circumstances they are not destructive of significant conservation interests.

In the case of a qualified mineral interest gift, the requirement that the conservation purpose be protected in perpetuity is not satisfied if any method of mining, removal, or extraction that is inconsistent with the particular conservation purposes of a contribution is permitted at any time. Some methods of mining, removal, or extraction may have temporary, localized impact on the real property contributed that is not destructive of significant conservation interests, and this requirement may be satisfied even though such methods are permitted. In addition, the bill specifically states that this requirement is not met if at any time the minerals may be removed or extracted by any surface mining method.

By requiring that the conservation purpose be protected in perpetuity, the committee intends that the perpetual restrictions must be enforceable by the donee organization (and successors in interest) against all other parties in interest (including successors in interest). Generally, the committee contemplates that the restrictions would be recorded. The committee does not, by the requirement that the conservation purpose be protected in perpetuity, intend that a recipient of a conservation contribution must set aside funds for the enforcement of the contribution.

The committee does intend, however, to limit the deduction only to those cases where the conservation purposes will in practice be carried out. The committee contemplates that the contributions will be made to organizations which have the commitment and the resources to enforce the perpetual restrictions and to protect the conservation purposes. The requirement that the conservation purpose be protected in perpetuity also is intended to limit deductible contributions to those transfers which require that the donee (or successor in interest) hold the conservation easement (or other restriction) or other property interests exclusively for conservation purposes (i.e., that they not be transferable by the donee except to other qualified organizations that also will hold the perpetual restriction or property exclusively for conservation purposes).

#### *Qualified organizations*

In general, the bill restricts eligible recipients of contributions of partial interests for conservation purposes to governments and publicly supported charities. Thus, a governmental unit (described in Code sec. 170(b)(1)(A)(v)) would be an eligible recipient, as would a charitable organization (described in Code sec. 501(c)(3)) that is publicly supported within the meaning of either Code section 170(b)(1)(A)(vi) or Code section 509(a)(2). In addition, an organization that is not itself publicly supported but nevertheless is qualified as a "public charity" (under Code sec. 509(a)(3)) would be eligible if it is controlled by a government or publicly supported organization. Thus, for example, an organization created as a title-holding subsidiary of a public supported charitable organization would be an eligible recipient if it is controlled by the parent organization.

#### *Valuation*

In general, a deduction is allowed for a charitable contribution in the amount of the fair market value of the contributed property, defined as the price at which the property would change hands between a willing buyer and a willing seller. Thus, the amount of the deduction for the contribution of a conservation easement or other restriction is the fair market value of the interest conveyed to the recipient. However, because markets generally are not well established for easements or similar restrictions, the willing buyer/willing seller test may be difficult to apply (although it may become increasingly possible to determine the value of conservation easements by reference to amounts paid for such interests in easement acquisition programs as such programs increase). As a consequence, conservation easements are typically (but not necessarily) valued indirectly as the difference

between the fair market value of the property involved before and after the grant of the easement. (See Rev. Rul. 73-339, 1973-2 C.B. 68 and Rev. Rul. 76-376, 1976-2 C.B. 53.) Where this test is used, however, the committee believes it should not be applied mechanically.

For example, where before and after valuation is used, the fair market value of the property before contribution of the easement should take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would be developed. Where applicable, valuation of the property before contribution should take into account zoning, conservation, or historic preservation laws that would restrict development of the property. Valuation of the transfer should take into account the impact of the transfer on other property, as in the case where restrictions on one parcel of property serve to increase the value of adjacent property. Also, there may be instances in which the grant of an easement may serve to enhance, rather than reduce, the value of property, and in such instances no deduction would be allowable; for example, where there is a premium in value on property of a historic nature. Similarly, in a case where the owners of a high-rise oceanfront condominium make a contribution of an open space easement that prohibits further development of the property between the high-rise structure and the shoreline but does not allow the public access to the beach and does not diminish the value of the property overall, there would be no deductible amount. (In this example, it is questionable, absent other considerations, whether the gift of such a beach easement with limited public scenic value and without public access to the beach would qualify under the requirements of the open space provision.) The committee also intends that, as the use of conservation easements increases, valuation would increasingly take into account the selling price value, in arm's-length transactions, of other properties burdened with comparable restrictions.

#### *Study by Treasury*

The committee found that it was hindered to some extent in its analysis of the present provisions relating to conservation contributions and its consideration of the proposed legislation by the absence of a comprehensive data base concerning the nature and scope of conservation easements and remainder interests. To permit Congress to evaluate more precisely the effectiveness of the conservation contribution provisions and the need, if any, to modify them at some future date, the committee requests that the Administration undertake a study on conservation easements and remainders to be submitted to Congress by 1985. The committee contemplates that, if possible, the Internal Revenue Service will devise a method by which to collect information on the number and characteristics of interests for which deductions are claimed under this section, possibly through the use of forms required to be submitted with the tax return on which a deduction is claimed.

#### *Effective date*

The provisions of the bill apply to transfers made after the date of enactment in taxable years ending after such date.

**Revenue effect**

It is estimated that this provision will reduce budget receipts by \$5 million annually.

### III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING H.R. 6975

**Budget Effects**

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the budget effects of H.R. 6975, as reported.

**Budget Receipts**

The table below summarizes the estimates of decreases in budget receipts resulting from the provisions of the bill for fiscal years 1981-1985.

The Treasury Department agrees with this statement.

#### ESTIMATED REVENUE EFFECTS OF H.R. 6975, TAX TREATMENT EXTENSION ACT OF 1980, AS REPORTED BY THE COMMITTEE ON FINANCE

[Millions of dollars]

Section	Fiscal years				
	1981	1982	1983	1984	1985
1. Employment tax status of independent contractors . . .	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
2. Extension of provisions relating to historic preservation . . . . .	-2	-21	-66	-111	-131
3. 60-month amortization for expenditures to rehabilitate low-income housing . . . . .		-1	-8	-18	-26
4. Extension of credit or refund of tax on fuels used in certain taxicabs . . . . .	-10	-30	-20	( <sup>2</sup> )	( <sup>2</sup> )
5. Certain Federal scholarship grants and National Research Service Awards <sup>3</sup> . . . . .	-4	-16	-22	-23	-24
6. Deductions for contributions for conservation purposes . . . . .	-5	-5	-5	-5	-5
<b>Total<sup>3</sup> . . . . .</b>	<b>-21</b>	<b>-73</b>	<b>-121</b>	<b>-157</b>	<b>-186</b>

<sup>1</sup> The revenue effect of this provision cannot be estimated because the provisions affect IRS asserted employment tax liabilities which were contested by taxpayers in both administrative and judicial proceedings.

<sup>2</sup> Negligible.

<sup>3</sup> The provisions estimated at "less than \$1 million" and "less than \$5 million" were included in this table for budget scorekeeping as \$1 million and \$3 million, respectively.

### ***Vote of the Committee***

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee on the motion to report the bill. H.R. 6975, as amended, was ordered favorably reported by voice vote.

## **IV. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES**

### ***Regulatory Impact***

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of this bill.

A. *Numbers of individuals and businesses who would be regulated.*—The bill does not involve new or expanded regulation of individuals or businesses.

B. *Economic impact of regulation on individuals, consumers and business.*—The bill does not involve economic regulation.

C. *Impact on personal privacy.*—This bill does not relate to the personal privacy of taxpayers.

D. *Determination of the amount of paperwork.*—This bill will have little impact on the amount of paperwork of taxpayers involved since most of the provisions merely extend present law treatment.

### ***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 and agrees with the methodology used and the resulting dollar amounts.

### ***New Budget Authority***

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the committee states that the bill does not create new budget authority.

### ***Tax Expenditures***

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee makes the following statement.

The bill creates new tax expenditures in (1) the exclusion for Federal scholarship grants, (2) the extensions of the provisions relating to historic structures and rehabilitation of low-income housing, to the extent that certain expenditures made after the expiration date of the provisions may qualify for favorable tax treatment, and (3) the deduction for contributions for conservation purposes.

Increased tax expenditures include (1) the extension of provisions relating to historic preservation, (2) the extension of provisions relating to the 60-month amortization of expenditures to rehabilitate low-income rental housing, (3) the extension of the excise tax exemption for certain taxicab use of motor fuels, (4) the extension of tax-

exempt scholarship treatment of National Research Service Awards, and (5) the provision making permanent certain qualified conservation deductions.

The estimated effects on budget receipts of each new or increased tax expenditure is presented in Part III of this report, Revenue Effects.

## **V. 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. 6975, as reported by the committee).

