1 EXECUTIVE COMMITTEE MEETING

2 MONDAY, NOVEMBER 25, 1991

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

ORIGINAL

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6 The meeting was convened, pursuant to notice,
7 at 3:50 p.m., in Room SD-215, Dirksen Senate Office
8 Building, Hon. Lloyd Bentsen (Chairman) presiding.

9 Also present: Senators Baucus, Bradley, Riegle,
10 Rockefeller, Daschle, Breaux, Packwood, Roth,
11 Danforth, Chafee, Durenberger, and Symms.

12 Also present: Vandra McMurtry, Staff Director
13 and Chief Counsel; and Edmund Mihulski, Chief of
14 Staff, Minority.

15 Also present: Michael Graetz, Deputy Assistant
16 Secretary for Taxation, Department of the Treasury;
17 Sam Sessions, Chief Tax Counsel; March Schmitt,
18 Associate Chief of Staff for Joint Committee on
19 Taxation.

20 (The prepared written statement of Senator
21 Durenberger appears in the appendix.)

22 (The press release announcing the meeting
23 follows:)

24

25

1 The Chairman. This hearing will come to order.
2 We have a very limited amount of time because of the
3 sieges that are taking place on the floor, and we
4 may have another vote over there soon.
5 We are here this afternoon to discuss an
6 original bill that will be introduced here--a
7 Senate-numbered bill--that if it passes out of this
8 committee, would go to the floor, and then if you
9 had an H.R. number coming over on extenders, that it
10 would be substituted for this bill on the floor.
11 I would ask Mr. Sessions to discuss the piece of
12 legislation. And we have Mr.Graetz here who is
13 from Treasury.
14 Mr. Sessions. Thank you, Mr. Chairman. The
15 members of the committee have received a copy of the
16 mark-up documents. It is a straightforward bill
17 that the committee members are familiar with.
18 Basically what it does is it extends the tax
19 incentive provisions for six months and offsets the
20 revenue costs by a change in the estimated tax rules
21 for corporations, which, over a five-year period,
22 would take corporations to a rule under which they
23 would pay 95 percent of current year's liability,
24 rather than 90 percent, as they currently pay.
25 We have discussed it with the members, and we

1 would be happy to answer any questions.

2 The Chairman. And the extenders are which

3 extenders?

4 Mr. Sessions. In the document that was

5 distributed to members, there are 12 of them. The

6 exclusions are for employer-provider educational

7 assistance; group legal services; deduction for

8 health insurance costs of self-employed persons;

9 qualified mortgage bonds and mortgage credit

10 certificates; small issue manufacturing bonds;

11 allocation and apportionment of research expenses;

12 the R&E tax credit; the low-income housing tax

13 credit; the target jobs tax credit; business energy

14 credits for solar and geothermal property; a tax

15 credit for orphan drugs; and an exception to the

16 minimum tax rules for gifts of appreciated tangible

17 property.

18 The Chairman. Let me state this meeting is

19 called because first, the members of this committee,

20 in general, want very much to see these extenders

21 extended and not have to wait until next year to do

22 it retroactively where you would have the hiatus in

23 the application of these incentives.

24 A deep concern on the part of the Chairman was

25 that once you let the floor get a hold of one of

1 these, or even in the committee, that each of us has
2 things that we would like to attach that we feel
3 very strongly about from a tax measure.
4 This is a very frustrating way to have to do it,
5 but I have felt very strongly that we should not
6 attach any amendment in this committee, nor should
7 we attach one on the floor, because I do not know
8 where that process would stop. The Chairman of the
9 Ways and Means Committee shares that very strongly
10 with me.
11 I want to make it clear that if an amendment is
12 adopted here, or even offered where we have to vote
13 on it--and there can be many attractive ones in
14 which we have deep concern and would like to see
15 enacted--if that is done, this committee will go
16 into recess. And I will assure you, it will be very
17 long recess.
18 Now, I further discussed this with the Majority
19 Leader insofar as the action on the floor. And it
20 is my understanding the Majority Leader will ask for
21 a unanimous consent agreement that no amendment be
22 offered.
23 It would be my feeling that if that unanimous
24 consent agreement is not achieved, that we not bring
25 up the bill. And I would hate to see that as the

1 result, but I do not think we have any other choice
2 in trying to get this passed at this late stage of
3 the session.
4 And there are many, many concerns expressed by
5 members of this committee to me that I strongly
6 share, insofar as things that can be done and should
7 be done from a tax standpoint. But that list would
8 be endless, and I do not think we had accomplished
9 the objective of the extenders.
10 I would like to ask the representative of the
11 Treasury Department, who, I assume, has looked at
12 the means of payment of talking about changing the
13 estimate from 90 percent for corporations to 95
14 percent over a period of five years, and that not
15 applying to corporations that make less than a
16 million dollars net income, and quite a number of
17 other safeguards to help those corporations to be
18 protected from such errors that might not be of
19 their own making in making those estimates.
20 Mr. Graetz, would you tell me your viewpoint on
21 it -- the Treasury's viewpoint?
22 Mr. Graetz. Mr. Chairman, the administration
23 does not oppose the extension of these expiring
24 provisions, or the change in the estimated tax that
25 would pay for them.

1 The Chairman. Now, with unanimous consent, I
2 will put a comment of Senator Boren's in the record
3 at this point.
4 (The letter appears in the appendix.)
5 The Chairman. Are there comments?
6 Senator Breaux. Mr. Chairman.
7 The Chairman. Senator Breaux.
8 Senator Breaux. Mr. Chairman, I thought I had
9 an amendment, but I do not think I have one--at
10 least not at this point.
11 I support the extenders. I think the vast
12 majority of members of this committee, and, of
13 course, the entire Senate and probably the Congress
14 as well, support the extenders.
15 I was hoping the bill that Senator Chafee had
16 joined with me originally and many others have added
17 their co-sponsor to--that is the repeal of the
18 luxury tax on boats--that is really not working, and
19 that we have a legitimate offset which would pay for
20 it; we would be able to find some vehicle or some
21 mechanism in this session to be able to be voted on
22 by the full Senate.
23 I think that is particularly in part because of
24 the action that the Senate took last week when we
25 had a resolution wherein 82 Senators expressed their

1 strong support for that type of legislation in and
2 unbinding resolution. That certainly has affected
3 the market even further, and I really was hopeful
4 that we would be able to have some vehicle to offer
5 that to in this half of the session.
6 I appreciate what the Chairman has said, and I
7 understand the difficulties that we face. I guess
8 what I am asking the Chairman is could he give us
9 any kind of an indication, perhaps, of what the
10 situation would be in the future that would allow
11 some of these taxes that have legitimate, solid
12 offsets that are in keeping with what we need to be
13 doing might have an opportunity to be considered by
14 the full Senate?
15 The Chairman. I would say to the Senator from
16 Louisiana that at the first opportunity that we have
17 a tax measure coming out of this committee, that I
18 would be pleased to consider the repeal of the
19 luxury tax. I am sure it would not be just on
20 boats, that there would be others that would be
21 concerned, too.
22 I might also say--because I know the very
23 serious problem we are facing in the boat industry
24 and the loss of jobs and to some degree this
25 certainly being a deterrent on sales--that I think

1 we should give serious consideration to
2 retroactivity to that measure to the first of the
3 year.
4 Senator Chafee. Mr. Chairman.
5 The Chairman. Yes.
6 Senator Chafee. Mr. Chairman, I am in the same
7 category as Senator Breaux. We all have things we
8 like--mortgage revenue bonds, the 861 foreign
9 allocation, the R&E tax credit on this bill--but I
10 am just deeply concerned about this luxury tax on
11 boats. It has just been a disaster from every point
12 of view.
13 I recognize that we are not going to be able to
14 do anything about it today, but I do want to echo
15 the concern and hope that we can visit it very soon,
16 or as soon as possible. So, I am heartened by your
17 comment that when we get a tax bill, this will be
18 part of it.
19 The other statement that you made is really of
20 great significance, and that is the retroactivity.
21 The boat shows are coming up in January. Some of
22 the fall boat shows have been, obviously.
23 The boat shows are coming up in January and
24 February. And if we can have some suggestion or
25 comment, certainly those of us interested will do

1 everything we can to make this tax repeal
2 retroactive and the statement that you have made
3 that you will look--I hope I am correct in saying--
4 with favor on the repeal being retroactive. I think
5 that would be of some help.
6 The Chairman. I would.
7 Senator Chafee. Thank you very much.
8 The Chairman. Senator Roth.
9 Senator Roth. Mr. Chairman, I support what you
10 are proposing today, but I would like to make two
11 comments about why it disturbs me.
12 The first comment is on the revenue raiser,
13 which is for five years. What bothers me is that we
14 come back periodically to renew the extenders, but
15 always have to raise a new tax; each of these taxes
16 becoming permanent. That bothers me, because it is
17 a way of raising taxes over a period of time just to
18 keep the extenders in effect.
19 So that I would hope when we address it next
20 year, we would look at a permanent way of taking
21 care of this matter so that it does not have the
22 effect of being a tax raiser.
23 Secondly, I personally feel very strongly that
24 we ought to stay here and put in effect a tax cut.
25 Last year we increased taxes in the Federal

1 Government by something like $18 billion. I think
2 that $18 billion tax increase at the Federal level
3 and the $17 billion at the State level--which
4 amounts to $35 billion--was the wrong medicine for
5 our economy. It was the wrong way to go.
6 And consequently, I would prefer--and I know
7 that you have great interest as well, as I co-
8 sponsored your proposal--that we get on with the
9 job. And tomorrow I think we are starting that.
10 But it is my strong conviction that we ought to
11 finish that job before we recess for the year.
12 The Chairman. Thank you. Senator Bradley.
13 Senator Bradley. Thank you very much, Mr.
14 Chairman. I take from reports of earlier
15 conversations with both Senator Chafee and Senator
16 Breaux, that the boat tax will not be offered. Is
17 that correct?
18 The Chairman. That is correct.
19 Senator Bradley. It is my hope that we will be
20 able to address this in the early part of next year,
21 and I understand that you have said that you will
22 look to try to do that as early as possible.
23 The Chairman. As soon as we have a tax measure
24 that we can attach it to, then it will be certainly
25 germane, and we will listen to the proposals.

1 Senator Bradley. Mr. Chairman, I am pleased to
2 hear that. On the other extenders, they will be
3 extended for six months.
4 The Chairman. That is correct.
5 Senator Bradley. Now, some of these are old
6 extenders, and some of these are new extenders. And
7 I see that they tactic is to get something in the
8 code and extend it for six months or a year, and
9 then when the package moves at the end of the six
10 months or the year to extend it, it goes from six,
11 to seven, to eight, to nine, to twelve different
12 extenders.
13 I would hope, and would it be your intention,
14 to, when we do get to this next year, to look at
15 making some of these permanent and discarding others
16 that are viewed by the committee as not worthy of
17 continuance?
18 The Chairman. Senator, I would be delighted if
19 we could do that.
20 Senator Bradley. Good. Thank you.
21 The Chairman. Senator Riegle.
22 Senator Riegle. Mr. Chairman, let me thank you
23 very much for holding this mark-up and for taking
24 the lead on this issue.
25 One of the items on your list is an item that I

1 have sponsored to extend the mortgage revenue bonds.
2 We now have over 80 co-sponsors of that legislation.
3 The only other point I would make is that if we
4 fail to do this, I think we will, in effect,
5 contribute to a slowing down of the economy. These
6 items actually provide some economic lift at a time
7 when the economy really needs it.
8 And so I think they not only are important and
9 valuable on their own merits, but I think it would
10 be a mistake to withdraw this element of lift that
11 otherwise will be available to the economy. Again,
12 thank you.
13 The Chairman. Thank you, Senator. Senator
14 Rockefeller.
15 Senator Rockefeller. Mr. Chairman, I would only
16 mention an issue which could be appropriate to this
17 year's legislation which we are just considering,
18 but clearly, under the rules, cannot be.
19 And that is that there are, at an average age of
20 77 years old, 120,000 retired coal miners or their
21 beneficiaries out there in this country in 50
22 States who are going to lose their health benefits
23 come next March, which is more or less just the
24 beginning of our next year.
25 That has happened because the former employers

1 of most of them have walked away from the health
2 benefit agreements that they had made in earlier
3 times. It is a tragic situation.
4 It is one which could be remedied without any
5 Federal money, but which cannot be remedied without
6 Federal legislation. And I would just simply put
7 the committee on notice that this was not only a
8 problem which was passed out of this committee
9 favorably in 1989, but which was then put off for
10 other reasons, but which now we are faced with
11 urgently, coming into this next year. And it will
12 be something that needs to be before this committee.
13 The Chairman. Thank you, Senator. Any further
14 comments? Senator Symms.
15 Senator Symms. Thank you, Mr. Chairman. I
16 guess I would echo some of what Senator Roth said,
17 Mr. Chairman, that I would hope that someday we
18 could get this extender thing straightened out so we
19 do not have to raise somebody else's taxes every
20 year to keep the same credit on the tax code. I
21 hate that part.
22 But I would also hope that maybe the Chairman
23 and the Ranking Member would somehow be able to at
24 least help us make a positive statement when this
25 does get to the floor that through the hearings

1 tomorrow, and whether there would be any statement
2 we could make in a sense of a Senate resolution, or
3 however the Chair wished to do it, to the country
4 that the first of the year, that on the top of the
5 dock, is going to be a growth package for this
6 country to give some people some confidence that we
7 are concerned about it.
8 There is a whole list of things; I will not go
9 through them. But to come to mind, the capital
10 gains tax; the payroll tax; the luxury tax; the cap
11 on revenue bonds; and a whole list of things that I
12 think could help generate some economic growth just
13 in outright reduction in rates in the country.
14 And I would hope we could get a statement or
15 something from the committee that we are going to
16 get at this the first of the year and give the
17 American people an opportunity to get back to work.
18 The Chairman. Senator, we will be discussing
19 that on Tuesday--tomorrow--and look forward to the
20 statements you make then.
21 Senator Symms. All right. Thank you.
22 The Chairman. Senator Danforth has been very
23 helpful in getting the commitment of Senators not to
24 add amendments to the extenders, and that has
25 frankly encouraged me to call this meeting to see if

1 we cannot get the approval of this particular piece
2 of legislation that we have introduced. Senator
3 Danforth.
4 Senator Danforth. Mr. Chairman, I would simply
5 like to express my appreciation for what you have
6 done. I know that you and every other member of
7 Congress undoubtedly has good ideas for how to
8 improve the tax laws of our country.
9 The fact of the matter is that there is no way
10 to pass the bill which opens up the floor to
11 amendments for everybody's good ideas. The only way
12 to pass the bill is a clean bill; you have
13 recognized that in convening this meeting.
14 Senator Mitchell has recognized that in taking
15 the position that unless he has unanimous consent,
16 that there be no amendments. He is not even going
17 to bring it to the floor.
18 This is an approach that was anticipated by 79
19 members of the Senate who signed a letter to Senator
20 Mitchell and Senator Dole saying we would assist in
21 keeping the bill clean.
22 It has been clear from the outset that only a
23 clean bill has any chance of being enacted into law
24 this year, and that the alternative to a clean bill
25 is to have these provisions of the Tax Code expire.

1 And among those expiring provisions would be the
2 R&D credit, and the low-income housing tax credit,
3 and the effect of that would be that at a time of
4 sluggish economic performance, even those measures
5 that we now have in the Tax Code that produce jobs,
6 would be allowed to go out of existence. That is
7 unthinkable and you have recognized that. And I
8 very much appreciate your holding this mark-up.
9 The Chairman. Thank you. Senator Durenberger.
10 Senator Durenberger. Mr. Chairman, briefly. I
11 have a statement I would like to be made part of the
12 record, and express my regrets that we cannot take
13 action eliminating the luxury tax. I must have as
14 many miles of lakeshore land in my State as anybody
15 has ocean, lake, or any other kind of water. I have
16 the largest boat manufacturer in my State.
17 I have got more mink being raised, providing
18 more fur in my State than any other place. And
19 luxury tax for a lot of people, because of its
20 adverse economic impact, has had a severe impact on
21 all of our States.
22 And I think it is the first thing that ought to
23 go. I think it is appropriate that we deal with
24 that next year. I think it is also appropriate that
25 we come back and visit not only the extenders, but

1 some of the laws that relate to it. One of the
2 areas that is on here is the low-income tax credit,
3 and I remember being here when we decided we would
4 do that.
5 We are still subsidizing access to low-income
6 housing for individuals while we let the whole of
7 the multi-family market go to pot in this country.
8 There are apartment houses that we have helped build
9 in this committee that are deteriorating because
10 there is no way to facilitate their maintenance.
11 And I think that, too, is a very serious housing
12 problem that we need to deal with.
13 The Chairman. Any further comments?
14 Senator Chafee. Mr. Chairman.
15 The Chairman. Senator Chafee.
16 Senator Chafee. You were kind enough to mention
17 the question regarding retroactivity. You were kind
18 enough to indicate some support for it. I just want
19 to indicate, Mr. Chairman, that when this comes up,
20 I would ask that the period of retroactivity at
21 least extend back until today, November 25th.
22 Now, the reason I do that is because the boat
23 shows are coming up in January and February before
24 we will even have a chance to consider this. And
25 knowing the way life works around here, I just

1 cannot believe that we will be able to tackle these
2 measures that early; I wish we could. So, that is
3 what our move to have it retroactive in order to
4 give these people some capability, to some extent,
5 reassure their potential buyers that those who buy
6 at the shows will be protected from this onerous
7 tax.
8 The Chairman. Thank you, Senator. Senator
9 Daschle.
10 Senator Daschle. Mr. Chairman, I will be real
11 brief. I first just commend Senator Danforth. He
12 is on such a roll, he would be my nominee for envoy
13 to the Middle East, given his successes this year.
14 This is a great way to end it, I think.
15 But it also points out, I hope, the need for us
16 to take a close look sometime soon at making some of
17 these provisions permanent.
18 I know there are offset problems and legislative
19 problems related to it, but it just seems to me so
20 silly for us every year to come to this point, leave
21 everybody in the lurch until the last minute, in the
22 way that we are having to do this again this year,
23 without a lot of consideration; lumping them all
24 together; coming to some conclusions, finding some
25 kind of an offset, and then getting out of here.

1 It just seems to me that we ought to find a
2 better way, and I think making some of them
3 permanent is that better way.
4 The Chairman. Are there further comments?
5 (No response.)
6 The Chairman. May I have a motion to move the
7 legislation?
8 Senator Packwood. So moved.
9 The Chairman. Second?
10 Senator Baucus. Second.
11 The Chairman. All in favor of the motion, make
12 it known by saying aye.
13 (A chorus of ayes.)
14 The Chairman. Opposed?
15 (No response.)
16 The Chairman. The motion carried unanimously.
17 Mr. Sessions. Mr. Chairman?
18 The Chairman. Yes.
19 Mr. Sessions. The staff would like to ask for
20 the normal drafting authority, since we have been
21 looking at a mark-up document.
22 The Chairman. The request is made for the
23 normal time for drafting authority. If there is no
24 objection, that will be granted.
25 Thank you, gentlemen. Thank you very much.

1 (Whereupon, the meeting was adjourned at 4:15
2 p.m.)
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1 CERTIFICATE

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3 This is to certify that the foregoing

4 proceedings of an Executive Committee Meeting,

5 Committee on Finance, United States Senate, held on

6 November 25, 1991, were transcribed as herein

7 appears and that this is the original transcript

8 thereof.

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11 ______________________________

12 WILLIAM J. MOFFITT

13 Official Court Reporter

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16 My Commission Expires April 24, 1994.

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UNITED STATES SENATE
COMMITEE ON FINANCE

Executive Session

Monday, November 25, 1991 - 3:30 PM
SD-215 Dirksen Senate Office Building

A G E N D A

To consider a bill to extend certain expiring tax provisions.

DESCRIPTION OF A PROPOSAL TO EXTEND TAX PROVISIONS EXPIRING IN 1991 AND REVENUE-RAISING PROVISION

Scheduled for Markup

by the

COMMITTEE ON FINANCE

on November 25, 1991

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

November 25, 1991

JCX-30-91

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III. DESCRIPTION OF REVENUE-RAISING PROVISION

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a brief description of a proposal to extend tax provisions scheduled to expire in 1991, including a reference to the legislative background of each provision and any related Administration budget proposal.[2]

The Committee on Finance has scheduled a markup on the 1991 expiring tax provisions on November 25, 1991.

The first part of the document is a summary listing of tax provisions scheduled to expire in 1991. The second part is a description of a proposal to extend the 1991 expiring tax provisions. The third part is a description of the revenue-raising proposal intended to offset the revenue losses attributable to the extension of the expiring provisions.

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1 This document may be cited as follows: Joint Committee on Taxation, Description of Tax Provisions Expiring in 1991 (JCX-26-91), November 25, 1991.

2 The expiring tax provisions are also described in Joint Committee on Taxation, Description of Tax Provisions Expiring in 1991 and 1992, (JCS-2-91), February 28, 1991.

I. SUMMARY OF TAX PROVISIONS EXPIRING IN 1991

The following tax provisions are generally scheduled to expire after December 31, 1991, except for item (6):[3]

(1) Exclusion for employer-provided educational assistance benefits (Code sec. 127);

(2) Exclusion for group legal services benefits and the tax exemption for an organization providing group legal services as part of a qualified group legal services plan (secs. 120 and 501(c)(20));

(3) Deduction for health insurance costs of self-employed individuals (sec. 162(l));

(4) Tax exemption for qualified mortgage bonds and election to issue mortgage credit certificates (secs. 143 and 25);

(5) Tax exemption for qualified small-issue manufacturing bonds (sec. 144(a));

(6) Rules for allocation and apportionment of research expenses (sec. 864(f));[4]

(7) Tax credit for qualified research expenditures (sec. 41);

(8) Tax credit for low-income rental housing (sec. 42);

(9) Targeted jobs tax credit (sec. 51);

(10) Business energy tax credits for solar and geothermal property (sec. 48(a));

(11) Tax credit for orphan drug clinical testing expenses (sec. 28); and

(12) Minimum tax exception for gifts of tangible personal property (sec. 57).

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[3] These tax provisions, except for item (12), were last extended in the Revenue Reconciliation Act of 1990 ("1990 Act") (Title XI of the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508). Item (12) was enacted in the 1990 Act as a one-year provision.

[4] Expired on August 1, 1991.

II. DESCRIPTION OF TAX PROVISIONS EXPIRING IN 1991

1. Exclusion for employer-provided educational assistance (sec. 127 of the Code)

Present Law

An employee's gross income and wages for income and employment tax purposes do not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts are paid or incurred pursuant to an educational assistance program that meets certain requirements (sec. 127). This exclusion, which expires for taxable years beginning after December 31, 1991, is limited to $5,250 of educational assistance with respect to an individual during a calendar year.

In the absence of the section 127 exclusion, an employee generally would be required to include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to the employee, unless the cost of such assistance qualified as a deductible job-related expense of the employee.

Legislative Background

The section 127 exclusion was first established on a temporary basis by the Revenue Act of 1978 (through 1983). It subsequently was extended, again on a temporary basis, by Public Law 98-611 (through 1985), by the Tax Reform Act of 1986 (through 1987), by the Technical and Miscellaneous Revenue Act of 1988 (through 1988), by the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), and by the Omnibus Reconciliation Act of 1990 (through 1991). Public Law 98-611 adopted a $5,000 annual limit on the exclusion; this limit was subsequently raised to $5,250 in the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 made the exclusion inapplicable to graduate-level courses. The restriction on graduate-level courses was repealed by the Omnibus Reconciliation Act of 1990, effective for taxable years beginning after December 31, 1990.

Description of Proposal

The exclusion from income for employer-provided educational assistance would be extended through June 30, 1992. The exclusion would be available with respect to amounts paid on or before June 30, 1992.

2. Exclusion for employer-provided group legal services; tax exemption for qualified group legal services organizations (secs. 120 and 501(c)(20) of the Code)

Present Law

Under present law, certain amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) are excluded from the employee's gross income for income and employment tax purposes (sec. 120). The exclusion is limited to an annual premium value of $70.

The exclusion for group legal services benefits expires for taxable years beginning after December 31, 1991.

In addition, present law provides tax-exempt status for an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan (sec. 501(c)(20)). The tax exemption for such an organization expires for taxable years beginning after December 31, 1991.

Legislative Background

The section 120 exclusion and the section 501(c)(20) exemption were enacted initially on a temporary basis by the Tax Reform Act of 1976 (through 1981). They subsequently were extended, again on a temporary basis, by the Economic Recovery Act of 1981 (through 1984), Public Law 98-612 (through 1985), the Tax Reform Act of 1986 (through 1987), the Technical and Miscellaneous Revenue Act of 1988 (through 1988), the Omnibus Budget Reconciliation Act of 1989 (through September 30, 1990), and the Omnibus Reconciliation Act of 1990 (through 1991). The Technical and Miscellaneous Revenue Act of 1988 imposed the $70 annual limit on the amount of premium that may be excluded by the employee.

Description of Proposal

The exclusion from income for employer-provided group legal services would be extended through June 30, 1992. The exclusion would be available with respect to amounts paid by an employer before July 1, 1992, for coverage under a qualified group legal services plan for periods before July 1, 1992.

3. Deduction for health insurance costs of self-employed individuals (sec. 162(l) of the Code)

Present Law

Under present law, an employer's contribution to a plan providing accident or health coverage is excludable from an

employee's income (sec. 106). No equivalent exclusion is provided for self-employed individuals (i.e., sole proprietors or partners in a partnership).

However, present law provides a deduction for 25 percent of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents. This deduction is allowable in calculating adjusted gross income. The 25-percent deduction is also available to a more than 2-percent shareholder of an S corporation.

No deduction is allowable for any taxable year in which the self-employed individual or eligible S corporation shareholder is eligible to participate (on a subsidized basis) in a health plan of an employer of the self-employed individual (or of such individual's spouse).

The 25-percent deduction expires for taxable years beginning after December 31, 1991.

Legislative Background

The 25-percent deduction for the health insurance costs of self-employed individuals was enacted on a temporary basis by the Tax Reform Act of 1986 (for taxable years beginning before January 1, 1990). Certain technical corrections to the provision were made by the Technical and Miscellaneous Revenue Act of 1988. The Omnibus Budget Reconciliation Act of 1989 extended the deduction for 9 months (for taxable years beginning before October 1, 1990) and clarified that the deduction is available to certain S corporation shareholders. The Omnibus Reconciliation Act of 1990 extended the deduction through 1991.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend for one year the 25-percent deduction for health insurance costs of self-employed individuals.

Description of Proposal

The 25-percent deduction for health insurance costs of self-employed individuals would be extended through June 30, 1992. The deduction would be available with respect to amounts paid before July 1, 1992, for insurance coverage for periods before July 1, 1992.

For purposes of the earned income limitation on the deduction, the amount of earned income taken into account would be the amount that bears the same ratio to the total amount of earned income for the taxable year as the number of months in the taxable year ending before July 1, 1992, bears to the total number of months in the taxable year.

4. Qualified mortgage bonds and mortgage credit certificates (secs. 143 and 25 of the Code)

Present Law

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used (net of costs of issuance and a reasonably required reserve fund) to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds. The QMBs must meet purchase price, income eligibility limitations, and other restrictions.

Mortgage credit certificates

Qualified governmental units may elect to exchange qualified mortgage bond authority for authority to issue mortgage credit certificates (MCCs) (sec. 25). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the residence being financed continues to be the certificate-recipient's principal residence. MCCs are subject to the same targeting requirements as QMBs.

Expiration

Authority to issue QMBs and to elect to trade in QMB volume authority to issue MCCs expires after December 31, 1991.

Legislative Background

The Mortgage Subsidy Bond Tax Act of 1980 first imposed restrictions on the ability of State and local governments to issue tax-exempt bonds to finance mortgage loans on single-family, owner-occupied residences. These restrictions included many of the rules applicable under present law.

Under the 1980 Act, the authority of State and local governments to issue QMBs expired on December 31, 1983. The Deficit Reduction Act of 1984 extended this authority (with modifications) through December 31, 1987, and enacted the MCC alternative to QMBs.

Authority to issue QMBs and the election to trade in bond volume authority to issue MCCs were extended for one year (through December 31, 1988) by the Tax Reform Act of 1986. The Technical and Miscellaneous Revenue Act of 1988 extended the authority to issue QMBs and the election to trade in bond volume authority to issue MCCs for another year (through December 31, 1989), with substantial modifications. The Omnibus Budget Reconciliation of 1989 extended the expiration date of this

authority nine months (through September 30, 1990).

Authority to issue QMBs and the election to trade in bond volume authority to issue MCCs were extended for 15 months, (through December 31, 1991) by the Omnibus Budget Reconciliation Act of 1990. The 1990 Act also made several modifications to the recapture provisions. These modifications were effective as if enacted in the Technical and Miscellaneous Revenue Act of 1988 (the Act which originally enacted the recapture provisions).

Description of Proposal

The authority of State and local governments to issue QMBs and to elect to trade in bond volume authority to issue MCCs would be extended through June 30, 1992.

5. Qualified small-issue manufacturing bonds (sec. 144(a) of the Code)

Present Law

Interest on certain small issues of private activity bonds is exempt from tax if at least 95 percent of the bond proceeds is used to finance manufacturing facilities or certain land or property for first-time farmers ("qualified small-issue bonds"). Qualified small-issue bonds are issues having an aggregate authorized face amount of $1 million or less. Alternatively, the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, may not exceed $10 million. Special limits apply to these bonds for first-time farmers.

Authority to issue qualified small-issue bonds expires after December 31, 1991.

Legislative Background

Substantial modifications to the tax treatment of exempt small-issue industrial development bonds were made by the Tax Equity and Fiscal Responsibility Act of 1982. The 1982 Act also provided that the authority to issue exempt small-issue bonds would expire after December 31, 1986. The Deficit Reduction Act of 1984 limited the small-issue bond exception to financing for manufacturing and farming facilities, effective after December 31, 1986, and extended the expiration date for these bonds to December 31, 1988. The Tax Reform Act of 1986 extended that date to December 31, 1989.

The Technical and Miscellaneous Revenue Act of 1988 clarified the definition of manufacturing to provide that up to 25 percent of the proceeds of qualified small issue bonds may be used to finance ancillary activities which are carried out at

the manufacturing site. The Omnibus Budget Reconciliation Act of 1989 extended the expiration date to September 30, 1990. The Omnibus Budget Reconciliation Act of 1990 extended that date to December 31, 1991.

Description of Proposal

The authority to issue qualified small-issue bonds would be extended through June 30, 1992.

6. Allocation and apportionment of research expenses (sec. 864(f) of the Code)

Present Law

Pursuant to Treasury regulations which were promulgated in 1977, research and experimentation expenditures are generally allocated as follows: (1) expenses for research that is undertaken solely to meet legal requirements imposed by a government and that cannot reasonably be expected to generate income (beyond de minimis amounts) outside that government's jurisdiction are allocated solely to income from sources within that jurisdiction; and (2) remaining research expenses are generally apportioned to foreign source income based on either (a) gross sales, except that a taxpayer using this method may first apportion at least 30 percent of such expenses exclusively to the source where over 50 percent of the taxpayer's research is performed; or (b) gross income, except that expenses apportioned to U.S. and foreign source income using a gross income method cannot be less than 50 percent of the respective portions that would be apportioned to each income grouping using a combination of the sales and place-of-performance methods.

A statutory allocation rule applies to the taxpayer's first two taxable years beginning after August 1, 1989, and on or before August 1, 1991. In these two taxable years, the statutory allocation rule provides that 64 percent of U.S.-incurred R&D expenses are allocated to U.S. source income, 64 percent of foreign-incurred R&D expenses are allocated to foreign source income, and the remainder of R&D expenses are allocated and apportioned either on the basis of sales or gross income, but subject to the condition that if income-based apportionment is used, the amount apportioned to foreign source income can be no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used. In taxable years beginning after August 1, 1991, the R&D allocation regulation applies.

Legislative Background

Beginning in 1981, Congress enacted a series of statutory R&D allocation rules to substitute, in part, for the R&D allocation regulation. The first statutory R&D allocation rule was contained in the Economic Recovery Tax Act of 1981 (ERTA),

covering any taxpayer's first 2 taxable years beginning within 2 years after August 13, 1981. In the taxable years governed by this aspect of ERTA, all U.S.-incurred R&D expenses were allocated to U.S. source income. This provision was extended by the Deficit Reduction Act of 1984 (DEFRA) and the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) through taxable years beginning on or before August 1, 1986.

For taxable years beginning after August 1, 1986, and on or before August 1, 1987, the Tax Reform Act of 1986 (TRA) provided that 50 percent of research expenses (other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source) were allocated to U.S. source income, with the remainder allocated and apportioned either on the basis of sales or gross income.

The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) effectively extended statutory allocation rules for an additional four months. The rules in effect for these four months, however, were different than those contained in previous statutes.

The Omnibus Budget Reconciliation Act of 1989 (OBRA89) and the Omnibus Budget Reconciliation Act of 1990 (OBRA90) apply a statutory allocation rule to the taxpayer's first two taxable years beginning after August 1, 1989, and on or before August 1, 1991. In taxable years governed by OBRA89 and OBRA90, the same statutory allocation rule applies as was applicable to expenses deemed incurred in the first four months of the year governed by TAMRA. That allocation rule is codified as section 864(f) of the Internal Revenue Code.

President's Budget Proposal

Under the President's fiscal year 1992 budget proposal, the statutory R&D allocation rules of section 864(f) would be extended for one year, so as to apply to all R&D expenses paid or incurred in taxable years beginning after August 1, 1991 and on or before August 1, 1992.[5]

Description of Proposal

The expired statutory allocation rule would be extended to apply to research expenses paid or incurred during the taxpayer's third taxable year beginning after August 1, 1989, and on or before August 1, 1992. In the case of the taxpayer's

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[5] The Treasury Department's General Explanations of the President's Budget Proposals Affecting Receipts erroneously describes the effective date of the proposal as "taxable years beginning after August 1, 1991 and ending on or before August 1, 1992."

first taxable year beginning after August 1, 1991, however, the statutory allocation rule would apply only to research expenses paid or incurred during the first six months of that year.

7. Tax credit for qualified research expenditures (sec. 41 of the Code)

Present Law

General rule

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit will not apply to amounts paid or incurred after December 31, 1991.

A 20-percent tax credit also applies to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for university basic research over (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.[6]

Computation of allowable credit

Except for certain university basic research payments, the credit applies only to the extent that the taxpayer's qualified research expenditures for the taxable year exceed its base amount. The base amount for the current year is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years.

If a taxpayer both incurred qualified research expenses and had gross receipts during each of at least three years from 1984 to 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenses for the 1984-1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (such as "start-up" firms) are assigned a fixed-base percentage of .03.

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Relation to deduction

Deductions for qualified research expenditures allowed to a

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6 Expenditures paid or incurred for university basic research after December 31, 1991, are not eligible for the credit.

taxpayer under sec. 174 or any other provision are reduced by an amount equal to 100 percent of the taxpayer's research credit determined for that year.

Legislative Background

The research credit initially was enacted in the Economic Recovery Tax Act of 1981 as a credit equal to 25 percent of the excess of qualified research expenses in the current year over the average of qualified research expenses in the prior three taxable years. The research credit was modified in the Tax Reform Act of 1986 which (1) extended the credit through December 31, 1988, (2) reduced the credit rate to 20 percent, (3) tightened the definition of research expenditures eligible for the credit, and (4) modified the university basic research credit.

The Technical and Miscellaneous Revenue Act of 1988 extended the credit for one additional year, through December 31, 1989. The 1988 Act also reduced the deduction allowed under section 174 for qualified research expenses by an amount equal to 50 percent of the research credit determined for the year.

The Omnibus Budget Reconciliation Act of 1989 effectively extended the research credit for nine months (by prorating qualified expenses incurred before January 1, 1991). The 1989 Act also modified the method for calculating a taxpayer's base amount and further reduced the deduction allowed under section 174 for qualified research expenses by an amount equal to 100 percent of the research credit determined for the year.

The Omnibus Budget Reconciliation Act of 1990 extended the research credit through December 31, 1991 (and repealed the special rule to prorate qualified expenses incurred before January 1, 1991).

President's Budget Proposal

The President's fiscal year 1992 budget proposal would make permanent the 20-percent research tax credit for qualified research expenditures and university basic research payments.

Description of Proposal

The tax credit for qualified research expenditures (including university basic research payments) would be extended for six months (i.e., for qualified expenses incurred through June 30, 1992).

8. Tax credit for low-income rental housing (sec. 42 of the Code)

Present Law

A tax credit is allowed in annual installments over ten years for qualifying newly constructed or substantially rehabilitated low-income rental housing. For most qualifying housing, the credit has a present value of 70 percent of the cost of low-income housing units. For housing receiving other Federal subsidies (e.g., tax-exempt bond financing) and for the acquisition cost of existing housing (e.g., costs other than the required rehabilitation expenditures), the credit has a present value of 30 percent.

To qualify for the credit, a building owner generally must receive a low-income housing credit allocation from the appropriate State credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The annual credit ceiling for each State is $1.25 per resident per year.

The low-income housing credit is scheduled to expire after December 31, 1991.

Legislative Background

The low-income housing credit was enacted by the Tax Reform Act of 1986, with an expiration date of December 31, 1989. The credit was substantially revised and extended through December 31, 1990, by the Omnibus Budget Reconciliation Act of 1989 (the 1989 Act). To implement the equivalent of a partial-year extension of the credit, the 1989 Act reduced the annual low-income housing credit ceiling for 1990. In years prior to 1990, the credit ceiling for each State was $1.25 multiplied by the State's population. For calendar year 1990, that amount was reduced by 25 percent from $1.25 to $0.9375.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) restored the State credit ceiling applicable for 1990 to $1.25 per resident of the State, and extended authority to allocate the credit through December 31, 1991. In addition, the 1990 Act made technical and other modifications to the credit.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the current low-income housing credit for one year, through December 31, 1992.

Description of Proposal

The low-income housing credit would be extended through June 30, 1992.

9. Targeted jobs tax credit (sec. 51 of the Code)

Present Law

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. The targeted groups consist of individuals who are either recipients of payments under means-tested transfer programs, economically disadvantaged, or disabled.

The credit generally is equal to 40 percent of up to $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200.

The credit expires for individuals who begin work for an employer after December 31, 1991.

Authorization of appropriations

Present law authorizes appropriations for administrative and publicity expenses relating to the credit through December 31, 1991. These monies are to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

Legislative Background

The targeted jobs tax credit was enacted by Congress in the Revenue Act of 1978 to replace an expiring credit for increased employment. As originally enacted, the targeted jobs tax credit was scheduled to apply to qualified wages paid before 1982.

The availability of the credit was successively extended by the Economic Recovery Tax Act of 1981 (ERTA) for one year (through 1982), by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) for two years (through 1984), and by the Deficit Reduction Act of 1984 (DEFRA) for one year (through 1985). The Tax Reform Act of 1986 (TRA 1986) extended the targeted jobs tax credit for three additional years (through 1988), with modifications. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) extended the credit for one year (through 1989), with modifications. The Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) extended the credit for nine months (through

September 30, 1990). Most recently, the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) extended the credit for fifteen months (through 1991).

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the credit for one year. Therefore, the credit would be available for workers who begin work for the employer before January 1, 1993.

Description of Proposal

The targeted jobs tax credit would be extended for six months, so that it would be available with respect to wages paid for employees who begin work for an employer before July 1, 1992.

10. Business energy tax credits for solar and geothermal property (sec. 48(a) of the Code)

Present Law

Under present law, nonrefundable business energy tax credits are allowed for 10 percent of the cost of certain qualified solar and geothermal energy property (Code sec. 48(a)). Solar energy property that qualifies for the credit includes any equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat. Qualifying geothermal property includes equipment which produces, distributes, or uses energy derived from a geothermal deposit, but, in the case of electricity generated by geothermal power, only up to (but not including) the electrical transmission stage.[7]

The business energy tax credits are currently scheduled to expire with respect to property placed in service after December 31, 1991.

Legislative Background

Ten-percent tax credits for qualifying solar and geothermal energy properties were enacted in the Energy Tax Act of 1978, effective after April 20, 1977, through December 31, 1982. In the Windfall Profit Tax Act of 1980, the solar and geothermal credits were extended through 1985, and the rates of these

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[7] For purposes of the credit, a geothermal deposit is defined as a domestic geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor, whether or not under pressure (Code sec. 613(e)(2)).

credits were increased to 15 percent. In the Tax Reform Act of 1986, the solar and geothermal credits were extended for three additional years (through 1988), at rates which phased down to 10 percent. An additional one-year extension (through 1989) of the solar and geothermal credits was provided in the Technical and Miscellaneous Revenue Act of 1988.

The business energy tax credits for solar and geothermal property were extended for the nine-month period through September 30, 1990, in the Omnibus Budget Reconciliation Act of 1989. In the Omnibus Budget Reconciliation Act of 1990, the solar and geothermal credits were extended for fifteen months through December 31, 1991.

President's Budget Proposal

The President's fiscal year 1992 budget proposal would extend the 10-percent business credits for solar and geothermal property for one year, through December 31, 1992.

Description of Proposal

The business energy tax credits would be extended for property placed in service through June 30, 1992.

11. Tax credit for orphan clinical drug testing expenses (sec. 28 of the Code)

Present Law

A 50-percent nonrefundable tax credit is allowed for a taxpayer's qualified clinical testing expenses paid or incurred in the testing of certain drugs, generally referred to as orphan drugs, for rare diseases or conditions. Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. Present law defines a rare disease or condition as one that (1) affects less than 200,000 persons in the United States or (2) affects more than 200,000 persons, but there is no reasonable expectation that businesses could recoup the costs of developing a drug for it from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

Legislative Background

This provision was enacted initially in the Orphan Drug Act of 1983, and was scheduled to expire after 1987. The credit was extended for three years in the Tax Reform Act of 1986, through December 31, 1990. The Omnibus Budget Reconciliation Act of 1990 extended the credit for one year, through December 31, 1991.

Description of Proposal

The proposal would extend the orphan drug tax credit for six months (i.e., for qualified clinical testing expenses incurred through June 30, 1992).

12. Minimum tax exception for gifts of appreciated tangible property (sec. 57(a)(6) of the Code)

Present Law

In computing taxable income, a taxpayer generally is allowed to deduct the fair market value of property contributed to a charitable organization.[8] In the case of a charitable contribution of tangible personal property, however, a taxpayer's deduction for regular tax purposes is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis. However, in the case of any taxable year beginning in 1991, this rule does not apply to contributions of tangible personal property.

Legislative Background

The Tax Reform Act of 1986 treated the amount by which the value of a charitable contribution of capital gain property exceeded the basis of the property as a minimum tax preference.

The Omnibus Budget Reconciliation Act of 1990 provided that, in the case of any taxable year beginning in 1991, this rule does not apply to a contribution of tangible personal property.

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[8] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)). Special rules also limit the amount of a charitable contribution deduction to less than the contributed property's fair market value in cases of contributions of inventory or other ordinary income property and short-term capital gain property.

<u>Description of Proposal</u>

The rule that charitable contributions of tangible personal property are not treated as a minimum tax preference item would be extended for six months (i.e., for contributions made through June 30, 1992).

III. DESCRIPTION OF REVENUE-RAISING PROVISION

1. Modify estimated tax payment rules for large corporations (sec. 6655 of the Code)

Present Law

A corporation is subject to an addition to tax for any underpayment of estimated tax. A corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least 90 percent of the tax liability shown on the return for the current taxable year. In addition, a corporation may annualize its taxable income and make estimated tax payments based on 90 percent of the tax liability attributable to such annualized income.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of its tax liability for the preceding taxable year (the "100 percent of last year's liability safe harbor"). A large corporation may use this rule with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

Description of Proposal

For 1992, a corporation that does not use the 100 percent of last year's liability safe harbor for its estimated tax payments would be required to base its estimated tax payments on 93 percent (rather than 90 percent) of its current year tax liability, whether such liability is determined on an actual or annualized basis. The applicable percentage would be 94 (rather than 93) percent in 1993, 94 percent in 1994, 95 percent in 1995, and 95 percent in 1996.

The provision does not change the present-law availability of the 100 percent of last year's liability safe harbor for small corporations. In addition, as under present law, the first quarter's estimated tax payment for a large corporation may be based on 100 percent of the prior year's tax liability.

Effective Date

The proposal would be effective for estimated tax payments with respect to taxable years beginning after December 31, 1991, and before January 1, 1997.

STATEMENT BY
SENATOR JOHN H. CHAFEE
IN THE SENATE FINANCE
ON THE EXTENSION OF THE EXPIRING PROVISIONS
November 25, 1991

Mr. Chairman, I am very pleased that we have been able to develop a compromise on a six-month extension of the expiring tax provisions. These provisions are an important part of our efforts to maintain our competitive position in the world economy; to encourage education; to provide affordable housing, both to renters and first-time homebuyers; and to provide jobs for all Americans.

The Mortgage Revenue Bond Program, which is scheduled to expire at the end of this year, is an important part of our efforts to reverse the declining home ownership trend that exists in this country. For many Americans, the dream of homeownership continues to become more and more difficult to achieve. The nation's homeownership rate is at its lowest level in almost two decades.

In many states, such as Rhode Island, where housing is very expensive when compared to median incomes, we must provide tax incentives for programs that assist low-income Americans in acquiring their first home. The Mortgage Revenue Bond (MRB) program authorizes states to issue tax-exempt mortgage revenue bonds to provide below market-rate financing for the purchase of homes by citizens in those states.

The mortgage revenue bond program is an important part of the state housing program in my home state and its efforts to address the large affordability gap that exists in Rhode Island. The below market-rate financing provided by the MRB program allows first-time homebuyers to purchase a home, when they would not have been able to qualify with any of the conventional financing methods.

In the 17 years that Rhode Island Housing and Mortgage Finance Corporation (RIHMFC) has existed, over 38,400 families have been able to purchase a home utilizing mortgages from the MRB program totaling almost $1.7 billion. The managers of the MRB program have calculated that approximately 80 percent of the families served by the MRB program would not have been able to qualify for a conventional mortgage.

The experiences of Rhode Island Housing illustrate the vital importance of this program to fulfilling the homeownership dreams of low-income Americans. The extension of this program through the middle of 1992 will allow states, such as Rhode Island, to provide Mortgage Revenue Bond financing for our young families who would not otherwise be able to fulfill the American dream by purchasing a first home.

The next provision I would like to discuss is the low-income housing tax credit that was created in the Tax Reform Act of 1986 to encourage construction and rehabilitation of housing for low-income Americans. The effectiveness of this credit in providing low-income

housing has been proven during the five years since its enactment and we should not let it expire at the end of this year.

The credit provides a valuable tax incentive to both non-profit and for-profit developers to fund the production and preservation of low-income rental housing. It is absolutely necessary to encourage the development and renovation of housing for the poor.

In my State, RIHMFC, the state housing agency, has used the tax credit to successfully address the needs of our citizens for safe and affordable housing. The loss of these credits would be devastating to their efforts. By combining the credit with bond financing and zero interest second mortgages, RIHFMC has been able to produce and preserve low-income housing in one of this country's most expensive housing markets. Our State was one of only nine states to use 100 percent of its credit allocation for both 1988 and 1989.

Providing an adequate supply of safe and affordable housing is a long-term job, for both state housing agencies and developers. State housing agencies that assist with these programs must invest a considerable amount of time and resources in the development of the necessary administrative capacity to operate the program. In addition, private housing developers must have considerable lead time for these undertakings. If they are to make the required investments in time and resources, these necessary participants in the program must know that it will be extended past this year.

Experience has shown that investment in low-income housing is highly dependent on the tax benefits provided by this credit. The low-income housing credit is one of the most direct and efficient ways to subsidize the production of low-cost, affordable housing for low-income Americans.

The other two provisions I would like to discuss are very important to the continuation of technological innovation in this country: the Research and Experimentation (R&E) Tax Credit and the R&E allocation rules under section 861 of the Internal Revenue Code. One area of tremendous importance in today's competitive environment is research and development (R&D) which leads to technological innovation. Since 1929, more than two-thirds of our economic growth has resulted from technological innovation.

The U.S. is falling behind in its development of new technologies. Earlier this year, the Council on Competitiveness released a report entitled *Gaining New Ground: Technology Priorities for America's Future*. The Council analyzed nine major technology-intensive industries and examined our competitive position in 94 "critical technologies." The report highlights 15 areas in which the United States is losing badly or has lost, including ceramics, robotics and memory chips. In addition, the report identifies 18 areas in which the U.S. is judged to be weak as compared to our major trading partners.

The nations winning the competitiveness race are those that recognize the importance of advanced technology, and work to

attract companies that will establish research and development facilities within their borders. To achieve greater economic competitiveness we must foster, not impede, U.S. investment in research and development. We must expand, not export, our technological base.

The current regulations under Section 861 create an incentive for companies to move their R&E offshore. If R&E expenses incurred in the U.S. must be allocated to foreign sales, U.S. companies may move the R&E offshore to take advantage of beneficial tax treatment in other countries.

It has been alleged that reform is some type of tax break. I assure you that is not the case. Section 861 is a penalty on domestic R&E, in that it requires U.S. R&E performers to engage in an accounting fiction that leads to double taxation and increases their worldwide tax liability. Removal of this penalty simply allows American companies to be treated like their counterparts all over the world.

The R&E tax credit is also very important to encourage American companies to increase the level of research they are doing on new technologies and new products. This credit has served as a very effective incentive since it was first enacted in 1981.

These two provisions are vitally important to the international competitiveness of U.S. companies, an issue that has become one of the top concerns of Congress, and rightly so. Given the importance

of this issue, government policies should be carefully scrutinized to ensure they enhance our ability to compete rather than hinder it. We cannot let these provisions lapse at this critical time when we should be encouraging new and increased research and development activities in the United States.

Each of the provisions in this bill are important to the Americans who utilize them and rely on them to fulfill their intended purpose. We cannot allow them to expire and expect people to rely on our ability to extend them retroactively next year. I urge my colleagues to support the extension of these provisions.

Joint Committee on Taxation
November 25, 1991
JCX-27-91 Revised/10:30am

ESTIMATED REVENUE EFFECTS OF THE TAX EXTENSION ACT OF 1991

Fiscal Years 1992-1996

[Millions of Dollars]

Provision	1992	1993	1994	1995	1996	1992-96
A. Extend Expiring Provisions Through 6/30/92						
1. Employer-provided educational assistance	-180	--	--	--	--	-180
2. Group legal services	-55	--	--	--	--	-55
3. Health insurance deduction for self employed	-103	-55	--	--	--	-158
4. Mortgage revenue bonds and mortgage credit certificates	-22	-55	-63	-59	-56	-255
5. Qualified small-issue manufacturing bonds	-18	-46	-52	-47	-42	-205
6. Foreign allocation of R&D (1)	-250	-190	--	--	--	-440
7. Research and experimentation tax credit	-348	-265	-66	-42	-21	-742
8. Low-income housing tax credit	-40	-150	-235	-250	-250	-925
9. Targeted jobs tax credit	-35	-60	-40	-18	-10	-163
10. Business energy tax credits (solar and geothermal property)	-13	-14	-6	-3	-1	-37
11. Orphan drug tax credit	-2	-3	--	--	--	-5
12. Minimum tax exemption for gifts of appreciated tangible property	-6	-16	6	-2	-2	-19
Subtotals: Part A	***-1,072***	***-854***	***-456***	***-421***	***-382***	***-3,184***
B. Corporate Estimated Tax						
1. Modify 90% safe harbor for corporate estimated tax payments (2)	1,477	808	148	591	171	3,197
GRAND TOTALS	**405**	**-46**	**-308**	**170**	**-211**	**13**

NOTES: Proposals estimated without accounting for possible interactions.
Details may not add to totals due to rounding.

(1) Effective for the first six months of the taxpayer's first taxable year beginning after August 1, 1991.
(2) Percent of current tax: 93% for 1992, 94% for 1993, 94% for 1994, 95% for 1995, and 95% for 1996.

Joint Committee on Taxation
November 25, 1991
JCX-28-91

Resolution Expressing the Sense of the House of Representatives With Respect To Legislation Relating to the Amortization of Goodwill and Certain Other Intangibles

Present Law

In determining taxable income for Federal income tax purposes, a taxpayer is allowed depreciation or amortization deductions for the cost or other basis of intangible property that is used in a trade or business or held for the production of income if the property has a limited useful life that may be determined with reasonable accuracy. No depreciation or amortization deductions are allowed with respect to goodwill or going concern value.

Legislative Background

The Federal income tax treatment of intangible assets has been a source of considerable controversy between taxpayers and the Internal Revenue Service. Legal and factual disputes arise as to the existence of particular intangible assets distinct from goodwill or going concern value, and as to the proper method of amortizing such assets. In addition, when a trade or business is acquired, the amount of the purchase price that is attributable to particular intangible assets may also be disputed.

On July 25, 1991, Chairman Rostenkowski introduced H.R. 3035, a bill to simplify the Federal income tax treatment of intangible assets. The bill would require the cost of most acquired intangible assets, including goodwill and going concern value, to be amortized ratably over a 14-year period. Under the bill, certain intangible assets that are not amortizable under present law would be amortizable over 14 years. Other intangible assets that are currently amortizable over longer or shorter periods would also be subject to 14-year amortization.

H.R. 3035 by its terms would apply only prospectively, to property acquired after the date of enactment of the bill. Since the introduction of the bill, concern has been expressed that there may be situations where business transactions are being held up because of uncertainty as to when any final legislation might be enacted.

Description of Proposal

A resolution would be adopted in the form of H. Res. 292, introduced by Chairman Rostenkowski on November 22,

1991. This is a resolution expressing the sense of the House of Representatives that any legislation enacted with respect to the amortization of goodwill and certain other intangibles for Federal income tax purposes should contain a provision permitting taxpayers to elect in a consistent manner the provisions of such legislation with respect to transactions after the date on which H.R. 3035 of the 102nd Congress was introduced and before the otherwise prescribed effective date of such legislation.

Orrin G. Hatch

STATEMENT BY ORRIN G. HATCH ON EXTENDERS BILL FINANCE COMMITTEE MARKUP November 25, 1991

Mr. Chairman, I want to applaud you and the distinguished Senator from Missouri for your efforts to pass this legislation.

This country is now coming out of a recession. We are in a period of slow economic growth. Our businesses and our taxpayers are struggling. They need our help.

The bill before us today would extend the twelve expiring tax provisions known as the extenders for six months. These provisions are an important part of a sound and stable investment policy. They are important to both businesses and individuals.

The extenders provide incentives that encourage investment in research and

development activities, employee education, health insurance, job creation, and low income housing construction.

More than business, these extenders help the individual taxpayers. They provide expanded access to education, health insurance, first time home purchases, and jobs for the disadvantaged and disabled. Many of these tax credits help the low and middle income families of America by providing incentives for investment in low income housing construction and job creation for those with special employment needs. These people need our help. This bill allows us to give them that help.

In my state of Utah, these tax provisions are critical. The low-income housing credit and mortgage revenue bond provisions account for a significant segment of the housing units available. The Targeted Jobs Tax Credit has helped many disabled and disadvantaged people of Utah gain employment. The minimum tax exception for gifts of appreciated tangible property

have helped our universities and other charitable organizations in obtaining donations. I am sure that all of us here have similar situations in the states we are here to represent.

There has been a suggestion that we let these tax credits lapse and extend them retroactively next year. This would be poor tax policy and would reflect badly on this Committee and the Congress. Retroactive extensions disrupt worthwhile programs and cause an undue administrative burden on companies and individuals. The stop and start environment associated with allowing these provisions to expire will only result in more pressure on our businesses at a time when we should be acting to help them.

By extending these provisions now, we give businesses and individuals the comfort of knowing these programs will still exist after the end of this year. This stability is important in planning for the future.

I have many amendments that I would like to be able to offer to this legislation. We have all been waiting for a long time for a tax bill to come before this Committee. I am sure that many of my colleagues are in the same situation. However, to get this legislation passed at this time, we all have to refrain from offering our amendments.

Many of us here, myself included, have signed onto a letter circulated by Senator Danforth stating our opposition to any amendments to this bill. This letter paved the way for us to be here today. I fully intend to honor this promise and encourage my colleagues to do the same.

The extension of these tax provisions sends a clear message to the American people. We are aware of their situation and we are doing something to help them. This message is especially important in light of the current economic situation.

I urge my colleagues to support this legislation and extend these provisions. I also urge them to oppose any amendments to this bill offered here in the markup or on the Senate floor. These amendments will only kill the bill. This will not help our economy or the taxpayers.

Thank you Mr. Chairman.

Joint Committee on Taxation
JCX-29-91
November 25, 1991

DESCRIPTION OF ADDITIONAL TAX TECHNICAL CORRECTIONS
[In addition to the Tax Technical Corrections included in H.R. 1555][1]

A. Amendments Related to the Revenue Reconciliation Act of 1990

1. Application of Small Producer Wine Credit to Bonded Warehouses.--Wine can be transferred without payment of excise tax to bonded warehouses which then become liable for tax on the transferred wine. The proposed technical correction would clarify that producers eligible for the small winery production credit may continue to transfer wine without payment of tax to bonded warehouses, with the warehouses claiming the credit on behalf of the producers under a "step-in-the-shoes" rule.

2. Determination of Bond Levels for Small Wine Producers.--Wine producers are required to post bond as a condition of legally producing the beverage. The amount of the required bond is related to projected excise tax liability. The proposed technical correction would clarify that the Bureau of Alcohol, Tobacco, and Firearms may take into consideration, when setting bonds, the amount of small winery production credit projected to be available to a small wine producer.

3. Application of Floor Stocks Tax Refunds for Cigarettes Returned to Manufacturers.--Floor stocks taxes will be imposed on cigarettes held beyond the manufacturers' level on January 1, 1993 (the date the cigarette excise tax rates are next scheduled to increase). Refunds are made for tax paid on cigarettes that subsequently are withdrawn from the market. The proposed technical correction would clarify that these refunds may be made to manufacturers when cigarettes are returned to them for credit by, or on behalf of, the persons who actually paid the floor stocks tax.

B. Amendments to the 1989 Act

1. Clarification of Treatment of Carryover of Excess Interest under Earnings Stripping Rules.--The 1989 Act provided rules to prevent avoidance of taxation through the

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[1] For a description of the tax technical corrections in H.R. 1555 as introduced, see Joint Committee on Taxation (JCX-5-91, March 21, 1991).

payment of excessive amounts of tax-exempt interest to related corporations (Code sec. 163(j)). The provision provides a safe harbor rule under which a payor with a sufficiently low debt/equity ratio is not subject to disallowance of deductions for such interest payments. Questions have arisen as to how the safe harbor works when there is excess interest from a year in which the safe harbor is not met that is carried over to a subsequent year in which the safe harbor is met. The proposed technical correction would clarify that excess interest that is carried forward may be allowed or disallowed in the subsequent year without regard to the debt/equity ratio in that year.

2. Health care continuation rules.--The 1989 Act amended the health care continuation rules to provide that, in the case of a covered employee who becomes entitled to Medicare, qualified beneficiaries (other than the covered employee) are entitled to 36 months of continuation coverage. One possible interpretation of the statutory language, however, would permit continuation coverage for up to 54 months. This extension of the coverage period was not intended. The proposed technical correction would amend both title I of the Employee Retirement Income Security Act and the Code (sec. 4980B) to limit the continuation coverage in such cases to no more than 36 months.

C. Amendments to the 1988 Act

1. Estate Tax Unified Credit Allowed Nonresident Aliens Under Treaty.--To the extent provided by treaty, the estate of a nonresident alien is allowed the same unified credit granted an estate of a U.S. citizen (i.e., $192,800) multiplied by the percentage of the gross estate situated in the United States. The proposed technical correction would clarify that exempted property need not be treated as situated in the United States in determining the proportional unified credit under a treaty.

D. Amendments to the 1987 Act

1. Information Reporting by Foreign-Owned Corporations and with Respect to Foreign Corporations.--The 1986 Act amendments to sections 6038 and 6038A each included a reference to information required by the Treasury Secretary for purposes of carrying out section 453C (the proportionate disallowance rule). Section 453C was repealed by the 1987 Act. The proposed technical correction would remove these references as deadwood.

E. Amendments to the Tax Reform Act of 1986

1. Passive Loss Disposition Rule.--Under the Tax Reform Act of 1986, if a passive activity is disposed of in

a transaction in which gain or loss is recognized, any overall loss from the activity is allowed against other income (whether active or passive). The computation of the overall loss from the activity is unclear in cases where there is a gain from the disposition of the passive activity. The proposed technical correction would compute the overall loss from the activity by netting all items of gain or loss from the activity for the year of disposition.

2. Branch-level Interest Tax.--In the Tax Reform Act of 1986, Congress enacted a branch-level tax on interest (Code sec. 884(f)). The tax was intended to apply to amounts of interest allocated to effectively connected income. Nonetheless, the statute generally limits application of the tax to interest "allowable as a deduction." This language arguably omits from application of the tax non-deductible amounts of interest that are allocable to effectively connected income (e.g., capitalized interest). The proposed technical correction would clarify that the branch level tax applies to all interest allocable to effectively connected income.

3. Source Rules for Sales of Inventory.--Section 865, enacted in the Tax Reform Act of 1986, provides rules for the sourcing of gain and loss from certain property sales. Section 865 was not intended to alter the source rules applicable to sales of inventory. In referencing the controlling sections for inventory sourcing in section 865(b)(2), a reference to section 863(a) was inadvertently omitted. The proposed technical correction would add this cross reference.

4. Correction of 1986 Act Transitional Rule for Tax-Exempt Bonds for Cleveland Domed Stadium.--The Tax Reform Act of 1986 placed restrictions on the use of tax-exempt bonds to finance sports stadiums. One of the transitional rules to that provision allowed tax-exempt bonds to be issued by Cleveland to finance a new sports stadium. After the enactment of that transitional rule, the State of Ohio transferred the ownership of sports stadiums from cities to counties. The proposed technical correction would provide that the terms of the 1986 Act transitional rule are not violated if the residual ownership of the stadium vests in the county where it is located (e.g., Cuyougha County) rather than a city located in that same county (e.g., Cleveland). The amendment does not extend the time for issuing the bonds or otherwise affect the amount of bonds or the location or design of the stadium.