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1st Session
HOUSE OF REPRESENTATIVES
REPORT
99-67

REPEAL OF CONTEMPORANEOUS RECORDKEEPING REQUIREMENTS

MAY 7, 1985.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 1869]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1869) to repeal the contemporaneous recordkeeping requirements added by the tax Reform Act of 1984, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

SECTION 1. REPEAL OF CONTEMPORANEOUS RECORDKEEPING REQUIREMENTS, ETC.

(a) CONTEMPORANEOUS RECORDKEEPING REQUIREMENTS.—Subsection (d) of section 274 of the Internal Revenue Code of 1954 (relating to substantiation requirements for certain deductions and credits) is amended by striking out "adequate contemporaneous records" and inserting in lieu thereof "adequate records or by sufficient evidence corroborating the taxpayer's own statement", and the Internal Revenue Code of 1954 shall be applied and administered as if the word "contemporaneous" had not been added to such subsection (d).

(b) PROVISIONS RELATING TO RETURN PREPARERS AND NEGLIGENCE PENALTY.—Paragraphs (2) and (3) of section 179(b) of the Tax Reform Act of 1984 are hereby repealed, and the Internal Revenue Code of 1954 shall be applied and administered as if such paragraphs (and the amendments made by such paragraphs) had not been enacted.

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(c) REPEAL OF REGULATIONS.—Regulations issued before the date of the enactment of this Act to carry out the amendments made by paragraphs (1)(C), (2), and (3) of section 179(b) of the Tax Reform Act of 1984 shall have no force and effect.

SEC. 2. SUBSTANTIATION REQUIREMENTS NOT TO APPLY TO CERTAIN VEHICLES WITH LITTLE PERSONAL USE.

(a) IN GENERAL.—Subsection (d) of section 274 of the Internal Revenue Code of 1954 (relating to substantiation required) is amended by adding at the end thereof the following new sentence: "This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i))."

(b) QUALIFIED NONPERSONAL USE VEHICLE DEFINED.—Section 274 of such Code is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) QUALIFIED NONPERSONAL USE VEHICLE.—For purposes of subsection (d), the term 'qualified nonpersonal use vehicle' means any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes."

SEC. 3. EXEMPTION FROM REQUIRED INCOME TAX WITHHOLDING FOR CERTAIN FRINGE BENEFITS.

Section 3402 of the Internal Revenue Code of 1954 (relating to income tax collected at source) is amended by adding at the end thereof the following new subsection:

"(s) EXEMPTION FROM WITHHOLDING FOR ANY VEHICLE FRINGE BENEFIT.—

"(1) EMPLOYER ELECTION NOT TO WITHHOLD.—The employer may elect not to deduct and withhold any tax under this chapter with respect to any vehicle fringe benefit provided to any employee if such employee is notified by the employer of such election (at such time and in such manner as the Secretary shall by regulations prescribe). The preceding sentence shall not apply to any vehicle fringe benefit unless the amount of such benefit is included by the employer on a statement timely furnished under section 6051.

"(2) EMPLOYER MUST FURNISH W-2.—Any vehicle fringe benefit shall be treated as wages from which amounts are required to be deducted and withheld under this chapter for purposes of section 6051.

"(3) VEHICLE FRINGE BENEFIT.—For purposes of this subsection, the term 'vehicle fringe benefit' means any fringe benefit—

"(A) which constitutes wages (as defined in section 3401), and

"(B) which consists of providing a highway motor vehicle for the use of the employee."

SEC. 4. REDUCTION IN LIMITATIONS ON INVESTMENT TAX CREDIT AND DEPRECIATION FOR LUXURY AUTOMOBILES.

(a) GENERAL RULE.—

(1) INVESTMENT TAX CREDIT.—Paragraph (1) of section 280F(a) of the Internal Revenue Code of 1954 (relating to investment tax credit) is amended by striking out "$1,000" and inserting in lieu thereof "$675".

(2) DEPRECIATION.—Paragraph (2) of section 280F(a) of such Code (relating to depreciation) is amended—

(A) by striking out "$4,000" in subparagraph (A)(i) and inserting in lieu thereof "$3,200", and

(B) by striking out "$6,000" each place it appears in subparagraphs (A)(ii) and (B)(ii) and inserting in lieu thereof "$4,800".

(b) 4-YEAR DEFERRAL OF INFLATION ADJUSTMENT.—

(1) ADJUSTMENT AFTER 1988.—Subparagraph (A) of section 280F(d)(7) of such Code (relating to automobile price inflation adjustment) is amended by striking out "passenger automobile" and inserting in lieu thereof "passenger automobile placed in service after 1988".

(2) 1987 BASE PERIOD.—Subclause (II) of section 280F(d)(7)(B)(i) of such Code is amended by striking out "1983" and inserting in lieu thereof "1987".

(3) TECHNICAL AMENDMENT.—Clause (i) of section 280F(d)(7)(B) of such Code is amended by striking out the last sentence.

SEC. 5. NEW REGULATIONS.

Not later than October 1, 1985, the Secretary of the Treasury or his delegate shall prescribe regulations to carry out the provisions of this Act which shall fully reflect such provisions.

SEC. 6. EFFECTIVE DATES.

(a) REPEALS.—The amendment and repeals made by subsections (a) and (b) of section 1 shall take effect as if included in the amendments made by section 179(b) of the Tax Reform Act of 1984.

(b) RESTORATION OF PRIOR LAW FOR 1985.—For taxable years beginning in 1985, section 274(d) of the Internal Revenue Code of 1954 shall apply as it read before the amendments made by section 179(b)(1) of the Tax Reform Act of 1984.

(c) EXCEPTION FROM SUBSTANTIATION REQUIREMENTS FOR QUALIFIED NONPERSONAL USE VEHICLES.—The amendments made by section 2 shall apply to taxable years beginning after December 31, 1985.

(d) WITHHOLDING AMENDMENT.—The amendment made by section 3 shall take effect on January 1, 1985.

(e) REDUCTION IN LIMITATIONS ON INVESTMENT TAX CREDIT AND DEPRECIATION.—

(1) Except as provided in paragraph (2), the amendments made by section 4 shall apply to—

(A) property placed in service after April 2, 1985, in taxable years ending after such date, and

(B) property leased after April 2, 1985, in taxable years ending after such date.

(2) The amendments made by section 4 shall not apply to any property—

(A) acquired by the taxpayer pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, but only if the property is placed in service before August 1, 1985, or

(B) of which the taxpayer is the lessee, but only if the lease is pursuant to a binding contract in effect on April 1,

1985, and at all times thereafter, and only if the taxpayer first uses such property under the lease before August 1, 1985.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1869) to repeal the contemporaneous recordkeeping requirements added by the Tax Reform Act of 1984, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

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J.J. PICKLE,
C.B. RANGEL,
PETE STARK,
JOHN J. DUNCAN,
BILL ARCHER,
GUY VANDER JAGT,
Managers on the Part of the House.

BOB PACKWOOD,
BOB DOLE,
W.V. ROTH, Jr.,
JOHN DANFORTH,
RUSSELL LONG,
LLOYD BENTSEN,
SPARK M. MATSUNAGA,
Managers on the Part of the Senate.

STATEMENT OF MANAGERS ON THE PART OF THE HOUSE

I. EXPLANATION OF PROVISIONS

A. Repeal of Requirement That Certain Records Must Be Contemporaneous (secs. 1 (a) and (c) and 2(a) of the House bill and secs. 1 (a) and (c) of the Senate amendment)

1. Repeal of "contemporaneous" requirement

Present law

The Tax Reform Act of 1984 (the 1984 Act) amended Code section 274(d) to require that taxpayers must maintain "adequate contemporaneous records" to substantiate deductions and credits for business use of automobiles and other listed property.

House bill

The House bill repeals the word "contemporaneous," effective as if it had never been enacted.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

2. Alternate substantiation method

Present law and background

Prior to the 1984 Act, taxpayers were required under section 274(d) to substantiate deductions for travel away from home (including meals and lodging), for items with respect to entertainment, amusement, or recreation activities of facilities, and for business gifts by adequate records or by sufficient evidence corroborating the taxpayer's own statement. In the case of an expense or item subject to substantiation under section 274(d), that provision required substantiation as to (1) the amount of such expense or other item, (2) the time and place of the travel, entertainment, amusement, recreation, or use of the facility, or the date and description of the gift, (3) the business purpose of the expense or other item, and (4) the business relationship to the taxpayer of persons entertained, using the facility, or receiving the gift. Prior to the 1984 Act, local travel (i.e., travel not away from home) was not subject to the section 274(d) substantiation standards.

Section 179(b) of the 1984 Act deleted from section 274(d) the alternate substantiation method of sufficient evidence corroborating the taxpayer's own statement. The 1984 Act also applied the section 274(d) substantiation requirements to deductions or credits claimed for use of listed property (as defined in sec. 280F(d)(4)). The categories of listed property include automobiles (whether used for local travel or travel away from home), other means of transportation, computers, etc.

House bill

The House bill provides that, as an alternative to maintaining adequate records, taxpayers may substantiate deductions and credits under section 274(d) by sufficient written evidence corroborating their own statement.

The committee report also requires that certain information concerning mileage and business use of vehicles, as well as similar information concerning business use of other listed property, must be requested on tax returns.

The House bill is effective on January 1, 1986. For 1985, the substantiation rules in effect prior to the 1984 Act would apply.

Senate amendment

The Senate amendment is similar to the House bill in that it provides for an alternate substantiation method. However, the Senate amendment does not require that the evidence must be written in order to qualify as sufficient under the alternate substantiation standard. The Senate amendment is effective January 1, 1985.

The Senate amendment does not specifically require that questions regarding the business use of automobiles and other listed property be asked on tax returns.

Conference agreement

Substantiation standards

In general

The conference agreement generally follows the Senate amendment as to the substantiation standards under section 274(d). Thus, section 274(d) is amended to require that a taxpayer must have adequate records or sufficient evidence corroborating the taxpayer's own statement to support credits or deductions for expenditures subject to the section 274(d) substantiation rules. As under pre-1984 Act law, section 274(d) as amended by the bill requires the taxpayer to substantiate (1) the amount of the expense or item subject to section 274(d), (2) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (3) the business purpose of the expense or other item, and (4) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift.

The conferees believe that a taxpayer's uncorroborated statement as to the business use of an automobile or other listed property does not alone have sufficient probative value to warrant consideration by the Internal Revenue Service or the courts. Consequently, the conferees adopt for this purpose the standard of prior law applicable to travel away from home and business entertainment (sec. 274(d)) that requires taxpayers to provide either adequate records or sufficient evidence corroborating their own statements in order to support a deduction or credit under section 274(d). The more general substantiation standards applicable under section

162,[1] which have been interpreted to permit in certain circumstances uncorroborated statements by taxpayers to support business deductions not subject to section 274(d) or other special rules, are to have no application to deductions or credits with respect to local travel, computers, and other listed property first required (under this bill) to meet the section 274(d) substantiation standards beginning January 1, 1986, just as they are to have no application with respect to expenditures with respect to travel away from home, etc., which continue to be subject to section 274(d) substantiation standards.

The conference agreement does not include the provision of the House bill that would require that the sufficient evidence corroborating the taxpayer's own statement be written. The conferees believe that oral evidence corroborating the taxpayer's own statement, such as oral testimony from a disinterested, unrelated party describing the taxpayer's activities, may be of sufficient probative value that it should not be automatically excluded from consideration under section 274(d).

The conferees emphasize, however, that different types of evidence have different degrees of probative value. The conferees believe that oral evidence alone has considerably less probative value than written evidence. In addition, the conferees believe that the probative value of written evidence is greater the closer in time it relates to the expenditure. Thus, written evidence arising at or near the time of the expenditure, absent unusual circumstances, has much more probative value than evidence created years later, such as written evidence first prepared for audit or court.

The conferees specifically approve the types of substantiation that were required under prior law, and consider the longstanding Treasury regulations on recordkeeping issued under section 274(d)[2] prior to the 1984 Act to reflect accurately their intent as to the substantiation that taxpayers are required to maintain.[3] While taxpayers may choose to keep logs on the use of their automobiles, and while such evidence generally has more probative value than evidence developed later, the Treasury is specifically prohibited from requiring that taxpayers keep daily contemporaneous logs of their use of automobiles.

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[1] Under general tax law principles, the courts have held that a taxpayer bears the burden of proving both the eligibility of any expenditure claimed as a deduction or credit and also the amount of any such eligible expenditure, including the expenses of using a car in the taxpayer's trade or business. See, e.g., *Interstate Transit Lines* v. *Comm'r*, 319 U.S. 590, 593 (1943); *Comm'r* v. *Heininger*, 320 U.S. 467 (1943); *Gaines* v. *Comm'r*, 35 T.C.M. 1415 (1976).

[2] See Teas. Reg. sec. 1.274-5.

[3] Prior law provided that adequate records or sufficient evidence may take the following forms:

a. Account books
b. Diaries
c. Logs
d. Documentary evidence (receipts, paid bills)
e. Trip sheets
f. Expense reports
g. Statements of witnesses
h. If the employee is required to make an adequate accounting to the employer and the reimbursement equals expenses, the employee is not required to report the expenses and reimbursement on his or her tax return. (A reimbursement would equal expenses where the reimbursement is determined pursuant to data on the type of automobile and its availability for personal purposes, and on a reasonable allocation of local operating and fixed costs.)

The conferees expect the Internal Revenue Service and the courts to continue to weigh carefully the probative value of these, as well as all other, forms of evidence. The Service and the courts continue to have the ability to discount or reject totally evidence that has limited or no probative value (such as documents actually created much later than they purport to have been created). As noted above, section 274(d) requires that the records or evidence (whatever their particular form) most substantiate not just the amount of the expense, but also the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift; the business purpose of the expense or other item; and the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift.

Although the conferees intend that the principles of these regulations fully apply to deductions and credits claimed for local travel and the use of other listed property under section 274(d), the conferees also recognize that these principles will need to be carefully applied to local travel and listed property not previously subject to section 274(d). This will need to be done because the nature of making these expenditures generally differs from the nature of making the types of expenditures that had been required to meet the section 274(d) substantiation standards prior to the 1984 Act, such as travel away from home and business meals. For example, deductions associated with local travel may be for annual amounts for items such as depreciation and insurance, rather than a series of discrete expenditures for meals or hotels. Also, expenses for travel away from home often involve a third party, such as an airline, train, or hotel, that provides a receipt for the taxpayer of the date and amount of the expenditure and the destination or location. Similarly, expenses for business meals generally occur in restaurants, which provide a similar receipt. While these receipts do not, of course, encompass all of the elements of the substantiation requirements under section 274(d),[4] they do aid taxpayers in their recordkeeping. Similar third party involvement generally is not available for local travel or the use of computers. Similarly, expenses for travel away from home or for business meals do not generally occur with the same frequency as individual local travel trips. Because the bill repeals the 1984 Act requirement of contemporaneous records, taxpayers are not required to maintain trip-by-trip logs and records encompassing each element of the substantiation standards of section 274(d) to justify a deduction or credit.

Consequently, the conferees recognize that some adjustment generally will need to be made in order to apply these principles to the specific factual circumstances surrounding expenditures for local travel and use of listed property not previously subject to section 274(d) rules. The conferees believe that the courts and the Treasury can make these required adjustments without sacrificing these principles, and without reverting to the section 162 standards (including the *Cohan* [5] rule), which the conferees have determined are

[4] For example, the third party is not in a position to record the business purpose of the trip or meal; the taxpayer must provide that information, which is required under the section 274(d) substantiation rules.

[5] *Cohan* v. *Commissioner*, 39 F.2d 540, 544 (2d Cir. 1930).

inadequate and unacceptable for purposes of section 274(d). In several cases previously decided under section 274(d), it is not clear that the courts had rejected the *Cohan* rule; the conferees believe that the courts must clearly and explicitly reject the *Cohan* rule for expenditures required to meet the substantiation requirements of section 274(d).

Written policy statements

The conferees intend that the two types of written policy statements satisfying the conditions described below, if initiated and kept by an employer to implement a policy of no personal use (or no personal use except for commuting) of a vehicle provided by the employer, qualify as sufficient evidence corroborating the taxpayer's own statement [6] and therefore will satisfy the employer's substantiation requirements under section 274(d). Therefore, the employee need not keep a separate set of records for purposes of the employer's substantiation requirements under section 274(d) with respect to use of a vehicle satisfying these written policy statement rules. A written policy statement adopted by a government unit as to employee use of its vehicles would be eligible for these exceptions to the section 274(d) substantiation rules. Thus, a resolution of a city council or a provision of state law or the state constitution would qualify as a written policy statement, so long as the conditions described below are met.

The first type of written policy statement that will satisfy the employer's substantiation requirements under section 274(d) is a policy that prohibits personal use by the employee. In order to be eligible for this special rule, all of the following conditions must be met—

(1) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business;

(2) When the vehicle is not being used for such business purposes, it is kept on the employer's business premises (or temporarily located elsewhere, e.g., for repair);

(3) Under the employer's written policy, no employee may use the vehicle for personal purposes, other than de minimis personal use (such as a stop for lunch between two business deliveries);

(4) The employer reasonably believes that no employee uses the vehicle, other than de minimis use, for any personal purpose;

(5) No employee using the vehicle lives at the employer's business premises; and

(6) There must be evidence that would enable the Internal Revenue Service to determine whether the use of the vehicle met the five preceding conditions.

The second type of written policy statement that will satisfy the employer's substantiation requirements under section 274(d) is a policy that prohibits personal use by the employee, except for commuting. In order to be eligible for this rule, all of the following conditions must be met—

[6] The substance of these two special rules was set forth in the temporary Treasury regulations repealed by the bill. The conferees intend that these rules, as described in this report, be reinstated in the new regulations required by the bill.

(1) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business;

(2) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle;

(3) The employer establishes a written policy under which the employee may not use the vehicle for personal purposes, other than commuting or de minimis personal use (such as a stop for a personal errand between a business delivery and the employee's home);

(4) The employer reasonably believes that, except for de minimis use, the employee does not use the vehicle for any personal purpose other than commuting;

(5) The employer accounts for the commuting use by including an appropriate amount (specified in Treasury regulations) in the employee's gross income; [7] and

(6) There must be evidence that would enable the Internal Revenue Service to determine whether the use of the vehicle met the five preceding conditions.

This second type of written policy statement is not available if the employee using the vehicle for commuting is an officer or one-percent owner of the employer.[8]

Tax return questions

The conference agreement generally follows the House bill as to information to be requested on tax returns about business use of vehicles and other listed property.

The conferees want to ensure that taxpayers claim only the deductions and credits to which they are entitled, but without being unduly burdened by unnecessarily complex recordkeeping requirements. At the same time, the conferees believe that taxpayers should provide sufficient information on their returns so that the Internal Revenue Service can make a preliminary evaluation of the appropriateness of the taxpayer's claimed deductions. Previously, the Internal Revenue Service found it difficult to make such a preliminary evaluation without auditing the taxpayer, which can also be a significant burden on the taxpayer.

Therefore, the conferees intend that individual taxpayers (whether employees or self-employed) claiming deductions or credits for business use of an automobile or other listed property subject to the substantiation standards of section 274(d) are to provide on their returns the substance of the information (generally on appropriate existing tax forms) called for by all the questions as set forth in the House report on the bill.[9] Corporate taxpayers, as well as all

[7] Of course, if in fact the employee uses the vehicle for personal purposes in violation of the particular type of written policy statement, then the employee has additional gross income.

[8] This restriction, which makes this rule inapplicable to officers or one-percent owners, applies for substantiation purposes under the conference agreement. The treatment of commuting use of vehicles by such persons for valuation purposes is to be determined separately under Treasury regulations. No inference is intended, on the basis of the exclusion of officers and one-percent owners from eligibility under this substantiation rule, as to the treatment of commuting use of vehicles by such persons under valuation rules prescribed by Treasury regulations.

[9] In the case of a vehicle, the information required to be requested on the tax return relates to mileage (total, business, commuting, and other personal), percentage of business use, date placed

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other taxpayers and entities, claiming such deductions or credits also are to be asked to supply such information on the forms or schedules they are required to file.

The conferees have carefully considered the fact that furnishing additional tax return information, although involving only a limited number of questions, requires some additional effort by taxpayers. However, the conferees note that computations involved with respect to vehicles (such as mileage and percentage of business use) normally would be made by taxpayers in the process of determining the proper amount of deductions and credits to claim, and that other information can be obtained through "yes" or "no" questions. Accordingly, to achieve better compliance and more accurate computations, the conference agreement directs the Internal Revenue Service to obtain this information on appropriate tax forms or schedules, notwithstanding any otherwise applicable paperwork reduction considerations.

The conferees intend that employees give this return information to their employers with respect to employer-provided vehicles. Generally, the employer would report this information on its tax return, since the employer is claiming the tax deductions or credits for use of the vehicle. An employer which provides more than five cars to its employees, however, would not have to include all this information on the employer's return; instead, such an employer must obtain this information from its employees, must so indicate on its return, and must retain the information received. The Internal Revenue Service could then examine on audit the information that the employees had provided to the employer. An employer may rely on such a statement from its employee (unless the employer knows or has reason to know it is false) to determine the credits and deductions to which the employer is entitled and to determine the amount, if any, which must be included in employee's income and wages by the employer because of the employee's commuting or other personal use of the employer-provided car.

Effective dates

The modification to the substantiation standards of section 274(d) that provides that taxpayers must substantiate deductions or credits subject to that provision by adequate records or sufficient evidence corroborating their own statement is effective January 1, 1985.

Use of listed property that was not subject to section 274(d) substantiation rules prior to the 1984 Act (such as local travel in an automobile or use of computers) is subject to the section 274(d) substantiation requirements effective January 1, 1986.[10] For 1985, use

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in service, use of other vehicles and after-work use, whether the taxpayer has evidence to support the business use claimed on the return, and whether or not the evidence is written. In the case of other listed property subject to the section 274(d) rules, information should be requested in connection with appropriate tax forms or schedules as to type of property (e.g., yacht, computer, airplane, etc.), percentage of business use, whether the taxpayer has written evidence to support the business use claimed on the return, and whether or not the evidence is written. Under the conference agreement, the Internal Revenue Service is not required to request on returns the specific question relating to computers set forth as question 2 on page 10 of the committee report on the House Bill.

[10] This January 1, 1986 effective date applies only to the extent that use of listed property was first made subject to the substantiation standards of section 274(d) by the 1984 Act. Deductions

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of such listed property is not subject to the special substantiation standards under section 274(d).

The tax return information (described above) must be requested on returns for taxable years beginning in 1985 (i.e., in the case of most individuals, returns which must be filed by April 15, 1986.)

3. Repeal of regulations

Present law

The Internal Revenue Service has issued temporary regulations implementing the recordkeeping provisions of section 179(b) of the 1984 Act.

House bill

The House bill repeals all Treasury regulations (temporary or proposed) issued prior to the enactment of this House bill that carry out the amendments made by section 179(b) of the Tax Reform Act of 1984. Thus, such regulations issued to implement the changes to section 274(d) made by that Act, particularly the inclusion in that section of the word "contemporaneous," are revoked.[11] In addition, any regulations relating to the return preparer provision and the special negligence penalty (described above) are revoked.[12] These revoked regulations are to have no force and effect whatsoever.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. Thus, the conference agreement provides that regulations issued to carry out the amendments made by paragraphs (1)(C), (2), and (3) of section 179(b) of the 1984 Act shall have no force and effect.

B. Repeal of Provisions Relating to Return Preparers (sec. 1(b) of the House bill and sec. 1(c) of the Senate amendment)

Present law

Return preparers must advise taxpayers of the substantiation requirements under section 274(d) and obtain written confirmation that those requirements have been met (Code section 6695(b)).

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for expenses or items that were subject to the section 274(d) substantiation standards prior to the 1984 Act (such as use of an automobile for travel away from home or use of a yacht that is an entertainment, recreation, or amusement facility) remain subject to the section 274(d) substantiation standards for all taxable years ending after December 31, 1962.

[11] Also, the provisions of the temporary regulations that prohibit an employer from including the entire value of the use of an automobile in the income of certain employees are revoked. Thus, an employer is permitted to charge the entire value of an employer-provided car to an employee as income and wages (for income tax, FICA, FUTA, and RRTA withholding purposes). The employer may then reimburse the employee for the business use of the car, or the employee may claim a deduction on the employee's income tax return for the business use of the car.

[12] The bill only revokes such regulations (issued prior to enactment) carrying out such amendments made by sections 179(b)(1)(C), (2), and (3) of the 1984 Act. Thus, the bill does not revoke any other regulations, such as regulations issued under sections 61 and 132 (relating to valuation).

House bill

The House bill repeals this provision, effective as if it had never been enacted.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

C. Repeal of Special Negligence Penalty (sec. 1(b) of the House bill and sec. 1(c) of the Senate amendment)

Present law

A special no-fault negligence penalty (Code sec. 6653(h)) applies to the portion of any understatement of tax attributable to failure to meet the substantiation requirements of section 274(d).

House bill

The House bill repeals this special negligence penalty, effective as if it had never been enacted.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. The conference agreement provides that the Internal Revenue Code shall be applied and administered as if this special negligence penalty had never been enacted.

The conferees believe that repealing this special negligence penalty is needed to restore to the Internal Revenue Service and the courts discretion not to impose the negligence penalty for minor, inadvertent recordkeeping or computational errors. The conferees emphasize, however, that the regular negligence and fraud penalties will continue to be applicable if a taxpayer claims tax benefits that cannot be supported. The conferees are concerned that these regular negligence and fraud penalties have not been applied by the Internal Revenue Service or the courts in a substantial number of instances where their application would be fully justified.

In one Tax Court case, for example, the taxpayer had kept detailed mileage records, required by his employer for reimbursement purposes, that indicated that his business use was approximately five percent of total use. On his tax return, the taxpayer claimed 70 percent business use, with no records to justify this claim. The Tax Court properly allowed only five percent business use. The Court did not, however, impose a negligence or fraud penalty. The conferees believe that, in a case like this one, the regular negligence penalty should certainly be imposed, and that careful consideration should be given to imposing the civil fraud penalty.

In another Tax Court case, the taxpayer had kept detailed records so that he could be reimbursed by his employer, but

claimed on his tax return approximately 35,000 miles of business use beyond what his records demonstrated, without any justification. No negligence penalty was imposed. In another case, the taxpayer produced a diary purporting to justify the claimed deductions. The Tax Court called the diary a "fabrication" and said that the taxpayer "was not telling the truth." The Court still permitted him a deduction, and did not impose the regular negligence or civil fraud penalty. Finally, another taxpayer apparently claimed a deduction for business mileage that exceeded the total mileage shown on his odometer, but the Tax Court did not impose a negligence or civil fraud penalty.

These cases indicate that the regular negligence and civil fraud penalties are not being administered by either the Internal Revenue Service or the courts in the manner that the Congress intended when it initially enacted these penalties. While minor, inadvertent recordkeeping or computational errors should not lead to the imposition of a substantial penalty, the conferees believe that it is vital to the integrity of the tax system that honest taxpayers know that others who claim tax benefits far in excess of what can be justified will be subject to the negligence and fraud penalties.

D. Exceptions From Section 274(d) Rules and Exclusion From Income for Certain Vehicles (sec. 2(b) of the House bill and sec. 2 of the Senate amendment)

Present law

Substantiation rules

Temporary Treasury regulations provided that, except for vehicles used for commuting, vehicles of a type ordinarily not susceptible to personal use do not constitute listed property to which the section 274(d) substantiation requirements apply. The regulations cited, as examples of such vehicles that are not susceptible to personal use, trucks specially designed for specific business purposes (such as refrigerated delivery trucks), special-purpose farm vehicles (such as tractors and combines), cement mixers, and forklifts.

Income inclusion

The fair market value of an employer-provided fringe benefit, such as personal use by an employee of an employer-provided vehicle, is included in the employee's gross income, and in wages for purposes of withholding and FICA, FUTA, and RRTA taxes, unless excluded under a specific statutory provision of the Code (secs. 61(a)(1), 3121(a), 3231(e), 3306(b), 3401(a)).

House bill

Substantiation rules

The House bill exempts from the section 274(d) substantiation rules (as modified by the bill) any vehicle that, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes. This provision is effective for taxable years beginning after December 31, 1985; thus, for 1985 the pre-1984 Act substantiation rules continue to apply with respect to such vehicles.

The committee report on the House bill lists the following vehicles as examples of vehicles exempted under the bill from the section 274(d) substantiation rules: (a) clearly marked police and fire vehicles (as described in the report); (b) delivery trucks with seating only for the driver, or only for the driver plus a folding jump seat; (c) flatbed trucks; (d) any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds; (e) passenger buses used as such with a capacity of at least 20 passengers; (f) ambulances used as such or hearses used as such; (g) bucket trucks ("cherry pickers"); (h) cranes and derricks; (i) forklifts; (j) cement mixers; (k) dump trucks (including garbage trucks); (l) refrigerated trucks; (m) tractors; and (n) combines.

The report on the House bill also states that the committee recognizes that it may not have developed an exhaustive list of vehicles not susceptible to personal use. Therefore, the report states, the committee intends that the Internal Revenue Service is to expand this list through either regulations or revenue rulings to include any vehicles not included in the listing in the report that are appropriate for listing because by their nature it is highly unlikely that they will be used more than a very minimal amount for personal purposes.

The report also states that the committee did not generally exempt from the section 274(d) substantiation rules all pickup trucks and vans, because these vehicles can easily be used for personal purposes. Some taxpayers purchase these vehicles as substitutes for passenger sedans, and use them predominantly (or entirely) for personal purposes. On the other hand, however, the committee report recognized that this is not applicable to all vans. For example, a van that has only a front bench for seating, in which permanent shelving [13] has been installed, that constantly carries merchandise, and that has been specially painted with advertising or the company's name, is a vehicle not susceptible to personal use.

Income inclusion

The committee report on the House bill states that it is appropriate for Treasury regulations to provide that under certain conditions all use by an employee of any employer-provided vehicle that is exempted under the House bill from the section 274(d) substantiation rules (see above) is excluded, as a working condition fringe benefit (sec. 132(a)(3)),[14] from the employee's gross income, and from wages (and, where appropriate, from the benefit base) for purposes of FICA, FUTA, and RRTA taxes. Such exclusions pursuant to Treasury regulations are to be effective as of January 1, 1985.

Senate amendment

Substantiation rules

The Senate amendment provides that the following vehicles are exempt from the section 274(d) substantiation rules (as modified by

[13] It is intended that this shelving fill most of the cargo area.

[14] Absent such a special exclusion, commuting use (or other personal use) by an employee of an employer-provided vehicle could not qualify as a working condition fringe benefit because the costs of commuting to and from work (or of other personal use of a vehicle) are nondeductible pursuant to Code section 262. *See*, e.g., *Fausner* v. *Comm'r*, 413 U.S. 838 (1973).

the amendment), and that any commuting or other personal use of such exempted vehicles is excluded from the user's gross income, and from wages (and, where appropriate, from the benefit base) for purposes of FICA, FUTA, and RRTA taxes, effective January 1, 1985:

(a) Vehicles required to be used as an integral part of the trade or business of an individual or of the employer (such as calling on customers or clients, making deliveries, or visiting job sites), so long as use in the trade or business is at least 75 percent of the vehicle's total use;

(b) Vehicles used by an employee for commuting, where the commuting is for a bona fide business purpose, where the employer does not permit the employee to make other personal use of the vehicle (other than de minimis use), and where use in the trade or business of the employer is at least 75 percent of total use; and

(c) Vehicles used by a governmental unit for police or other law enforcement purposes and vehicles used as an ambulance.

Income inclusion

The Senate amendment provides that any commuting or other personal use of such exempted vehicles (described above) is excluded from the user's gross income, and from wages (and, where appropriate, from the benefit base) for purposes of FICA, FUTA, and RRTA taxes, effective January 1, 1985.

ITC and depreciation caps

The Senate amendment provides that police and law enforcement vehicles and ambulances placed in service after June 18, 1984 are exempt from the investment tax credit and depreciation limitations set forth in section 280F.

Conference agreement

The conference agreement follows the House bill, with the following modifications.

The conferees intend that school buses (as defined in Code section 4221(d)(7)(C)), qualified specialized utility repair trucks, and qualified moving vans, in addition to the list above (items (a) through (n) in the description of the House bill), are also to be examples of vehicles that, by reason of their nature, are not likely to be used more than a de minimis amount for personal purposes.

The term "qualified specialized utility repair trucks" means trucks (not including vans or pickup trucks) specifically designed and used to carry heavy tools, testing equipment, or parts where (1) the shelves, racks, or other permanent interior construction which has been installed to carry and store such heavy items is such that it is unlikely that the truck will be used more than a very minimal amount for personal purposes [15] and (2) the employer requires the employee to drive the truck home in order to be able to respond in emergency situations for purposes of restoring or maintaining electricity, gas, telephone, water, sewer, or steam utility services.

[15] An example of this would be permanent shelving that fills most of the cargo area.

The term "qualified moving vans" means vans used by professional moving companies in the trade or business of moving household or business goods where no personal use of the van is allowed other than for travel to and from a move site (or for de minimis use), where personal use for travel to and from a move site is an irregular practice (i.e., not more than five times a month on average), and where personal use is limited to situations in which it is more convenient to the employer, because of the location of the employee's residence, for the van not to be returned to the employer's business location.

Also, the conferees agreed that the Treasury Department has authority to issue regulations exempting from the section 274(d) substantiation rules, and from inclusion in income and wages, officially authorized uses of unmarked vehicles by law enforcement officers. To qualify for this exemption, the personal use must be authorized by the Federal, State, county, or local governmental agency or department that owns or leases the vehicle and employs the officer, and must be for law-enforcement functions such as undercover work or reporting directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use. The term "law enforcement officer" means an individual who is employed on a full-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property, who is authorized by law to carry firearms and execute search warrants and also to make arrests (other than merely a citizen arrest), and who regularly carries firearms (except when it is not possible to do this because of the requirements of undercover work). The term "law enforcement officer" does not include Internal Revenue Service special agents.

The conference agreement also provides that if, for example, a municipal government ordinance requires that police officers driving clearly marked police cars who are on duty at all times must take the vehicle home when the employee is not on his or her regular shift, and prohibits any personal use (except for this commuting use) of the vehicle outside the city (i.e., outside the limit of the officer's arrest powers), then all use of the vehicle could be considered in such regulations as an excludable working condition fringe.

E. Withholding Election (sec. 3 of the House bill)

Present law

As authorized under the 1984 Act, temporary Treasury regulations have provided for withholding (or payment) of income and employment taxes with respect to taxable noncash fringe benefits, such as an employee's personal use of an employer-provided vehicle, on a quarterly basis (Code sec. 3501(b)).

House bill

The House bill provides that an employer may elect not to deduct and withhold income taxes with respect to the noncash fringe benefit attributable to an employee's personal use of a highway motor vehicle provided by the employer. An employer making this election must so notify the employee (at such time and in such

manner as provided in Treasury regulations) and must include the fair market value of the benefit on the Form W–2 furnished to the employee. An electing employer must still withhold social security (or railroad retirement) taxes. This provision is effective as of January 1, 1985.

The committee report on the House bill states that the committee intends that the regulations are to be revised to allow an employer to elect, for income and employment tax purposes, to treat taxable fringe benefits (including personal use of employer-provided automobiles) as paid on a pay period, quarterly, semi-annual, or annual basis.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

F. Limitations on Investment Tax Credit and Depreciation for Automobiles (sec. 4 of the House bill)

Present law

The 1984 Act generally imposed limitations on the amount of investment tax credit and annual depreciation deductions that are allowed for an automobile placed in service or leased by the taxpayer after June 18, 1984.

For an automobile placed in service in 1984, (1) the investment tax credit is limited to $1,000; (2) depreciation in the first taxable year the automobile is placed in service is limited to $4,000; and (3) depreciation in any subsequent taxable year is limited to $6,000. For years after 1984, the limits are adjusted for inflation, as measured by the percentage growth of the automobile component of the Consumer Price Index for All Urban Consumers between October of the preceding year and October, 1983. The adjusted limits for any year apply only to automobiles placed in service in that year.

House bill

The limits on the amount of investment tax credit and annual depreciation deductions that may be claimed with respect to an automobile are reduced as follows under the House bill; (1) the investment tax credit is limited to $675; (2) depreciation in the first taxable year the automobile is placed in service is limited to $3,600 and (3) depreciation in any subsequent taxable year is limited to $5,400. For years after 1985, the reduced limits are indexed for inflation, as measured by the percentage growth of the automobile component of the Consumer Price Index for All Urban Consumers between October of the preceding year and October, 1984. Adjustments for inflation are otherwise determined as under present law. The committee report states that the committee intends that the Secretary of the Treasury prescribe all limits adjusted for inflation.

The reduced limits are generally effective for property placed in service or leased by the taxpayer after April 2, 1985. However, property acquired by the taxpayer pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, is not subject to the reduced limits if it is placed in service before August 1, 1985; and property of which the taxpayer is the lessee pursuant to a binding contract in effect on April 1, 1985, and all times thereafter, is not subject to the reduced limits if the taxpayer first uses the property under the lease before August 1, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with three modifications: (1) depreciation in the first taxable year is limited to $3,200; (2) depreciation in any subsequent taxable year is limited to $4,800; and (3) the reduced limits on the investment credit and depreciation are not indexed for inflation until 1989. For automobiles placed in service in any year after 1988, the reduced limits are adjusted for the percentage increase of the automobile component of the Consumer Price Index for All Urban Consumers between October of the preceding year and October, 1987. The conferees made these changes to the House bill to ensure that the conference agreement is revenue neutral.

G. New Regulations (sec. 5 of the House bill)

Present law

The Treasury Department has the authority to issue regulations under the Internal Revenue Code.

House bill

The House bill requires that the Treasury Department issue regulations to carry out the provisions of the House bill not later than October 1, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. Because the conferees have delayed applicability of the section 274(d) substantiation rules to local travel, computers, etc., until January 1, 1986, the conferees believe that requiring regulations to be issued by October 1, 1985, will provide taxpayers with sufficient time to prepare to meet these requirements.

II. ESTIMATED REVENUE EFFECTS

ESTIMATED REVENUE EFFECTS OF PROVISIONS OF H.R. 1869 AS AGREED TO BY THE CONFERENCE COMMITTEE, FISCAL YEARS 1985–90

[Millions of dollars]

Provision	1985	1986	1987	1988	1989	1990
Changes to Substantiation and Withholding Requirements	−172	−111	−151	−148	−149	−154
Reduction in Limitations on ITC and Depreciation for Autos	22	124	181	209	228	241
Total	−150	13	30	61	79	87

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J. J. PICKLE,
C. B. RANGEL,
PETE STARK,
JOHN J. DUNCAN,
BILL ARCHER,
GUY VANDER JAGT,
Managers on the Part of the House.

BOB PACKWOOD,
BOB DOLE,
W. V. ROTH, JR.,
JOHN DANFORTH,
RUSSELL LONG,
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Managers on the Part of the Senate.

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