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HOUSE OF REPRESENTATIVES
REPORT
104–92

SELF-EMPLOYED HEALTH INSURANCE ACT

MARCH 29, 1995.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 831]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 831), to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, 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 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. PERMANENT EXTENSION AND INCREASE OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) PERMANENT EXTENSION.—Subsection (l) of section 162 of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking paragraph (6).

(b) INCREASE IN DEDUCTION.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 is amended by striking "25 percent" and inserting "30 percent".

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1993.

(2) INCREASE.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1994.

SEC. 2. REPEAL OF NONRECOGNITION ON FCC CERTIFIED SALES AND EXCHANGES.

(a) IN GENERAL.—Subchapter O of chapter 1 of the Internal Revenue Code of 1986 is amended by striking part V (relating to changes to effectuate FCC policy).

(b) CONFORMING AMENDMENTS.—Sections 1245(b)(5) and 1250(d)(5) of the Internal Revenue Code of 1986 are each amended—

(1) by striking "section 1071 (relating to gain from sale or exchange to effectuate polices of FCC) or", and

(2) by striking "1071 AND" in the heading thereof.

(c) CLERICAL AMENDMENT.—The table of parts for such subchapter O is amended by striking the item relating to part V.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to—

(A) sales and exchanges on or after January 17, 1995, and

(B) sales and exchanges before such date if the FCC tax certificate with respect to such sale or exchange is issued on or after such date.

(2) BINDING CONTRACTS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written contract which was binding on January 16, 1995, and at all times thereafter before the sale or exchange, if the FCC tax certificate with respect to such sale or exchange was applied for, or issued, on or before such date.

(B) SALES CONTINGENT ON ISSUANCE OF CERTIFICATE.—

(i) IN GENERAL.—A contract shall be treated as not binding for purposes of subparagraph (A) if the sale or exchange pursuant to such contract, or the material terms of such contract, were contingent, at any time on January 16, 1995, on the issuance of an FCC tax certificate. The preceding sentence shall not apply if the FCC tax certificate for such sale or exchange is issued on or before January 16, 1995.

(ii) MATERIAL TERMS.—For purposes of clause (i), the material terms of a contract shall not be treated as contingent on the issuance of an FCC tax certificate solely because such terms provide that the sales price would, if such certificate were not issued, be increased by an amount not greater than 10 percent of the sales price otherwise provided in the contract.

(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term "FCC tax certificate" means any certificate of the Federal Communications Commission for the effectuation of section 1071 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act).

SEC. 3. SPECIAL RULES RELATING TO INVOLUNTARY CONVERSIONS.

(a) REPLACEMENT PROPERTY ACQUIRED BY CORPORATIONS FROM RELATED PERSONS.—

(1) IN GENERAL.—Section 1033 of the Internal Revenue Code of 1986 (relating to involuntary conversions) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) NONRECOGNITION NOT TO APPLY IF CORPORATION ACQUIRES REPLACEMENT PROPERTY FROM RELATED PERSON.—

"(1) IN GENERAL.—In the case of—

"(A) a C corporation, or

"(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion,

subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period described in subsection (a)(2)(B).

"(2) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).'

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to involuntary conversions occurring on or after February 6, 1995.

(b) APPLICATION OF SECTION 1033 TO CERTAIN SALES REQUIRED FOR MICROWAVE RELOCATION.—

(1) IN GENERAL.—Section 1033 of the Internal Revenue Code of 1986 (relating to involuntary conversions), as amended by subsection (a), is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SALES OR EXCHANGES TO IMPLEMENT MICROWAVE RELOCATION POLICY.—

"(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified sale or exchange, such sale or exchange shall be treated as an involuntary conversion to which this section applies.

"(2) QUALIFIED SALE OR EXCHANGE.—For purposes of paragraph (1), the term 'qualified sale or exchange' means a sale or exchange before January 1, 2000, which is certified by the Federal Communications Commission as having been made by a taxpayer in connection with the relocation of the taxpayer from the 1850–1990MHz spectrum by reason of the Federal Communications Commission's reallocation of that spectrum for use for personal communications services. The Commission shall transmit copies of certifications under this paragraph to the Secretary.'

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales or exchanges after March 14, 1995.

SEC. 4. DENIAL OF EARNED INCOME CREDIT FOR INDIVIDUALS HAVING EXCESSIVE INVESTMENT INCOME.

(a) IN GENERAL.—Section 32 of the Internal Revenue Code of 1986 is amended by redesignating subsections (i) and (j) as sub-

sections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

"(i) DENIAL OF CREDIT FOR INDIVIDUALS HAVING EXCESSIVE INVESTMENT INCOME.—

"(1) IN GENERAL.—No credit shall be allowed under subsection (a) for the taxable year if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds $2,350.

"(2) DISQUALIFIED INCOME.—For purposes of paragraph (1), the term 'disqualified income' means—

"(A) interest or dividends to the extent includible in gross income for the taxable year,

"(B) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

"(C) the excess (if any) of—

"(i) gross income from rents or royalties not derived in the ordinary course of a trade or business, over

"(ii) the sum of—

"(I) the deductions (other than interest) which are clearly and directly allocable to such gross income, plus

"(II) interest deductions properly allocable to such gross income."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 5. EXTENSION OF SPECIAL RULE FOR CERTAIN GROUP HEALTH PLANS.

Section 13442(b) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) is amended by striking "May 12, 1995" and inserting "December 31, 1995".

SEC. 6. STUDY OF EXPATRIATION TAX.

(a) IN GENERAL.—The staff of the Joint Committee on Taxation shall conduct a study of the issues presented by any proposals to affect the taxation of expatriation, including an evaluation of—

(1) the effectiveness and enforceability of current law with respect to the tax treatment of expatriation,

(2) the current level of expatriation for tax avoidance purposes,

(3) any restrictions imposed by any constitutional requirement that the Federal income tax apply only to realized gains,

(4) the application of international human rights principles to taxation of expatriation,

(5) the possible effects of any such proposals on the free flow of capital into the United States,

(6) the impact of any such proposals on existing tax treaties and future treaty negotiations,

(7) the operation of any such proposals in the case of interests in trusts,

(8) the problems of potential double taxation in any such proposals,

(9) the impact of any such proposals on the trade policy objectives of the United States,

(10) the administrability of such proposals, and

(11) possible problems associated with existing law, including estate and gift tax provisions.

(b) REPORT.—The Chief of Staff of the Joint Committee on Taxation shall, not later than June 1, 1995, report the results of the study conducted under subsection (a) to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

And the Senate agree to the same.

BILL ARCHER,
PHILIP CRANE,
WM. THOMAS,
CHARLES B. RANGEL,
Managers on the Part of the House.

BOB PACKWOOD,
BOB DOLE,
BILL ROTH,
JOHN H. CHAFEE,
CHUCK GRASSLEY,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
CAROL MOSELEY-BRAUN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 831) to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, 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 struck 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 that 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 clerical changes.

A. Permanently Extend Deduction for Health Insurance Costs of Self-Employed Individuals

(Sec. 1 of the House bill, sec. 1 of the Senate amendment, sec. 1 of the conference agreement and sec. 162(l) of the Code)

Present Law

Under present law, the tax treatment of health insurance expenses depends on whether the taxpayer is an employee and whether the taxpayer is covered under a health plan paid for by the employee's employer. An employer's contribution to a plan providing accident or health coverage for the employee and the employee's spouse and dependents is excludable from an employee's income. The exclusion is generally available in the case of owners of a business who are also employees.

In the case of self-employed individuals (i.e., sole proprietors or partners in a partnership), no equivalent exclusion applies. However, prior law provided a deduction for 25 percent of the amount paid for health insurance for a self-employed individual and the individual's spouse and dependents. The 25-percent deduction was available with respect to the cost of self-insurance as well as commercial insurance. In the case of self insurance, the deduction was not available unless the self-insured plan was in fact insurance

(e.g., there was appropriate risk shifting) and not merely a reimbursement arrangement. The 25-percent deduction was not available for any month if the taxpayer was eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse. In addition, no deduction was available to the extent that the deduction exceeded the taxpayer's earned income. The amount of expenses paid for health insurance in excess of the deductible amount could be taken into account in determining whether the individual was entitled to an itemized deduction for medical expenses. The 25-percent deduction expired for taxable years beginning after December 31, 1993.

For purposes of these rules, more than 2-percent shareholders of S corporations are treated the same as self-employed individuals. Thus, they were entitled to the 25-percent deduction.

Other individuals who purchase their own health insurance (e.g., someone whose employer does not provide health insurance) can deduct their insurance premiums only to the extent that the premiums, when combined with other unreimbursed medical expenses, exceed 7.5 percent of adjusted gross income.

House Bill

The House bill would retroactively reinstate the deduction for 25 percent of health insurance costs of self-employed individuals for 1994 and would extend the deduction permanently.

Effective date.—The provision would be effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that the deduction would be increased to 30 percent for years beginning after December 31, 1994.

Effective date.—The provision generally would be effective for taxable years beginning after December 31, 1993. The increase in the deduction to 30 percent of health insurance costs would be effective for taxable years beginning after December 31, 1994.

Conference Agreement

The conference agreement follows the Senate amendment.

B. Repeal of Special Rules Applicable to FCC-Certified Sales of Broadcast Property

(Sec. 2 of the House bill, sec. 2 of the Senate amendment, sec. 2 of the conference agreement, and sec. 1071 of the Code)

Present Law and Background

Tax treatment of a seller of broadcast property

General tax rules

Under generally applicable Code provisions, the seller of a business, including a broadcast business, recognizes gain to the extent the sale price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is then subject to the current income tax unless the gain is deferred or not recognized under a special tax provision.

Special rules under Code section 1033

Under Code section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property. The replacement property may be acquired directly or by acquiring control of a corporation (generally, 80 percent of the stock of the corporation) that owns replacement property. The taxpayer's basis in the replacement property generally is the same as the taxpayer's basis in the converted property, decreased by the amount of any money or loss recognized on the conversion, and increased by the amount of any gain recognized on the conversion.

Only involuntary conversions that result from destruction, theft, seizure, or condemnation (or threat or imminence thereof) are eligible for deferral under Code section 1033. In addition, the term "condemnation" refers to the process by which private property is taken from public use without the consent of the property owner but upon the award and payment of just compensation, according to a ruling by the Internal Revenue Service (IRS).[1] Thus, for example, an order by a Federal court to a corporation to divest itself of ownership of certain stock because of anti-trust rules is not a condemnation (or a threat or imminence thereof), and the divestiture is not eligible for deferral under this provision.[2] Under another IRS ruling, the "threat or imminence of condemnation" test is satisfied if, prior to the execution of a binding contract to sell the property, "the property owner is informed, either orally or in writing by a representative of a governmental body or public official authorized to acquire property for public use, that such body or official has decided to acquire his property, and from the information conveyed to him has reasonable grounds to believe that his property will be condemned if a voluntary sale is not arranged."[3] However, under

[1] Rev. Rul. 58–11, 1958–1 C.B. 273.
[2] Id.
[3] Rev. Rul. 74–8, 1974–1 C.B. 200.

this ruling, the threatened taking also must constitute a condemnation, as defined above.

Special rules under Code section 1071

Under Code section 1071, if the FCC certifies that a sale or exchange of property is necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the FCC with respect to the ownership and control of "radio broadcasting stations," a taxpayer may elect to treat the sale or exchange as an involuntary conversion. The FCC is not required to determine the tax consequences of certifying a sale or to consult with the IRS about the certification process.

Under Code section 1071, the replacement requirement in the case of FCC-certified sales may be satisfied by purchasing stock of a corporation that owns broadcasting property, whether or not the stock represents control of the corporation. In addition, even if the taxpayer does not reinvest all the sales proceeds in similar or related replacement property, the taxpayer nonetheless may elect to defer recognition of gain if the basis of depreciable property that is owned by the taxpayer immediately after the sale or that is acquired during the same taxable year is reduced by the amount of deferred gain.

Tax treatment of a buyer of broadcast property

Under generally applicable Code provisions, the purchaser of a broadcast business, or any other business, acquires a basis equal to the purchase price paid. In an asset acquisition, a buyer must allocate the purchase price among the purchased assets to determine the buyer's basis in these assets. In a stock acquisition, the buyer generally takes a basis in the stock equal to the purchase price paid, and the business retains its basis in the assets. This treatment applies whether or not the seller of the broadcast property has received an FCC certificate exempting the sale transaction from the normal tax treatment.

FCC tax certificate program

Multiple ownership policy

The FCC originally adopted multiple ownership rules in the early 1940s.[4] These rules prohibited broadcast station owners from owning more than one station in the same service area, and, generally, more than six high frequency (radio) or three television stations. Owners wishing to acquire additional stations had to divest themselves of stations they already owned in order to remain in compliance with the FCC's rules.

In November 1943, the FCC adopted a rule that prohibited duopolies (ownership of more than one station in the same city).[5] After these rules were adopted, owners wishing to acquire additional stations in excess of the national ownership limit had to divest themselves of stations they already owned in order to remain in compliance with the FCC's rules. After Code section 1071 was

[4] Fed. Reg. 2382 (June 26, 1940) (multiple ownership rules for high frequency broadcast stations); 5 Fed. Reg. 2284 (May 6, 1941) (multiple ownership rules for television stations).
[5] 8 Fed. Reg. 16065 (Nov. 23, 1943).

adopted in 1943, in some cases, parties petitioned the FCC for tax certificates pursuant to Code section 1071 when divesting themselves of stations. These divestitures were labeled "voluntary divestitures" by the FCC. When the duopoly rule was adopted, 35 licensees that held more than one license in a particular city were required by the rule "involuntarily" to divest themselves of one of the licenses.[6]

Minority ownership policy

In 1978, the FCC announced a policy of promoting minority ownership of broadcast facilities by offering an FCC tax certificate to those who voluntarily sell such facilities (either in the form of assets or stock) to minority individuals or minority-controlled entities.[7] The FCC's policy was based on the view that minority ownership of broadcast stations would provide a significant means of fostering the inclusion of minority views in programming, thereby serving the needs and interests of the minority community as well as enriching and educating the non-minority audience. The FCC subsequently expanded its policy to include the sale of cable television systems to minorities as well.[8]

"Minorities," within the meaning of the FCC's policy, include "Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders."[9] As a general rule, a minority-controlled corporation is one in which more than 50 percent of the voting stock is held by minorities. A minority-controlled limited partnership is one in which the general partner is a minority or minority-controlled, and minorities have at least a 20-percent interest in the partnership.[10] The FCC requires those who acquire broadcast properties with the help of the FCC tax certificate policy to hold those properties for at least one year.[11] An acquisition can qualify even if there is a pre-existing agreement (or option) to buy out the minority interests at the end of the one-year holding period, providing that the transaction is at arm's-length.

In 1982, the FCC further expanded its tax certificate policy for minority ownership. At that time, the FCC decided that, in addition to those who sell properties to minorities, investors who contribute to the stabilization of the capital base of a minority enterprise would be entitled to a tax certificate upon the subsequent sale of their interest in the minority entity.[12] To qualify for an FCC tax certificate in this circumstance, an investor must either (1) provide start-up financing that allows a minority to acquire either broadcast or cable properties, or (2) purchase shares in a minority-controlled entity within the first year after the license necessary to operate the property is issued to the minority. An investor can qualify

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[6] FCC Announces New Policy Relating to Issuance of Tax Certificates, 14 FCC2d 827 (1956).
[7] Minority Ownership of Broadcasting Facilities, 68 FCC2d 979 (1978).
[8] Minority Ownership of Cable Television Systems, 52 R.R.2d 1469 (1982).
[9] 52 R.R.2d at n. 1.
[10] Commission's Policy Regarding the Advancement of Minority Ownership in Broadcasting, Policy Statement, and Notice of Proposed Rulemaking, 92 FCC2d 853–855 (1982).
[11] See Amendment of Section 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control), 57 R.R.2d 1149 (1985). Anti-trafficking rules require cable properties to be held for at least three years (unless the property is sold pursuant to a tax certificate).
[12] Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC2d 849 (1982).

for a tax certificate even if the sale of the interest occurs after participation by a minority in the entity has ceased. In these situations, the status of the divesting investor and the purchaser of the divested interest is irrelevant, because the goal is to increase the financing opportunities available to minorities.

Personal communications services ownership policy

In 1993, Congress provided for the orderly transfer of frequencies, including frequencies that can be licensed pursuant to competitive bidding procedures.[13] The FCC has adopted rules to conduct auctions for the award of more than 2,000 licenses to provide personal communications services ("PCS"). PCS will be provided by means of a new generation of communication devices that will include small, lightweight, multi-function portable phones, portable facsimile and other imaging devices, new types of multichannel cordless phones, and advanced paging devices with two-way data capabilities. The PCS auctions (which began last year) will constitute the largest auction of public assets in American history and are expected to generate billions of dollars for the United States Treasury.[14]

The FCC has designed procedures to ensure that small businesses, rural telephone companies and businesses owned by women and minorities have "the opportunity to participate in the provision" of PCS, as Congress directed in 1993.[15] To help minorities and women participate in the auction of the PCS licenses, the FCC took several steps including up to a 25-percent bidding credit, a reduced upfront payment requirement, a flexible installment payment schedule and an extension of the tax certificate program for businesses owned by minorities and women.[16]

The FCC will employ the tax certificate program in three ways: (1) initial investors (who provide "start-up" financing or purchase interests within the first year after license issuance) in minority and woman-owned PCS businesses will be eligible for FCC tax certificates upon the sale of their investments; (2) holders of PCS licenses will be able to obtain FCC tax certificates upon the sale of the business to a company controlled by minorities and women; and (3) a cellular operator that sells its interest in an overlapping cellular system to a minority or a woman-owned business to come into compliance with the FCC PCS/cellular cross-ownership rule will be eligible for a tax certificate. In addition, as discussed below, the FCC will issue tax certificates for PCS to encourage fixed microwave operators voluntarily to relocate to clear a portion of the spectrum for PCS technologies.

Microwave relocation policy

PCS can operate only on frequencies below 3GHz. However, because that frequency range is currently occupied by various private fixed microwave communications systems (such as railroads, oil pipelines, and electric utilities), there are no large blocks of unallocated spectrum available to PCS. To accommodate PCS, the

[13] Omnibus Budget Reconciliation Act of 1993, P.L. 103–66, Title VI.
[14] Fifth Report and Order, 9 FCC Rcd 5532 (1994).
[15] Omnibus Budget Reconciliation Act of 1993, P.L. 103–66, section 6002(a).
[16] Installment payments are available to small businesses and rural telephone companies.

FCC has reallocated the spectrum; the 1850–1990MHz spectrum will be used for PCS, and the microwave systems will be required to move to higher frequencies. Current occupants of the 1850–1990MHz spectrum allocated to PCS must relocate to higher frequencies not later than three years after the close of the bidding process.[17] In accordance with FCC rules, these current occupants have the right to be compensated for the cost of replacing their old equipment, which can operate only on the 1850–1990MHz spectrum, with equipment that will operate at the new, higher frequency. At a minimum, the winners of the new PCS licenses must pay for and install new facilities to enable the incumbent microwave operators to relocate. The amount of these payments and characteristics of the new equipment will be the subject of negotiation between the incumbent microwave operators and the PCS licensees; thus, the nature of the compensation (i.e., solely replacement equipment, or a combination of replacement equipment plus a cash payment) is unknown at present. If no agreement is reached within the 3-year voluntary negotiation period, the microwave operators will be required by the FCC to vacate the spectrum; however, the timing of such relocation is uncertain because the relocation would take place only after completion of a formal negotiation process in which the FCC would be a participant.

The FCC will employ the tax certificate program for PCS to encourage fixed microwave operators voluntarily to relocate from the 1850–1990 MHz band to clear the band for PCS technologies.[18] Tax certificates will be available to incumbent microwave operators that relocate voluntarily within three years following the close of the bidding process. Thus, the certificates are intended to encourage such occupants to relocate more quickly than they otherwise would and to clarify the tax treatment of such transactions.[19]

Congressional appropriations rider

Since fiscal year 1988, in appropriations legislation, the Congress has prohibited the FCC from using any of its appropriated funds to repeal, to retroactively apply changes in, or to continue a reexamination of its comparative licensing, distress sale and tax certificate policies.[20] This limitation has not prevented an expansion of the existing program.[21] The current rider will expire at the end of the 1995 fiscal year, September 30, 1995.

House Bill

The House bill would repeal Code section 1071. Thus, a sale or exchange of broadcast properties would be subject to the same

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[17] The PCS auctions for the 1850–1990MHz spectrum commenced in December, 1994.

[18] See, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993).

[19] The transaction between the PCS licensee and the incumbent microwave operator might qualify for tax-free treatment as a like-kind exchange under Code section 1031 or as an involuntary conversion under Code section 1033. However, the availability of deferral under these Code provisions may be uncertain in certain circumstances. For example, it may be unclear whether the transaction would qualify as an involuntary conversion under currently applicable IRS standards.

[20] Pub. L. No. 100–202 (1987).

[21] The appropriations restriction "does not prohibit the agency from taking steps to create greater opportunity for minority ownership." H. Rept. No. 103–708 (Conf. Rept.), 103d Cong. 2d Sess. 40 (1994).

tax rules applicable to all other taxpayers engaged in the sale or exchange of a business.

Effective date.—The repeal of section 1071 would be effective for (1) sales or exchanges on or after January 17, 1995, and (2) sale or exchanges before that date if the FCC tax certificate with respect to the sale or exchange is issued on or after that date. The provision would not apply to taxpayers who have entered into a binding written contract (or have completed a sale or exchange pursuant to a binding written contract) before January 17, 1995, and who have applied for an FCC tax certificate by that date. A contract would be treated as not binding for this purpose if the sale or exchange pursuant to the contract (or the material terms of the contract) were contingent on January 16, 1995, on issuance of an FCC tax certificate. A sale or exchange would not be contingent on January 16, 1995, on issuance of an FCC tax certificate if the tax certificate had been issued by the FCC by that date.

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 with a clarification that the material terms of an otherwise binding contract in effect on January 16, 1995, would not be treated as contingent on the issuance of an FCC tax certificate solely because the contract provides that the sales price is increased by an amount not greater than 10 percent of the sales price in the event an FCC tax certificate is not issued.

C. Modification of Code Section 1033

(Sec. 3 of the House bill, sec. 3 of the Senate amendment, sec. 3 of the conference agreement, and sec. 1033 of the Code)

Present Law

As described above (item B), under Code section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within a specified period.

Under rulings issued by the IRS to taxpayers, property (stock or assets) purchased from a related person may, in some cases, qualify as property similar or related in service or use to the converted property.[22] Thus, in certain circumstances, related taxpayers may obtain significant (and possible indefinite or permanent) tax deferral without any additional cash outlay to acquire new properties. In cases in which a taxpayer purchases stock as re-

[22] See, e.g., PLR 8132072, PLR 8020069. Private letter rulings do not have precedential authority and may not be relied upon by any taxpayer other than the taxpayer receiving the ruling but are some indication of IRS administrative practice.

placement property, section 1033 permits the taxpayer to reduce basis of stock, but does not require any reduction in the basis of the underlying assets. Thus, the reduction in basis of stock does not result in reduced depreciation deductions.

House Bill

Under the House bill, a taxpayer would not be entitled to defer gain under Code section 1033 when the replacement property or stock is purchased from a related person. For purposes of the bill, a person would be treated as related to another person if the relationship between the persons would result in a disallowance of losses under the rules of Code section 267 or 707(b). The provision would be intended to apply to all cases involving relationships to the taxpayer described in Code section 267(b) or 707(b)(1), including members of controlled groups under Code section 267(f).

Effective date.—The provision would apply to replacement property or stock acquired on or after February 6, 1995.

Senate Amendment

Related-party transactions

Under the Senate amendment, subchapter C corporations would not be entitled to defer gain under Code section 1033 if the replacement property or stock is purchased from a related person. A person would be treated as related to another person if the person bears a relationship to the other person described in Code section 267(b) or 707(b)(1). An exception to the general rule would provide that a taxpayer could purchase replacement property or stock from a related person and defer gain under Code section 1033 to the extent the related person acquired the replacement property or stock from an unrelated person within the period prescribed under Code section 1033. Thus, property acquired from outside the group within the period prescribed by section 1033 and retransferred to the taxpayer member of the group within the prescribed time period, would qualify in the hands of the taxpayer to the extent that the property's basis or other net tax consequences to the group do not change as a result of the transfer.

Microwave relocation transactions

The Senate amendment would provide that sales or exchanges that are certified by the FCC as having been made by a taxpayer in connection with the relocation of the taxpayer from the 1850–1990MHz spectrum by reason of the FCC's reallocation of that spectrum for use for PCS would be treated as involuntary conversions to which Code section 1033 applies.

Effective date

The provision prohibiting the purchase of qualified replacement property from a related party would apply to involuntary conversions occurring on or after February 6, 1995.

The provision treating certain microwave relocation transactions as involuntary conversions would apply to sales or exchanges occurring before January 1, 2000.

Conference Agreement

The conference agreement follows the Senate amendment with a modification to provide that the amendments made to section 1033 will apply not only to C corporations, but also to certain partnerships. Specifically, the provision will apply to a partnership if more than 50 percent of the capital interest, or profits interest, of the partnership are owned, directly or indirectly (as determined under section 707(b)(3)), by C corporations at the time of the involuntary conversion. If the provision applies to a partnership under the above rule, the provision would apply to all partners of the partnership, including partners that are not C corporations. If a partnership is not described by the above rule, none of the partners of the partnership will be subject to the provision by reason of their interest in the partnership.

In addition, the conference agreement clarifies that the determination of whether or not a partnership is related to another party will be made at the partnership level.

D. Unearned Income Test for Earned Income Tax Credit

(Sec. 4 of the House bill, sec. 4 of the Senate amendment, sec. 4 of the conference agreement, and sec. 32 of the Code)

Present Law

Eligible low-income workers are able to claim a refundable earned income tax credit (EITC). The amount of the credit an eligible taxpayer may claim depends upon whether the taxpayer has one, more than one, or no qualifying children and is determined by multiplying the credit rate by the taxpayer's earned income up to an earned income threshold. The maximum amount of the credit is the product of the credit rate and the earned income threshold. For taxpayers with earned income (or adjusted gross income, if greater) in excess of the phaseout threshold, the credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or adjusted gross income, if greater) in excess of the phaseout threshold. The credit is not allowed if earned income (or adjusted gross income, if greater) exceeds the phaseout limit. There is no additional limitation on the amount of unearned income that the taxpayer may receive.

The parameters for the EITC depend upon the number of qualifying children the taxpayer claims. For 1995, the parameters are as follows:

	Two or more qualifying children—	One qualifying child—	No qualifying children—
Credit rate	36.00%	34.00%	7.65%
Phaseout rate	20.22%	15.98%	7.65%
Earned income threshold	$8,640	$6,160	$4,100

	Two or more qualifying children—	One qualifying child—	No qualifying children—
Maximum credit	$3,110	$2,094	$314
Phaseout threshold	$11,290	$11,290	$5,130
Phaseout limit	$26,673	$24,396	$9,230

The earned income threshold and the phaseout threshold are indexed for inflation; because the phaseout limit depends on those amounts, the phaseout rate, and the credit rate, the phaseout limit will also increase if there is inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

The credit rates and phaseout rates for the EITC change over time under present law. For 1996 and after, the credit rate will be 40 percent and the phaseout rate will be 21.06 percent for taxpayers with two or more qualifying children. The credit rate and the phaseout rate for taxpayers with one qualifying child or no qualifying children will be the same as those listed in the table above.

In order to claim the EITC, a taxpayer must either have a qualifying child or must meet other requirements. A qualifying child must meet a relationship test, an age test, and a residence test. In order to claim the EITC without a qualifying child, a taxpayer must not be a dependent and must be over age 24 and under age 65.

House Bill

Under the House bill, a taxpayer would not be eligible for the EITC if the aggregate amount of interest and dividends includible in the taxpayer's income for the taxable year exceeds $3,150. The otherwise allowable EITC amount would be phased out ratably for taxpayers with aggregate taxable interest and dividend income between $2,500 and $3,150. For taxable years beginning after 1996, the $2,500 threshold and the $650 size of the phaseout would be indexed for inflation with rounding to the nearest multiple of $10.

Effective date.—The provision would be effective for taxable years beginning after December 31, 1995.

Senate Amendment

Under the Senate amendment, a taxpayer would not be eligible for the EITC if the aggregate amount of "disqualified income" of the taxpayer for the taxable year exceeds $2,450. Disqualified income would be the sum of:

(1) interest (whether or not subject to tax) received or accrued in the taxable year,

(2) dividends to the extent includible in gross income for the taxable year, and

(3) net income (if greater than zero) from rents and royalties not derived in the ordinary course of business.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement provides that a taxpayer is not eligible for the EITC if the aggregate amount of "disqualified income" of the taxpayer for the taxable year exceeds $2,350. Disqualified income is the sum of:

(1) interest and dividends includible in gross income for the taxable year,

(2) tax-exempt interest received or accrued in the taxable year, and

(3) net income (if greater than zero) from rents and royalties not derived in the ordinary course of business.

Tax-exempt interest is defined as amounts required to be reported on the taxpayer's return under Code section 6012(d).

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

E. Extension of Rule for Certain Group Health Plans

(Sec. 5 of the conference agreement and sec. 162(n) of the Code)

Present Law

In general, present law disallows employer deductions for any amounts paid or incurred in connection with a group health plan if the plan fails to reimburse hospitals for inpatient services provided in the State of New York at the same rate that licensed commercial insurers are required to reimburse hospitals for inpatient services of individuals not covered by a group health plan. This provision applies with respect to inpatient hospital services provided to participants after February 2, 1993, and on or before May 12, 1995.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement extends the present-law deduction disallowance for expenses in connection with certain group health plans through December 31, 1995.

Effective date.—The provision is effective on the date of enactment.

F. Imposition of Tax on U.S. Citizens Who Relinquish Citizenship

(Sec. 5 of the Senate amendment, sec. 6 of the conference agreement, proposed new sec. 877A, and secs. 877 and 7701 of the Code)

Present Law

U.S. citizens and residents generally are subject to U.S. income taxation on their worldwide income. The United States imposes tax on gains recognized by foreign persons that are attributable to dispositions of interests in U.S. real property. Distributions, including lump-sum distributions, that foreign persons receive from qualified U.S. retirement plans generally are subject to U.S. tax at a 30-percent rate.

A U.S. citizen who relinquishes U.S. citizenship with a principal purpose to avoid Federal tax may be subjected to an alternative taxing method for 10 years after expatriation (sec. 877). Under this alternative method, the expatriate generally is taxed on his U.S. source income (net of certain deductions), as well as on certain business profits, at rates applicable to U.S. citizens and residents.

The United States imposes its estate tax on the worldwide estates of persons who were citizens or domiciliaries of the United States at the time of death, and on certain property belonging to nondomiciliaries of the United States which is located in the United States at the time of their death. The U.S. gift tax is imposed on all gifts made by U.S. citizens and domiciliaries, and on gifts of property made by nondomiciliaries where the property is located in the United States at the time of the gift. Special rules apply to the estate and gift tax treatment of individuals who relinquished their U.S. citizenship within 10 years of death or gift, if the individual's loss of U.S. citizenship has as one of its principal purposes a tax avoidance motive.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, a U.S. citizen who relinquishes citizenship generally would be treated as having sold all of his property at fair market value immediately prior to the expatriation. Gain or loss from the deemed sale would be recognized at that time, generally without regard to other provisions of the Code. Net gain on the deemed sale would be recognized under the bill only to the extent it exceeds $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom expatriate).

Property treated as sold by an expatriating citizen under the provision would include all items that would be included in the individual's gross estate under the Federal estate tax if such individual were to die on the day of the deemed sale, plus certain trust

interests that are not otherwise includible in the gross estate and other interests that may be specified by the Treasury Department in order to carry out the purposes of the provision.

Certain types of property generally would not be taken into account for purposes of determining the expatriation tax: U.S. real property interests, interests in qualified retirement plans (other than interests attributable to excess contributions or contributions that violate any condition for tax-favored treatment), and, under regulations, interests in foreign pension plans and similar retirement plans or programs (up to a maximum amount of $500,000).

Under the amendment, an expatriate who is a beneficiary of a trust would be deemed to own a separate trust consisting of the assets allocable to his share of the trust, in accordance with his interest in the trust. The separate trust would be treated as selling its assets for fair market value immediately before the beneficiary relinquishes his citizenship, and distributing all resulting income and corpus to the beneficiary.

Under the amendment, a U.S. citizen who renounces his U.S. nationality before a diplomatic or consular officer of the United States would be treated as having relinquished his citizenship on that date, provided that the renunciation is later confirmed by the issuance of a certificate of loss of nationality ("CLN") by the U.S. Department of State. A U.S. citizen who furnishes to the Department of State a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act would be treated as having relinquished his citizenship on the date such statement is so furnished, provided that the voluntary relinquishment is later confirmed by the issuance of a CLN. Any other U.S. citizen to whom the Department of State issues a CLN would be treated as having relinquished his citizenship on the date the CLN is issued to the individual. A naturalized citizen is treated as having relinquished his citizenship on the date a court of the United States cancels his certificate of naturalization.

Under the amendment, an individual who is subject to the tax on expatriation would be required to pay a tentative tax equal to the amount of tax that would have been due based on a hypothetical short tax year that ended on the date the individual relinquished his citizenship. The tentative tax would be due on the 90th day after the date of relinquishment.

The amendment would provide that the time for the payment of the tax on expatriation may be extended for a period not to exceed 10 years at the request of the taxpayer, as provided by section 6161.

The amendment would authorize the Treasury Department to issue regulations to permit a taxpayer to allocate the taxable gain (net of any applicable exclusion) to the basis of assets taxed under this provision, thereby preventing double taxation if the assets remain subject to U.S. tax jurisdiction.

Effective date.—The amendment would be effective for U.S. citizens who relinquish their U.S. citizenship (as determined under the provision) on or after February 6, 1995. The tentative tax would not be required to be paid until 90 days after the date of enactment.

Present law would continue to apply to U.S. citizens who relinquished their citizenship prior to February 6, 1995.

Conference Agreement

The conference agreement does not include the Senate amendment.

The conference agreement, however, directs that the staff of the Joint Committee on Taxation undertake a study of the issues presented by any proposals to affect the tax treatment of expatriation, including an evaluation of (1) the effectiveness and enforceability of current law with respect to the tax treatment of expatriation, (2) the current level of expatriation for tax avoidance purposes, (3) any restrictions imposed by any constitutional requirement that Federal income tax apply only to realized gains, (4) the application of international human rights principles to the taxation of expatriation, (5) the possible effects of any such proposals on the free flow of capital into the United States, (6) the impact of any such proposals on existing tax treaties and future treaty negotiations, (7) the operation of any such proposals in the case of interests in trusts, (8) the problems of potential double taxation in any such proposals, (9) the impact of any such proposals on the trade policy objectives of the United States, (10) the administrability of such proposals, and (11) possible problems associated with existing law, including estate and gift tax provisions. The results of such study are to be reported to the Chairman of the House Committee on Ways and Means and to the Chairman of the Senate Committee on Finance by June 1, 1995.

ESTIMATED REVENUE EFFECTS OF H.R. 831 AS AGREED TO BY HOUSE AND SENATE CONFEREES—FISCAL YEARS 1995–2005

[Millions of Dollars]

Provision	Effective	1995	1996	1997	1998	1999	2000	1995–00	2001–05	1995–05
1. Extend self-employed health deduction: 25% for 1994 and 30% thereafter.	tyba Dec. 31, 1993	−514	−482	−527	−587	−649	−708	−3,467	−4,520	−7,987
2. Repeal section 1071 (FCC tax certificate program with transition).	Jan. 17, 1995	303	379	135	135	170	201	1,323	1,465	2,786
3. Modify section 1033 for corporations with transition rule for microwave relocation previously entitled to section 1071 (non-recognition of gain on involuntary conversions not to apply to acquisitions from related persons).	Feb. 6, 1995	5	9	23	33	47	67	184	505	689
4. Deny earned income tax credit to individuals with interest, dividends, tax-exempt interest income, and net rental and royalty income over $2,350 (the threshold is not indexed for inflation) [1].	Jan. 1, 1996		22	436	487	521	556	2,023	3,515	5,538
5. Extension of rule for certain group health plans.	DoE	−42	−11					−53		−53
Net totals		−248	−83	67	68	89	116	10	965	975

[1] Included in this estimate are decreases in EITC outlays of $18 million for FY 1996, $353 million for FY 1997, $397 million for FY 1998, $426 million for FY 1999, $449 million for FY 2000, $495 million for FY 2001, $529 million for FY 2002, $566 million for FY 2003, $605 million for FY 2004, and $647 million for FY 2005.

Note.—Details may not add to totals due to rounding. Legend for ''Effective'' column: tyba=taxable years beginning after. DoE=date of enactment.

Source: Joint Committee on Taxation.

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WM. THOMAS,
CHARLES B. RANGEL,
Managers on the Part of the House.

BOB PACKWOOD,
BOB DOLE,
BILL ROTH,
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CAROL MOSELEY-BRAUN,
Managers on the Part of the Senate.

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