FEDERAL GAMING AND GAMBLING LAWS

-EXPCITE-

TITLE 7 - AGRICULTURE

CHAPTER 1 - COMMODITY EXCHANGES

-HEAD-

Sec. 12a. Registration of commodity dealers and associated persons; regulation of contract markets

-STATUTE-

The Commission is authorized -

(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, floor brokers, and floor traders upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof: Provided, That notwithstanding any provision of this chapter, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules,

regulations, or orders as the Commission may adopt, except that the term of any such temporary license shall not exceed six months from the date of its issuance;

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person -

(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent,

clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity where such activity involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, gambling, or any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 6c or 23 of this title, or concerning securities;

(D) if such person has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 6c or 23 of this title, or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling,

or (iv) involves the violation of section 152, 1001, 1341, 1342, 1343, 1503, 1623, 1961, 1962, 1963, or 2314, or chapter 25, 47, 95, or 96 of title 18, or section 7201 or 7206 of title 26;

(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found in a proceeding brought by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this chapter, the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Securities Investors (FOOTNOTE 1) Protection Act of 1970 (15 U.S.C. 78aaa et seq.), the Foreign Corrupt Practices Act of 1977, chapter 96 of title 18, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(FOOTNOTE 1) So in original. Probably should be "Investor".

(F) if such person is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, denying, suspending, or revoking such person's membership in any contract market or registered futures association, or barring or suspending such person from being associated with a registrant under this chapter or with a member of a contract market or with a member of a registered futures association;

(G) if, as to any of the matters set forth in this paragraph and paragraph (3), such person willfully made any materially false or misleading statement or omitted to state any material fact in such person's application or any update thereto; or

(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph:

Provided, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in section 9 of this title; and

Provided, further, That for the purposes of paragraphs (2) and (3) of this section, "principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through

agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission;

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that -

(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated, or has consented to findings of a violation of, any provision of this chapter, or any rule, regulation, or order thereunder (other than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision;

(B) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any provision of the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Securities Investors (FOOTNOTE 2) Protection Act of 1970 (15 U.S.C. 78aaa et seq.), the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of

the Municipal Securities Rulemaking Board or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(FOOTNOTE 2) So in original. Probably should be "Investor".

(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this chapter, or of any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: Provided, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this subparagraph if (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

(D) such person pleaded guilty to or was convicted of a felony other than a felony of the type specified in paragraph (2)(D) of this section, or was convicted of a felony of the type specified in paragraph (2)(D) of this section more than ten years preceding the filing of the application;

(E) such person pleaded guilty to or was convicted of any misdemeanor which (i) involves any transaction or advice

concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 6c or 23 of this title or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, or section 7203, 7204, 7205, or 7207 of title 26;

(F) such person was debarred by any agency of the United States from contracting with the United States;

(G) such person willfully made any materially false or misleading statement or willfully omitted to state any material fact in such person's application or any update thereto, in any report required to be filed with the Commission by this chapter or the regulations thereunder, in any proceeding before the Commission or in any registration disqualification proceeding;

(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court, in a United States military court, or in a foreign court

of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this chapter or under the rules or regulations of the Commission, such person has not established that such person meets such minimum financial requirements;

(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a contract market, a registered futures association, any other self-regulatory organization, or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program or barring or suspending such person from being associated with any member or members of such contract market, association, self-regulatory organization, or foreign regulatory body;

(K) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

(L) such person has associated with such person any other

person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

(M) there is other good cause; or

(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration:

Provided, That pending final determination under this paragraph, registration shall not be granted: Provided further, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to this paragraph in the manner provided in section 9 of this title;

(4) in accordance with the procedure provided for in section 9 of this title, to suspend, revoke, or place restrictions upon the registration of any person registered under this chapter if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Commission under section 9 of this title and the period of denial specified in such order shall not have expired: Provided, That such person may appeal from a decision to

suspend, revoke, or place restrictions upon registration made pursuant to this paragraph in the manner provided in section 9 of this title;

(5) to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this chapter;

(6) to communicate to the proper committee or officer of any contract market, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), notwithstanding the provisions of section 12 of this title, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of this chapter: Provided, That any information furnished by the Commission under this paragraph shall not be disclosed by such contract market, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding;

(7) to alter or supplement the rules of a contract market insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a contract market that such contract market effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission

determines that such contract market has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such contract market, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such contract market. Such rules, regulations, or orders may specify changes with respect to such matters as -

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such contract market;

(B) the form or manner of execution of purchases and sales for future delivery;

(C) other trading requirements, excepting the setting of levels of margin;

(D) safeguards with respect to the financial responsibility of members;

(E) the manner, method, and place of soliciting business, including the content of such solicitations; and

(F) the form and manner of handling, recording, and accounting for customers' orders, transactions, and accounts;

(8) to make and promulgate such rules and regulations with respect to those persons registered under this chapter, who are not members of a contract market, as in the judgment of the Commission are reasonably necessary to protect the public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation;

(9) to direct the contract market, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission's action. The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based upon an examination of all the information before the Commission at the time the determination was made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a contract market to the terms "market emergency", "emergency", or equivalent language in its own

bylaws, rules, regulations, or resolutions;

(10) to authorize any person to perform any portion of the registration functions under this chapter, in accordance with rules, notwithstanding any other provision of law, adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to section 21(j) of this title, and subject to the provisions of this chapter applicable to registrations granted by the Commission; and

(11)(A) by written notice served on the person and pursuant to such rules, regulations, and orders as the Commission may adopt, to suspend or modify the registration of any person registered under this chapter who is charged (in any information, indictment, or complaint authorized by a United States attorney or an appropriate official of any State) with the commission of or participation in a crime involving a violation of this chapter, or a violation of any other provision of Federal or State law that would reflect on the honesty or the fitness of the person to act as a fiduciary (including an offense specified in subparagraph (D) or (E) of paragraph (2)) that is punishable by imprisonment for a term exceeding one year, if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

(B) Prior to the suspension or modification of the registration of a person under this paragraph, the person shall be afforded an opportunity for a hearing at which the Commission shall have the burden of showing that the continued registration of the person does, or is likely to, pose a threat to the public interest or

threaten to impair public confidence in any market regulated by the Commission.

(C) Any notice of suspension or modification issued under this paragraph shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(D) On disposition of such information, indictment, or complaint, the Commission may issue and serve on such person an order pursuant to paragraph (2) or (4) to suspend, restrict, or revoke the registration of such person.

(E) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under this chapter.

(F) A person aggrieved by an order issued under this paragraph may obtain review of such order in the same manner and on the same terms and conditions as are provided in section 8(b) of this title.

-SOURCE-

(Sept. 21, 1922, ch. 369, Sec. 8a, as added June 15, 1936, ch. 545, Sec. 10, 49 Stat. 1500; amended Aug. 5, 1955, ch. 574, 69 Stat. 535; Feb. 19, 1968, Pub. L. 90-258, Sec. 20-23, 82 Stat. 32, 33; Oct. 23, 1974, Pub. L. 93-463, title I, Sec. 103(a), title II, Sec. 204(c), 205(c), 213-215, 88 Stat. 1392, 1397, 1400, 1404; Sept. 30, 1978, Pub. L. 95-405, Sec. 17, 92 Stat. 874; Jan. 11, 1983, Pub. L. 97-444, title I, Sec. 104, title II, Sec. 223-225, 96 Stat. 2297, 2310-2315; Oct. 28, 1992, Pub. L. 102-546, title II, Sec. 207(b)(3), (4), 208, 209(b)(6), 227, title IV, Sec. 402(10), 106 Stat. 3604, 3607, 3618, 3625.)

-REFTEXT-

REFERENCES IN TEXT

Section 9 of this title, referred to in pars. (2) to (4), was in the original "section 6(c) of this Act" meaning section 6(c) of act Sept. 21, 1922, ch. 369, which is classified to sections 9 and 15 of this title. See Codification note set out under section 8 of this title.

The Securities Act of 1933, referred to in pars. (2)(E) and (3)(B), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (Sec. 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in pars. (2)(E) and (3)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (Sec. 78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Public Utility Holding Company Act of 1935, referred to in pars. (2)(E) and (3)(B), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 838, as amended, which is classified generally to chapter 2C (Sec. 79 et seq.) of Title 15. For complete classification of this Act to the Code, see section 79 of Title 15 and Tables.

The Trust Indenture Act of 1939, referred to in pars. (2)(E) and (3)(B), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, as amended, which is classified generally to subchapter III (Sec. 77aaa et seq.) of chapter 2A of Title 15. For complete classification of this Act to the Code, see

section 77aaa of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in pars. (2)(E) and (3)(B), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (Sec. 80b-1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in pars. (2)(E) and (3)(B), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (Sec. 80a-1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

The Securities Investor Protection Act of 1970, referred to in pars. (2)(E) and (3)(B), is Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (Sec. 78aaa et seq.) of Title 15. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

The Foreign Corrupt Practices Act of 1977, referred to in pars. (2)(E) and (3)(B), is title I of Pub. L. 95-213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd-1 and 78dd-2 of Title 15, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

-MISC2-

AMENDMENTS

1992 - Par. (1). Pub. L. 102-546, Sec. 207(b)(3), substituted

"floor brokers, and floor traders" for "and floor brokers".

Par. (2). Pub. L. 102-546, Sec. 209(b)(6)(A), made technical amendment to reference to section 9 of this title in concluding provisions to reflect change in reference to corresponding section of original act.

Par. (2)(C)(i). Pub. L. 102-546, Sec. 207(b)(4), inserted "floor trader," after "floor broker,".

Par. (2)(C)(ii). Pub. L. 102-546, Sec. 208(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 6c or 23 of this title, or concerning securities".

Par. (2)(D)(ii). Pub. L. 102-546, Sec. 207(b)(4), inserted "floor trader," after "floor broker,".

Par. (2)(D)(iv). Pub. L. 102-546, Sec. 208(b), inserted references to sections 1001, 1503, 1623, 1961 to 1963, and 2314 of title 18 and sections 7201 and 7206 of title 26.

Par. (2)(E). Pub. L. 102-546, Sec. 208(c), substituted "in a proceeding brought" for "by any court of competent jurisdiction," and in cl. (i) inserted reference to chapter 96 of title 18.

Par. (2)(G). Pub. L. 102-546, Sec. 208(d), substituted "this paragraph and paragraph (3)" for "subparagraphs (A) through (F) of this paragraph", "materially false" for "material false", and "application or any update thereto" for "application".

Par. (3). Pub. L. 102-546, Sec. 209(b)(6)(B), made technical amendment to reference to section 9 of this title in concluding

provisions to reflect change in reference to corresponding section of original act.

Par. (3)(D). Pub. L. 102-546, Sec. 208(e), inserted "pleaded guilty to or" after "person", substituted "section," for "section within ten years preceding the filing of the application or at any time thereafter," and "felony of the type specified in paragraph (2)(D) of this section more" for "felony, including a felony of the type specified in paragraph (2)(D) of this section, more".

Par. (3)(E). Pub. L. 102-546, Sec. 208(f)(1), (2), inserted "pleaded guilty to or" after "person" and struck out "within ten years preceding the filing of the application for registration or at any time thereafter" before "of any misdemeanor".

Par. (3)(E)(ii). Pub. L. 102-546, Sec. 207(b)(4), inserted "floor trader," after "floor broker,".

Par. (3)(E)(iv). Pub. L. 102-546, Sec. 208(f)(3), inserted reference to sections 7203 to 7205 and 7207 of title 26.

Par. (3)(G). Pub. L. 102-546, Sec. 208(g)(5), which directed the insertion of "or in any registration disqualification proceeding" after "Commission", was executed by making the insertion after "Commission" the second time it appeared to reflect the probable intent of Congress.

Pub. L. 102-546, Sec. 208(g)(1)-(4), substituted "materially false" for "material false", "application or any update thereto," for "application," and struck out "or" after "thereunder,".

Par. (3)(H). Pub. L. 102-546, Sec. 208(h), inserted ", in a United States military court," after "State court".

Par. (3)(J). Pub. L. 102-546, Sec. 208(i), struck out "or" before "any other self-regulatory", inserted "or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program", and substituted "association, self-regulatory organization, or foreign regulatory body" for "association, or self-regulatory organization".

Par. (4). Pub. L. 102-546, Sec. 209(b)(6)(C), made technical amendment to references to section 9 of this title in concluding provisions to reflect change in references to corresponding section of original act.

Par. (5). Pub. L. 102-546, Sec. 402(10)(A), struck out "and" at end.

Par. (7). Pub. L. 102-546, Sec. 402(10)(B), substituted "matters as - " for "matters as:" in introductory provisions.

Par. (11). Pub. L. 102-546, Sec. 227, added par. (11).

1983 - Par. (1). Pub. L. 97-444, Sec. 223, substituted authorization for registration of "associated persons of futures commission merchants" for "and persons associated therewith as described in section 6k of this title"; authorized registration of introducing brokers, associated persons of introducing brokers, associated persons of commodity trading advisors and associated persons of commodity pool operators, substituted "such persons" for "any persons" before "associated with the applicant", and authorized establishment of registration and renewal fees and charges and granting of temporary licenses for terms not exceeding six months from date of issuance.

Par. (2). Pub. L. 97-444, Sec. 224(1), added par. (2) and struck out prior par. (2) which authorized Commission "to refuse to

register any person -

"(A) if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked;

"(B) if it is found, after opportunity for hearing, that the applicant is unfit to engage in the business for which the application for registration is made, (i) because such applicant, or, if the applicant is a partnership, any general partner, or, if the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, at any time engaged in any practice of the character prohibited by this chapter or was convicted of a felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made any material false or misleading statement in his application or willfully omitted to state any material fact in connection with the application, or (ii) for other good cause shown; or

"(C) in the case of an applicant for registration as futures commission merchant, if it is found after opportunity for hearing that the applicant has not established that he meets the minimum financial requirements under section 6f of this title: Provided, That pending final determination under subparagraph (B) or (C), registration shall not be granted: And provided further, That the applicant may appeal from the refusal of registration under subparagraph (B) or (C) in the manner provided in section 9 of this title; and".

Par. (3). Pub. L. 97-444, Sec. 224(3), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 97-444, Sec. 224(2), (4), struck out par. (4) provision for establishment of registration and renewal fees and charges, covered in par. (1), redesignated par. (3) as (4), and in redesignated par. (4), authorized placing of restrictions on registrations, suspension or revocation of registration of an introducing broker and appeals from registration decisions made pursuant to this paragraph as provided in section 9 of this title, and substituted "if cause exists under paragraph (3) of this section" for "if cause exists under paragraph (2)(B) or (C) of this section".

Par. (6). Pub. L. 97-444, Sec. 104, authorized communication of full facts respecting transactions or market operations to registered futures associations and self-regulatory organizations, included concern for investors, provided for communications when necessary or appropriate to effectuate purposes of this chapter, and prohibited disclosure of furnished information except in self-regulatory actions or proceedings.

Pars. (6) to (8). Pub. L. 97-444, Sec. 224(5), struck out "and" at end of pars. (6), (7), and (8).

Par. (9). Pub. L. 97-444, Sec. 225, authorized Commission to direct the contract market to take certain action, including, but not limited to, setting of temporary emergency margin levels on any futures contract, and fixing of limits that may apply to a market position acquired in good faith prior to the effective date of Commission's action and inserted provisions respecting judicial review.

Par. (10). Pub. L. 97-444, Sec. 224(6), added par. (10).

1978 - Par. (1). Pub. L. 95-405, Sec. 17(1), inserted ", which

may require the applicant, and any persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing" after "by the Commission".

Par. (6). Pub. L. 95-405, Sec. 17(2), struck out "and to publish" after "any contract market".

1974 - Pub. L. 93-463, Sec. 103(a), substituted "Commission" for "Secretary of Agriculture" in provisions preceding par. (1).

Par. (1). Pub. L. 93-463, Sec. 103(a), 204(c), 205(c), substituted "Commission" for "Secretary of Agriculture", inserted "and persons associated therewith as described in section 6k of this title," after "futures commission merchants", and inserted "commodity trading advisors, commodity pool operators" before "and floor brokers".

Pars. (3), (5), (6). Pub. L. 93-463, Sec. 103(a), substituted "Commission" for "Secretary of Agriculture".

Par. (7). Pub. L. 93-463, Sec. 213, amended par. (7) generally, substituting provisions covering the altering or supplementing of the rules of a contract market for provisions covering the disapproval of bylaws, rules, regulations, and resolutions made, issued, or proposed by a contract market.

Par. (8). Pub. L. 93-463, Sec. 214, added par. (8).

Par. (9). Pub. L. 93-463, Sec. 215, added par. (9).

1968 - Par. (2). Pub. L. 90-258, Sec. 20, designated existing provisions as subpar. (A), substituted "if the prior registration of such person" for "if such person has violated any of the provisions of this chapter or any of the rules or regulations

promulgated by the Secretary of Agriculture hereunder for which the registration of such person" and added subpars. (B) and (C).

Par. (3). Pub. L. 90-258, Sec. 21, authorized Secretary of Agriculture, in accordance with procedure provided for in section 9 of this title, to suspend or revoke the registration of any person registered under this chapter if cause exists under par. (2)(B) or (C) of this section which would warrant a refusal of registration of such person.

Par. (4). Pub. L. 90-258, Sec. 22, struck out authorization for establishment of fees for copies of registration certificates.

Par. (7). Pub. L. 90-258, Sec. 23, added par. (7).

1955 - Par. (4). Act Aug. 5, 1955, authorized Secretary to fix and establish reasonable fees for registrations and renewals, and struck out provisions which set the fee for each registration and renewal at not more than $10.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 207(b)(3), (4) of Pub. L. 102-546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102-546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section

28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2a, 4a, 6f, 6k, 7a, 21 of this title.

-CITE-

42 USC Sec. 12211 01/26/98

-EXPCITE-

Sec. 16. Commission operations

-STATUTE-

(a) Cooperation with other agencies

The Commission may cooperate with any Department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, any foreign futures authority, any department or agency of a foreign government or political subdivision thereof, or any person.

(b) Employment of investigators, experts, Administrative Law Judges, consultants, clerks, and other personnel; contracts

(1) The Commission shall have the authority to employ such investigators, special experts, Administrative Law Judges, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

(2) The Commission may employ experts and consultants in accordance with section 3109 of title 5, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5.

(3) The Commission shall also have authority to make and enter into contracts with respect to all matters which in the judgment of the Commission are necessary and appropriate to effectuate the purposes and provisions of this chapter, including, but not limited to, the rental of necessary space at the seat of Government and elsewhere.

(4) The Commission may request (in accordance with the procedures set forth in subchapter II of chapter 31 of title 5) and the Office of Personnel Management shall authorize pursuant to the request, eight positions in the Senior Executive Service in addition to the number of such positions authorized for the Commission on October 28, 1992.

(c) Expenses

All of the expenses of the Commissioners, including all necessary expenses for transportation incurred by them while on official business of the Commission, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter for each of fiscal years 1995 through 2000.

(e) Relation to other laws, departments, or agencies

Nothing in this chapter shall supersede or preempt -

(1) criminal prosecution under any Federal criminal statute;

(2) the application of any Federal or State statute, including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest (A) that is not conducted on or subject to the rules of a contract market, or, in the case of any State or local law that prohibits or regulates ***gaming*** or the operation of ''bucket shops'' (other than antifraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 6 of this title, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions, or (C) that is not subject to regulation by the Commission under section 6c or 23 of this title; or

(3) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this chapter who shall fail or refuse to obtain such registration or designation.

The Commission may refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering such statutes for such investigation, action, or proceedings as that department or agency shall deem appropriate.

(f) Investigative assistance to foreign futures authorities

(1) On request from a foreign futures authority, the Commission may, in its discretion, provide assistance in accordance with this section if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces. The Commission may conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States.

(2) In deciding whether to provide assistance under this subsection, the Commission shall consider whether -

(A) the requesting authority has agreed to provide reciprocal assistance to the Commission in futures and options matters; and

(B) compliance with the request would prejudice the public interest of the United States.

(3) Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a

foreign futures authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation, or in providing any other assistance to a foreign futures authority, pursuant to this section. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) Computerized futures trading

Consistent with its responsibilities under section 22 of this title, the Commission is directed to facilitate the development and operation of computerized trading as an adjunct to the open outcry auction system. The Commission is further directed to cooperate with the Office of the United States Trade Representative, the Department of the Treasury, the Department of Commerce, and the Department of State in order to remove any trade barriers that may be imposed by a foreign nation on the international use of electronic trading systems.

-SOURCE-

(Sept. 21, 1922, ch. 369, Sec. 12, 42 Stat. 1003; Oct. 23, 1974, Pub. L. 93-463, title I, Sec. 101(b), 88 Stat. 1391; Sept. 30, 1978, Pub. L. 95-405, Sec. 20, 92 Stat. 875; Jan. 11, 1983, Pub. L. 97-444, title II, Sec. 228, 229, 96 Stat. 2318; Nov. 10, 1986, Pub. L. 99-641, title I, Sec. 106, 100 Stat. 3558; Oct. 28, 1992, Pub. L. 102-546, title II, Sec. 216, 220(a), title III, Sec. 302, 303, title IV, Sec. 401, title V, Sec. 502(c), 106 Stat. 3611, 3614, 3622, 3624, 3631; Apr. 21, 1995, Pub. L. 104-9, Sec. 2, 109 Stat. 154.)

-MISC1-

AMENDMENTS

1995 - Subsec. (d). Pub. L. 104-9 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''There are authorized to be appropriated to carry out this chapter -

''(1) $53,000,000 for fiscal year 1993; and

''(2) $60,000,000 for fiscal year 1994.''

1992 - Subsec. (a). Pub. L. 102-546, Sec. 302, inserted ''any foreign futures authority, any department or agency of a foreign government or political subdivision thereof,'' after ''thereof,''.

Subsec. (b). Pub. L. 102-546, Sec. 216, designated first through third sentences as pars. (1) to (3), respectively, and added par. (4).

Subsec. (d). Pub. L. 102-546, Sec. 401, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''There are authorized to be appropriated to carry out this chapter such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989.''

Subsec. (e)(2)(A). Pub. L. 102-546, Sec. 502(c), inserted ''or, in the case of any State or local law that prohibits or regulates ***gaming*** or the operation of 'bucket shops' (other than antifraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 6 of this title,'' after ''market,''.

Subsec. (f). Pub. L. 102-546, Sec. 303, added subsec. (f).

Subsec. (g). Pub. L. 102-546, Sec. 220(a), added subsec. (g).

1986 - Subsec. (d). Pub. L. 99-641 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''There are authorized to be appropriated to carry out the provisions of this chapter such sums as may be required for each of the fiscal years during the period beginning October 1, 1982, and ending September 30, 1986.''

1983 - Subsec. (d). Pub. L. 97-444, Sec. 228, substituted appropriation authorization for fiscal years during period beginning Oct. 1, 1982, and ending Sept. 30, 1986, for prior authorization for fiscal years during period beginning Oct. 1, 1978, and ending Sept. 30, 1982.

Subsec. (e). Pub. L. 97-444, Sec. 229, added subsec. (e).

1978 - Subsec. (d). Pub. L. 95-405 substituted ''for each of the fiscal years during the period beginning October 1, 1978, and ending September 30, 1982'' for ''for the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, for the fiscal year ending June 30, 1977, and for the fiscal year ending June 30, 1978''.

1974 - Pub. L. 93-463 designated existing unlettered provisions as subsecs. (a) to (d), substituted ''Commission'' for ''Secretary of Agriculture'', inserted provisions authorizing the expenditure of funds for expenses upon the presentation of itemized vouchers therefor approved by the Commission, substituted provisions authorizing appropriations specifically for fiscal years ending June 30, 1975, 1976, 1977, and 1978, for provisions making a general authorization of appropriations without a fiscal year limitation, and inserted authorization to enter into contracts and compensate experts and consultants in accordance with section 3109 of title 5 at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, Sec. 101(c)(1)) of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

-EXPCITE-

TITLE 8 - ALIENS AND NATIONALITY

CHAPTER 12 - IMMIGRATION AND NATIONALITY

SUBCHAPTER I - GENERAL PROVISIONS

-HEAD-

Sec. 1101. Definitions

-STATUTE-

(a) As used in this chapter -

(1) The term "administrator" means the official designated by the Secretary of State pursuant to section 1104(b) of this title.

(2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term "Attorney General" means the Attorney General of the United States.

(6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into

the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7) The term "clerk of court" means a clerk of a naturalization court.

(8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term "consular officer" means any consular, diplomatic, or other officer of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas.

(10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 1182(d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the

alien -

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens -

(A)(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of

the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

(D)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 1288(a) of this title (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from

the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam and solely in pursuit of his calling as a crewman and to depart from Guam with the vessel on which he arrived;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him; (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; or (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital;

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184(l) (FOOTNOTE 1) of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved

by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

(FOOTNOTE 1) See References in Text note below.

(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) (22 U.S.C. 288 et seq.), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization; and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) an alien (i)(a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or controlled by the employer) for which the alien will perform the services, or (b) subject to section 1182(j)(2) of this title, who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title or as a fashion model, who meets the requirements for the occupation specified in section 1184(i)(2) of this title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 1182(n)(1) of this title; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily

to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or

skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) an alien who is the fiancee or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission, and the minor children of such fiancee or fiance accompanying him or following to join him;

(L) an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United

States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I);

(O) an alien who -

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the

artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who -

(i)(a) is described in section 1184(c)(4)(A) of this title (relating to athletes), or (b) is described in section 1184(c)(4)(B) of this title (relating to entertainment groups);

(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;

(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers;

(R) an alien, and the spouse and children of the alien if

accompanying or following to join the alien, who -

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii); or

(S) subject to section 1184(k) of this title, an alien -

(i) who the Attorney General determines -

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine -

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of

providing such information; and

(IV) is eligible to receive a reward under section 2708(a) of title 22,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien.

(16) The term "immigrant visa" means an immigrant visa required by this chapter and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.

(17) The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended

(62 Stat. 605; 65 Stat. 76) (50 App. U.S.C. 454(a)), or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) Repealed. Pub. L. 102-232, title III, Sec. 305(m)(1), Dec. 12, 1991, 105 Stat. 1750.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.

(27) The term "special immigrant" means -

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who -

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States -

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of title 26) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who is an employee, or an honorably retired

former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602(a)(1) of title 22) enters into force (October 1, 1979), who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty (April 1, 1979), and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force (October 1, 1979), has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from

such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 (April 1, 1979), who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who -

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) of this section before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been

physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's

retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States -

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that -

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating -

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant.

(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30) The term "passport" means any travel document issued by

competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of

government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

(39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the

protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means -

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined

in section 802 of title 21), including a drug trafficking crime (as defined in section 924(c) of title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

(E) an offense described in -

(i) section 842(h) or (i) of title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of title 18 (relating to firearms offenses); or

(iii) section 5861 of title 26 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at (FOOTNOTE 2) least one year;

(FOOTNOTE 2) So in original. Probably should be preceded by "is".

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at (FOOTNOTE 2) least one year;

(H) an offense described in section 875, 876, 877, or 1202 of

title 18 (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of title 18 (relating to child pornography);

(J) an offense described in section 1962 of title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that -

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588 of title 18 (relating to peonage, slavery, and involuntary servitude);

(L) an offense described in -

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18;

(ii) section 421 of title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) section 421 of title 50 (relating to protecting the identity of undercover agents);

(M) an offense that -

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter (FOOTNOTE 3)

(FOOTNOTE 3) So in original. Probably should be followed by a semicolon.

(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily -

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory,

professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily -

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive

capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term "extraordinary ability" means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction.

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of -

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term "conviction" means, with respect to an alien,

a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where -

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(b) As used in subchapters I and II of this chapter -

(1) The term "child" means an unmarried person under twenty-one years of age who is -

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of

eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(F) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the

child's proposed residence; Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

(2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term "person" means an individual or an organization.

(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands,

Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in subchapter III of this chapter -

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 and 1432 of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of sixteen years, and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(d) Repealed. Pub. L. 100-525, Sec. 9(a)(3), Oct. 24, 1988, 102 Stat. 2619.

(e) For the purposes of this chapter -

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of

affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this chapter -

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was -

(1) a habitual drunkard;

(2) Repealed. Pub. L. 97-116, Sec. 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (9)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section (FOOTNOTE 4) (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(FOOTNOTE 4) So in original. The phrase "of such section" probably should not appear.

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

(g) For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 1182(a)(2)(E) of this title, the term "serious criminal offense" means -

(1) any felony;

(2) any crime of violence, as defined in section 16 of title 18; or

(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

-SOURCE-

(June 27, 1952, ch. 477, title I, Sec. 101, 66 Stat. 166; Sept. 11,

1957, Pub. L. 85-316, Sec. 1, 2, 71 Stat. 639; July 7, 1958, Pub. L. 85-508, Sec. 22, 72 Stat. 351; Mar. 18, 1959, Pub. L. 86-3, Sec. 20(a), 73 Stat. 13; Sept. 21, 1961, Pub. L. 87-256, Sec. 109(a), (b), 75 Stat. 534; Sept. 26, 1961, Pub. L. 87-301, Sec. 1, 2, 7, 75 Stat. 650, 653; Oct. 3, 1965, Pub. L. 89-236, Sec. 8, 24, 79 Stat. 916, 922; Nov. 2, 1966, Pub. L. 89-710, 80 Stat. 1104; Apr. 7, 1970, Pub. L. 91-225, Sec. 1, 84 Stat. 116; Dec. 16, 1975, Pub. L. 94-155, 89 Stat. 824; Oct. 12, 1976, Pub. L. 94-484, title VI, Sec. 601(b), (e), 90 Stat. 2301, 2302; Oct. 20, 1976, Pub. L. 94-571, Sec. 7(a), 90 Stat. 2706; Oct. 12, 1976, Pub. L. 94-484, title VI, Sec. 602(c), as added Aug. 1, 1977, Pub. L. 95-83, title III, Sec. 307(q)(3), 91 Stat. 395; Aug. 17, 1977, Pub. L. 95-105, title I, Sec. 109(b)(3), 91 Stat. 847; Sept. 27, 1979, Pub. L. 96-70, title III, Sec. 3201(a), 93 Stat. 496; Mar. 17, 1980, Pub. L. 96-212, title II, Sec. 201(a), 94 Stat. 102; Dec. 29, 1981, Pub. L. 97-116, Sec. 2, 5(d)(1), 18(a), 95 Stat. 1611, 1614, 1619; Oct. 30, 1984, Priv. L. 98-47, Sec. 3, 98 Stat. 3435; Oct. 21, 1986, Pub. L. 99-505, Sec. 1, 100 Stat. 1806; Oct. 22, 1986, Pub. L. 99-514, Sec. 2, 100 Stat. 2095; Nov. 6, 1986, Pub. L. 99-603, title III, Sec. 301(a), 312, 315(a), 100 Stat. 3411, 3434, 3439; Nov. 14, 1986, Pub. L. 99-653, Sec. 2, 3, 100 Stat. 3655; Oct. 1, 1988, Pub. L. 100-459, title II, Sec. 210(a), 102 Stat. 2203; Oct. 24, 1988, Pub. L. 100-525, Sec. 2(o)(1), 8(b), 9(a), 102 Stat. 2613, 2617, 2619; Nov. 18, 1988, Pub. L. 100-690, title VII, Sec. 7342, 102 Stat. 4469; Nov. 21, 1989, Pub. L. 101-162, title VI, Sec. 611(a), 103 Stat. 1038; Dec. 18, 1989, Pub. L. 101-238, Sec. 3(a), 103 Stat. 2100; Feb. 16, 1990, Pub. L. 101-246, title I, Sec. 131(b), 104 Stat. 31; Nov. 29, 1990, Pub. L. 101-649, title I, Sec. 123,

151(a), 153(a), 162(f)(2)(A), title II, Sec. 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209(a), title IV, Sec. 407(a)(2), title V, Sec. 501(a), 509(a), title VI, Sec. 603(a)(1), 104 Stat. 4995, 5004, 5005, 5012, 5018-5020, 5022, 5023, 5026, 5027, 5040, 5048, 5051, 5082; Oct. 1, 1991, Pub. L. 102-110, Sec. 2(a), 105 Stat. 555; Dec. 12, 1991, Pub. L. 102-232, title II, Sec. 203(a), 205(a)-(c), 206(b), (c)(1), (d), 207(b), title III, Sec. 302(e)(8)(A), 303(a)(5)(A), (7)(A), (14), 305(m)(1), 306(a)(1), 309(b)(1), (4), 105 Stat. 1737, 1740, 1741, 1746-1748, 1750, 1751, 1758; Apr. 30, 1994, Pub. L. 103-236, title I, Sec. 162(h)(1), 108 Stat. 407; Sept. 13, 1994, Pub. L. 103-322, title XIII, Sec. 130003(a), 108 Stat. 2024; Oct. 5, 1994, Pub. L. 103-337, div. C, title XXXVI, Sec. 3605, 108 Stat. 3113; Oct. 25, 1994, Pub. L. 103-416, title II, Sec. 201, 202, 214, 219(a), 222(a), 108 Stat. 4310, 4311, 4314, 4316, 4320; Nov. 15, 1995, Pub. L. 104-51, Sec. 1, 109 Stat. 467; Apr. 24, 1996, Pub. L. 104-132, title IV, Sec. 440(b), (e), 110 Stat. 1277; Sept. 30, 1996, Pub. L. 104-208, div. C, title I, Sec. 104(a), title III, Sec. 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a), (b), 322(a)(1), (2)(A), 361(a), 371(a), title VI, Sec. 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009-555, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627 to 3009-629, 3009-644, 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723; Oct. 6, 1997, Pub. L. 105-54, Sec. 1(a), 111 Stat. 1175; Nov. 26, 1997, Pub. L. 105-119, title I, Sec. 113, 111 Stat. 2460.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1)(E), (F), (4),

and (e)-(g), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, as amended, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Headquarters Agreement with the United Nations (61 Stat. 758), referred to in subsec. (a)(15)(C), is set out as a note under section 287 of Title 22, Foreign Relations and Intercourse.

Section 1184(l) of this title, referred to in subsec. (a)(15)(F), probably means the subsec. (l) of section 1184, which relates to nonimmigrant elementary and secondary school students and was added by Pub. L. 104-208, div. C, title VI, Sec. 625(a)(1), Sept. 30, 1996, 110 Stat. 3009-699.

The International Organizations Immunities Act (59 Stat. 669), referred to in subsec. (a)(15)(G)(i), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (Sec. 288 et seq.) of chapter 7 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

Section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), referred to in subsec. (a)(19), was classified to section 303 of Title 50, Appendix, War and National Defense, and was omitted from the Code as obsolete.

The Selective Service Act of 1948, referred to in subsec. (a)(19), was redesignated the Universal Military Training and Service Act by act June 19, 1951, 65 Stat. 75, and then redesignated the Military Selective Service Act of 1967 by act June 30, 1967, Pub. L. 90-40, 81 Stat. 100, and subsequently

redesignated the Military Selective Service Act by Pub. L. 92-129, title I, Sec. 101(a)(1), Sept. 28, 1971, 85 Stat. 348.

-COD-

CODIFICATION

September 30, 1996, referred to in the concluding provisions of subsec. (a)(43), was in the original "the date of enactment of this paragraph", which was translated as meaning the date of enactment of section 321(b) of Pub. L. 104-208, which inserted that language, to reflect the probable intent of Congress.

-MISC3-

AMENDMENTS

1997 - Subsec. (a)(27)(C)(ii)(II), (III). Pub. L. 105-54 substituted "2000" for "1997".

Subsec. (a)(27)(J). Pub. L. 105-119 amended subpar. (J) generally. Prior to amendment, subpar. (J) read as follows: "an immigrant (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or".

1996 - Subsec. (a)(6). Pub. L. 104-208, Sec. 104(a), inserted at

end "Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien."

Subsec. (a)(13). Pub. L. 104-208, Sec. 301(a), amended par. (13) generally. Prior to amendment, par. (13) read as follows: "The term 'entry' means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an outlying possession was not voluntary: Provided, That no person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception."

Subsec. (a)(15)(F)(i). Pub. L. 104-208, Sec. 625(a)(2), inserted "consistent with section 1184(l) of this title" after "such a course of study".

Subsec. (a)(15)(K). Pub. L. 104-208, Sec. 308(f)(1)(A), substituted "admission" for "entry".

Subsec. (a)(15)(S). Pub. L. 104-208, Sec. 671(a)(3)(B),

substituted "section 1184(k)" for "section 1184(j)" in introductory provisions.

Subsec. (a)(17). Pub. L. 104-208, Sec. 308(d)(4)(A), substituted "expulsion, or removal" for "or expulsion".

Subsec. (a)(30). Pub. L. 104-208, Sec. 308(f)(1)(B), substituted "admission" for "entry".

Subsec. (a)(42). Pub. L. 104-208, Sec. 601(a)(1), inserted at end "For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion."

Subsec. (a)(43). Pub. L. 104-208, Sec. 321(b), inserted at end of concluding provisions "Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996."

Subsec. (a)(43)(A). Pub. L. 104-208, Sec. 321(a)(1), inserted ", rape, or sexual abuse of a minor" after "murder".

Subsec. (a)(43)(D). Pub. L. 104-208, Sec. 321(a)(2), substituted "$10,000" for "$100,000".

Subsec. (a)(43)(F). Pub. L. 104-208, Sec. 322(a)(2)(A), struck out "imposed (regardless of any suspension of imprisonment)"

after "term of imprisonment".

Pub. L. 104-208, Sec. 321(a)(3), substituted "at least one year" for "is at least 5 years".

Subsec. (a)(43)(G). Pub. L. 104-208, Sec. 322(a)(2)(A), which directed amendment of subpar. (G) by striking out "imposed (regardless of any suspension of imprisonment)", was executed by striking out "imposed (regardless of any suspension of such imprisonment)" after "term of imprisonment" to reflect the probable intent of Congress.

Pub. L. 104-208, Sec. 321(a)(3), substituted "at least one year" for "is at least 5 years".

Subsec. (a)(43)(J). Pub. L. 104-208, Sec. 321(a)(4), substituted "sentence of one year imprisonment" for "sentence of 5 years' imprisonment".

Pub. L. 104-132, Sec. 440(e)(1), inserted ", or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses)," after "corrupt organizations)".

Subsec. (a)(43)(K)(i). Pub. L. 104-132, Sec. 440(e)(2)(A), struck out "or" at end.

Subsec. (a)(43)(K)(ii). Pub. L. 104-208, Sec. 671(b)(5), struck out comma after "1588".

Pub. L. 104-208, Sec. 321(a)(5), inserted "if committed" before "for commercial advantage".

Pub. L. 104-132, Sec. 440(e)(2)(C), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (a)(43)(K)(iii). Pub. L. 104-132, Sec. 440(e)(2)(B), redesignated cl. (ii) as (iii).

Subsec. (a)(43)(L)(iii). Pub. L. 104-208, Sec. 321(a)(6), added cl. (iii).

Subsec. (a)(43)(M). Pub. L. 104-208, Sec. 321(a)(7), substituted "$10,000" for "$200,000" in cls. (i) and (ii).

Subsec. (a)(43)(N). Pub. L. 104-208, Sec. 322(a)(2)(A), which directed amendment of subpar. (N) by striking "imposed (regardless of any suspension of imprisonment)", could not be executed because that phrase did not appear subsequent to amendment by Pub. L. 104-208, Sec. 321(a)(8). See below.

Pub. L. 104-208, Sec. 321(a)(8), substituted ", except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter" for "for which the term of imprisonment imposed (regardless of any suspension of imprisonment) at least one year;".

Pub. L. 104-208, Sec. 321(a)(3), substituted "at least one year" for "is at least 5 years".

Pub. L. 104-132, Sec. 440(e)(3), amended subpar. (N) generally. Prior to amendment, subpar. (N) read as follows: "an offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;".

Subsec. (a)(43)(O). Pub. L. 104-132, Sec. 440(e)(7), added subpar. (O).

Pub. L. 104-132, Sec. 440(e)(6), redesignated subpar. (O) as (P).

Pub. L. 104-132, Sec. 440(e)(4), amended subpar. (O) generally. Prior to amendment subpar. (O) read as follows: "an offense

described in section 1546(a) of title 18 (relating to document fraud) which constitutes trafficking in the documents described in such section for which the term of imprisonment imposed (regardless of any suspicion of such imprisonment) is at least 5 years;".

Subsec. (a)(43)(P). Pub. L. 104-208, Sec. 322(a)(2)(A), which directed amendment of subpar. (P) by striking out "imposed (regardless of any suspension of imprisonment)", was executed by striking out "imposed (regardless of any suspension of such imprisonment)" after "term of imprisonment" to reflect the probable intent of Congress.

Pub. L. 104-208, Sec. 321(a)(9), substituted "12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter" for "18 months".

Pub. L. 104-208, Sec. 321(a)(3), which directed amendment of subpar. (P) by substituting "at least one year" for "is at least 5 years", could not be executed because "is at least 5 years" did not appear subsequent to amendments by Pub. L. 104-132, Sec. 440(e)(4), (6). See above.

Pub. L. 104-132, Sec. 440(e)(6), redesignated subpar. (O) as (P). Former subpar. (P) redesignated (Q).

Pub. L. 104-132, Sec. 440(e)(5), substituted "5 years or more;" for "15 years or more; and".

Subsec. (a)(43)(Q). Pub. L. 104-132, Sec. 440(e)(6), redesignated subpar. (P) as (Q). Former subpar. (Q) redesignated (U).

Subsec. (a)(43)(R). Pub. L. 104-208, Sec. 321(a)(10), substituted

"for which the term of imprisonment is at least one year" for "for which a sentence of 5 years' imprisonment or more may be imposed".

Pub. L. 104-132, Sec. 440(e)(8), added subpar. (R).

Subsec. (a)(43)(S). Pub. L. 104-208, Sec. 321(a)(11), substituted "for which the term of imprisonment is at least one year" for "for which a sentence of 5 years' imprisonment or more may be imposed".

Pub. L. 104-132, Sec. 440(e)(8), added subpar. (S).

Subsec. (a)(43)(T). Pub. L. 104-132, Sec. 440(e)(8), added subpar. (T).

Subsec. (a)(43)(U). Pub. L. 104-132, Sec. 440(e)(6), redesignated subpar. (Q) as (U).

Subsec. (a)(47). Pub. L. 104-132, Sec. 440(b), added par. (47).

Subsec. (a)(48). Pub. L. 104-208, Sec. 322(a)(1), added par. (48).

Subsec. (a)(49). Pub. L. 104-208, Sec. 361(a), added par. (49).

Subsec. (b)(4). Pub. L. 104-208, Sec. 371(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The term 'special inquiry officer' means any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings, in whole or in part, required by this chapter to be conducted by or before a special inquiry officer and who is designated and selected by the Attorney General, individually or by regulation, to conduct such proceedings. Such special inquiry officer shall be subject to such supervision and shall perform such duties, not inconsistent with this chapter, as the Attorney General shall prescribe."

Subsec. (c)(1). Pub. L. 104-208, Sec. 671(e)(2), substituted "and 1432" for ", 1432, and 1433".

Subsec. (f)(3). Pub. L. 104-208, Sec. 308(d)(3)(A), substituted "inadmissible" for "excludable".

Subsec. (g). Pub. L. 104-208, Sec. 308(e)(3), substituted "deported or removed" for "deported" in two places.

1995 - Subsec. (b)(1)(A). Pub. L. 104-51, Sec. 1(1)(A), substituted "child born in wedlock" for "legitimate child".

Subsec. (b)(1)(D). Pub. L. 104-51, Sec. 1(1)(B), substituted "a child born out of wedlock" for "an illegitimate child".

Subsec. (b)(2). Pub. L. 104-51, Sec. 1(2) substituted "a child born out of wedlock" for "an illegitimate child".

1994 - Subsec. (a)(1). Pub. L. 103-236 substituted "official designated by the Secretary of State pursuant to section 1104(b) of this title" for "Assistant Secretary of State for Consular Affairs".

Subsec. (a)(15)(S). Pub. L. 103-322 added subpar. (S).

Subsec. (a)(27)(C)(ii)(II), (III). Pub. L. 103-416, Sec. 214, substituted "1997," for "1994,".

Subsec. (a)(27)(D). Pub. L. 103-416, Sec. 201, inserted "or of the American Institute in Taiwan," after "Government abroad," and "(or, in the case of the American Institute in Taiwan, the Director thereof)" after "Service establishment".

Subsec. (a)(27)(F)(ii). Pub. L. 103-337 inserted "or continues to be employed by the United States Government in an area of the former Canal Zone" after "employment".

Subsec. (a)(27)(I)(iii)(II). Pub. L. 103-416, Sec. 202, added subcl. (II) and struck out former subcl. (II) which read as

follows: "files a petition for status under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after October 24, 1988, whichever is later; or".

Subsec. (a)(27)(J)(i). Pub. L. 103-416, Sec. 219(a), substituted "or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has" for "and has" before "been deemed".

Subsec. (a)(43). Pub. L. 103-416, Sec. 222(a), amended par. (43) generally. Prior to amendment, par. (43) read as follows: "The term 'aggravated felony' means murder, any illicit trafficking in any controlled substance (as defined in section 802 of title 21), including any drug trafficking crime as defined in section 924(c)(2) of title 18, or any illicit trafficking in any firearms or destructive devices as defined in section 921 of such title, any offense described in section 1956 of title 18 (relating to laundering of monetary instruments), or any crime of violence (as defined in section 16 of title 18, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years, or any attempt or conspiracy to commit any such act. Such term applies to offenses described in the previous sentence whether in violation of Federal or State law and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years."

1991 - Subsec. (a)(15)(D)(i). Pub. L. 102-232, Sec. 309(b)(1), inserted a comma after "States)".

Subsec. (a)(15)(H)(i)(b). Pub. L. 102-232, Sec. 303(a)(7)(A),

struck out ", and had approved by," after "has filed with".

Pub. L. 102-232, Sec. 303(a)(5)(A), inserted "subject to section 1182(j)(2) of this title," after "or (b)".

Pub. L. 102-232, Sec. 207(b), inserted "or as a fashion model" after "section 1184(i)(1) of this title" and "or, in the case of a fashion model, is of distinguished merit and ability" after "section 1184(i)(2) of this title".

Subsec. (a)(15)(O)(i). Pub. L. 102-232, Sec. 205(b), struck out before semicolon at end ", but only if the Attorney General determines that the alien's entry into the United States will substantially benefit prospectively the United States".

Subsec. (a)(15)(O)(ii)(III)(b). Pub. L. 102-232, Sec. 205(c), substituted "significant production (including pre- and post-production work)" for "significant principal photography".

Subsec. (a)(15)(P)(i). Pub. L. 102-232, Sec. 203(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows:

"(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or performs as part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with that group over a period of at least 1 year and provides functions integral to the performance of the group, and

"(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete or entertainer with respect to a specific athletic competition or performance;".

Subsec. (a)(15)(P)(ii)(II). Pub. L. 102-232, Sec. 206(b), (c)(1),

inserted "or organizations" after "and an organization" and struck out before semicolon at end ", between the United States and the foreign states involved".

Subsec. (a)(15)(P)(iii)(II). Pub. L. 102-232, Sec. 206(d), substituted "to perform, teach, or coach" for "for the purpose of performing" and inserted "commercial or noncommercial" before "program".

Subsec. (a)(15)(Q). Pub. L. 102-232, Sec. 303(a)(14), substituted "approved" for "designated".

Subsec. (a)(24). Pub. L. 102-232, Sec. 305(m)(1), struck out par. (24) which defined "naturalization court".

Subsec. (a)(27)(I)(ii)(II), (iii)(II). Pub. L. 102-232, Sec. 302(e)(8)(A), substituted "files a petition for status" for "applies for a visa or adjustment of status".

Subsec. (a)(27)(K). Pub. L. 102-110 added subpar. (K).

Subsec. (a)(43). Pub. L. 102-232, Sec. 306(a)(1), struck out comma before period at end of first sentence.

Subsec. (a)(46). Pub. L. 102-232, Sec. 205(a), added par. (46).

Subsec. (c)(1). Pub. L. 102-232, Sec. 309(b)(4), struck out reference to section 1434.

1990 - Subsec. (a)(15)(D)(i). Pub. L. 101-649, Sec. 203(c), substituted "a capacity" for "any capacity" and inserted ", as defined in section 1288(a) of this title" after "on board a vessel".

Subsec. (a)(15)(E)(i). Pub. L. 101-649, Sec. 204(a), inserted ", including trade in services or trade in technology" after "substantial trade".

Subsec. (a)(15)(H). Pub. L. 101-649, Sec. 205(e)(1), struck out

"having a residence in a foreign country which he has no intention of abandoning" after "an alien".

Subsec. (a)(15)(H)(i)(a). Pub. L. 101-649, Sec. 162(f)(2)(A), substituted "for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or controlled by the employer) for which the alien will perform the services, or" for "for the facility for which the alien will perform the services, or".

Subsec. (a)(15)(H)(i)(b). Pub. L. 101-649, Sec. 205(c)(1), substituted "who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title, who meets the requirements for the occupation specified in section 1184(i)(2) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with, and had approved by, the Secretary an application under section 1182(n)(1) of this title" for "who is of distinguished merit and ability and who is coming temporarily to the United States to perform services (other than services as a registered nurse) of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or

conduct research, or both, at or for such institution or agency".

Subsec. (a)(15)(H)(ii). Pub. L. 101-649, Sec. 205(e)(2), (3), substituted "(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States" for "who is coming temporarily to the United States (a)", and in subcl. (b) inserted "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States" after "(b)".

Subsec. (a)(15)(H)(iii). Pub. L. 101-649, Sec. 205(e)(4), inserted "having a residence in a foreign country which he has no intention of abandoning" after "(iii)".

Pub. L. 101-649, Sec. 205(d), inserted ", in a training program that is not designed primarily to provide productive employment" before semicolon at end.

Subsec. (a)(15)(L). Pub. L. 101-649, Sec. 206(c), substituted "within 3 years preceding" for "immediately preceding".

Subsec. (a)(15)(O), (P). Pub. L. 101-649, Sec. 207(a), added subpars. (O) and (P).

Subsec. (a)(15)(Q). Pub. L. 101-649, Sec. 208, added subpar. (Q).

Subsec. (a)(15)(R). Pub. L. 101-649, Sec. 209(a), added subpar. (R).

Subsec. (a)(27)(C). Pub. L. 101-649, Sec. 151(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "(i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed

by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him;".

Subsec. (a)(27)(J). Pub. L. 101-649, Sec. 153(a), added subpar. (J).

Subsec. (a)(36). Pub. L. 101-649, Sec. 407(a)(2), struck out "(except as used in section 1421(a) of this title)" after "includes".

Subsec. (a)(43). Pub. L. 101-649, Sec. 501(a)(6), inserted "and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years" after "Federal or State law".

Pub. L. 101-649, Sec. 501(a)(5), inserted at end "Such term applies to offenses described in the previous sentence whether in violation of Federal or State law."

Pub. L. 101-649, Sec. 501(a)(4), struck out "committed within the United States" after "to commit any such act,".

Pub. L. 101-649, Sec. 501(a)(3), inserted "any offense described in section 1956 of title 18 (relating to laundering of monetary instruments), or any crime of violence (as defined in section 16 of title 18, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years," after "section 921 of such title,".

Pub. L. 101-649, Sec. 501(a)(2), inserted "any illicit trafficking in any controlled substance (as defined in section 802 of title 21), including" after "murder,".

Pub. L. 101-649, Sec. 501(a)(1), aligned margin of par. (43).

Subsec. (a)(44). Pub. L. 101-649, Sec. 123, added par. (44).

Subsec. (a)(45). Pub. L. 101-649, Sec. 204(c), added par. (45).

Subsec. (f)(3). Pub. L. 101-649, Sec. 603(a)(1)(A), substituted "paragraphs (2)(D), (6)(E), and (9)(A)" for "paragraphs (11), (12), and (31)".

Pub. L. 101-649, Sec. 603(a)(1)(B), substituted "subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof" for "paragraphs (9) and (10) of section 1182(a) of this title and paragraph (23)".

Subsec. (f)(8). Pub. L. 101-649, Sec. 509(a), substituted "an aggravated felony (as defined in subsection (a)(43) of this section)" for "the crime of murder".

Subsec. (h). Pub. L. 101-649, Sec. 603(a)(1)(C), substituted "1182(a)(2)(E) of this title" for "1182(a)(34) of this title".

Pub. L. 101-246 added subsec. (h).

1989 - Subsec. (a)(15)(H)(i). Pub. L. 101-238 added subcl. (a), designated existing provisions as subcl. (b), and inserted "(other than services as a registered nurse)" after "to perform services".

Subsec. (b)(2). Pub. L. 101-162 inserted before period at end ", except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term 'parent' does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption".

1988 - Subsec. (a)(15)(J). Pub. L. 100-525, Sec. 9(a)(1), substituted "Director of the United States Information Agency" for "Secretary of State".

Subsec. (a)(27)(I)(i)(II), (ii)(II), (iii)(II). Pub. L. 100-525, Sec. 2(o)(1), substituted "October 24, 1988" for "November 6, 1986" and "applies for a visa or adjustment of status" for "applies for admission".

Subsec. (a)(38). Pub. L. 100-525, Sec. 9(a)(2), struck out "For the purpose of issuing certificates of citizenship to persons who are citizens of the United States, the term 'United States' as used in section 1452 of this title includes the Canal Zone."

Subsec. (a)(43). Pub. L. 100-690 added par. (43).

Subsec. (b)(2). Pub. L. 100-459, temporarily inserted before period at end ", except that, for purposes of paragraph (1)(F) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term 'parent' does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption". See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (c)(1). Pub. L. 100-525, Sec. 8(b), repealed Pub. L. 99-653, Sec. 3. See 1986 Amendment note below.

Subsec. (d). Pub. L. 100-525, Sec. 9(a)(3), struck out subsec. (d) defining "veteran", "Spanish-American War", "World War I", "World War II", and "Korean hostilities" as those terms were used in part III of subchapter III of this chapter.

1986 - Subsec. (a)(15)(D). Pub. L. 99-505 designated existing

provisions as cl. (i) and added cl. (ii).

Subsec. (a)(15)(H). Pub. L. 99-603, Sec. 301(a), designated existing provisions of cl. (ii) as subcl. (b) and added subcl. (a) relating to persons performing agricultural labor or services as defined by the Secretary of Labor in regulations and including agricultural labor as defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29 of a temporary or seasonal nature.

Subsec. (a)(15)(H)(ii). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(15)(N). Pub. L. 99-603, Sec. 312(b), added subpar. (N).

Subsec. (a)(27)(I). Pub. L. 99-603, Sec. 312(a), added subpar. (I).

Subsec. (b)(1)(D). Pub. L. 99-603, Sec. 315(a), inserted "or to its natural father if the father has or had a bona fide parent-child relationship with the person".

Subsec. (b)(1)(E). Pub. L. 99-653, Sec. 2, struck out "thereafter" after "the child has".

Subsec. (c)(1). Pub. L. 99-653, Sec. 3, which struck out par. (1) defining "child", was repealed by Pub. L. 100-525, Sec. 8(b), and such par. (1) was revived as of Nov. 14, 1986, see Repeal and Revival note below.

1984 - Subsec. (a)(9). Priv. L. 98-47 struck out provisions which directed that in Canal Zone and outlying possessions of the United States "consular officer" meant an officer designated by the

Governor of the Canal Zone, or the governors of the outlying possessions for purposes of issuing immigrant or nonimmigrant visas under this chapter.

1981 - Subsec. (a)(15)(F). Pub. L. 97-116, Sec. 2(a)(1), 18(a)(1), substituted in cl. (i) "college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program" for "institution of learning or other recognized place of study", and "Secretary of Education" for "Office of Education of the United States".

Subsec. (a)(15)(H), (J), (K), (L). Pub. L. 97-116, Sec. 18(a)(2), substituted a semicolon for a period at end of subpars. (H), (J), (K), and (L) and inserted "or" at end of subpar. (L).

Subsec. (a)(15)(M). Pub. L. 97-116, Sec. 2(a)(2), added subpar. (M).

Subsec. (a)(27)(H). Pub. L. 97-116, Sec. 5(d)(1), added subpar. (H).

Subsec. (a)(33). Pub. L. 97-116, Sec. 18(a)(3), struck out provision that residence be considered continuous for the purposes of sections 1482 and 1484 of this title where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.

Subsec. (b)(1)(A), (B). Pub. L. 97-116, Sec. 18(a)(5)(A), struck out "or" at the end.

Subsec. (b)(1)(C). Pub. L. 97-116, Sec. 18(a)(5)(B), substituted a semicolon for the period at end.

Subsec. (b)(1)(E). Pub. L. 97-116, Sec. 2(b), 18(a)(5)(C), substituted "sixteen" for "fourteen", and "; or" for the

period at the end.

Subsec. (b)(1)(F). Pub. L. 97-116, Sec. 2(b), substituted "sixteen" for "fourteen".

Subsec. (f). Pub. L. 97-116, Sec. 2(c), struck out par. (2) which provided that a person not be considered a person of good moral character if within the period for which good moral character is required to be established the person commits adultery, and substituted in par. (3) "paragraphs (9) and (10) of section 1182(a) of this title and paragraph (23) of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana)" for "paragraphs (9), (10), and (23) of section 1182(a) of this title".

1980 - Subsec. (a)(42). Pub. L. 96-212 added par. (42).

1979 - Subsec. (a)(27)(E) to (G). Pub. L. 96-70 added subpars. (E) to (G).

1977 - Subsec. (a)(1). Pub. L. 95-105 substituted "Assistant Secretary of State for Consular Affairs" for "administrator of the Bureau of Security and Consular Affairs of the Department of State".

Subsec. (a)(41). Pub. L. 95-83 inserted "a" after "graduates of" and ", other than such aliens who are of national or international renown in the field of medicine" after "in a foreign state".

1976 - Subsec. (a)(15)(H)(i). Pub. L. 94-484, Sec. 601(b)(1), inserted ", and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or

agency in the United States to teach or conduct research, or both, at or for such institution or agency".

Subsec. (a)(15)(H)(ii). Pub. L. 94-484, Sec. 601(b)(2), inserted ", but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession".

Subsec. (a)(15)(H)(iii). Pub. L. 94-484, Sec. 601(b)(3), inserted ", other than to receive graduate medical education or training".

Subsec. (a)(15)(J). Pub. L. 94-484, Sec. 601(b)(4), inserted "and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title".

Subsec. (a)(27). Pub. L. 94-571 struck out subpar. (A) provision defining term "special immigrant" to include an immigrant born in any independent foreign country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him and restricting issuance of an immigrant visa until consular officer was in receipt of a determination made by the Secretary of Labor pursuant to former provisions of section 1182(a)(14) of this title; and redesignated as subpars. (A) to (D) former subpars. (B) to (E).

Subsec. (a)(41). Pub. L. 94-484, Sec. 601(e), added par. (41).

1975 - Subsec. (b)(1)(F). Pub. L. 94-155 provided for adoption of alien children under the age of fourteen by unmarried United States citizens who are at least twenty-five years of age and inserted requirement that before adoption the Attorney General be satisfied that proper care will be provided the child after admission.

1970 - Subsec. (a)(15)(H). Pub. L. 91-225, Sec. 1(a), provided for nonimmigrant alien status for alien spouse and minor children of any alien specified in par. (H) if accompanying him or following to join him and struck out "temporary", "other", and "industrial" before "services", "temporary services", and "trainee" in cls. (i) to (iii), respectively.

Subsec. (a)(15)(K), (L). Pub. L. 91-225, Sec. 1(b), added subpars. (K) and (L).

1966 - Subsec. (a)(38). Pub. L. 89-710 inserted sentence providing that term "United States" as used in section 1452 of this title, for the purpose of issuing certificates of citizenship to persons who are citizens of the United States, shall include the Canal Zone.

1965 - Subsec. (a)(27). Pub. L. 89-236, Sec. 8(a), substituted "special immigrant" for "nonquota immigrant" as term being defined.

Subsec. (a)(32). Pub. L. 89-236, Sec. 8(b), substituted term "profession" and its definition for term "quota immigrant" and its definition.

Subsec. (b)(1)(F). Pub. L. 89-236, Sec. 8(c), expanded definition to include a child, under the age of 14 at the time a petition is filed in his behalf to accord a classification as an immediate relative or who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption, and made minor

amendments in the existing definition.

Subsec. (b)(6). Pub. L. 89-236, Sec. 24, struck out par. (6) which defined term "eligible orphan".

1961 - Subsec. (a)(15). Pub. L. 87-256 included the alien spouse and minor children of any such alien if accompanying him or following to join him in subpar. (F), and added subpar. (J).

Subsec. (b)(1)(F). Pub. L. 87-301, Sec. 2, added subpar. (F).

Subsec. (b)(6). Pub. L. 87-301, Sec. 1, added par. (6).

Subsec. (d)(1). Pub. L. 87-301, Sec. 7(a), inserted "or from June 25, 1950, to July 1, 1955,".

Subsec. (d)(2). Pub. L. 87-301, Sec. 7(b), inserted definition of "Korean hostilities".

1959 - Subsec. (a)(36). Pub. L. 86-3 struck out reference to Hawaii.

1958 - Subsec. (a)(36). Pub. L. 85-508 struck out reference to Alaska.

1957 - Subsec. (b)(1). Pub. L. 85-316 inserted "whether or not born out of wedlock" in subpar. (B), and added subpars. (D) and (E).

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105-139, Sec. 1(f), Dec. 2, 1997, 111 Stat. 2645, provided that: "The amendments made by this section (amending provisions set out as notes under this section and sections 1151, 1153, and 1255 of this title) -

"(1) shall take effect upon the enactment of the Nicaraguan Adjustment and Central American Relief Act (title II of Pub. L. 105-100, approved Nov. 19, 1997) (as contained in the District of Columbia Appropriations Act, 1998); and

"(2) shall be effective as if included in the enactment of such Act."

Section 1(b) of Pub. L. 105-54 provided that: "The amendment made by subsection (a) (amending this section) shall take effect on the date of the enactment of this Act (Oct. 6, 1997)."

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 104(b) of div. C of Pub. L. 104-208 provided that:

"(1) Clause a. - Clause (A) of the sentence added by the amendment made by subsection (a) (amending this section) shall apply to documents issued on or after 18 months after the date of the enactment of this Act (Sept. 30, 1996).

"(2) Clause b. - Clause (B) of such sentence shall apply to cards presented on or after 3 years after the date of the enactment of this Act."

Section 309 of title III of div. C of Pub. L. 104-208, as amended by Pub. L. 104-302, Sec. 2(2), (3), Oct. 11, 1996, 110 Stat. 3657; Pub. L. 105-100, title II, Sec. 203(a)-(c), 204(d), Nov. 19, 1997, 111 Stat. 2196-2199, 2201; Pub. L. 105-139, Sec. 1(c), Dec. 2, 1997, 111 Stat. 2644, provided that:

"(a) In General. - Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division (amending sections 1225, 1227, and 1251 of this title, enacting provisions set out as notes under sections 1225, 1226, 1227, and 1252 of this title, and repealing provisions set out as a note under section 1225 of this title), this subtitle (subtitle A (Sec. 301-309) of title III of div. C of Pub. L. 104-208, see Tables for classification) and the amendments made by this subtitle shall take effect on the first day of the first month beginning

more than 180 days after the date of the enactment of this Act (Sept. 30, 1996) (in this title (see Tables for classification) referred to as the 'title III-A effective date').

"(b) Promulgation of Regulations. - The Attorney General shall first promulgate regulations to carry out this subtitle by not later than 30 days before the title III-A effective date.

"(c) Transition for Certain Aliens. -

"(1) General rule that new rules do not apply. - Subject to the succeeding provisions of this subsection, in the case of an alien who is in exclusion or deportation proceedings before the title III-A effective date -

"(A) the amendments made by this subtitle shall not apply, and

"(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments.

"(2) Attorney general option to elect to apply new procedures. - In a case described in paragraph (1) in which an evidentiary hearing under section 236 or 242 and 242B of the Immigration and Nationality Act (8 U.S.C. 1226, 1252, former 1252b) has not commenced as of the title III-A effective date, the Attorney General may elect to proceed under chapter 4 of title II of such Act (8 U.S.C. 1221 et seq.) (as amended by this subtitle). The Attorney General shall provide notice of such election to the alien involved not later than 30 days before the date any evidentiary hearing is commenced. If the Attorney General makes such election, the notice of hearing provided to the alien under section 235 or 242(a) of such Act (8 U.S.C. 1225, 1252(a)) shall

be valid as if provided under section 239 of such Act (8 U.S.C. 1229) (as amended by this subtitle) to confer jurisdiction on the immigration judge.

"(3) Attorney general option to terminate and reinitiate proceedings. - In the case described in paragraph (1), the Attorney General may elect to terminate proceedings in which there has not been a final administrative decision and to reinitiate proceedings under chapter 4 of title II (of) the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) (as amended by this subtitle). Any determination in the terminated proceeding shall not be binding in the reinitiated proceeding.

"(4) Transitional changes in judicial review. - In the case in which a final order of exclusion or deportation is entered more than 30 days after the date of the enactment of this Act (Sept. 30, 1996), notwithstanding any provision of section 106 of the Immigration and Nationality Act (former 8 U.S.C. 1105a) (as in effect as of the date of the enactment of this Act) to the contrary -

"(A) in the case of judicial review of a final order of exclusion, subsection (b) of such section shall not apply and the action for judicial review shall be governed by the provisions of subsections (a) and (c) of such (section) in the same manner as they apply to judicial review of orders of deportation;

"(B) a court may not order the taking of additional evidence under section 2347(c) of title 28, United States Code;

"(C) the petition for judicial review must be filed not later than 30 days after the date of the final order of

exclusion or deportation;

"(D) the petition for review shall be filed with the court of appeals for the judicial circuit in which the administrative proceedings before the special inquiry officer or immigration judge were completed;

"(E) there shall be no appeal of any discretionary decision under section 212(c), 212(h), 212(i), 244, or 245 of the Immigration and Nationality Act (8 U.S.C. former 1182(c), 1182(h), (i), former 1254, 1255) (as in effect as of the date of the enactment of this Act (Sept. 30, 1996));

"(F) service of the petition for review shall not stay the deportation of an alien pending the court's decision on the petition, unless the court orders otherwise; and

"(G) there shall be no appeal permitted in the case of an alien who is inadmissible or deportable by reason of having committed a criminal offense covered in section 212(a)(2) or section 241(a)(2)(A)(iii), (B), (C), or (D) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2), former 1251(a)(2)(A)(iii), (B), (C), (D)) (as in effect as of the date of the enactment of this Act), or any offense covered by section 241(a)(2)(A)(ii) of such Act (as in effect on such date) for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 241(a)(2)(A)(i) of such Act (as so in effect).

"(5) Transitional rules with regard to suspension of deportation. -

"(A) In general. - Subject to subparagraphs (B) and (C), paragraphs (1) and (2) of section 240A(d) of the Immigration

and Nationality Act (8 U.S.C. 1229b(d)(1), (2)) (relating to continuous residence or physical presence) shall apply to orders to show cause (including those referred to in section 242B(a)(1) of the Immigration and Nationality Act (former 8 U.S.C. 1252b(a)(1)), as in effect before the title III-A effective date), issued before, on, or after the date of the enactment of this Act (Sept. 30, 1996).

"(B) Exception for certain orders. - In any case in which the Attorney General elects to terminate and reinitiate proceedings in accordance with paragraph (3) of this subsection, paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(1), (2)) shall not apply to an order to show cause issued before April 1, 1997.

"(C) Special rule for certain aliens granted temporary protection from deportation. -

"(i) In general. - For purposes of calculating the period of continuous physical presence under section 244(a) of the Immigration and Nationality Act (former 8 U.S.C. 1254(a)) (as in effect before the title III-A effective date) or section 240A of such Act (8 U.S.C. 1229b) (as in effect after the title III-A effective date), subparagraph (A) of this paragraph and paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act shall not apply in the case of an alien, regardless of whether the alien is in exclusion or deportation proceedings before the title III-A effective date, who has not been convicted at any time of an aggravated felony (as defined in section 101(a) of the

Immigration and Nationality Act (8 U.S.C. 1101(a))) and -

"(I) was not apprehended after December 19, 1990, at the time of entry, and is -

"(aa) a Salvadoran national who first entered the United States on or before September 19, 1990, and who registered for benefits pursuant to the settlement agreement in American Baptist Churches, et al. v. Thornburgh (ABC), 760 F. Supp. 796 (N.D. Cal. 1991) on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991; or

"(bb) a Guatemalan national who first entered the United States on or before October 1, 1990, and who registered for benefits pursuant to such settlement agreement on or before December 31, 1991;

"(II) is a Guatemalan or Salvadoran national who filed an application for asylum with the Immigration and Naturalization Service on or before April 1, 1990;

"(III) is the spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1))) of an individual, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such individual, if the individual has been determined to be described in this clause (excluding this subclause and subclause (IV));

"(IV) is the unmarried son or daughter of an alien parent, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such alien parent, if -

"(aa) the alien parent has been determined to be

described in this clause (excluding this subclause and subclause (III)); and

"(bb) in the case of a son or daughter who is 21 years of age or older at the time such decision is rendered, the son or daughter entered the United States on or before October 1, 1990; or

"(V) is an alien who entered the United States on or before December 31, 1990, who filed an application for asylum on or before December 31, 1991, and who, at the time of filing such application, was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

"(ii) Limitation on judicial review. - A determination by the Attorney General as to whether an alien satisfies the requirements of clause (i) is final and shall not be subject to review by any court. Nothing in the preceding sentence shall be construed as limiting the application of section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)) (as in effect after the title III-A effective date) to other eligibility determinations pertaining to discretionary relief under this Act (probably should be "division", see Short Title of 1996 Amendment note below).

"(6) Transition for certain family unity aliens. - The Attorney General may waive the application of section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)), as inserted by section 301(b)(1) of this division, in the case of an

alien who is provided benefits under the provisions of section 301 of the Immigration Act of 1990 (Pub. L. 101-649, set out as a note under section 1255a of this title) (relating to family unity).

"(7) Limitation on suspension of deportation. - After April 1, 1997, the Attorney General may not suspend the deportation and adjust the status under section 244 of the Immigration and Nationality Act (former 8 U.S.C. 1254) (as in effect before the title III-A effective date) of any alien in any fiscal year, except in accordance with section 240A(e) of such Act (8 U.S.C. 1229b(e)). The previous sentence shall apply regardless of when an alien applied for such suspension and adjustment.

"(d) Transitional References. - For purposes of carrying out the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), as amended by this subtitle -

"(1) any reference in section 212(a)(1)(A) of such Act (8 U.S.C. 1182(a)(1)(A)) to the term 'inadmissible' is deemed to include a reference to the term 'excludable', and

"(2) any reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation.

"(e) Transition. - No period of time before the date of the enactment of this Act (Sept. 30, 1996) shall be included in the period of 1 year described in section 212(a)(6)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(B)(i)) (as amended by section 301(c) of this division).

"(f) Special Rule for Cancellation of Removal. -

"(1) In general. - Subject to the provisions of the

Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (as in effect after the title III-A effective date), other than subsections (b)(1), (d)(1), and (e) of section 240A of such Act (8 U.S.C. 1229b(b)(1), (d)(1), (e)) (but including section 242(a)(2)(B) of such Act (8 U.S.C. 1252(a)(2)(B))), the Attorney General may, under section 240A of such Act, cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States, if the alien applies for such relief, the alien is described in subsection (c)(5)(C)(i) of this section, and -

"(A) the alien -

"(i) is not inadmissible or deportable under paragraph (2) or (3) of section 212(a) or paragraph (2), (3), or (4) of section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2), (3), 1227(a)(3), (4)) and is not an alien described in section 241(b)(3)(B)(i) of such Act (8 U.S.C. 1231(b)(3)(B)(i));

"(ii) has been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date of such application;

"(iii) has been a person of good moral character during such period; and

"(iv) establishes that removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

"(B) the alien -

"(i) is inadmissible or deportable under section 212(a)(2), 237(a)(2) (other than 237(a)(2)(A)(iii)), or 237(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2), 1227(a)(2), (3));

"(ii) is not an alien described in section 241(b)(3)(B)(i) or 101(a)(43) of such Act (8 U.S.C. 1231(b)(3)(B)(i), 1101(a)(43));

"(iii) has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for removal;

"(iv) has been a person of good moral character during such period; and

"(v) establishes that removal would result in exceptional and extremely unusual hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

"(2) Treatment of certain breaks in presence. - Section 240A(d)(2) (8 U.S.C. 1229b(d)(2)) shall apply for purposes of calculating any period of continuous physical presence under this subsection, except that the reference to subsection (b)(1) in such section shall be considered to be a reference to paragraph (1) of this section.

"(g) Motions To Reopen Deportation or Removal Proceedings. - Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C.

1101(a)))), any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105-100, amending this note) may file one motion to reopen removal or deportation proceedings to apply for cancellation of removal or suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of the Nicaraguan Adjustment and Central American Relief Act (Nov. 19, 1997) and shall extend for a period not to exceed 240 days."

(Section 203(f) of Pub. L. 105-100 provided that: "The amendments made by this section to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (amending section 309 of Pub. L. 104-208, div. C, set out above) shall take effect as if included in the enactment of such Act.")

(Section 2 of Pub. L. 104-302 provided that the amendment made by that section to section 309 of Pub. L. 104-208, set out above, is effective Sept. 30, 1996.)

Section 321(c) of div. C of Pub. L. 104-208 provided that: "The amendments made by this section (amending this section) shall apply to actions taken on or after the date of the enactment of this Act (Sept. 30, 1996), regardless of when the conviction occurred, and shall apply under section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) only to violations of section 276(a) of such Act occurring on or after such date."

Section 322(c) of div. C of Pub. L. 104-208 provided that: "The amendments made by subsection (a) (amending this section and

section 1182 of this title) shall apply to convictions and sentences entered before, on, or after the date of the enactment of this Act (Sept. 30, 1996). Subparagraphs (B) and (C) of section 240(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(3)(B), (C)), as inserted by section 304(a)(3) of this division, shall apply to proving such convictions."

Section 361(b) of div. C of Pub. L. 104-208 provided that: "The amendment made by subsection (a) (amending this section) shall take effect on the date of the enactment of this Act (Sept. 30, 1996)."

Section 371(d)(1) of div. C of Pub. L. 104-208 provided that: "Subsections (a) and (b) (amending this section and sections 1105a, 1159, 1224, 1225, 1226, 1252, 1252b, 1323, and 1362 of this title) shall take effect on the date of the enactment of this Act (Sept. 30, 1996)."

Section 591 of title V of div. C of Pub. L. 104-208 provided that: "Except as provided in this title (enacting sections 1369 to 1371 and 1623 and 1624 of this title, amending sections 1182, 1183, 1183a, 1612, 1631, 1632, 1641, and 1642 of this title, section 506 of Title 18, Crimes and Criminal Procedure, section 1091 of Title 20, Education, and sections 402, 1320b-7, and 1436a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section, sections 1182, 1183a, 1611, 1612, and 1621 of this title, and sections 402 and 1436a of Title 42, and repealing provisions set out as a note under section 1183a of this title), this title and the amendments made by this title shall take effect on the date of the enactment of this Act (Sept. 30, 1996)."

Section 625(c) of div. C of Pub. L. 104-208 provided that: "The amendments made by subsection (a) (amending this section and

section 1184 of this title) shall apply to individuals who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) after the end of the 60-day period beginning on the date of the enactment of this Act (Sept. 30, 1996), including aliens whose status as such a nonimmigrant is extended after the end of such period."

Section 671(a)(7) of div. C of Pub. L. 104-208 provided that: "The amendments made by this subsection (amending this section, sections 1184, 1251, 1255, 1258, and 1324 of this title, and provisions set out as a note under section 1252 of this title) shall be effective as if included in the enactment of the VCCLEA (Pub. L. 103-322)."

Section 671(b)(14) of div. C of Pub. L. 104-208 provided that: "Except as otherwise provided in this subsection (amending this section and sections 1252a, 1255b, 1323, 1356, and 1483 of this title, enacting provisions set out as notes under sections 1161 and 1433 of this title, and amending provisions set out as notes under this section and sections 1255a, 1323, and 1401 of this title), the amendments made by this subsection shall take effect as if included in the enactment of INTCA (Pub. L. 103-416)."

Section 440(f) of Pub. L. 104-132 provided that: "The amendments made by subsection (e) (amending this section) shall apply to convictions entered on or after the date of the enactment of this Act (Apr. 24, 1996), except that the amendment made by subsection (e)(3) (amending this section) shall take effect as if included in the enactment of section 222 of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103-416)."

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 219(dd) of Pub. L. 103-416 provided that: "Except as otherwise specifically provided in this section, the amendments made by this section (amending this section and sections 1151, 1153, 1154, 1160, 1182, 1188, 1251, 1252, 1252b, 1254a, 1255, 1255a, 1256, 1288, 1302, 1322, 1323, 1324a, 1324b, 1324c, 1330, 1356, 1421, 1424, 1444, 1449, and 1522 of this title, repealing section 1161 of this title, amending provisions set out as notes under this section and sections 1182, 1254a, 1255, 1255a, and 1356 of this title, and repealing provisions set out as a note under section 1288 of this title) shall be effective as if included in the enactment of the Immigration Act of 1990 (Pub. L. 101-649)."

Section 222(b) of Pub. L. 103-416 provided that: "The amendments made by this section (amending this section) shall apply to convictions entered on or after the date of enactment of this Act (Oct. 25, 1994)."

Amendment by Pub. L. 103-236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103-236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103-236, as amended, set out as a note under section 2651a of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1991 AMENDMENTS

Section 208 of title II of Pub. L. 102-232 provided that: "The provisions of, and amendments made by, this title (amending this section and section 1184 of this title and enacting provisions set out as notes under this section and section 1184 of this title)

shall take effect on April 1, 1992."

Section 302(e)(8) of Pub. L. 102-232 provided that the amendments made by that section (amending this section and sections 1186a and 1201 of this title) are effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 102-649.

Section 305(m) of Pub. L. 102-232 provided that the amendments made by that section (amending this section and sections 1423, 1433, 1441, 1443, 1445, and 1452 of this title) are effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101-649.

Section 310 of Pub. L. 102-232, as amended by Pub. L. 103-416, title II, Sec. 219(z)(9), Oct. 25, 1994, 108 Stat. 4318, provided that: "Except as otherwise specifically provided, the amendments made by (and provisions of) -

"(1) sections 302 through 308 (amending this section, sections 1102, 1105a, 1151 to 1154, 1157, 1159 to 1161, 1182, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1324c, 1325, 1357, 1421, 1423, 1433, 1439 to 1441, 1443, 1445 to 1449, 1451, 1452, and 1455 of this title, and section 3753 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1160, 1182, 1251, 1252, 1254a, and 1255 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title) shall take effect as if included in the enactment of the Immigration Act of 1990 (Pub. L. 101-649), and

"(2) section 309(b) (amending this section and sections 1154,

1160, 1182, 1188, 1252, 1252a, 1324a, 1356, 1424, and 1455 of this title and enacting provisions set out as a note under this section) shall take effect on the date of the enactment of this Act (Dec. 12, 1991)."

Section 2(d) of Pub. L. 102-110 provided that: "This section (amending this section and sections 1153 and 1255 of this title) shall take effect 60 days after the date of the enactment of this Act (Oct. 1, 1991)."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 161 of title I of Pub. L. 101-649, as amended by Pub. L. 102-110, Sec. 4, Oct. 1, 1991, 105 Stat. 557; Pub. L. 102-232, title III, Sec. 302(e)(1), (2), Dec. 12, 1991, 105 Stat. 1745; Pub. L. 103-416, title II, Sec. 218, 219(aa), Oct. 25, 1994, 108 Stat. 4316, 4319; Pub. L. 104-208, div. C, title VI, Sec. 671(f), Sept. 30, 1996, 110 Stat. 3009-724, provided that:

"(a) In General. - Except as otherwise provided in this title, this title and the amendments made by this title (enacting section 1186b of this title, amending this section, sections 1103, 1151 to 1154, 1157, 1159, 1182, 1251, 1254, 1255, and 1325 of this title, section 3304 of Title 26, Internal Revenue Code, and section 1382c of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1152, 1153, 1159, 1182, 1201, and 1251 of this title, and amending provisions set out as notes under section 1255 of this title) shall take effect on October 1, 1991, and apply beginning with fiscal year 1992.

"(b) Provisions Taking Effect Upon Enactment. - The following sections (and amendments made by such sections) shall take effect

on the date of the enactment of this Act (Nov. 29, 1990) and (unless otherwise provided) apply to fiscal year 1991:

"(1) Section 103 (enacting provisions set out as a note under section 1152 of this title) (relating to per country limitation for Hong Kong).

"(2) Section 104 (amending sections 1157 and 1159 of this title and enacting provisions set out as notes under section 1159 of this title) (relating to asylee adjustments).

"(3) Section 124 (enacting provisions set out as a note under section 1153 of this title) (relating to transition for employees of certain U.S. businesses in Hong Kong).

"(4) Section 133 (enacting provisions set out as a note under section 1153 of this title) (relating to one-year diversity transition for aliens who have been notified of availability of NP-5 visas).

"(5) Section 134 (enacting provisions set out as a note under section 1153 of this title) (relating to transition for displaced Tibetans).

"(6) Section 153 (amending this section and section 1251 of this title and enacting provisions set out as a note under section 1251 of this title) (relating to special immigrants who are dependent on a juvenile court).

"(7) Section 154 (enacting provisions set out as a note under section 1201 of this title) (permitting extension of validity of visas for certain residents of Hong Kong).

"(8) Section 155 (enacting provisions set out as a note under section 1153 of this title) (relating to expedited issuance of Lebanese second and fifth preference visas).

"(9) Section 162(b) (amending section 1154 of this title) (relating to immigrant visa petitioning process), but only insofar as such section relates to visas for fiscal years beginning with fiscal year 1992.

"(c) General Transitions. -

"(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act (8 U.S.C. 1154(a)) before October 1, 1991, for preference status under section 203(a)(3) or section 203(a)(6) of such Act (8 U.S.C. 1153(a)(3), (6)) (as in effect before such date) -

"(A) in order to maintain the priority date with respect to such a petition, the petitioner must file (by not later than October 1, 1993) a new petition for classification of the employment under paragraph (1), (2), or (3) of section 203(b) of such Act (as amended by this title), and

"(B) any labor certification under section 212(a)(5)(A) of such Act required with respect to the new petition shall be deemed approved if the labor certification with respect to the previous petition was previously approved under section 212(a)(14) of such Act.

In the case of a petition filed under section 204(a) of such Act before October 1, 1991, but which is not described in paragraph (4), and for which a filing fee was paid, any additional filing fee shall not exceed one-half of the fee for the filing of the new petition referred to in subparagraph (A).

"(2) Any petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1991, for preference status under section 203(a)(4) or section 203(a)(5) of

such Act (as in effect before such date) shall be deemed, as of such date, to be a petition filed under such section for preference status under section 203(a)(3) or section 203(a)(4), respectively, of such Act (as amended by this title).

"(3) In the case of an alien who is described in section 203(a)(8) of the Immigration and Nationality Act (as in effect before October 1, 1991) as the spouse or child of an alien admitted for permanent residence as a preference immigrant under section 203(a)(3) or 203(a)(6) of such Act (as in effect before such date) and who would be entitled to enter the United States under such section 203(a)(8) but for the amendments made by this title (see subsec. (a) above), such an alien shall be deemed to be described in section 203(d) of such Act as the spouse or child of an alien described in section 203(b)(2) or 203(b)(3)(A)(i), respectively, of such Act with the same priority date as that of the principal alien.

"(4)(A) Subject to subparagraph (B), any petition filed before October 1, 1991, and approved on any date, to accord status under section 203(a)(3) or 203(a)(6) of the Immigration and Nationality Act (as in effect before such date) shall be deemed, on and after October 1, 1991 (or, if later, the date of such approval), to be a petition approved to accord status under section 203(b)(2) or under the appropriate classification under section 203(b)(3), respectively, of such Act (as in effect on and after such date). Nothing in this subparagraph shall be construed as exempting the beneficiaries of such petitions from the numerical limitations under section 203(b)(2) or 203(b)(3) of such Act.

"(B) Subparagraph (A) shall not apply more than two years

after the date the priority date for issuance of a visa on the basis of such a petition has been reached.

"(d) Admissibility Standards. - When an immigrant, in possession of an unexpired immigrant visa issued before October 1, 1991, makes application for admission, the immigrant's admissibility under paragraph (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(A)) shall be determined under the provisions of law in effect on the date of the issuance of such visa.

"(e) Construction. - Nothing in this title (see subsec. (a) above) shall be construed as affecting the provisions of section 19 of Public Law 97-116 (8 U.S.C. 1151 note), section 2(c)(1) of Public Law 97-271 (8 U.S.C. 1255 note), or section 202(e) of Public Law 99-603 (8 U.S.C. 1255a note)."

(Section 219(aa) of Pub. L. 103-416 provided that the amendment made by that section to section 161(c)(3) of Pub. L. 101-649, set out above, is effective as if included in section 4 of Pub. L. 102-110, see below.)

(Section 4 of Pub. L. 102-110 provided that the amendment made by that section, adding pars. (3) and (4) to section 161(c) of Pub. L. 101-649, set out above, is effective as if included in the Immigration Act of 1990, Pub. L. 101-649.)

Section 162(f)(3) of Pub. L. 101-649 provided that: "The amendments made by this subsection (amending this section, section 1182 of this title, and provisions set out as a note under section 1255 of this title) shall apply as though included in the enactment of the Immigration Nursing Relief Act of 1989 (Pub. L. 101-238)."

Section 203(d) of Pub. L. 101-649 provided that: "The amendments

made by this section (enacting section 1288 of this title and amending this section and section 1281 of this title) shall apply to services performed on or after 180 days after the date of the enactment of this Act (Nov. 29, 1990)."

Section 231 of title II of Pub. L. 101-649 provided that: "Except as otherwise provided in this title, this title, and the amendments made by this title (enacting section 1288 of this title, amending this section and sections 1182, 1184, 1187, 1281, and 1323 of this title, and enacting provisions set out as notes under this section and sections 1182, 1184, 1187, and 1288 of this title), shall take effect on October 1, 1991, except that sections 222 and 223 (enacting provisions set out as notes under this section) shall take effect on the date of the enactment of this Act (Nov. 29, 1990)."

Amendment by section 407(a)(2) of Pub. L. 101-649 effective Nov. 29, 1990, with general savings provisions, see section 408(a)(3), (d) of Pub. L. 101-649, set out as an Effective Date of 1990 Amendment; Savings Provisions note under section 1421 of this title.

Section 501(b) of Pub. L. 101-649 provided that: "The amendments made by subsection (a) (amending this section) shall apply to offenses committed on or after the date of the enactment of this Act (Nov. 29, 1990), except that the amendments made by paragraphs (2) and (5) of subsection (a) shall be effective as if included in the enactment of section 7342 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690)."

Section 509(b) of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, Sec. 306(a)(7), Dec. 12, 1991, 105 Stat. 1751, provided

that: "The amendment made by subsection (a) (amending this section) shall take effect on the date of the enactment of this Act (Nov. 29, 1990) and shall apply to convictions occurring on or after such date, except with respect to conviction for murder which shall be considered a bar to good moral character regardless of the date of the conviction."

Section 601(e) of Pub. L. 101-649 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section (amending section 1182 of this title) and by section 603(a) of this Act (amending this section and sections 1102, 1153, 1157, 1159, 1160, 1161, 1181, 1183, 1201, 1224, 1225, 1226, 1254a, 1255a, 1259, 1322, and 1327 of this title, repealing section 2691 of Title 22, Foreign Relations and Intercourse, amending provisions set out as notes under this section and sections 1255 and 1255a of this title, and repealing provisions set out as notes under section 1182 of this title) shall apply to individuals entering the United States on or after June 1, 1991.

"(2) The amendments made by paragraphs (5) and (13) of section 603(a) (amending sections 1160 and 1255a of this title) shall apply to applications for adjustment of status made on or after June 1, 1991."

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101-238 applicable to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after Dec. 18, 1989, see section 3(d) of Pub. L. 101-238, set out as a note under section 1182 of this title.

Section 611(b) of Pub. L. 101-162 provided that: "The amendment

made by subsection (a) (amending this section) shall take effect on October 1, 1989, upon the expiration of the similar amendment made by section 210(a) of the Department of Justice Appropriations Act, 1989 (title II of Public Law 100-459, 102 Stat. 2203)."

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Section 2(s) of Pub. L. 100-525 provided that: "The amendments made by this section (amending this section, sections 1160, 1161, 1184, 1186, 1187, 1188, 1251, 1254, 1255, 1255a, 1259, 1324, 1324a, 1324b, and 1357 of this title, section 1546 of Title 18, Crimes and Criminal Procedure, and section 1091 of Title 20, Education, amending provisions set out as notes under this section and sections 1188 and 1255a of this title and section 1802 of Title 29, Labor, and repealing provisions set out as a note under section 1255a of this title) shall be effective as if they were included in the enactment of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603)."

Section 309(b)(15) of Pub. L. 102-232 provided that: "The amendments made by section 8 of the Immigration Technical Corrections Act of 1988 (Pub. L. 100-525, amending this section, sections 1152, 1182, 1201 to 1202, 1301, 1302, 1304, 1356, 1409, 1431 to 1433, 1452, 1481, and 1483 of this title, and section 4195 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section, sections 1153, 1201, 1401, 1409, 1451, and 1481 of this title, and section 4195 of Title 22, and amending provisions set out as notes under this section and section 1153 of this title) shall be effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986 (Public Law 99-653)."

Section 210(b) of Pub. L. 100-459 provided that: "The amendment made by subsection (a) (amending this section) shall take effect as

if included in the enactment of section 315 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) and shall expire on October 1, 1989."

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 23(a) of Pub. L. 99-653, as added by Pub. L. 100-525, Sec. 8(r), Oct. 24, 1988, 102 Stat. 2618, provided that: "The amendments made by sections 2, 4, and 7 (amending this section and sections 1152, 1182, 1228, 1251, and 1356 of this title) apply to visas issued, and admissions occurring, on or after November 14, 1986."

Amendment by section 301(a) of Pub. L. 99-603 applicable to petitions and applications filed under sections 1184(c) and 1188 of this title on or after the first day of the seventh month beginning after Nov. 6, 1986, see section 301(d) of Pub. L. 99-603, as amended, set out as an Effective Date note under section 1188 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 21 of Pub. L. 97-116 provided that:

"(a) Except as provided in subsection (b) and in section 5(c) (set out as a note under section 1182 of this title), the amendments made by this Act (see Short Title of 1981 Amendment note below) shall take effect on the date of the enactment of this Act (Dec. 29, 1981).

"(b)(1) The amendments made by section 2(a) (amending this section) shall apply on and after the first day of the sixth month beginning after the date of the enactment of this Act (Dec. 29,

1981).

"(2) The amendment made by section 16 (amending section 1455 of this title) shall apply to fiscal years beginning on or after October 1, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Section 204(a)-(c) of title II of Pub. L. 96-212 provided that:

"(a) Except as provided in subsections (b) and (c), this title and the amendments made by this title (enacting sections 1157, 1158, and 1159 of this title, amending this section and sections 1151 to 1153, 1181, 1182, 1253, and 1254 of this title, enacting provisions set out as notes under sections 1153, 1157, 1158, 1182, and 1521 of this title, and amending provisions set out as a note under sections 1182 and 1255 of this title) shall take effect on the date of the enactment of this Act (Mar. 17, 1980), and shall apply to fiscal years beginning with the fiscal year beginning October 1, 1979.

"(b)(1)(A) Section 207(c) of the Immigration and Nationality Act (as added by section 201(b) of this Act) (section 1157(c) of this title) and the amendments made by subsections (b), (c), and (d) of section 203 of this Act (amending sections 1152, 1153, 1182, and 1254 of this title) shall take effect on April 1, 1980.

"(B) The amendments made by section 203(f) (amending section 1182 of this title) shall apply to aliens paroled into the United States on or after the sixtieth day after the date of the enactment of this Act (Mar. 17, 1980).

"(C) The amendments made by section 203(i) (amending section 1153 of this title and provisions set out as notes under section 1255 of this title) shall take effect immediately before April 1,

1980.

"(2) Notwithstanding sections 207(a) and 209(b) of the Immigration and Nationality Act (as added by section 201(b) of this Act) (sections 1157(a) and 1159(b) of this title), the fifty thousand and five thousand numerical limitations specified in such respective sections shall, for fiscal year 1980, be equal to 25,000 and 2,500, respectively.

"(3) Notwithstanding any other provision of law, for fiscal year 1980 -

"(A) the fiscal year numerical limitation specified in section 201(a) of the Immigration and Nationality Act (section 1151(a) of this title) shall be equal to 280,000, and

"(B) for the purpose of determining the number of immigrant visa and adjustments of status which may be made available under sections 203(a)(2) and 202(e)(2) of such Act (sections 1153(a)(2) and 1152(e)(2) of this title), the granting of a conditional entry or adjustment of status under section 203(a)(7) or 202(e)(7) of such Act after September 30, 1979, and before April 1, 1980, shall be considered to be the granting of an immigrant visa under section 203(a)(2) or 202(e)(2), respectively, of such Act during such period.

"(c)(1) The repeal of subsections (g) and (h) of section 203 of the Immigration and Nationality Act, made by section 203(c)(8) of this title (section 1153(g) and (h) of this title), shall not apply with respect to any individual who before April 1, 1980, was granted a conditional entry under section 203(a)(7) of the Immigration and Nationality Act (and under section 202(e)(7) of such Act (section 1152(e)(7) of this title), if applicable), as in

effect immediately before such date, and it shall not apply to any alien paroled into the United States before April 1, 1980, who is eligible for the benefits of section 5 of Public Law 95-412 (set out as a note under section 1182 of this title).

"(2) An alien who, before April 1, 1980, established a date of registration at an immigration office in a foreign country on the basis of entitlement to a conditional entrant status under section 203(a)(7) of the Immigration and Nationality Act (as in effect before such date) (section 1153(a)(7) of this title), shall be deemed to be entitled to refugee status under section 207 of such Act (as added by section 201(b) of this title) (section 1157 of this title) and shall be accorded the date of registration previously established by that alien. Nothing in this paragraph shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of such Act.

"(3) The provisions of paragraphs (14), (15), (20), (21), (25), and (32) if section 212(a) of the Immigration and Nationality Act (former section 1182(a)(14), (15), (20), (21), (25), and (32) of this title) shall not be applicable to any alien who has entered the United States before April 1, 1980, pursuant to section 203(a)(7) of such Act (section 1153(a)(7) of this title) or who has been paroled as a refugee into the United States under section 212(d)(5) of such Act, and who is seeking adjustment of status, and the Attorney General may waive any other provision of section 212(a) of such Act (other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public

interest."

EFFECTIVE DATE OF 1979 AMENDMENT

Section 3201(d)(1) of Pub. L. 96-70 provided that: "The amendments made by this section (amending this section and section 1182 of this title) shall take effect on the date of the enactment of this Act (Sept. 27, 1979)."

EFFECTIVE DATE OF 1977 AMENDMENT

Section 602(d) of Pub. L. 94-484, as added by Pub. L. 95-83, title III, Sec. 307(q)(3), Aug. 1, 1977, 91 Stat. 395, provided that: "This section (amending this section and enacting provisions set out as a note under section 1182 of this title) and the amendment made by subsection (c) (amending this section) are effective January 10, 1977, and the amendments made by subsections (b)(4) and (d) of section 601 (amending this section and section 1182 of this title) shall apply only on and after January 10, 1978, notwithstanding subsection (f) of such section (set out as an Effective Date of 1976 Amendments note under section 1182 of this title)."

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 10 of Pub. L. 94-571 provided that: "The foregoing provisions of this Act, including the amendments made by such provisions (see Short Title of 1976 Amendment note below), shall become effective on the first day of the first month which begins more than sixty days after the date of enactment of this Act (Oct. 20, 1976)."

Amendment by section 601(b)(4) of Pub. L. 94-484 applicable only on and after Jan. 10, 1978, notwithstanding section 601(f) of Pub. L. 94-484, see section 602(d) of Pub. L. 94-484, as added by

section 307(q)(3) of Pub. L. 95-83, set out as an Effective Date of 1977 Amendment note above.

Amendment by Pub. L. 94-484 effective ninety days after Oct. 12, 1976, see section 601(f) of Pub. L. 94-484, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

EFFECTIVE DATE

Section 407 of act June 27, 1952, provided that: "Except as provided in subsection (k) of section 401 (former section 1106(k) of this title), this Act (this chapter) shall take effect at 12:01 ante meridian United States Eastern Standard Time on the one hundred eightieth day immediately following the date of its enactment (June 27, 1952)."

SHORT TITLE OF 1997 AMENDMENTS

Section 112(a) of Pub. L. 105-119 provided that: "This section (enacting, amending, and repealing provisions set out as notes under section 1440 of this title) may be cited as the 'Philippine Army, Scouts, and Guerilla Veterans of World War II Naturalization Act of 1997'."

Pub. L. 105-100, title II, Sec. 201, Nov. 19, 1997, 111 Stat. 2193, provided that: "This title (amending section 1229b of this title, enacting provisions set out as notes under this section and sections 1151, 1153, 1229b, and 1255 of this title, and amending provisions set out as a note under this section) may be cited as the 'Nicaraguan Adjustment and Central American Relief Act'."

SHORT TITLE OF 1996 AMENDMENT

Section 1(a) of div. C of Pub. L. 104-208 provided that: "This division (see Tables for classification) may be cited as the 'Illegal Immigration Reform and Immigrant Responsibility Act of 1996'."

SHORT TITLE OF 1994 AMENDMENT

Section 1 of Pub. L. 103-416 provided that: "This Act (see Tables for classification) may be cited as the 'Immigration and Nationality Technical Corrections Act of 1994'."

SHORT TITLE OF 1991 AMENDMENTS

Section 1(a) of Pub. L. 102-232 provided that: "This Act (amending this section, sections 1102, 1105a, 1151 to 1154, 1157, 1159 to 1161, 1182, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252a, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1324c, 1325, 1356, 1357, 1421, 1423, 1424, 1433, 1439 to 1441, 1443, 1445 to 1452, and 1455 of this title, and section 3753 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1160, 1182, 1184, 1251, 1252, 1254a, 1255, 1356, and 1421 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title) may be cited as the 'Miscellaneous and Technical Immigration and Naturalization Amendments of 1991'."

Section 101 of title I of Pub. L. 102-232 provided that: "This title (amending sections 1421, 1448, 1450, and 1455 of this title and enacting provisions set out as a note under section 1421 of this title) may be cited as the 'Judicial Naturalization Ceremonies

Amendments of 1991'."

Section 201 of title II of Pub. L. 102-232 provided that: "This title (amending this section and section 1184 of this title and enacting provisions set out as notes under this section and section 1184 of this title) may be cited as the 'O and P Nonimmigrant Amendments of 1991'."

Section 301(a) of title III of Pub. L. 102-232 provided that: "This title (amending this section, sections 1102, 1105a, 1151 to 1154, 1157, 1159 to 1161, 1182, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252a, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1324c, 1325, 1356, 1357, 1421, 1423, 1424, 1433, 1439 to 1441, 1443, 1445 to 1449, 1451, 1452, and 1455 of this title, and section 3753 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1160, 1182, 1251, 1252, 1254a, 1255, and 1356 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title) may be cited as the 'Immigration Technical Corrections Act of 1991'."

Section 1 of Pub. L. 102-110 provided that: "This Act (amending this section and sections 1153, 1255, and 1524 of this title and enacting and amending provisions set out as notes under this section) may be cited as the 'Armed Forces Immigration Adjustment Act of 1991'."

SHORT TITLE OF 1990 AMENDMENTS

Section 1(a) of Pub. L. 101-649 provided that: "This Act (see Tables for classification) may be cited as the 'Immigration Act of 1990'."

Pub. L. 101-249, Sec. 1, Mar. 6, 1990, 104 Stat. 94, provided that: "This Act (enacting section 1440-1 of this title) may be cited as the 'Posthumous Citizenship for Active Duty Service Act of 1989'."

SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101-238 provided that: "This Act (amending this section and sections 1160 and 1182 of this title, enacting provisions set out as notes under sections 1182, 1255, 1255a, and 1324a of this title, and amending provisions set out as a note under section 1255a of this title) may be cited as the 'Immigration Nursing Relief Act of 1989'."

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100-658, Sec. 1, Nov. 15, 1988, 102 Stat. 3908, provided that: "This Act (enacting provisions set out as notes under this section and section 1153 of this title and amending provisions set out as a note under section 1153 of this title) may be cited as the 'Immigration Amendments of 1988'."

Section 1(a) of Pub. L. 100-525 provided that: "This Act (amending this section, sections 1102, 1103, 1104, 1105a, 1152, 1154, 1157, 1160, 1161, 1182, 1184, 1186, 1186a, 1187, 1188, 1201, 1201a, 1202, 1222, 1223, 1224, 1227, 1251, 1252, 1254, 1255, 1255a, 1255b, 1259, 1301, 1302, 1304, 1305, 1324, 1324a, 1324b, 1353, 1356, 1357, 1360, 1408, 1409, 1421, 1422, 1424, 1426, 1431, 1432, 1433, 1435, 1440, 1441, 1446, 1447, 1451, 1452, 1454, 1455, 1459, 1481, 1483, 1489, 1522, 1523, and 1524 of this title, section 1546 of Title 18, Crimes and Criminal Procedure, section 1091 of Title 20, Education, and section 4195 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this

section and sections 1153, 1182, 1201, 1227, 1254, 1255, 1356, 1401, 1409, 1451, 1481, and 1522 of this title and section 4195 of Title 22, amending provisions set out as notes under this section and sections 1153, 1182, 1188, and 1255a of this title and section 1802 of Title 29, Labor, and repealing provisions set out as a note under section 1255a of this title) may be cited as the 'Immigration Technical Corrections Act of 1988'."

SHORT TITLE OF 1986 AMENDMENTS

Section 1(a) of Pub. L. 99-653, as amended by Pub. L. 100-525, Sec. 8(a)(1), Oct. 24, 1988, 102 Stat. 2617, provided that: "this Act (amending this section, sections 1152, 1182, 1201, 1202, 1228, 1251, 1301, 1302, 1304, 1401, 1409, 1431 to 1433, 1451, 1452, 1481, and 1483 of this title, and section 4195 of Title 22, Foreign Relations and Intercourse, and repealing section 1201a of this title and provisions set out as notes under section 1153 of this title) may be cited as the 'Immigration and Nationality Act Amendments of 1986'."

Pub. L. 99-639, Sec. 1, Nov. 10, 1986, 100 Stat. 3537, provided that: "This Act (enacting section 1186a of this title, amending sections 1154, 1182, 1184, 1251, 1255, and 1325 of this title, and enacting provisions set out as notes under sections 1154, 1182, 1184, and 1255 of this title) may be cited as the 'Immigration Marriage Fraud Amendments of 1986'."

Pub. L. 99-605, Sec. 1(a), Nov. 6, 1986, 100 Stat. 3449, provided that: "This Act (amending sections 1522 to 1524 of this title and enacting provisions set out as notes under section 1522 of this title) may be cited as the 'Refugee Assistance Extension Act of 1986'."

Section 1(a) of Pub. L. 99-603 provided that: "This Act (enacting sections 1160, 1161, 1186, 1187, 1255a, 1324a, 1324b, 1364, and 1365 of this title and section 1437r of Title 42, The Public Health and Welfare, amending this section, sections 1152, 1184, 1251, 1252, 1254, 1255, 1258, 1259, 1321, 1324, and 1357 of this title, section 2025 of Title 7, Agriculture, section 1546 of Title 18, Crimes and Criminal Procedure, sections 1091 and 1096 of Title 20, Education, sections 1802, 1813, and 1851 of Title 29, Labor, and sections 303, 502, 602, 603, 672, 673, 1203, 1320b-7, 1353, 1396b, and 1436a of Title 42, repealing section 1816 of Title 29, enacting provisions set out as notes under this section and sections 1152, 1153, 1160, 1186, 1187, 1253, 1255a, 1259, 1324a, and 1324b of this title, section 1802 of Title 29, and sections 405, 502, and 1320b-7 of Title 42, and amending provisions set out as notes under this section and section 1383 of Title 42) may be cited as the 'Immigration Reform and Control Act of 1986'."

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-363, Sec. 1, Oct. 25, 1982, 96 Stat. 1734, provided that: "This Act (amending sections 1522, 1523, and 1524 of this title and enacting provisions set out as a note under section 1522 of this title) may be cited as the 'Refugee Assistance Amendments of 1982'."

SHORT TITLE OF 1981 AMENDMENT

Section 1(a) of Pub. L. 97-116 provided that: "this Act (amending this section, sections 1105a, 1151, 1152, 1154, 1182, 1201, 1203, 1221, 1227, 1251, 1252, 1253, 1254, 1255, 1255b, 1258, 1305, 1324, 1356, 1361, 1401a, 1409, 1427, 1431, 1432, 1433, 1439, 1440, 1445, 1446, 1447, 1448, 1452, 1455, 1481, and 1483 of this

title, and section 1429 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under this section and sections 1151 and 1182 of this title, amending a provision set out as a note under this section, and repealing a provision set out as a note under section 1182 of this title) may be cited as the 'Immigration and Nationality Act Amendments of 1981'."

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96-212 provided: "That this Act (enacting sections 1157 to 1159 and 1521 to 1525 of this title, amending this section, sections 1151 to 1153, 1181, 1182, 1253, and 1254 of this title, and section 2601 of Title 22, Foreign Relations and Intercourse, enacting provision set out as notes under this section and sections 1153, 1157, 1158, 1521, and 1522 of this title, amending provisions set out as notes under sections 1182 and 1255 of this title, and repealing provisions set out as a note under section 2601 of Title 22) may be cited as the 'Refugee Act of 1980'."

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-571 provided: "That this Act (amending this section and sections 1151, 1152 to 1154, 1181, 1182, 1251, 1254, and 1255 of this title and enacting provisions set out as notes under this section and sections 1153 and 1255 of this title) may be cited as the 'Immigration and Nationality Act Amendments of 1976'."

SHORT TITLE

Section 1 of act June 27, 1952, provided that such act, enacting this chapter, section 1429 of Title 18, Crimes and Criminal Procedure, amending sections 1353a, 1353d, 1552 of this title,

sections 342b, 342c, 342e of former Title 5, Executive Departments and Government Officers and Employees, sections 1114, 1546 of Title 18, sections 618, 1446 of Title 22, Foreign Relations and Intercourse, sections 1, 177 of former Title 49, Transportation, sections 1952 to 1955 and 1961 of Title 50 App., War and National Defense, repealing section 530 of former Title 31, Money and Finance, enacting provisions set out as notes under this section and amending provisions set out as notes under sections 1435 and 1440 of this title, may be cited as the "Immigration and Nationality Act".

REPEAL AND REVIVAL

Section 8(b) of Pub. L. 100-525 provided that: "Section 3 of INAA (Pub. L. 99-653, repealing subsec. (c)(1) of this section) is repealed and the language stricken by such section is revived as of November 14, 1986."

REPEALS

Section 403(b) of act June 27, 1952, provided that: "Except as otherwise provided in section 405 (set out below), all other laws, or parts of laws, in conflict or inconsistent with this Act (this chapter) are, to the extent of such conflict or inconsistency, repealed."

REGULATIONS

Section 303(a)(8) of Pub. L. 102-232 provided that: "The Secretary of Labor shall issue final or interim final regulations to implement the changes made by this section to section 101(a)(15)(H)(i)(b) and section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n)) no later than January 2, 1992."

Pub. L. 102-140, title VI, Sec. 610, Oct. 28, 1991, 105 Stat. 832, as amended by Pub. L. 103-416, title II, Sec. 219(l)(2), Oct. 25, 1994, 108 Stat. 4317, provided that:

"(a) The Attorney General shall prescribe regulations under title 5, United States Code, to carry out section 404(b)(1) of the Immigration and Nationality Act (act June 27, 1952, as amended, set out as a note above), including a delineation of (1) scenarios that constitute an immigration emergency, (2) the process by which the President declares an immigration emergency, (3) the role of the Governor and local officials in requesting a declaration of emergency, (4) a definition of 'assistance as required by the Attorney General', and (5) the process by which States and localities are to be reimbursed.

"(b) The Attorney General shall prescribe regulations under title 5, United States Code, to carry out section 404(b)(2) of such Act, including providing a definition of the terms in section 404(b)(2)(A)(ii) and a delineation of 'in any other circumstances' in section 404(b)(2)(A)(iii) of such Act.

"(c) The regulations under this section shall be published for comment not later than 30 days after the date of enactment of this Act (Oct. 28, 1991) and issued in final form not later than 15 days after the end of the comment period."

SAVINGS CLAUSE

Section 405 of act June 27, 1952, provided in part that:

"(a) Nothing contained in this Act (this chapter), unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of

citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act (this chapter) shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal done or existing, at the time this Act (this chapter) shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act (this chapter) are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act (this chapter), makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended (former section 155 of this title), or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended (former section 1953 of Appendix to Title 50), which is pending on the date of enactment of this Act (June 27, 1952), shall be regarded as a proceeding within the meaning of this subsection.

"(b) Except as otherwise specifically provided in title III (subchapter III of this chapter), any petition for naturalization heretofore filed which may be pending at the time this Act (this chapter) shall take effect shall be heard and determined in accordance with the requirements of law in effect when such

petition was filed.

"(c) Except as otherwise specifically provided in this Act (this chapter), the repeal of any statute by this Act (this chapter) shall not terminate nationality heretofore lawfully acquired nor restore nationality heretofore lost under any law of the United States or any treaty to which the United States may have been a party.

"(d) Except as otherwise specifically provided in this Act (this chapter), or any amendment thereto, fees, charges and prices for purposes specified in title V of the Independent Offices Appropriation Act, 1952 (Public Law 137, Eighty-second Congress, approved August 31, 1951), may be fixed and established in the manner and by the head of any Federal Agency as specified in that Act.

"(e) This Act (this chapter) shall not be construed to repeal, alter, or amend section 231(a) of the Act of April 30, 1946 (60 Stat. 148; (section 1281(a) of title 22)), the Act of June 20, 1949 (Public Law 110, section 8, Eighty-first Congress, first session; 63 Stat. 208 (section 403h of title 50)), the Act of June 5, 1950 (Public Law 535, Eighty-first Congress, second session (former section 1501 et seq. of title 22)), nor title V of the Agricultural Act of 1949, as amended (Public Law 78, Eighty-second Congress, first session (former sections 1461 to 1468 of title 7))."

SEPARABILITY

Section 1(e) of div. C of Pub. L. 104-208 provided that: "If any provision of this division (see Tables for classification) or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of this division and the

application of the provisions of this division to any person or circumstance shall not be affected thereby."

Section 406 of act June 27, 1952, provided that: "If any particular provision of this Act (this chapter), or the application thereof to any person or circumstance, is held invalid, the remainder of the Act (this chapter) and the application of such provision to other persons or circumstances shall not be affected thereby."

ADMISSION OF ALASKA AS STATE

Effectiveness of amendment of this section by Pub. L. 85-508 as dependent on admission of State of Alaska into the Union, see section 8(b) of Pub. L. 85-508, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

ADMISSION OF HAWAII AS STATE

Admission of Hawaii into the Union was accomplished Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 25, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding former section 491 of Title 48, Territories and Insular Possessions.

APPROPRIATIONS

Section 404 of act June 27, 1952, as amended by acts Dec. 29, 1981, Pub. L. 97-116, Sec. 18(s), 95 Stat. 1621; Nov. 6, 1986, Pub. L. 99-603, title I, Sec. 113, 100 Stat. 3383; Nov. 29, 1990, Pub. L. 101-649, title VII, Sec. 705(a), 104 Stat. 5087; Dec. 12, 1991, Pub. L. 102-232, title III, Sec. 308(d), 105 Stat. 1757, provided that:

"(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act (this chapter)

(other than chapter 2 of title IV) (subchapter IV of this chapter).

"(b)(1) There are authorized to be appropriated (for fiscal year 1991 and any subsequent fiscal year) to an immigration emergency fund, to be established in the Treasury, an amount sufficient to provide for a balance of $35,000,000 in such fund, to be used to carry out paragraph (2) and to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such fund with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

"(2)(A) Funds which are authorized to be appropriated by paragraph (1), subject to the dollar limitation contained in subparagraph (B), shall be available, by application for the reimbursement of States and localities providing assistance as required by the Attorney General, to States and localities whenever -

"(i) a district director of the Service certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter,

"(ii) the lives, property, safety, or welfare of the residents of a State or locality are endangered, or

"(iii) in any other circumstances as determined by the

Attorney General.

In applying clause (i), the providing of parole at a point of entry in a district shall be deemed to constitute an application for asylum in the district.

"(B) Not more than $20,000,000 shall be made available for all localities under this paragraph.

"(C) For purposes of subparagraph (A), the requirement of paragraph (1) that an immigration emergency be determined shall not apply.

"(D) A decision with respect to an application for reimbursement under subparagraph (A) shall be made by the Attorney General within 15 days after the date of receipt of the application."

(Section 705(b) of Pub. L. 101-649 provided that: "Section 404(b)(2)(A)(i) of the Immigration and Nationality Act (act June 27, 1952, set out above), as added by the amendment made by subsection (a)(5), shall apply with respect to increases in the number of asylum applications filed in a calendar quarter beginning on or after January 1, 1989. The Attorney General may not spend any amounts from the immigration emergency fund pursuant to the amendments made by subsection (a) (amending section 404 of act June 27, 1952, set out above) before October 1, 1991.")

(Determination of President of the United States, No. 97-16, Feb. 12, 1997, 62 F.R. 13981, provided that immigration emergency determined by President in 1995 to exist with respect to smuggling into United States of illegal aliens persisted and directed use of Immigration Emergency Fund established by section 404(b)(1) of act June 27, 1952, set out above.

(Prior determination was contained in the following:

(Determination of President of the United States, No. 95-49, Sept. 28, 1995, 60 F.R. 53677.)

PHILIPPINE TRADERS AS NONIMMIGRANTS

Philippine traders classifiable as nonimmigrants under subsec. (a)(15)(E) of this section, see section 1184a of this title.

COORDINATION OF AMENDMENTS BY PUB. L. 104-208

Section 1(b) of div. C of Pub. L. 104-208 provided that: "Except as otherwise specifically provided -

"(1) whenever in this division (see Tables for classification) an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

"(2) amendments to a section or other provision are to such section or other provision before any amendment made to such section or other provision elsewhere in this division."

APPLICABILITY OF TITLE V OF DIVISION C OF PUB. L. 104-208 TO FOREIGN ASSISTANCE

Section 592 of title V of div. C of Pub. L. 104-208 provided that: "This title (see Effective Date of 1996 Amendment note above) does not apply to any Federal, State, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General."

NOTIFICATION TO PUBLIC AND PROGRAM RECIPIENTS OF CHANGES REGARDING ELIGIBILITY FOR PROGRAMS

Section 593 of title V of div. C of Pub. L. 104-208 provided that:

"(a) In General. - Each agency of the Federal Government or a State or political subdivision that administers a program affected by the provisions of this title (see Effective Date of 1996 Amendment note above), shall, directly or through the States, provide general notification to the public and to program recipients of the changes regarding eligibility for any such program pursuant to this title.

"(b) Failure To Give Notice. - Nothing in this section shall be construed to require or authorize continuation of eligibility if the notice under this section is not provided."

REPORT ON ALIENS GRANTED REFUGEE STATUS OR ASYLUM DUE TO PERSECUTION FOR RESISTANCE TO COERCIVE POPULATION CONTROL METHODS

Section 601(a)(2) of div. C of Pub. L. 104-208 provided that: "Not later than 90 days after the end of each fiscal year, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate describing the number and countries of origin of aliens granted refugee status or asylum under determinations pursuant to the amendment made by paragraph (1) (amending this section). Each such report shall also contain projections regarding the number and countries of origin of aliens that are likely to be granted refugee status or asylum for the subsequent 2 fiscal years."

SENSE OF CONGRESS REGARDING AMERICAN-MADE PRODUCTS; REQUIREMENTS FOR NOTICE

Section 648 of div. C of Pub. L. 104-208 provided that:

"(a) Purchase of American-Made Equipment and Products. - It is the sense of the Congress that, to the greatest extent practicable,

all equipment and products purchased with funds made available under this division (see Tables for classification) should be American-made.

"(b) Notice to Recipients of Grants. - In providing grants under this division, the Attorney General, to the greatest extent practicable, shall provide to each recipient of a grant a notice describing the statement made in subsection (a) by the Congress."

IMPROVING BORDER CONTROLS

Section 130006 of Pub. L. 103-322 provided that:

"(a) Authorization of Appropriations. - There are authorized to be appropriated for the Immigration and Naturalization Service to increase the resources for the Border Patrol, the Inspections Program, and the Deportation Branch to apprehend illegal aliens who attempt clandestine entry into the United States or entry into the United States with fraudulent documents or who remain in the country after their nonimmigrant visas expire -

"(1) $228,000,000 for fiscal year 1995;

"(2) $185,000,000 for fiscal year 1996;

"(3) $204,000,000 for fiscal year 1997; and

"(4) $58,000,000 for fiscal year 1998.

"Of the sums authorized in this section, all necessary funds shall, subject to the availability of appropriations, be allocated to increase the number of agent positions (and necessary support personnel positions) in the Border Patrol by not less than 1,000 full-time equivalent positions in each of fiscal years 1995, 1996, 1997, and 1998 beyond the number funded as of October 1, 1994.

"(b) Report. - By September 30, 1996 and September 30, 1998, the Attorney General shall report to the Congress on the programs

described in this section. The report shall include an evaluation of the programs, an outcome-based measurement of performance, and an analysis of the cost effectiveness of the additional resources provided under this Act (see Tables for classification)."

VISAS FOR OFFICIALS OF TAIWAN

Section 221 of Pub. L. 103-416, as amended by Pub. L. 104-208, div. C, title III, Sec. 308(d)(3)(E), title VI, Sec. 671(b)(12), Sept. 30, 1996, 110 Stat. 3009-617, 3009-722, provided that: "Whenever the President of Taiwan or any other high-level official of Taiwan shall apply to visit the United States for the purposes of discussions with United States Federal or State government officials concerning -

"(1) trade or business with Taiwan that will reduce the United States-Taiwan trade deficit,

"(2) prevention of nuclear proliferation,

"(3) threats to the national security of the United States,

"(4) the protection of the global environment,

"(5) the protection of endangered species, or

"(6) regional humanitarian disasters,

the official shall be admitted to the United States, unless the official is otherwise inadmissible under the immigration laws of the United States."

CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS

Section 225 of Pub. L. 103-416, as amended by Pub. L. 104-132, title IV, Sec. 436(b)(2), Apr. 24, 1996, 110 Stat. 1275; Pub. L. 104-208, div. C, title III, Sec. 308(c)(4)(B), Sept. 30, 1996, 110 Stat. 3009-616, provided that: "No amendment made by this Act (see Tables for classification) shall be construed to create any

substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person."

(Amendment by Pub. L. 104-132 effective as if included in enactment of Pub. L. 103-416, see section 436(b)(3) of Pub. L. 104-132 set out as an Effective Date of 1996 Amendment note under section 1252 of this title.)

REPORT ON ADMISSION OF CERTAIN NONIMMIGRANTS

Section 202(b) of Pub. L. 102-232 directed Comptroller General, by not later than Oct. 1, 1994, to submit to Committees on the Judiciary of Senate and of House of Representatives a report containing information relating to the admission of artists, entertainers, athletes, and related support personnel as nonimmigrants under 8 U.S.C. 1101(a)(15)(O), (P), and information on the laws, regulations, and practices in effect in other countries that affect United States citizens and permanent resident aliens in the arts, entertainment, and athletics, in order to evaluate the impact of such admissions, laws, regulations, and practices on such citizens and aliens, directed Chairman of the Committee on the Judiciary of Senate to make the report available to interested parties and to hold a hearing respecting the report and directed such Committee to report to Senate its findings and any legislation it deems appropriate.

DELAY UNTIL APRIL 1, 1992, IN IMPLEMENTATION OF PROVISIONS RELATING TO NONIMMIGRANT ARTISTS, ATHLETES, ENTERTAINERS, AND FASHION MODELS

Section 3 of Pub. L. 102-110 provided that: "Section 214(g)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(C)) shall not apply to the issuance of visas or

provision of status before April 1, 1992. Aliens seeking nonimmigrant admission as artists, athletes, entertainers, or fashion models (or for the purpose of accompanying or assisting in an artistic or athletic performance) before April 1, 1992, shall not be admitted under subparagraph (O)(i), (O)(ii), (P)(i), or (P)(iii) of section 101(a)(15) of such Act (8 U.S.C. 1101(a)(15)), but may be admitted under the terms of subparagraph (H)(i)(b) of such section (as in effect on September 30, 1991)."

COMMISSION ON IMMIGRATION REFORM

Section 141 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, Sec. 302(c)(1), Dec. 12, 1991, 105 Stat. 1744, provided that:

"(a) Establishment and Composition of Commission. - (1) Effective October 1, 1991, there is established a Commission on Immigration Reform (in this section referred to as the 'Commission') which shall be composed of 9 members to be appointed as follows:

"(A) One member who shall serve as Chairman, to be appointed by the President.

"(B) Two members to be appointed by the Speaker of the House of Representatives who shall select such members from a list of nominees provided by the Chairman of the Committee on the Judiciary of the House of Representatives.

"(C) Two members to be appointed by the Minority Leader of the House of Representatives who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary of the House of Representatives.

"(D) Two members to be appointed by the Majority Leader of the Senate who shall select such members from a list of nominees provided by the Chairman of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary of the Senate.

"(E) Two members to be appointed by the Minority Leader of the Senate who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary of the Senate.

"(2) Initial appointments to the Commission shall be made during the 45-day period beginning on October 1, 1991. A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

"(3) Members shall be appointed to serve for the life of the Commission, except that the term of the member described in paragraph (1)(A) shall expire at noon on January 20, 1993, and the President shall appoint an individual to serve for the remaining life of the Commission.

"(b) Functions of Commission. - The Commission shall -

"(1) review and evaluate the impact of this Act and the amendments made by this Act (see Tables for classification), in accordance with subsection (c); and

"(2) transmit to the Congress -

"(A) not later than September 30, 1994, a first report describing the progress made in carrying out paragraph (1), and

"(B) not later than September 30, 1997, a final report setting forth the Commission's findings and recommendations, including such recommendations for additional changes that

should be made with respect to legal immigration into the United States as the Commission deems appropriate.

"(c) Considerations. -

"(1) Particular considerations. - In particular, the Commission shall consider the following:

"(A) The requirements of citizens of the United States and of aliens lawfully admitted for permanent residence to be joined in the United States by immediate family members and the impact which the establishment of a national level of immigration has upon the availability and priority of family preference visas.

"(B) The impact of immigration and the implementation of the employment-based and diversity programs on labor needs, employment, and other economic and domestic conditions in the United States.

"(C) The social, demographic, and natural resources impact of immigration.

"(D) The impact of immigration on the foreign policy and national security interests of the United States.

"(E) The impact of per country immigration levels on family-sponsored immigration.

"(F) The impact of the numerical limitation on the adjustment of status of aliens granted asylum.

"(G) The impact of the numerical limitations on the admission of nonimmigrants under section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)).

"(2) Diversity program. - The Commission shall analyze the information maintained under section 203(c)(3) of the Immigration

and Nationality Act (8 U.S.C. 1153(c)(3)) and shall report to Congress in its report under subsection (b)(2) on -

"(A) the characteristics of individuals admitted under section 203(c) of the Immigration and Nationality Act, and

"(B) how such characteristics compare to the characteristics of family-sponsored immigrants and employment-based immigrants.

The Commission shall include in the report an assessment of the effect of the requirement of paragraph (2) of section 203(c) of the Immigration and Nationality Act on the diversity, educational, and skill level of aliens admitted.

"(d) Compensation of Members. - (1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, pay at the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-18 of the General Schedule. Each member of the Commission who is such an officer or employee shall serve without additional pay.

"(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

"(e) Meetings, Staff, and Authority of Commission. - The provisions of subsections (e) through (g) of section 304 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603, set out as a note under section 1160 of this title) shall apply to the Commission in the same manner as they apply to the Commission established under such section, except that paragraph (2) of

subsection (e) thereof shall not apply.

"(f) Authorization of Appropriations. - (1) There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this section.

"(2) Notwithstanding any other provision of this section, the authority to make payments, or to enter into contracts, under this section shall be effective only to such extent, or in such amounts, as are provided in advance in appropriations Acts.

"(g) Termination Date. - The Commission shall terminate on the date on which a final report is required to be transmitted under subsection (b)(2)(B), except that the Commission may continue to function until January 1, 1998, for the purpose of concluding its activities, including providing testimony to standing committees of Congress concerning its final report under this section and disseminating that report.

"(h) Congressional Response. - (1) No later than 90 days after the date of receipt of each report transmitted under subsection (b)(2), the Committees on the Judiciary of the House of Representatives and of the Senate shall initiate hearings to consider the findings and recommendations of the report.

"(2) No later than 180 days after the date of receipt of such a report, each such Committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

"(i) Presidential Report. - The President shall conduct a review and evaluation and provide for the transmittal of reports to the Congress in the same manner as the Commission is required to conduct a review and evaluation and to transmit reports under subsection (b)."

(References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, Sec. 101(c)(1)) of Pub. L. 101-509, set out in a note under section 5376 of Title 5.)

SPECIAL IMMIGRANT STATUS FOR CERTAIN ALIENS EMPLOYED AT UNITED STATES MISSION IN HONG KONG (D SPECIAL IMMIGRANTS)

Section 152 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, Sec. 302(d)(1), Dec. 12, 1991, 105 Stat. 1744, provided that:

"(a) In General. - Subject to subsection (c), an alien described in subsection (b) shall be treated as a special immigrant described in section 101(a)(27)(D) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(D)).

"(b) Aliens Covered. - An alien is described in this subsection if -

"(1) the alien is -

"(A) an employee at the United States consulate in Hong Kong under the authority of the Chief of Mission (including employment pursuant to section 5913 of title 5, United States Code) and has performed faithful service as such an employee for a total of three years or more, or

"(B) a member of the immediate family (as defined in 6 Foreign Affairs Manual 117k as of the date of the enactment of this Act (Nov. 29, 1990)) of an employee described in subparagraph (A) who has been living with the employee in the same household;

"(2) the welfare of the employee or such an immediate family member is subject to a clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

"(3) the principal officer in Hong Kong, in the officer's discretion, has recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

"(c) Expiration. - Subsection (a) shall only apply to aliens who file an application for special immigrant status under this section by not later than January 1, 2002.

"(d) Limited Waiver of Numerical Limitations. - The first 500 visas made available to aliens as special immigrants under this section shall not be counted against any numerical limitation established under section 201 or 202 of the Immigration and Nationality Act (8 U.S.C. 1151 or 1152)."

INAPPLICABILITY OF AMENDMENT BY PUB. L. 101-649

Amendment by section 203(c) of Pub. L. 101-649 not to affect performance of longshore work in United States by citizens or nationals of United States, see section 203(a)(2) of Pub. L. 101-649, set out as a note under section 1288 of this title.

APPLICATION OF TREATY TRADER FOR CERTAIN FOREIGN STATES

Section 204(b) of Pub. L. 101-649 provided that: "Each of the following foreign states shall be considered, for purposes of section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), to be a foreign state described in such section if the foreign state extends reciprocal nonimmigrant

treatment to nationals of the United States:

"(1) The largest foreign state in each region (as defined in section 203(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1153(c)(1))) which (A) has 1 or more dependent areas (as determined for purposes of section 202 of such Act (8 U.S.C. 1152)) and (B) does not have a treaty of commerce and navigation with the United States.

"(2) The foreign state which (A) was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603, set out as a note under section 1153 of this title) and (B) does not have a treaty of commerce and navigation with the United States, but (C) had such a treaty with the United States before 1925."

CLARIFICATION OF TREATMENT OF CERTAIN INTERNATIONAL ACCOUNTING FIRMS

Section 206(a) of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, Sec. 303(a)(9), Dec. 12, 1991, 105 Stat. 1748, provided that: "In applying sections 101(a)(15)(L) and 203(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L), 1153(b)(1)(C)) and section 124(a)(3)(A) of this Act (set out as a note under section 1153 of this title), in the case of a partnership that is organized in the United States to provide accounting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to

provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member."

ADMISSION OF NONIMMIGRANTS FOR COOPERATIVE RESEARCH, DEVELOPMENT, AND COPRODUCTION PROJECTS

Section 222 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, Sec. 303(b)(3), Dec. 12, 1991, 105 Stat. 1748, provided that:

"(a) In General. - Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who -

"(1) has a residence in a foreign country which the alien has no intention of abandoning, and

"(2) is coming to the United States, upon a basis of reciprocity, to perform services of an exceptional nature requiring such merit and ability relating to a cooperative research and development project or a coproduction project provided under a government-to-government agreement administered by the Secretary of Defense, but not to exceed a period of more than 10 years,

or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

"(b) Numerical Limitation. - The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section at any time may not exceed 100."

ESTABLISHMENT OF SPECIAL EDUCATION EXCHANGE VISITOR PROGRAM

Section 223 of Pub. L. 101-649, as amended by Pub. L. 102-232, title III, Sec. 303(b)(4), Dec. 12, 1991, 105 Stat. 1748, provided that:

"(a) In General. - Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who -

"(1) has a residence in a foreign country which the alien has no intention of abandoning, and

"(2) is coming temporarily to the United States (for a period not to exceed 18 months) as a participant in a special education training program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities,

or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

"(b) Numerical Limitation. - The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section in any fiscal year may not exceed 50."

EXTENSION OF H-1 IMMIGRATION STATUS FOR CERTAIN NONIMMIGRANTS EMPLOYED IN COOPERATIVE RESEARCH AND DEVELOPMENT PROJECTS AND COPRODUCTION PROJECTS

Pub. L. 101-189, div. A, title IX, Sec. 937, Nov. 29, 1989, 103 Stat. 1538, provided that: "The Attorney General shall provide for the extension through December 31, 1991, of nonimmigrant status under section 101(a)(15)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)) for an alien to perform temporarily services relating to a cooperative research and development project or a coproduction project provided under a

government-to-government agreement administered by the Secretary of Defense in the case of an alien who has had such status for a period of at least five years if such status has not expired as of the date of the enactment of this Act (Nov. 29, 1989) but would otherwise expire during 1989, 1990, or 1991, due only to the time limitations with respect to such status."

EXTENSION OF H-1 STATUS FOR CERTAIN REGISTERED NURSES THROUGH DECEMBER 31, 1989

Pub. L. 100-658, Sec. 4, Nov. 15, 1988, 102 Stat. 3909, provided that: "The Attorney General shall provide for the extension through December 31, 1989, of nonimmigrant status under section 101(a)(15)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)) for an alien to perform temporarily services as a registered nurse in the case of an alien who has had such status for a period of at least 5 years if -

"(1) such status has not expired as of the date of the enactment of this Act (Nov. 15, 1988) but would otherwise expire during 1988 or 1989, due only to the time limitation with respect to such status; or

"(2)(A) the alien's status as such a nonimmigrant expired during the period beginning on January 1, 1987, and ending on the date of the enactment of this Act, due only to the time limitation with respect to such status,

"(B) the alien is present in the United States as of the date of the enactment of this Act,

"(C) the alien has been employed as a registered nurse in the United States since the date of expiration of such status, and

"(D) in the case of an alien whose status expired during 1987,

the alien's employer has filed with the Immigration and Naturalization Service, before the date of the enactment of this Act, an appeal of a petition filed in connection with the alien's application for extension of such status."

RESIDENCE WITHIN UNITED STATES CONTINUED DURING PERIOD OF ABSENCE

Section 2(o)(2) of Pub. L. 100-525 provided that: "Only for purposes of section 101(a)(27)(I) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(I)), an alien who is or was an officer or employee of an international organization (or is the unmarried son or daughter or surviving spouse of such an officer or employee or former officer or employee) is considered to be residing and physically present in the United States during a period in which the alien is residing in the United States but is absent from the United States because of the officer's or employee's need to conduct official business on behalf of the organization or because of customary leave, but only if during the period of the absence the officer or employee continues to have a duty station in the United States and, in the case of such an unmarried son or daughter, the son or daughter is not enrolled in a school outside the United States."

NONIMMIGRANT TRADERS AND INVESTORS UNDER UNITED STATES-CANADA FREE-TRADE AGREEMENT

For provisions allowing Canadian citizens to be classifiable as nonimmigrants under subsec. (a)(15)(E) of this section upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, see section 307(a) of Pub. L. 100-449, set out in a note under section 2112 of Title 19, Customs Duties.

AMERASIAN IMMIGRATION

Pub. L. 100-461, title II, Oct. 1, 1988, 102 Stat. 2268-15, as amended by Pub. L. 101-167, title II, Nov. 21, 1989, 103 Stat. 1211; Pub. L. 101-302, title II, May 25, 1990, 104 Stat. 228; Pub. L. 101-513, title II, Nov. 5, 1990, 104 Stat. 1996, provided: "That the provisions of subsection (c) of section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as contained in section 101(e) of Public Law 100-202 (set out below), shall apply to an individual who (1) departs from Vietnam after the date of the enactment of this Act (Oct. 1, 1988), and (2) is described in subsection (b) of such section, but who is issued an immigrant visa under section 201(b) or 203(a) of the Immigration and Nationality Act (8 U.S.C. 1151(b), 1153(a)) (rather than under subsection (a) of such section), or would be described in subsection (b) of such section if such section also applied to principal aliens who were citizens of the United States (rather than merely to aliens)".

Pub. L. 100-202, Sec. 101(e) (title V, Sec. 584), Dec. 22, 1987, 101 Stat. 1329-183, as amended by Pub. L. 101-167, title II, Nov. 21, 1989, 103 Stat. 1211; Pub. L. 101-513, title II, Nov. 5, 1990, 104 Stat. 1996; Pub. L. 101-649, title VI, Sec. 603(a)(20), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 102-232, title III, Sec. 307(l)(8), Dec. 12, 1991, 105 Stat. 1757, provided that:

"(a)(1) Notwithstanding any numerical limitations specified in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney General may admit aliens described in subsection (b) to the United States as immigrants if -

"(A) they are admissible (except as otherwise provided in paragraph (2)) as immigrants, and

"(B) they are issued an immigrant visa and depart from Vietnam on or after March 22, 1988.

"(2) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4), (5), and (7)(A)) shall not be applicable to any alien seeking admission to the United States under this section, and the Attorney General on the recommendation of a consular officer may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation by a consular officer.

"(3) Notwithstanding section 221(c) of the Immigration and Nationality Act (8 U.S.C. 1201(c)), immigrant visas issued to aliens under this section shall be valid for a period of one year.

"(b)(1) An alien described in this section is an alien who, as of the date of the enactment of this Act (Dec. 22, 1987), is residing in Vietnam and who establishes to the satisfaction of a consular officer or an officer of the Immigration and Naturalization Service after a face-to-face interview, that the alien -

"(A)(i) was born in Vietnam after January 1, 1962, and before January 1, 1976, and (ii) was fathered by a citizen of the United States (such an alien in this section referred to as a 'principal alien');

"(B) is the spouse or child of a principal alien and is

accompanying, or following to join, the principal alien; or

"(C) subject to paragraph (2), either (i) is the principal alien's natural mother (or is the spouse or child of such mother), or (ii) has acted in effect as the principal alien's mother, father, or next-of-kin (or is the spouse or child of such an alien), and is accompanying, or following to join, the principal alien.

"(2) An immigrant visa may not be issued to an alien under paragraph (1)(C) unless the officer referred to in paragraph (1) has determined, in the officer's discretion, that (A) such an alien has a bona fide relationship with the principal alien similar to that which exists between close family members and (B) the admission of such an alien is necessary for humanitarian purposes or to assure family unity. If an alien described in paragraph (1)(C)(ii) is admitted to the United States, the natural mother of the principal alien involved shall not, thereafter, be accorded any right, privilege, or status under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) by virtue of such parentage.

"(3) For purposes of this section, the term 'child' has the meaning given such term in section 101(b)(1)(A), (B), (C), (D), and (E) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)(A)-(E)).

"(c) Any alien admitted (or awaiting admission) to the United States under this section shall be eligible for benefits under chapter 2 of title IV of the Immigration and Nationality Act (8 U.S.C. 1521 et seq.) to the same extent as individuals admitted (or awaiting admission) to the United States under section 207 of such Act (8 U.S.C. 1157) are eligible for benefits under such chapter.

"(d) The Attorney General, in cooperation with the Secretary of State, shall report to Congress 1 year, 2 years, and 3 years, after the date of the enactment of this Act (Dec. 22, 1987) on the implementation of this section. Each such report shall include the number of aliens who are issued immigrant visas and who are admitted to the United States under this section and number of waivers granted under subsection (a)(2) and the reasons for granting such waivers.

"(e) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall apply in the administration of this section and nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible."

(Section 307(l)(8) of Pub. L. 102-232 provided that the amendment made by that section to section 101(e) (title V, Sec. 584(a)(2)) of Pub. L. 100-202, set out above, is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101-649.)

(Pub. L. 101-513, title II, Nov. 5, 1990, 104 Stat. 1996, provided that the amendment made by Pub. L. 101-513 to Pub. L. 100-202, Sec. 101(e) (title V, Sec. 584(b)(2)), set out above, is effective Dec. 22, 1987.)

AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF IMMIGRATION AND NATURALIZATION SERVICE

Section 111 of Pub. L. 99-603 provided that:

"(a) Two Essential Elements. - It is the sense of Congress that two essential elements of the program of immigration control established by this Act (see Short Title of 1986 Amendments note above) are -

"(1) an increase in the border patrol and other inspection and enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States and the violation of the terms of their entry, and

"(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act (this chapter).

"(b) Increased Authorization of Appropriations for INS and EOIR. - In addition to any other amounts authorized to be appropriated, in order to carry out this Act there are authorized to be appropriated to the Department of Justice -

"(1) for the Immigration and Naturalization Service, for fiscal year 1987, $422,000,000, and for fiscal year 1988, $419,000,000; and

"(2) for the Executive Office of Immigration Review, for fiscal year 1987, $12,000,000, and for fiscal year 1988, $15,000,000.

Of the amounts authorized to be appropriated under paragraph (1)

sufficient funds shall be available to provide for an increase in the border patrol personnel of the Immigration and Naturalization Service so that the average level of such personnel in each of fiscal years 1987 and 1988 is at least 50 percent higher than such level for fiscal year 1986.

"(c) Use of Funds for Improved Services. - Of the funds appropriated to the Department of Justice for the Immigration and Naturalization Service, the Attorney General shall provide for improved immigration and naturalization services and for enhanced community outreach and in-service training of personnel of the Service. Such enhanced community outreach may include the establishment of appropriate local community taskforces to improve the working relationship between the Service and local community groups and organizations (including employers and organizations representing minorities).

"(d) Supplemental Authorization of Appropriations for Wage and Hour Enforcement. - There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department in order to deter the employment of unauthorized aliens and remove the economic incentive for employers to exploit and use such aliens."

ELIGIBILITY OF H-2 AGRICULTURAL WORKERS FOR CERTAIN LEGAL ASSISTANCE

Section 305 of Pub. L. 99-603 provided that: "A nonimmigrant worker admitted to or permitted to remain in the United States

under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)) for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), but only with respect to legal assistance on matters relating to wages, housing, transportation, and other employment rights as provided in the worker's specific contract under which the nonimmigrant was admitted."

DENIAL OF CREW MEMBER NONIMMIGRANT VISA IN CASE OF STRIKES

Section 315(d) of Pub. L. 99-603 provided that:

"(1) Except as provided in paragraph (2), during the one-year period beginning on the date of the enactment of this Act (Nov. 6, 1986), an alien may not be admitted to the United States as an alien crewman (under section 101(a)(15)(D) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D)) for the purpose of performing service on board a vessel or aircraft at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service.

"(2) Paragraph (1) shall not apply to an alien employee who was employed before the date of the strike concerned and who is seeking admission to enter the United States to continue to perform services as a crewman to the same extent and on the same routes as the alien performed such services before the date of the strike."

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Section 407 of Pub. L. 99-603 provided that: "It is the sense of the Congress that the President of the United States should consult

with the President of the Republic of Mexico within 90 days after enactment of this Act (Nov. 6, 1986) regarding the implementation of this Act (see Short Title of 1986 Amendments note above) and its possible effect on the United States or Mexico. After the consultation, it is the sense of the Congress that the President should report to the Congress any legislative or administrative changes that may be necessary as a result of the consultation and the enactment of this legislation."

COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT

Section 601 of Pub. L. 99-603, as amended by Pub. L. 100-525, Sec. 2(r), Oct. 24, 1988, 102 Stat. 2614, provided for establishment, membership, etc., of a Commission for the Study of International Migration and Cooperative Economic Development to examine, in consultation with governments of Mexico and other sending countries in Western Hemisphere, the conditions which contribute to unauthorized migration to United States and mutually beneficial reciprocal trade and investment programs to alleviate conditions leading to such unauthorized migration and to report to President and Congress, not later than 3 years after appointment of members of Commission, on results of Commission's examination with recommendations on providing mutually beneficial reciprocal trade and investment programs to alleviate such unauthorized migration.

TREATMENT OF DEPARTURES FROM GUAM

Section 2 of Pub. L. 99-505 provided that: "In the administration of section 101(a)(15)(D)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(D)(ii)) (added by the amendment made by section 1 of this Act), an alien crewman shall be

considered to have departed from Guam after leaving the territorial waters of Guam, without regard to whether the alien arrives in a foreign state before returning to Guam."

ALIEN EMPLOYEES OF AMERICAN UNIVERSITY OF BEIRUT

Priv. L. 98-53, Oct. 30, 1984, 98 Stat. 3437, provided: "That an alien lawfully admitted to the United States for permanent residence shall be considered, for purposes of section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(A)), to be temporarily visiting abroad during any period (before or after the date of the enactment of this Act (Oct. 30, 1984)) in which the alien is employed by the American University of Beirut."

STUDY AND EVALUATION OF EXCHANGE PROGRAMS FOR GRADUATE MEDICAL EDUCATION OF ALIEN GRADUATES OF FOREIGN MEDICAL SCHOOLS; REPORT TO CONGRESS NOT LATER THAN JANUARY 15, 1983

Section 5(e) of Pub. L. 97-116 provided that: "The Secretary of Health and Human Services, after consultation with the Attorney General, the Secretary of State, and the Director of the International Communication Agency, shall evaluate the effectiveness and value to foreign nations and to the United States of exchange programs for the graduate medical education or training of aliens who are graduates of foreign medical schools, and shall report to Congress, not later than January 15, 1983, on such evaluation and include in such report such recommendations for changes in legislation and regulations as may be appropriate."

ADJUSTMENT OF STATUS OF NONIMMIGRANT ALIENS RESIDING IN THE VIRGIN ISLANDS TO PERMANENT RESIDENT ALIEN STATUS

Upon application during the one-year period beginning Sept. 30,

1982, by an alien who was inspected and admitted to the Virgin Islands of the United States either as a nonimmigrant alien worker under subsec. (a)(15)(H)(ii) of this section or as a spouse or minor child of such worker, and has resided continuously in the Virgin Islands since June 30, 1975, the Attorney General may adjust the status of such nonimmigrant alien to that of an alien lawfully admitted for permanent residence, provided certain conditions are met, and such alien is not to be deported for failure to maintain nonimmigrant status until final action is taken on the alien's application for adjustment, see section 2(a), (b) of Pub. L. 97-271, set out as a note under section 1255 of this title.

LIMITATION ON ADMISSION OF ALIENS SEEKING EMPLOYMENT IN THE VIRGIN ISLANDS

Notwithstanding any other provision of law, the Attorney General not to be authorized, on or after Sept. 30, 1982, to approve any petition filed under section 1184(c) of this title in the case of importing any alien as a nonimmigrant under subsec. (a)(15)(H)(ii) of this section for employment in the Virgin Islands of the United States other than as an entertainer or as an athlete and for a period not exceeding 45 days, see section 3 of Pub. L. 97-271, set out as a note under section 1255 of this title.

LIMITATION ON ADMISSION OF SPECIAL IMMIGRANTS

Section 3201(c) of Pub. L. 96-70 provided that notwithstanding any other provision of law, not more than 15,000 individuals could be admitted to the United States as special immigrants under subparagraphs (E), (F), and (G) of subsec. (a)(27) of this section, of which not more than 5,000 could be admitted in any fiscal year, prior to repeal by Pub. L. 103-416, title II, Sec. 212(a), Oct. 25,

1994, 108 Stat. 4314.

-EXEC-

EX. ORD. NO. 12711. POLICY IMPLEMENTATION WITH RESPECT TO NATIONALS OF PEOPLE'S REPUBLIC OF CHINA

Ex. Ord. No. 12711, Apr. 11, 1990, 55 F.R. 13897, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, the Attorney General and the Secretary of State are hereby ordered to exercise their authority, including that under the Immigration and Nationality Act (8 U.S.C. 1101-1557), as follows:

Section 1. The Attorney General is directed to take any steps necessary to defer until January 1, 1994, the enforced departure of all nationals of the People's Republic of China (PRC) and their dependents who were in the United States on or after June 5, 1989, up to and including the date of this order (hereinafter "such PRC nationals").

Sec. 2. The Secretary of State and the Attorney General are directed to take all steps necessary with respect to such PRC nationals (a) to waive through January 1, 1994, the requirement of a valid passport and (b) to process and provide necessary documents, both within the United States and at U.S. consulates overseas, to facilitate travel across the borders of other nations and reentry into the United States in the same status such PRC nationals had upon departure.

Sec. 3. The Secretary of State and the Attorney General are directed to provide the following protections:

(a) irrevocable waiver of the 2-year home country residence requirement that may be exercised until January 1, 1994, for such

PRC nationals;

(b) maintenance of lawful status for purposes of adjustment of status or change of nonimmigrant status for such PRC nationals who were in lawful status at any time on or after June 5, 1989, up to and including the date of this order;

(c) authorization for employment of such PRC nationals through January 1, 1994; and

(d) notice of expiration of nonimmigrant status (if applicable) rather than the institution of deportation proceedings, and explanation of options available for such PRC nationals eligible for deferral of enforced departure whose nonimmigrant status has expired.

Sec. 4. The Secretary of State and the Attorney General are directed to provide for enhanced consideration under the immigration laws for individuals from any country who express a fear of persecution upon return to their country related to that country's policy of forced abortion or coerced sterilization, as implemented by the Attorney General's regulation effective January 29, 1990.

Sec. 5. The Attorney General is directed to ensure that the Immigration and Naturalization Service finalizes and makes public its position on the issue of training for individuals in F-1 visa status and on the issue of reinstatement into lawful nonimmigrant status of such PRC nationals who have withdrawn their applications for asylum.

Sec. 6. The Departments of Justice and State are directed to consider other steps to assist such PRC nationals in their efforts to utilize the protections that I have extended pursuant to this

order.

Sec. 7. This order shall be effective immediately.

George Bush.

DETERRING ILLEGAL IMMIGRATION

Memorandum of President of the United States, Feb. 7, 1995, 60 F.R. 7885, provided:

Memorandum for the Heads of Executive Departments and Agencies

It is a fundamental right and duty for a nation to protect the integrity of its borders and its laws. This Administration shall stand firm against illegal immigration and the continued abuse of our immigration laws. By closing the back door to illegal immigration, we will continue to open the front door to legal immigrants.

My Administration has moved swiftly to reverse the course of a decade of failed immigration policies. Our initiatives have included increasing overall Border personnel by over 50 percent since 1993. We also are strengthening worksite enforcement and work authorization verification to deter employment of illegal aliens. Asylum rules have been reformed to end abuse by those falsely claiming asylum, while offering protection to those in genuine fear of persecution. We are cracking down on smugglers of illegal aliens and reforming criminal alien deportation for quicker removal. And we are the first Administration to obtain funding to reimburse States for a share of the costs of incarcerating criminal illegal aliens.

While we already are doing more to stem the flow of illegal immigration than has any previous Administration, more remains to be done. In conjunction with the Administration's unprecedented

budget proposal to support immigration initiatives, this directive provides a blueprint of policies and priorities for this Administration's continuing work to curtail illegal immigration. With its focus on strong border deterrence backed up by effective worksite enforcement, removal of criminal and other deportable aliens and assistance to states, this program protects the security of our borders, our jobs and our communities for all Americans - citizens and legal immigrants alike.

COMPREHENSIVE BORDER CONTROL STRATEGY

A. Deterring Illegal Immigration At Our Borders

I have directed the Attorney General to move expeditiously toward full implementation of our comprehensive border control strategy, including efforts at the southwest border. To support sustained long-term strengthening of our deterrence capacity, the Administration shall seek funding to add new Border Patrol agents to reach the goal of at least 7,000 agents protecting our borders by the year 2000.

Flexible Border Response Capacity

To further this strategy, the Department of Justice shall implement the capacity to respond to emerging situations anywhere along our national borders to deter buildups of illegal border crossers, smuggling operations, or other developing problems.

Strategic Use of High Technology

Through the strategic use of sensors, night scopes, helicopters, light planes, all-terrain vehicles, fingerprinting and automated recordkeeping, we have freed many Border Patrol agents from long hours of bureaucratic tasks and increased the effectiveness of these highly-trained personnel. Because these tools are essential

for the Immigration and Naturalization Service (INS) to do its job, I direct the Attorney General to accelerate to the greatest extent possible their utilization and enhancement to support implementation of our deterrence strategy.

Strong Enforcement Against Repeat Illegal Crossers

The Department of Justice shall assess the effectiveness of efforts underway to deter repeat illegal crossers, such as fingerprinting and dedicating prosecution resources to enforce the new prosecution authority provided by the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322, see Tables for classification).

The Department of Justice shall determine whether accelerated expansion of these techniques to additional border sectors is warranted.

B. Deterring Alien Smuggling

This Administration has had success deterring large ship-based smuggling directly to United States shores. In response, smugglers are testing new routes and tactics. Our goal: similar success in choking off these attempts by adjusting our anti-smuggling initiatives to anticipate shifting smuggling patterns.

To meet new and continuing challenges posed along transport routes and in foreign locations by smuggling organizations, we will augment diplomatic and enforcement resources at overseas locations to work with host governments, and increase related intelligence gathering efforts.

The Departments of State and Justice, in cooperation with other relevant agencies, will report to the National Security Council within 30 days on the structure of interagency coordination to

achieve these objectives.

Congressional action will be important to provide U.S. law enforcement agencies with needed authority to deal with international smuggling operations. I will propose that the Congress pass legislation providing wiretap authority for investigation of alien smuggling cases and providing authorization to seize the assets of groups engaged in trafficking in human cargo.

In addition, I will propose legislation to give the Attorney General authority to implement procedures for expedited exclusion to deal with large flows of undocumented migrants, smuggling operations, and other extraordinary migration situations.

C. Visa Overstay Deterrence

Nearly half of this country's illegal immigrants come into the country legally and then stay after they are required by law to depart, often using fraudulent documentation. No Administration has ever made a serious effort to identify and deport these individuals. This Administration is committed to curtailing this form of illegal immigration.

Therefore, relevant departments and agencies are directed to review their policies and practices to identify necessary reforms to curtail visa overstayers and to enhance investigations and prosecution of those who fraudulently produce or misuse passports, visas, and other travel related documents. Recommendations for administrative initiatives and legislative reform shall be presented to the White House Interagency Working Group on Immigration by June 30, 1995.

REDUCING THE MAGNET OF WORK OPPORTUNITIES, WORKSITE ENFORCEMENT,

AND DETERRENCE

Border deterrence cannot succeed if the lure of jobs in the United States remains. Therefore, a second major component of the Administration's deterrence strategy is to toughen worksite enforcement and employer sanctions. Employers who hire illegal immigrants not only obtain unfair competitive advantage over law-abiding employers, their unlawful use of illegal immigrants suppresses wages and working conditions for our country's legal workers. Our strategy, which targets enforcement efforts at employers and industries that historically have relied upon employment of illegal immigrants, will not only strengthen deterrence of illegal immigration, but better protect American workers and businesses that do not hire illegal immigrants.

Central to this effort is an effective, nondiscriminatory means of verifying the employment authorization of all new employees. The Administration fully supports the recommendation of the Commission on Legal Immigration Reform to create pilot projects to test various techniques for improving workplace verification, including a computer database test to validate a new worker's social security number for work authorization purposes. The Immigration and Naturalization Service (INS) and Social Security Administration are directed to establish, implement, monitor, and review the pilots and provide me with an interim report on the progress of this program by March 1, 1996.

In addition, the INS is directed to finalize the Administration's reduction of the number of authorized documents to support work verification for noncitizens. Concurrently, the Administration will seek further reduction legislatively in the number of

documents that are acceptable for proving identity and work authorization. The Administration will improve the security of existing documents to be used for work authorization and seek increased penalties for immigration fraud, including fraudulent production and use of documents.

The Department of Labor shall intensify its investigations in industries with patterns of labor law violations that promote illegal immigration.

I also direct the Department of Labor, INS, and other relevant Federal agencies to expand their collaboration in cracking down on those who subvert fair competition by hiring illegal aliens. This may include increased Federal authority to confiscate assets that are the fruits of that unfair competition.

The White House Interagency Working Group on Immigration shall further examine the link between immigration and employment, including illegal immigration, and recommend to me other appropriate measures.

DETENTION AND REMOVAL OF DEPORTABLE ILLEGAL ALIENS

The Administration's deterrence strategy includes strengthening the country's detention and deportation capability. No longer will criminals and other high risk deportable aliens be released back into communities because of a shortage of detention space and ineffective deportation procedures.

A. Comprehensive Deportation Process Reform

The Department of Justice, in consultation with other relevant agencies, shall develop a streamlined, fair, and effective procedure to expedite removal of deportable aliens. As necessary, additional legislative authority will be sought in this area. In

addition, the Department of Justice shall increase its capacity to staff deportation and exclusion hearings to support these objectives.

B. National Detention and Removal Plan

To address the shortage of local detention space for illegal aliens, the Administration shall devise a National Detention, Transportation, and Removal Policy that will permit use of detention space across the United States and improve the ability to remove individuals with orders of deportation. The Department of Justice, in consultation with other agencies as appropriate and working under the auspices of the White House Interagency Working Group on Immigration, shall finalize this plan by April 30, 1995.

The Administration will seek support and funding from the Congress for this plan and for our efforts to double the removal of illegal aliens with final orders of deportation.

C. Identification and Removal of Criminal Aliens

The Institutional Hearing Program is successfully expediting deportation of incarcerated criminal aliens after they serve their sentences.

To further expedite removal of criminal aliens from this country and reduce costs to Federal and State governments, the Department of Justice is directed to develop an expanded program of verification of the immigration status of criminal aliens within our country's prisons. In developing this program, the viability of expanding the work of the Law Enforcement Support Center should be assessed and all necessary steps taken to increase coordination and cooperative efforts with State, and local law enforcement officers in identification of criminal aliens.

TARGETED DETERRENCE AREAS

Many of the Administration's illegal immigration enforcement initiatives are mutually reinforcing. For example, strong interior enforcement supports border control. While there have been efforts over the years at piecemeal cooperation, this Administration will examine, develop, and test a more comprehensive coordinated package of deterrence strategies in selected metropolitan areas by multiple Federal, State, and local agencies.

The White House Interagency Working Group on Immigration shall coordinate the development of this interagency and intergovernmental operation.

VERIFICATION OF ELIGIBILITY FOR BENEFITS

The law denies most government benefits to illegal aliens. The government has a duty to assure that taxpayer-supported public assistance programs are not abused. As with work authorization, enforcement of eligibility requirements relies upon a credible system of verification. The INS, working with the White House Interagency Working Group on Immigration as appropriate, shall review means of improving the existing benefits verification program. In addition, we will seek new mechanisms - including increased penalties for false information used to qualify for benefits - to protect the integrity of public programs.

ANTI-DISCRIMINATION

Our efforts to combat illegal immigration must not violate the privacy and civil rights of legal immigrants and U.S. citizens. Therefore, I direct the Attorney General, the Secretary of Health and Human Services, the Chair of the Equal Employment Opportunity Commission, and other relevant Administration officials to

vigorously protect our citizens and legal immigrants from immigration-related instances of discrimination and harassment. All illegal immigration enforcement measures shall be taken with due regard for the basic human rights of individuals and in accordance with our obligations under applicable international agreements.

ASSISTANCE TO STATES

States today face significant costs for services provided to illegal immigrants as a result of failed policies of the past. Deterring illegal immigration is the best long-term solution to protect States from growing costs for illegal immigration. This is the first Administration to address this primary responsibility squarely. We are targeting most of our Federal dollars to those initiatives that address the root causes that lead to increased burdens on States.

The Federal Government provides States with billions of dollars to provide for health care, education, and other services and benefits for immigrants. This Administration is proposing increases for immigration and immigration-related spending of 25 percent in 1996 compared to 1993 levels. In addition, this Administration is the first to obtain funding from the Congress to reimburse States for a share of the costs of incarcerated illegal aliens.

This Administration will continue to work with States to obtain more Federal help for certain State costs and will oppose inappropriate cost-shifting to the States.

INTERNATIONAL COOPERATION

This Administration will continue to emphasize international

cooperative efforts to address illegal immigration.

Pursuant to a Presidential Review Directive (PRD), the Department of State is now coordinating a study on United States policy toward international refugee and migration affairs. I hereby direct that, as part of that PRD process, this report to the National Security Council include the relationship of economic development and migration in the Western Hemisphere and, in particular, provide recommendations for further foreign economic policy measures to address causes of illegal immigration.

The Department of State shall coordinate an interagency effort to consider expanded arrangements with foreign governments for return of criminal and deportable aliens.

The Department of State also shall seek to negotiate readmission agreements for persons who could have sought asylum in the last country from which they arrived. Such agreements will take due regard of U.S. obligations under the Protocol Relating to the Status of Refugees.

The Department of State further shall implement cooperative efforts with other nations receiving smuggled aliens or those used as transhipment points by smugglers. In particular, we will look to countries in our hemisphere to join us by denying their territory as bases for smuggling operations.

The Department of State shall initiate negotiations with foreign countries to secure authority for the United States Coast Guard to board source country vessels suspected of transporting smuggled aliens.

This directive shall be published in the Federal Register.

William J. Clinton.

-CROSS-

DEFINITIONS

Section 1(c) of div. C of Pub. L. 104-208 provided that: "Except as otherwise specifically provided in this division (see Tables for classification), for purposes of titles I (enacting section 1225a of this title and section 758 of Title 18, Crimes and Criminal Procedure, amending this section and sections 1103, 1182, 1251, 1325, 1356, and 1357 of this title, and enacting provisions set out as notes under this section, sections 1103, 1182, 1221, 1325, and 1356 of this title, and section 758 of Title 18) and VI (enacting sections 1363b and 1372 to 1375 of this title and section 116 of Title 18, amending this section, sections 1105a, 1151, 1152, 1154, 1157, 1158, 1160, 1182, 1184, 1187, 1189, 1201, 1202, 1251, 1252a, 1255 to 1255b, 1258, 1288, 1483, 1323, 1324, 1324b, 1356, and 1522 of this title, section 112 of Title 32, National Guard, and section 191 of Title 50, War and National Defense, enacting provisions set out as notes under this section, sections 1153, 1158, 1161, 1182, 1187, 1189, 1202, 1255, 1433, and 1448 of this title, section 301 of Title 5, Government Organization and Employees, section 116 of Title 18, and section 405 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under sections 1159, 1182, 1252, 1255a, 1323, 1401, and 1430 of this title) of this division, the terms 'alien', 'Attorney General', 'border crossing identification card', 'entry', 'immigrant', 'immigrant visa', 'lawfully admitted for permanent residence', 'national', 'naturalization', 'refugee', 'State', and 'United States' shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))."

Section 594 of title V of div. C of Pub. L. 104-208 provided that: "Except as otherwise provided in this title (see Effective Date of 1996 Amendment note above), for purposes of this title -

"(1) the terms 'alien', 'Attorney General', 'national', 'naturalization', 'State', and 'United States' shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)); and

"(2) the term 'child' shall have the meaning given such term in section 101(c) of the Immigration and Nationality Act."

Section 14 of Pub. L. 85-316 provided that: "Except as otherwise specifically provided in this Act, the definitions contained in subsections (a) and (b) of section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a), (b)) shall apply to sections 4, 5, 6, 7, 8, 9, 12, 13, and 15 of this Act (enacting sections 1182b, 1182c, 1201a, 1205, 1251a, 1255a, and 1255b of this title and provisions set out as notes under section 1153 of this title and section 1971a of the Appendix to Title 50, War and National Defense.)"

Many of the terms listed in this section are similarly defined in section 782 of Title 50, War and National Defense.

CROSS REFERENCES

Definition of the terms -

Alien enemies, see section 21 of Title 50, War and National Defense.

Crew list visa, see section 1201 of this title.

Order of deportation, see section 1252 of this title.

Permits to enter, see section 1185 of this title.

Person, see sections 1185 and 1322 of this title.

Religious training and belief, see section 1448 of this title.

Transportation line and transportation company, see section 1228 of this title.

United States, see section 1185 of this title.

Immigration and Naturalization Service, see section 1551 et seq. of this title.

Peace Corps programs, nonimmigrant status of foreign participants, see section 2508 of Title 22, Foreign Relations and Intercourse.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1102, 1151, 1152, 1153, 1154, 1157, 1158, 1159, 1160, 1181, 1182, 1184, 1184a, 1186, 1187, 1201, 1202, 1227, 1229b, 1231, 1254a, 1255, 1255a, 1255b, 1257, 1258, 1281, 1282, 1288, 1303, 1356, 1365, 1372, 1433, 1641 of this title; title 2 section 441e; title 7 section 2015; title 10 section 2864; title 18 sections 32, 37, 178, 831, 1091, 1116, 1119, 1201, 1203, 2280, 2281, 2331, 2332a, 2332c, 2401, 3077, 3142, 3181; title 19 sections 58c, 3401; title 22 sections 1474, 2395, 2508, 3508, 5001; title 26 sections 871, 872, 1441, 3121, 3231, 3306, 7701; title 28 section 1605; title 29 sections 1506, 1802; title 42 sections 408, 410, 1436a; title 45 sections 231, 351; title 46 section 2101; title 49 section 46502; title 50 sections 424, 1801; title 50 App. sections 453, 456.

-CITE-

-EXPCITE-

TITLE 11 - BANKRUPTCY

CHAPTER 3 - CASE ADMINISTRATION

SUBCHAPTER III - ADMINISTRATION

-HEAD-

Sec. 346. Special tax provisions

-STATUTE-

(a) Except to the extent otherwise provided in this section, subsections (b), (c), (d), (e), (g), (h), (i), and (j) of this section apply notwithstanding any State or local law imposing a tax, but subject to the Internal Revenue Code of 1986.

(b)(1) In a case under chapter 7, 12, or 11 of this title concerning an individual, any income of the estate may be taxed under a State or local law imposing a tax on or measured by income only to the estate, and may not be taxed to such individual. Except as provided in section 728 of this title, if such individual is a partner in a partnership, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of income, gain, loss, deduction, or credit of such individual that is distributed, or considered distributed, from such partnership, after the commencement of the case is gain, loss, income, deduction, or credit, as the case may be, of the estate.

(2) Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such a case, and any

State or local tax on or measured by such income, shall be computed in the same manner as the income and the tax of an estate.

(3) The estate in such a case shall use the same accounting method as the debtor used immediately before the commencement of the case.

(c)(1) The commencement of a case under this title concerning a corporation or a partnership does not effect a change in the status of such corporation or partnership for the purposes of any State or local law imposing a tax on or measured by income. Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such case may be taxed only as though such case had not been commenced.

(2) In such a case, except as provided in section 728 of this title, the trustee shall make any tax return otherwise required by State or local law to be filed by or on behalf of such corporation or partnership in the same manner and form as such corporation or partnership, as the case may be, is required to make such return.

(d) In a case under chapter 13 of this title, any income of the estate or the debtor may be taxed under a State or local law imposing a tax on or measured by income only to the debtor, and may not be taxed to the estate.

(e) A claim allowed under section 502(f) or 503 of this title, other than a claim for a tax that is not otherwise deductible or a capital expenditure that is not otherwise deductible, is deductible by the entity to which income of the estate is taxed unless such claim was deducted by another entity, and a deduction for such a claim is deemed to be a deduction attributable to a business.

(f) The trustee shall withhold from any payment of claims for

wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld was paid.

(g)(1) Neither gain nor loss shall be recognized on a transfer -

(A) by operation of law, of property to the estate;

(B) other than a sale, of property from the estate to the debtor; or

(C) in a case under chapter 11 or 12 of this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan, except that gain or loss may be recognized to the same extent that such transfer results in the recognition of gain or loss under section 371 (FOOTNOTE 1) of the Internal Revenue Code of 1986.

(FOOTNOTE 1) See References in Text note below.

(2) The transferee of a transfer of a kind specified in this subsection shall take the property transferred with the same character, and with the transferor's basis, as adjusted under subsection (j)(5) of this section, and holding period.

(h) Notwithstanding sections 728(a) and 1146(a) of this title, for the purpose of determining the number of taxable periods during which the debtor or the estate may use a loss carryover or a loss carryback, the taxable period of the debtor during which the case is commenced is deemed not to have been terminated by such

commencement.

(i)(1) In a case under chapter 7, 12, or 11 of this title concerning an individual, the estate shall succeed to the debtor's tax attributes, including -

(A) any investment credit carryover;

(B) any recovery exclusion;

(C) any loss carryover;

(D) any foreign tax credit carryover;

(E) any capital loss carryover; and

(F) any claim of right.

(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) of this subsection but that was not utilized by the estate. The debtor may utilize such tax attributes as though any applicable time limitations on such utilization by the debtor were suspended during the time during which the case was pending.

(3) In such a case, the estate may carry back any loss of the estate to a taxable period of the debtor that ended before the order for relief under such chapter the same as the debtor could have carried back such loss had the debtor incurred such loss and the case under this title had not been commenced, but the debtor may not carry back any loss of the debtor from a taxable period that ends after such order to any taxable period of the debtor that ended before such order until after the case is closed.

(j)(1) Except as otherwise provided in this subsection, income is not realized by the estate, the debtor, or a successor to the debtor by reason of forgiveness or discharge of indebtedness in a case under this title.

(2) For the purposes of any State or local law imposing a tax on or measured by income, a deduction with respect to a liability may not be allowed for any taxable period during or after which such liability is forgiven or discharged under this title. In this paragraph, "a deduction with respect to a liability" includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

(3) Except as provided in paragraph (4) of this subsection, for the purpose of any State or local law imposing a tax on or measured by income, any net operating loss of an individual or corporate debtor, including a net operating loss carryover to such debtor, shall be reduced by the amount of indebtedness forgiven or discharged in a case under this title, except to the extent that such forgiveness or discharge resulted in a disallowance under paragraph (2) of this subsection.

(4) A reduction of a net operating loss or a net operating loss carryover under paragraph (3) of this subsection or of basis under paragraph (5) of this subsection is not required to the extent that the indebtedness of an individual or corporate debtor forgiven or discharged -

(A) consisted of items of a deductible nature that were not deducted by such debtor; or

(B) resulted in an expired net operating loss carryover or other deduction that -

(i) did not offset income for any taxable period; and

(ii) did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after

which such indebtedness was discharged.

(5) For the purposes of a State or local law imposing a tax on or measured by income, the basis of the debtor's property or of property transferred to an entity required to use the debtor's basis in whole or in part shall be reduced by the lesser of -

(A)(i) the amount by which the indebtedness of the debtor has been forgiven or discharged in a case under this title; minus

(ii) the total amount of adjustments made under paragraphs (2) and (3) of this subsection; and

(B) the amount by which the total basis of the debtor's assets that were property of the estate before such forgiveness or discharge exceeds the debtor's total liabilities that were liabilities both before and after such forgiveness or discharge.

(6) Notwithstanding paragraph (5) of this subsection, basis is not required to be reduced to the extent that the debtor elects to treat as taxable income, of the taxable period in which indebtedness is forgiven or discharged, the amount of indebtedness forgiven or discharged that otherwise would be applied in reduction of basis under paragraph (5) of this subsection.

(7) For the purposes of this subsection, indebtedness with respect to which an equity security, other than an interest of a limited partner in a limited partnership, is issued to the creditor to whom such indebtedness was owed, or that is forgiven as a contribution to capital by an equity security holder other than a limited partner in the debtor, is not forgiven or discharged in a case under this title -

(A) to any extent that such indebtedness did not consist of items of a deductible nature; or

(B) if the issuance of such equity security has the same consequences under a law imposing a tax on or measured by income to such creditor as a payment in cash to such creditor in an amount equal to the fair market value of such equity security, then to the lesser of -

(i) the extent that such issuance has the same such consequences; and

(ii) the extent of such fair market value.

-SOURCE-

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2565; Pub. L. 98-353, title III, Sec. 438, July 10, 1984, 98 Stat. 370; Pub. L. 99-554, title II, Sec. 257(g), 283(c), Oct. 27, 1986, 100 Stat. 3114, 3116; Pub. L. 103-394, title V, Sec. 501(d)(4), Oct. 22, 1994, 108 Stat. 4143.)

-MISC1-

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 346 of the House amendment, together with sections 728 and 1146, represent special tax provisions applicable in bankruptcy. The policy contained in those sections reflects the policy that should be applied in Federal, State, and local taxes in the view of the House Committee on the Judiciary. The House Ways and Means Committee and the Senate Finance Committee did not have time to process a bankruptcy tax bill during the 95th Congress. It is anticipated that early in the 96th Congress, and before the effective date of the bankruptcy code (Oct. 1, 1979), the tax committees of Congress will have an opportunity to consider action with respect to amendments to the Internal Revenue Code (title 26)

and the special tax provisions in title 11. Since the special tax provisions are likely to be amended during the first part of the 96th Congress, it is anticipated that the bench and bar will also study and comment on these special tax provisions prior to their revision.

Special tax provisions: State and local rules. This section provides special tax provisions dealing with the treatment, under State or local, but not Federal, tax law, of the method of taxing bankruptcy estates of individuals, partnerships, and corporations; survival and allocation of tax attributes between the bankrupt and the estate; return filing requirements; and the tax treatment of income from discharge of indebtedness. The Senate bill removed these rules pending adoption of Federal rules on these issues in the next Congress. The House amendment returns the State and local tax rules to section 346 so that they may be studied by the bankruptcy and tax bars who may wish to submit comments to Congress.

Withholding rules: Both the House bill and Senate amendment provide that the trustee is required to comply with the normal withholding rules applicable to the payment of wages and other payments. The House amendment retains this rule for State and local taxes only. The treatment of withholding of Federal taxes will be considered in the next Congress.

Section 726 of the Senate amendment provides that the rule requiring pro rata payment of all expenses within a priority category does not apply to the payment of amounts withheld by a bankruptcy trustee. The purpose of this rule was to insure that the trustee pay the full amount of the withheld taxes to the

appropriate governmental tax authority. The House amendment deletes this rule as unnecessary because the existing practice conforms essentially to that rule. If the trustee fails to pay over in full amounts that he withheld, it is a violation of his trustee's duties which would permit the taxing authority to sue the trustee on his bond.

When taxes considered "incurred": The Senate amendment contained rules of general application dealing with when a tax is "incurred" for purposes of the various tax collection rules affecting the debtor and the estate. The House amendment adopts the substance of these rules and transfers them to section 507 of title 11.

Penalty for failure to pay tax: The Senate amendment contains a rule which relieves the debtor and the trustee from certain tax penalties for failure to make timely payment of a tax to the extent that the bankruptcy rules prevent the trustee or the debtor from paying the tax on time. Since most of these penalties relate to Federal taxes, the House amendment deletes these rules pending consideration of Federal tax rules affecting bankruptcy in the next Congress.

SENATE REPORT NO. 95-989

Subsection (a) indicates that subsections (b), (c), (d), (e), (g), (h), (i), and (j) apply notwithstanding any State or local tax law, but are subject to Federal tax law.

Subsection (b)(1) provides that in a case concerning an individual under chapter 7 or 11 of title 11, income of the estate is taxable only to the estate and not to the debtor. The second sentence of the paragraph provides that if such individual is a

partner, the tax attributes of the partnership are distributable to the partner's estate rather than to the partner, except to the extent that section 728 of title 11 provides otherwise.

Subsection (b)(2) states a general rule that the estate of an individual is to be taxed as an estate. The paragraph is made subject to the remainder of section 346 and section 728 of title 11.

Subsection (b)(3) requires the accounting method, but not necessarily the accounting period, of the estate to be the same as the method used by the individual debtor.

Subsection (c)(1) states a general rule that the estate of a partnership or a corporated debtor is not a separate entity for tax purposes. The income of the debtor is to be taxed as if the case were not commenced, except as provided in the remainder of section 346 and section 728.

Subsection (c)(2) requires the trustee, except as provided in section 728 of title 11, to file all tax returns on behalf of the partnership or corporation during the case.

Subsection (d) indicates that the estate in a chapter 13 case is not a separate taxable entity and that all income of the estate is to be taxed to the debtor.

Subsection (e) establishes a business deduction consisting of allowed expenses of administration except for tax or capital expenses that are not otherwise deductible. The deduction may be used by the estate when it is a separate taxable entity or by the entity to which the income of the estate is taxed when it is not.

Subsection (f) imposes a duty on the trustee to comply with any Federal, State, or local tax law requiring withholding or

collection of taxes from any payment of wages, salaries, commissions, dividends, interest, or other payments. Any amount withheld is to be paid to the taxing authority at the same time and with the same priority as the claim from which such amount withheld was paid.

Subsection (g)(1)(A) indicates that neither gain nor loss is recognized on the transfer by law of property from the debtor or a creditor to the estate. Subparagraph (B) provides a similar policy if the property of the estate is returned from the estate to the debtor other than by a sale of property to debtor. Subparagraph (C) also provides for nonrecognition of gain or loss in a case under chapter 11 if a corporate debtor transfers property to a successor corporation or to an affiliate under a joint plan. An exception is made to enable a taxing authority to cause recognition of gain or loss to the extent provided in IRC (title 26) section 371 (as amended by section 109 of this bill).

Subsection (g)(2) provides that any of the three kinds of transferees specified in paragraph (1) take the property with the same character, holding period, and basis in the hands of the transferor at the time of such transfer. The transferor's basis may be adjusted under section 346(j)(5) even if the discharge of indebtedness occurs after the transfer of property. Of course, no adjustment will occur if the transfer is from the debtor to the estate or if the transfer is from an entity that is not discharged.

Subsection (h) provides that the creation of the estate of an individual under chapter 7 or 11 of title 11 as a separate taxable entity does not affect the number of taxable years for purposes of computing loss carryovers or carrybacks. The section applies with

respect to carryovers or carrybacks of the debtor transferred into the estate under section 346(i)(1) of title 11 or back to the debtor under section 346(i)(2) of title 11.

Subsection (i)(1) states a general rule that an estate that is a separate taxable entity nevertheless succeeds to all tax attributes of the debtor. The six enumerated attributes are illustrative and not exhaustive.

Subsection (i)(2) indicates that attributes passing from the debtor into an estate that is a separate taxable entity will return to the debtor if unused by the estate. The debtor is permitted to use any such attribute as though the case had not been commenced.

Subsection (i)(3) permits an estate that is a separate taxable entity to carryback losses of the estate to a taxable period of the debtor that ended before the case was filed. The estate is treated as if it were the debtor with respect to time limitations and other restrictions. The section makes clear that the debtor may not carryback any loss of his own from a tax year during the pendency of the case to such a period until the case is closed. No tolling of any period of limitation is provided with respect to carrybacks by the debtor of post-petition losses.

Subsection (j) sets forth seven special rules treating with the tax effects of forgiveness or discharge of indebtedness. The terms "forgiveness" and "discharge" are redundant, but are used to clarify that "discharge" in the context of a special tax provision in title 11 includes forgiveness of indebtedness whether or not such indebtedness is "discharged" in the bankruptcy sense.

Paragraph (1) states the general rule that forgiveness of indebtedness is not taxable except as otherwise provided in

paragraphs (2)-(7). The paragraph is patterned after sections 268, 395, and 520 of the Bankruptcy Act (sections 668, 795, and 920 of former title 11).

Paragraph (2) disallows deductions for liabilities of a deductible nature in any year during or after the year of cancellation of such liabilities. For the purposes of this paragraph, "a deduction with respect to a liability" includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

Paragraph (3) causes any net operating loss of a debtor that is an individual or corporation to be reduced by any discharge of indebtedness except as provided in paragraphs (2) or (4). If a deduction is disallowed under paragraph (2), then no double counting occurs. Thus, paragraph (3) will reflect the reduction of losses by liabilities that have been forgiven, including deductible liabilities or nondeductible liabilities such as repayment of principal on borrowed funds.

Paragraph (4) specifically excludes two kinds of indebtedness from reduction of net operating losses under paragraph (3) or from reduction of basis under paragraph (5). Subparagraph (A) excludes items of a deductible nature that were not deducted or that could not be deducted such as gambling losses or liabilities for interest owed to a relative of the debtor. Subparagraph (B) excludes indebtedness of a debtor that is an individual or corporation that resulted in deductions which did not offset income and that did not contribute to an unexpired net operating loss or loss carryover. In these situations, the debtor has derived no tax benefit so there

is no need to incur an offsetting reduction.

Paragraph (5) provides a two-point test for reduction of basis. The paragraph replaces sections 270, 396, and 522 of the Bankruptcy Act (sections 670, 796, and 922 of former title 11). Subparagraph (A) sets out the maximum amount by which basis may be reduced - the total indebtedness forgiven less adjustments made under paragraphs (2) and (3). This avoids double counting. If a deduction is disallowed under paragraph (2) or a carryover is reduced under paragraph (3) then the tax benefit is neutralized, and there is no need to reduce basis. Subparagraph (B) reduces basis to the extent the debtor's total basis of assets before the discharge exceeds total preexisting liabilities still remaining after discharge of indebtedness. This is a "basis solvency" limitation which differs from the usual test of solvency because it measures against the remaining liabilities the benefit aspect of assets, their basis, rather than their value. Paragraph (5) applies so that any transferee of the debtor's property who is required to use the debtor's basis takes the debtor's basis reduced by the lesser of (A) and (B). Thus, basis will be reduced, but never below a level equal to undischarged liabilities.

Paragraph (6) specifies that basis need not be reduced under paragraph (5) to the extent the debtor treats discharged indebtedness as taxable income. This permits the debtor to elect whether to recognize income, which may be advantageous if the debtor anticipates subsequent net operating losses, rather than to reduce basis.

Paragraph (7) establishes two rules excluding from the category of discharged indebtedness certain indebtedness that is exchanged

for an equity security issued under a plan or that is forgiven as a contribution to capital by an equity security holder. Subparagraph (A) creates the first exclusion to the extent indebtedness consisting of items not of a deductible nature is exchanged for an equity security, other than the interests of a limited partner in a limited partnership, issued by the debtor or is forgiven as a contribution to capital by an equity security holder. Subparagraph (B) excludes indebtedness consisting of items of a deductible nature, if the exchange of stock for debts has the same effect as a cash payment equal to the value of the equity security, in the amount of the fair market value of the equity security or, if less, the extent to which such exchange has such effect. The two provisions treat the debtor as if it had originally issued stock instead of debt. Subparagraph (B) rectifies the inequity under current law between a cash basis and accrual basis debtor concerning the issuance of stock in exchange for previous services rendered that were of a greater value than the stock. Subparagraph (B) also changes current law by taxing forgiveness of indebtedness to the extent that stock is exchanged for the accrued interest component of a security, because the recipient of such stock would not be regarded as having received money under the Carman doctrine.

-REFTEXT-

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

Section 371 of the Internal Revenue Code of 1986, referred to in subsec. (g)(1)(C), was repealed by Pub. L. 101-508, title XI, Sec. 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388-521.

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-394, Sec. 504(d)(4)(A), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)".

Subsec. (g)(1)(C). Pub. L. 103-394, Sec. 501(d)(4)(B), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954 (26 U.S.C. 371)".

1986 - Subsec. (b)(1). Pub. L. 99-554, Sec. 257(g)(1), inserted reference to chapter 12.

Subsec. (g)(1)(C). Pub. L. 99-554, Sec. 257(g)(2), inserted reference to chapter 12.

Subsec. (i)(1). Pub. L. 99-554, Sec. 257(g)(3), inserted reference to chapter 12.

Subsec. (j)(7). Pub. L. 99-554, Sec. 283(c), substituted "owed" for "owned".

1984 - Subsec. (c)(2). Pub. L. 98-353 substituted "corporation" for "operation".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 257 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary

and Judicial Procedure.

Amendment by section 283 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 1146, 1231 of this title.

-CITE-

29 USC Sec. 1813 01/26/98

-EXPCITE-

CHAPTER 11 - REORGANIZATION

SUBCHAPTER I - OFFICERS AND ADMINISTRATION

-HEAD-

Sec. 1104. Appointment of trustee or examiner

-STATUTE-

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee -

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

(b) Except as provided in section 1163 of this title, on the request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.

(c) If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor, if

-

(1) such appointment is in the interests of creditors, any equity security holders, and other interests of the estate; or

(2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed $5,000,000.

(d) If the court orders the appointment of a trustee or an examiner, if a trustee or an examiner dies or resigns during the case or is removed under section 324 of this title, or if a trustee fails to qualify under section 322 of this title, then the United States trustee, after consultation with parties in interest, shall appoint, subject to the court's approval, one disinterested person other than the United States trustee to serve as trustee or examiner, as the case may be, in the case.

-SOURCE-

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2627; Pub. L. 99-554, title II, Sec. 222, Oct. 27, 1986, 100 Stat. 3102; Pub. L. 103-394, title II, Sec. 211(a), title V, Sec. 501(d)(30), Oct. 22, 1994, 108 Stat. 4125, 4146.)

-MISC1-

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1104 of the House amendment represents a compromise between the House bill and the Senate amendment concerning the appointment of a trustee or examiner. The method of appointment rather than election, is derived from the House bill; the two alternative standards of appointment are derived with modifications from the Senate amendment, instead of the standard stated in the House bill. For example, if the current management of the debtor

gambled away rental income before the filing of the petition, a trustee should be appointed after the petition, whether or not postpetition mismanagement can be shown. However, under no circumstances will cause include the number of security holders of the debtor or the amount of assets or liabilities of the debtor. The standard also applies to the appointment of an examiner in those circumstances in which mandatory appointment, as previously detailed, is not required.

SENATE REPORT NO. 95-989

Subsection (a) provides for the mandatory appointment of a disinterested trustee in the case of a public company, as defined in section 1101(3), within 10 days of the order for relief, or of a successor, in the event of a vacancy, as soon as practicable.

Section 156 of chapter X ((former) 11 U.S.C. 516 (556)) requires the appointment of a disinterested trustee if the debtor's liabilities are $250,000 or over. Section 1104(a) marks a substantial change. The appointment of a trustee is mandatory only for a public company, which under section 1101(3), has $5 million in liabilities, excluding tax and trade obligations, and 1,000 security holders. In view of past experience, cases involving public companies will under normal circumstances probably be relatively few in number but of vast importance in terms of public investor interest.

In case of a nonpublic company, the appointment or election of a trustee is discretionary if the interests of the estate and its security holders would be served thereby. A test based on probable costs and benefits of a trusteeship is not practical. The appointment may be made at any time prior to confirmation of the

plan.

In case of a nonpublic company, if no trustee is appointed, the court may under subsection (c) appoint an examiner, if the appointment would serve the interests of the estate and security holders. The purpose of his appointment is specified in section 1106(b).

HOUSE REPORT NO. 95-595

Subsection (a) of this section governs the appointment of trustees in reorganization cases. The court is permitted to order the appointment of one trustee at any time after the commencement of the case if a party in interest so requests. The court may order appointment only if the protection afforded by a trustee is needed and the costs and expenses of a trustee would not be disproportionately higher than the value of the protection afforded.

The protection afforded by a trustee would be needed, for example, in cases where the current management of the debtor has been fraudulent or dishonest, or has grossly mismanaged the company, or where the debtor's management has abandoned the business. A trustee would not necessarily be needed to investigate misconduct of former management of the debtor, because an examiner appointed under this section might well be able to serve that function adequately without displacing the current management. Generally, a trustee would not be needed in any case where the protection afforded by a trustee could equally be afforded by an examiner. Though the device of examiner appears in current chapter X (chapter 10 of former title 11), it is rarely used because of the nearly absolute presumption in favor of the appointment of a

trustee. Its use here will give the courts, debtors, creditors, and equity security holders greater flexibility in handling the affairs of an insolvent debtor, permitting the court to tailor the remedy to the case.

The second test, relating to the costs and expenses of a trustee, is not intended to be a strict cost/benefit analysis. It is included to require the court to have due regard for any additional costs or expenses that the appointment of a trustee would impose on the estate.

Subsection (b) permits the court, at any time after the commencement of the case and on request of a party in interest, to order the appointment of an examiner, if the court has not ordered the appointment of a trustee. The examiner would be appointed to conduct such an investigation of the debtor as is appropriate under the particular circumstances of the case, including an investigation of any allegations of fraud, dishonesty, or gross mismanagement of the debtor of or by current or former management of the debtor. The standards for the appointment of an examiner are the same as those for the appointment of a trustee: the protection must be needed, and the costs and expenses must not be disproportionately high.

By virtue of proposed 11 U.S.C. 1109, an indenture trustee and the Securities and Exchange Commission will be parties in interest for the purpose of requesting the appointment of a trustee or examiner.

Subsection (c) directs that the United States trustee actually select and appoint the trustee or examiner ordered appointed under this section. The United States trustee is required to consult

with various parties in interest before selecting and appointing a trustee. He is not bound to select one of the members of the panel of private trustees established under proposed 28 U.S.C. 586(a)(1) which exists only for the purpose of providing trustees for chapter 7 cases. Neither is he precluded from selecting a panel member if the member is qualified to serve as chapter 11 trustee. Appointment by the United States trustee will remove the court from the often criticized practice of appointing an officer that will appear in litigation before the court against an adverse party.

AMENDMENTS

1994 - Subsec. (b). Pub. L. 103-394, Sec. 211(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 103-394, Sec. 211(a)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103-394, Sec. 211(a)(1), 501(d)(30), redesignated subsec. (c) as (d) and inserted comma after "interest".

1986 - Subsecs. (a), (b). Pub. L. 99-554, Sec. 222(1), (2), inserted "or the United States trustee" after "party in interest".

Subsec. (c). Pub. L. 99-554, Sec. 222(3), substituted "the United States trustee, after consultation with parties in interest shall appoint, subject to the court's approval, one disinterested person other than the United States trustee to serve" for "the court shall appoint one disinterested person to serve".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before

Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 322, 546, 557, 1103, 1106, 1161 of this title.

-CITE-

11 USC Sec. 346 01/26/98

-EXPCITE-

TITLE 12 - BANKS AND BANKING

CHAPTER 16 - FEDERAL DEPOSIT INSURANCE CORPORATION

-HEAD-

Sec. 1829a. Participation by State nonmember insured banks in lotteries and related activities

-STATUTE-

(a) Prohibited activities

A State nonmember insured bank may not -

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery; or

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) Use of banking premises prohibited

A State nonmember insured bank may not permit -

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

(c) Definitions

As used in this section -

(1) The term ''deal in'' includes making, taking, buying, selling, redeeming, or collecting.

(2) The term ''lottery'' includes any arrangement whereby three or more persons (the ''participants'') advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the ''winners'') will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes -

(A) a random selection;

(B) a ***game***, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its

bearing upon the possibility that he may become a winner.

(3) The term ''lottery ticket'' includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility), of becoming a winner in a lottery.

(d) Lawful banking services connected with operation of lottery

Nothing contained in this section prohibits a State nonmember insured bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

(e) Regulations; enforcement

The Board of Directors shall prescribe such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

-SOURCE-

(Sept. 21, 1950, ch. 967, Sec. 2(20), as added Pub. L. 90-203, Sec. 3, Dec. 15, 1967, 81 Stat. 610; amended Pub. L. 103-325, title VI, Sec. 602(a)(51), Sept. 23, 1994, 108 Stat. 2290.)

-MISC1-

AMENDMENTS

1994 - Subsec. (a)(3). Pub. L. 103-325 inserted ''or'' at end.

EFFECTIVE DATE

Section effective Apr. 1, 1968, see section 6 of Pub. L. 90-203, set out as a note under section 25a of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1306.

-EXPCITE-

CHAPTER 3 - FEDERAL RESERVE SYSTEM

SUBCHAPTER VIII - STATE BANKS AS MEMBERS OF SYSTEM

-HEAD-

Sec. 339. Participation by State member banks in lotteries and related activities

-STATUTE-

(a) Prohibited activities

A State member bank may not -

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) Use of banking premises prohibited

A State member bank may not permit -

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to

the bank under subsection (a) of this section.

(c) Definitions

As used in this section -

(1) The term ''deal in'' includes making, taking, buying, selling, redeeming, or collecting.

(2) The term ''lottery'' includes any arrangement whereby three or more persons (the ''participants'') advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the ''winners'') will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes -

(A) a random selection;

(B) a ***game***, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term ''lottery ticket'' includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

(d) Lawful banking services connected with operation of lottery

Nothing contained in this section prohibits a State member bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

(e) Regulations; enforcement

The Board of Governors of the Federal Reserve System shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

-SOURCE-

(Dec. 13, 1913, ch. 6, Sec. 9A, as added Pub. L. 90-203, Sec. 2, Dec. 15, 1967, 81 Stat. 609.)

-COD-

CODIFICATION

Section was enacted as section 9A of act Dec. 13, 1913, and not as part of section 9 of such act which comprises this subchapter.

-MISC3-

EFFECTIVE DATE

Section effective Apr. 1, 1968, see section 6 of Pub. L. 90-203, set out as a note under section 25a of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1306.

-EXPCITE-

CHAPTER 2 - NATIONAL BANKS

SUBCHAPTER I - ORGANIZATION AND GENERAL PROVISIONS

-HEAD-

Sec. 25a. Participation by national banks in lotteries and activities

-STATUTE-

(a) Prohibited activities

A national bank may not -

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) Use of banking premises prohibited

A national bank may not permit -

(1) the use of any part of any of its banking offices by any persons for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

(c) Definitions

As used in this section -

(1) The term ''deal in'' includes making, taking, buying, selling, redeeming, or collecting.

(2) The term ''lottery'' includes any arrangement whereby three or more persons (the ''participants'') advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the ''winners'') will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by

any means which includes -

(A) a random selection;

(B) a ***game***, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term ''lottery ticket'' includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

(d) Lawful banking services connected with operation of lotteries

Nothing contained in this section prohibits a national bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

(e) Regulations; enforcement

The Comptroller of the Currency shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

-SOURCE-

(R.S. Sec. 5136A, as added Pub. L. 90-203, Sec. 1(a), Dec. 15, 1967, 81 Stat. 608.)

-MISC1-

EFFECTIVE DATE

Section 6 of Pub. L. 90-203 provided that: ''The amendments made by this Act (adding this section, sections 339, 1730c, and 1829a of

this title, and section 1306 of Title 18, Crimes and Criminal Procedure) shall take effect on April 1, 1968.''

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1306.

-EXPCITE-

TITLE 15 - COMMERCE AND TRADE

CHAPTER 24 - TRANSPORTATION OF GAMBLING DEVICES

-HEAD-

Sec. 1171. Definitions

-STATUTE-

As used in this chapter -

(a) The term "gambling device" means -

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the

application of an element of chance, any money or property, or

(B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "possession of the United States" means any possession of the United States which is not named in subsection (b) of this section.

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States.

(f) The term "boundaries" has the same meaning given that term in section 1301 of title 43.

-SOURCE-

(Jan. 2, 1951, ch. 1194, Sec. 1, 64 Stat. 1134; Oct. 18, 1962, Pub. L. 87-840, Sec. 2, 3, 76 Stat. 1075; Mar. 9, 1992, Pub. L. 102-251, title II, Sec. 202(c), 106 Stat. 62.)

-MISC1-

AMENDMENTS

1992 - Subsec. (f). Pub. L. 102-251 added subsec. (f).

1962 - Subsec. (a)(2), (3). Pub. L. 87-840, Sec. 2, substituted provisions including machines and mechanical devices designed and manufactured primarily for gambling by the operation of which a person may become entitled to receive, as the result of chance, any money or property, for provisions which included machines or mechanical devices designed and manufactured to operate by inserting a coin, token, or similar object, in par. (2), and inserted ", but which is not attached to any such machine or mechanical device as a constituent part", in par. (3).

Subsec. (b). Pub. L. 87-840, Sec. 3, substituted "the District of Columbia" for "Alaska, Hawaii".

Subsecs. (d) and (e). Pub. L. 87-840, Sec. 3, added subsecs. (d) and (e).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 7 of Pub. L. 87-840 provided that: "The amendments made by this Act (enacting section 1178 of this title and amending this section and sections 1172 and 1173 of this title) shall take effect on the sixtieth day after the date of its enactment (Oct. 18, 1962)."

SHORT TITLE OF 1962 AMENDMENT

Section 1 of Pub. L. 87-840 provided: "That this Act (enacting section 1178 of this title and amending this section and sections 1172 and 1173 of this title) may be cited as the 'Gambling Devices Act of 1962'."

SHORT TITLE

Act Jan. 2, 1951, which enacted this chapter, is popularly known as the "Gambling Devices Transportation Act".

SEPARABILITY

Section 8 of act Jan. 2, 1951, provided that: "If any provision of this Act (this chapter) or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act (this chapter) which can be given effect without the invalid provision or application, and to this end the provisions of this Act (this chapter) are declared to be severable."

-CROSS-

CROSS REFERENCES

Numbering of gambling devices, see section 1173 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1173 of this title.

-CITE-

18 USC Sec. 1961 01/26/98

-EXPCITE-

Sec. 1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission

-STATUTE-

(a) General rule

It shall be unlawful knowingly to transport any gambling device to any place in a State or a possession of the United States from any place outside of such State or possession: Provided, That this section shall not apply to transportation of any gambling device to

a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: Provided, further, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

(b) Authority of Federal Trade Commission

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretation of the authority, of the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et. seq.).

(c) Exception

This section does not prohibit the transport of a gambling device to a place in a State or a possession of the United States on a vessel on a voyage, if -

(1) use of the gambling device on a portion of that voyage is, by reason of subsection (b) of section 1175 of this title, not a violation of that section; and

(2) the gambling device remains on board that vessel while in that State.

-SOURCE-

(Jan. 2, 1951, ch. 1194, Sec. 2, 64 Stat. 1134; Oct. 18, 1962, Pub.

L. 87-840, Sec. 4, 76 Stat. 1075; Mar. 9, 1992, Pub. L. 102-251, title II, Sec. 202(a), 106 Stat. 61.)

-REFTEXT-

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (Sec. 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

-MISC2-

AMENDMENTS

1992 - Pub. L. 102-251, Sec. 202(a)(1), (3), (4), designated existing provisions as subsecs. (a) and (b), inserted headings, and added subsec. (c).

Pub. L. 102-251, Sec. 202(a)(2), which directed that ", District of Columbia," be struck out in subsec. (a), was executed by striking out ", the District of Columbia," after "place in a State" and "outside of such State" to reflect the probable intent of Congress.

1962 - Pub. L. 87-840 excepted gambling devices used or designed for use at and transported to licensed gambling establishments where betting is legal under State laws, and provided that it shall not be unlawful to transport such devices into any State in which the device is specifically enumerated as lawful in a State statute.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

-CROSS-

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1176 of this title.

-CITE-

15 USC Sec. 1171 01/26/98

-EXPCITE-

Sec. 1173. Registration of manufacturers and dealers

-STATUTE-

(a) Activities requiring registration; contents of registration statement

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any

gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30, of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

(b) Numbering of devices

(1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of section 1171 of this title shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(c) Records; required information

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of -

(A) each gambling device manufactured, purchased, or otherwise acquired by him,

(B) each gambling device owned or possessed by him or in his custody, and

(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show -

(A) in the case of each such gambling device defined in

paragraph (a)(1) or (a)(2) of section 1171 of this title, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a)(3) of section 1171 of this title, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

(d) Retention of records

Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

(e) Dealing in, owning, possessing, or having custody of devices not marked or numbered; false entries in records

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this

section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

(f) Authority of Federal Bureau of Investigation

Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

-SOURCE-

(Jan. 2, 1951, ch. 1194, Sec. 3, 64 Stat. 1135; Oct. 18, 1962, Pub. L. 87-840, Sec. 5, 76 Stat. 1075.)

-REFTEXT-

REFERENCES IN TEXT

The effective date of the Gambling Devices Act of 1962, referred to in subsec. (a)(2), (3), is the effective date of Pub. L. 87-840, which is the sixtieth day after Oct. 18, 1962. See Effective Date

of 1962 Amendment note set out under section 1171 of this title.

-MISC2-

AMENDMENTS

1962 - Pub. L. 87-840 amended section generally. Prior to amendment, section read as follows: "Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries. For the purposes of this chapter, every manufacturer or dealer shall mark and number each gambling device, so that it is individually identifiable. In cases of sale, delivery, or shipment of gambling devices in unassembled form, the manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and

numbered for identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

-CROSS-

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1176 of this title.

-CITE-

15 USC Sec. 1172 01/26/98

-EXPCITE-

Sec. 1174. Labeling and marking of shipping packages

-STATUTE-

All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the

consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package.

-SOURCE-

(Jan. 2, 1951, ch. 1194, Sec. 4, 64 Stat. 1135.)

-CROSS-

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1176 of this title.

-CITE-

18 USC Sec. 1084 01/26/98

-EXPCITE-

Sec. 1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited; exceptions

-STATUTE-

(a) General rule

It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18, including on a vessel documented under chapter 121 of title 46 or documented under the

laws of a foreign country.

(b) Exception

(1) In general

Except as provided in paragraph (2), this section does not prohibit -

(A) the repair, transport, possession, or use of a gambling device on a vessel that is not within the boundaries of any State or possession of the United States;

(B) the transport or possession, on a voyage, of a gambling device on a vessel that is within the boundaries of any State or possession of the United States, if -

(i) use of the gambling device on a portion of that voyage is, by reason of subparagraph (A), not a violation of this section; and

(ii) the gambling device remains on board that vessel while the vessel is within the boundaries of that State or possession; or

(C) the repair, transport, possession, or use of a gambling device on a vessel on a voyage that begins in the State of Indiana and that does not leave the territorial jurisdiction of that State, including such a voyage on Lake Michigan.

(2) Application to certain voyages

(A) General rule

Paragraph (1)(A) does not apply to the repair or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) of this paragraph if the State or possession of the United States in which the voyage or segment begins and ends has enacted a statute the terms of

which prohibit that repair or use on that voyage or segment.

(B) Voyage and segment described

A voyage or segment of a voyage referred to in subparagraph (A) is a voyage or segment, respectively -

(i) that begins and ends in the same State or possession of the United States, and

(ii) during which the vessel does not make an intervening stop within the boundaries of another State or possession of the United States or a foreign country.

(C) Exclusion of certain voyages and segments

Except for a voyage or segment of a voyage that occurs within the boundaries of the State of Hawaii, a voyage or segment of a voyage is not described in subparagraph (B) if it includes or consists of a segment -

(i) that begins and ends in the same State;

(ii) that is part of a voyage to another State or to a foreign country; and

(iii) in which the vessel reaches the other State or foreign country within 3 days after leaving the State in which it begins.

(c) Exception for Alaska

(1) With respect to a vessel operating in Alaska, this section does not prohibit, nor may the State of Alaska make it a violation of law for there to occur, the repair, transport, possession, or use of any gambling device on board a vessel which provides sleeping accommodations for all of its passengers and that is on a voyage or segment of a voyage described in paragraph (2), except that such State may, within its boundaries -

(A) prohibit the use of a gambling device on a vessel while it is docked or anchored or while it is operating within 3 nautical miles of a port at which it is scheduled to call; and

(B) require the gambling devices to remain on board the vessel.

(2) A voyage referred to in paragraph (1) is a voyage that -

(A) includes a stop in Canada or in a State other than the State of Alaska;

(B) includes stops in at least 2 different ports situated in the State of Alaska; and

(C) is of at least 60 hours duration.

-SOURCE-

(Jan. 2, 1951, ch. 1194, Sec. 5, 64 Stat. 1135; Mar. 9, 1992, Pub. L. 102-251, title II, Sec. 202(b), 106 Stat. 61; Oct. 9, 1996, Pub. L. 104-264, title XII, Sec. 1222, 110 Stat. 3286; Oct. 19, 1996, Pub. L. 104-324, title XI, Sec. 1106, 110 Stat. 3967.)

-MISC1-

AMENDMENTS

1996 - Subsec. (b)(1)(C). Pub. L. 104-324, Sec. 1106(b), added subpar. (C).

(b)(2)(C). Pub. L. 104-264, Sec. 1222, and Pub. L. 104-324, Sec. 1106(a), made substantially identical amendments, adding subpar. (C). The text of subpar. (C) is based on amendment by Pub. L. 104-324.

Subsec. (c). Pub. L. 104-324, Sec. 1106(c), added subsec. (c).

1992 - Subsec. (a). Pub. L. 102-251, Sec. 202(b)(1), (2), designated existing provisions as subsec. (a), inserted heading, and inserted before period at end ", including on a vessel documented under chapter 121 of title 46 or documented under the

laws of a foreign country".

Subsec. (b). Pub. L. 102-251, Sec. 202(b)(3), added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of Title 49, Transportation.

-CROSS-

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1172, 1176 of this title; title 25 section 2710.

-CITE-

15 USC Sec. 1173 01/26/98

-EXPCITE-

Sec. 1177. Confiscation of gambling devices and means of transportation; laws governing

-STATUTE-

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this chapter shall be seized and forfeited to the United States. All provisions

of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: Provided, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

-SOURCE-

(Jan. 2, 1951, ch. 1194, Sec. 7, 64 Stat. 1135.)

-TRANS-

TRANSFER OF FUNCTIONS

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were

already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

-CITE-

26 USC Sec. 4472 01/26/98

-EXPCITE-

Sec. 1178. Nonapplicability of chapter to certain machines and devices

-STATUTE-

None of the provisions of this chapter shall be construed to apply -

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting,

(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank,

and are designed and manufactured primarily for use at carnivals or county or State fairs.

-SOURCE-

(Jan. 2, 1951, ch. 1194, Sec. 9, as added Oct. 18, 1962, Pub. L. 87-840, Sec. 6, 76 Stat. 1077.)

-MISC1-

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as an Effective Date of 1962 Amendment note under section 1171 of this title.

-CITE-

15 USC Sec. 1174 01/26/98

-EXPCITE-

CHAPTER 57 - INTERSTATE HORSERACING

-HEAD-

Sec. 3001. Congressional findings and policy

-STATUTE-

(a) The Congress finds that -

(1) the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders;

(2) the Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests; and

(3) in the limited area of interstate off-track wagering on horseraces, there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.

(b) It is the policy of the Congress in this chapter to regulate interstate commerce with respect to wagering on horseracing, in order to further the horseracing and legal off-track betting industries in the United States.

-SOURCE-

(Pub. L. 95-515, Sec. 2, Oct. 25, 1978, 92 Stat. 1811.)

-MISC1-

EFFECTIVE DATE

Section 9 of Pub. L. 95-515 provided that:

"(a) The provisions of this Act (this chapter) shall take effect on the date of enactment of this Act (Oct. 25, 1978), and, except as provided in subsection (b) of this section, shall apply to any interstate off-track wager accepted on or after such date of enactment.

"(b)(1) The provisions of this Act (this chapter) shall not apply to any interstate off-track wager which is accepted pursuant to a contract existing on May 1, 1978.

"(2) The provisions of this Act shall not apply to any form of legal non-parimutuel off-track betting existing in a State on May 1, 1978.

"(3) The provisions of subsection (b) of section 5 of this Act (section 3004(b) of this title) shall not apply to any parimutuel off-track betting system existing on May 1, 1978, in a State which does not conduct parimutuel horseracing on the date of enactment of

this Act (Oct. 25, 1978)."

SHORT TITLE

Section 1 of Pub. L. 95-515 provided that: "This Act (enacting this chapter) may be cited as the 'Interstate Horseracing Act of 1978'."

-CITE-

15 USC Sec. 1178 01/26/98

-EXPCITE-

TITLE 15 - COMMERCE AND TRADE

CHAPTER 24 - TRANSPORTATION OF GAMBLING DEVICES

-HEAD-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 50 - GAMBLING

-HEAD-

Sec. 1081. Definitions

-STATUTE-

As used in this chapter:

The term ''gambling ship'' means a vessel used principally for the operation of one or more gambling establishments. Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a

covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1, 1994).

The term ''gambling establishment'' means any common ***gaming*** or gambling establishment operated for the purpose of ***gaming*** or gambling, including accepting, recording, or registering bets, or carrying on a policy ***game*** or any other lottery, or playing any ***game*** of chance, for money or other thing of value.

The term ''vessel'' includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

The term ''American vessel'' means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

The term ''wire communication facility'' means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

-SOURCE-

(Added May 24, 1949, ch. 139, Sec. 23, 63 Stat. 92; amended Sept.

13, 1961, Pub. L. 87-216, Sec. 1, 75 Stat. 491; Sept. 13, 1994, Pub. L. 103-322, title XXXII, Sec. 320501, 108 Stat. 2114.)

-REFTEXT-

REFERENCES IN TEXT

Section 4472 of the Internal Revenue Code of 1986, referred to in text, is classified to section 4472 of Title 26, Internal Revenue Code.

-MISC2-

AMENDMENTS

1994 - Pub. L. 103-322, in definition of ''gambling ship'', inserted at end ''Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1, 1994).''

1961 - Pub. L. 87-216 inserted definition of ''wire communication facility''.

-EXPCITE-

Sec. 1082. Gambling ships

-STATUTE-

(a) It shall be unlawful for any citizen or resident of the United States, or any other person who is on an American vessel or is otherwise under or within the jurisdiction of the United States, directly or indirectly -

(1) to set up, operate, or own or hold any interest in any

gambling ship or any gambling establishment on any gambling ship; or

(2) in pursuance of the operation of any gambling establishment on any gambling ship, to conduct or deal any gambling game, or to conduct or operate any gambling device, or to induce, entice, solicit, or permit any person to bet or play at any such establishment,

if such gambling ship is on the high seas, or is an American vessel or otherwise under or within the jurisdiction of the United States, and is not within the jurisdiction of any State.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined under this title or imprisoned not more than two years, or both.

(c) Whoever, being (1) the owner of an American vessel, or (2) the owner of any vessel under or within the jurisdiction of the United States, or (3) the owner of any vessel and being an American citizen, shall use, or knowingly permit the use of, such vessel in violation of any provision of this section shall, in addition to any other penalties provided by this chapter, forfeit such vessel, together with her tackle, apparel, and furniture, to the United States.

-SOURCE-

(Added May 24, 1949, ch. 139, Sec. 23, 63 Stat. 92; amended Sept. 13, 1994, Pub. L. 103-322, title XXXIII, Sec. 330016(1)(L), 108 Stat. 2147.)

-MISC1-

AMENDMENTS

1994 - Subsec. (b). Pub. L. 103-322 substituted "fined under

this title" for "fined not more than $10,000".

-CITE-

26 USC Sec. 527 01/26/98

-EXPCITE-

Sec. 1083. Transportation between shore and ship; penalties

-STATUTE-

(a) It shall be unlawful to operate or use, or to permit the operation or use of, a vessel for the carriage or transportation, or for any part of the carriage or transportation, either directly or indirectly, of any passengers, for hire or otherwise, between a point or place within the United States and a gambling ship which is not within the jurisdiction of any State. This section does not apply to any carriage or transportation to or from a vessel in case of emergency involving the safety or protection of life or property.

(b) The Secretary of the Treasury shall prescribe necessary and reasonable rules and regulations to enforce this section and to prevent violations of its provisions.

For the operation or use of any vessel in violation of this section or of any rule or regulation issued hereunder, the owner or charterer of such vessel shall be subject to a civil penalty of $200 for each passenger carried or transported in violation of such provisions, and the master or other person in charge of such vessel shall be subject to a civil penalty of $300. Such penalty shall constitute a lien on such vessel, and proceedings to enforce such

lien may be brought summarily by way of libel in any court of the United States having jurisdiction thereof. The Secretary of the Treasury may mitigate or remit any of the penalties provided by this section on such terms as he deems proper.

-SOURCE-

(Added May 24, 1949, ch. 139, Sec. 23, 63 Stat. 92.)

-CROSS-

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Forfeitures and seizures -

Jurisdiction, see sections 1333, 1355, and 1356 of Title 28, Judiciary and Judicial Procedure.

Proceedings, see section 2461 of Title 28.

-CITE-

18 USC Sec. 1952 01/26/98

-EXPCITE-

Sec. 1084. Transmission of wagering information; penalties

-STATUTE-

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common

carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

-SOURCE-

(Added Pub. L. 87-216, Sec. 2, Sept. 13, 1961, 75 Stat. 491; amended Pub. L. 100-690, title VII, Sec. 7024, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 101-647, title XII, Sec. 1205(g), Nov. 29, 1990, 104 Stat. 4831; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

-MISC1-

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-322 substituted "fined under this title" for "fined not more than $10,000".

1990 - Subsec. (e). Pub. L. 101-647 inserted "commonwealth," before "territory or possession of the United States".

1988 - Subsec. (b). Pub. L. 100-690, Sec. 7024(a), inserted "or foreign country" after "State" in two places.

Subsec. (c). Pub. L. 100-690, Sec. 7024(b)(2), struck out ", Commonwealth of Puerto Rico, territory, possession, or the District of Columbia" after "State".

Subsec. (e). Pub. L. 100-690, Sec. 7024(b)(1), added subsec. (e).

-CROSS-

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title; title 8 section 1101.

-CITE-

18 USC Sec. 1083 01/26/98

-EXPCITE-

CHAPTER 53 - INDIANS

-HEAD-

Sec. 1166. Gambling in Indian country

-STATUTE-

(a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.

(b) Whoever in Indian country is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(c) For the purpose of this section, the term ''gambling'' does not include -

(1) class I ***gaming*** or class II ***gaming*** regulated by the Indian ***Gaming*** Regulatory Act, or

(2) class III ***gaming*** conducted under a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian ***Gaming*** Regulatory Act that is in effect.

(d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian ***Gaming*** Regulatory Act, or under any other provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe.

-SOURCE-

(Added Pub. L. 100-497, Sec. 23, Oct. 17, 1988, 102 Stat. 2487.)

-REFTEXT-

REFERENCES IN TEXT

The Indian ***Gaming*** Regulatory Act, referred to in subsec. (c), is

Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, which enacted sections 1166 to 1168 of this title and chapter 25 (Sec. 2701 et seq.) of Title 25, Indians. Section 11(d)(8) of such Act is classified to section 2710(d)(8) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 25 and Tables.

-EXPCITE-

Sec. 1168. Theft by officers or employees of ***gaming*** establishments on Indian lands

-STATUTE-

(a) Whoever, being an officer, employee, or individual licensee of a ***gaming*** establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian ***Gaming*** Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of $1,000 or less shall be fined not more than $250,000 or imprisoned not more than five years, or both;

(b) Whoever, being an officer, employee, or individual licensee of a ***gaming*** establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian ***Gaming*** Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of $1,000 shall be fined not more than $1,000,000 or imprisoned for not more than twenty years,

or both.

-SOURCE-

(Added Pub. L. 100-497, Sec. 23, Oct. 17, 1988, 102 Stat. 2487; amended Pub. L. 101-647, title XXXV, Sec. 3537, Nov. 29, 1990, 104 Stat. 4925.)

-MISC1-

AMENDMENTS

1990 - Subsec. (a). Pub. L. 101-647 substituted ''or imprisoned'' for ''and be imprisoned for''.

-EXPCITE-

CHAPTER 61 - LOTTERIES

-HEAD-

Sec. 1301. Importing or transporting lottery tickets

-STATUTE-

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift, enterprise, or similar scheme; or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift, enterprise or

similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined under this title or imprisoned not more than two years, or both.

-SOURCE-

(June 25, 1948, ch. 645, 62 Stat. 762; Sept. 13, 1994, Pub. L. 103-322, title XXXII, Sec. 320905, title XXXIII, Sec. 330016(1)(H), 108 Stat. 2126, 2147.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., Sec. 387 (Mar. 4, 1909, ch. 321, Sec. 237, 35 Stat. 1136).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "in interstate or foreign commerce" were substituted for involved enumeration of places, thus permitting section to be condensed and simplified without change of meaning. See definitive section 10 of this title.

The rewritten punishment provision is in lieu of the following: "for the first offense, be fined not more than $1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than two years". There seems

no point in fixing a punishment for a second offense less than that for the first offense.

Minor changes were made in phraseology.

AMENDMENTS

1994 - Pub. L. 103-322 substituted "fined under this title" for "fined not more than $1,000" and inserted "or, being engaged in the business of procuring for a person in 1 State such a ticket, chance, share, or interest in a lottery, gift, enterprise or similar scheme conducted by another State (unless that business is permitted under an agreement between the States in question or appropriate authorities of those States), knowingly transmits in interstate or foreign commerce information to be used for the purpose of procuring such a ticket, chance, share, or interest;" after "scheme;".

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-625, Sec. 1, Nov. 7, 1988, 102 Stat. 3205, provided that: "This Act (amending sections 1304 and 1307 of this title and section 3005 of Title 39, Postal Service, and enacting provisions set out as notes under sections 1304 and 1307 of this title) may be cited as the 'Charity Games Advertising Clarification Act of 1988'."

-CROSS-

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1307 of this title;

title 25 section 2720; title 39 section 3005.

-CITE-

18 USC Sec. 1082 01/26/98

-EXPCITE-

CHAPTER 73 - OBSTRUCTION OF JUSTICE

-HEAD-

Sec. 1511. Obstruction of State or local law enforcement

-STATUTE-

(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if -

(1) one or more of such persons does any act to effect the object of such a conspiracy;

(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

(3) one or more of such persons conducts finances, manages, supervises, directs, or owns all or part of an illegal gambling business.

(b) As used in this section -

(1) ''illegal gambling business'' means a gambling business which -

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) ''gambling'' includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers ***games***, or selling chances therein.

(3) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) This section shall not apply to any bingo ***game***, lottery, or similar ***game*** of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

(d) Whoever violates this section shall be punished by a fine under this title or imprisonment for not more than five years, or both.

-SOURCE-

(Added Pub. L. 91-452, title VIII, Sec. 802(a), Oct. 15, 1970, 84

Stat. 936; amended Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-322, title XXXIII, Sec. 330016(2)(C), Sept. 13, 1994, 108 Stat. 2148.)

-REFTEXT-

REFERENCES IN TEXT

Paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, referred to in subsec. (c), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

-MISC2-

AMENDMENTS

1994 - Subsec. (d). Pub. L. 103-322 substituted ''fine under this title'' for ''fine of not more than $20,000''.

1986 - Subsec. (c). Pub. L. 99-514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

CONGRESSIONAL STATEMENT OF FINDINGS

Section 801 of title VIII of Pub. L. 91-452 provided that: ''The Congress finds that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof.''

PRIORITY OF STATE LAWS

Section 811 of title VIII of Pub. L. 91-452 provided that: ''No provision of this title (enacting this section and section 1955 of this title, amending section 2516 of this title, and enacting provisions set out as notes under this section and section 1955 of this title) indicates an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of a state or possession, or a political subdivision of a State or possession, on the same subject matter, or to relieve

any person of any obligation imposed by any law of any State or possession, or political subdivision of a State or possession.''

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

-EXPCITE-

CHAPTER 95 - RACKETEERING

-HEAD-

Sec. 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

-STATUTE-

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to -

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform -

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if

death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

-SOURCE-

(Added Pub. L. 87-228, Sec. 1(a), Sept. 13, 1961, 75 Stat. 498; amended Pub. L. 89-68, July 7, 1965, 79 Stat. 212; Pub. L. 91-513, title II, Sec. 701(i)(2), Oct. 27, 1970, 84 Stat. 1282; Pub. L. 99-570, title I, Sec. 1365(a), Oct. 27, 1986, 100 Stat. 3207-35; Pub. L. 101-647, title XII, Sec. 1205(i), title XVI, Sec. 1604, Nov. 29, 1990, 104 Stat. 4831, 4843; Pub. L. 103-322, title XIV, Sec. 140007(a), title XXXIII, Sec. 330016(1)(L), Sept. 13, 1994, 108 Stat. 2033, 2147.)

-REFTEXT-

REFERENCES IN TEXT

Section 102(6) of the Controlled Substances Act, referred to in subsec. (b)(i)(1), is classified to section 802(6) of Title 21, Food and Drugs.

-MISC2-

AMENDMENTS

1994 - Pub. L. 103-322, Sec. 330016(1)(L), which directed the amendment of this section by substituting "under this title" for "not more than $10,000", could not be executed because the phrase "not more than $10,000" did not appear in text subsequent to amendment of subsec. (a) by Pub. L. 103-322, Sec. 140007(a). See below.

Subsec. (a). Pub. L. 103-322, Sec. 140007(a), substituted "and thereafter performs or attempts to perform - " and subpars. (A) and (B) for former concluding provisions which read as follows: "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both."

1990 - Subsec. (a). Pub. L. 101-647, Sec. 1604, inserted "the mail or" after "uses" and struck out "including the mail," before "with intent" in introductory provisions.

Subsec. (b). Pub. L. 101-647, Sec. 1205(i), inserted "(i)" after "As used in this section" and added cl. (ii).

1986 - Subsec. (b)(3). Pub. L. 99-570 added cl. (3).

1970 - Subsec. (b)(1). Pub. L. 91-513, Sec. 701(i)(2)(A), inserted "or controlled substances (as defined in section 102(6) of the Controlled Substances Act)".

Subsec. (c). Pub. L. 91-513, Sec. 701(i)(2)(B), struck out reference to investigations involving narcotics.

1965 - Subsec. (b)(2). Pub. L. 89-68 made section applicable to travel in aid of arson.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

SAVINGS PROVISION

Amendment by Pub. L. 91-513 not to affect or abate any prosecutions for any violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the former Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, were to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91-513, set out as a Savings Provision note under section 321 of Title 21, Food and Drugs.

-CROSS-

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title;

title 26 section 6050I.

Sec. 1953. Interstate transportation of wagering paraphernalia

-STATUTE-

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar ***game*** shall be fined under this title or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law, or (5) the transportation in foreign commerce to a destination in a foreign country of equipment, tickets, or materials designed to be used within that foreign country in a

lottery which is authorized by the laws of that foreign country.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) For the purposes of this section (1) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) ''foreign country'' means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

(e) For the purposes of this section ''lottery'' means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. ''Lottery'' does not include the placing or accepting of bets or wagers on sporting events or contests.

-SOURCE-

(Added Pub. L. 87-218, Sec. 1, Sept. 13, 1961, 75 Stat. 492; amended Pub. L. 93-583, Sec. 3, Jan. 2, 1975, 88 Stat. 1916; Pub. L. 96-90, Sec. 2, Oct. 23, 1979, 93 Stat. 698; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

-MISC1-

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-322 substituted ''fined under this title'' for ''fined not more than $10,000''.

1979 - Subsec. (b)(5). Pub. L. 96-90, Sec. 2(1), added cl. (5).

Subsecs. (d), (e). Pub. L. 96-90, Sec. 2(2), added subsecs. (d)

and (e).

1975 - Subsec. (b)(4). Pub. L. 93-583 added cl. (4).

-CROSS-

CROSS REFERENCES

Mailing lottery tickets or related matter, see section 1302 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1302, 1961 of this title.

-EXPCITE-

Sec. 1955. Prohibition of illegal gambling businesses

-STATUTE-

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.

(b) As used in this section -

(1) ''illegal gambling business'' means a gambling business which -

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross

revenue of $2,000 in any single day.

(2) ''gambling'' includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers ***games***, or selling chances therein.

(3) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizures, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of

customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo ***game***, lottery, or similar ***game*** of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, as amended, if no part of the gross receipts derived from such activity inures to the benefits of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

-SOURCE-

(Added Pub. L. 91-452, title VIII, Sec. 803(a), Oct. 15, 1970, 84 Stat. 937; amended Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)

-REFTEXT-

REFERENCES IN TEXT

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, referred to in subsec. (e), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

-MISC2-

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-322 substituted ''fined under this title'' for ''fined not more than $20,000''.

1986 - Subsec. (e). Pub. L. 99-514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

-TRANS-

TRANSFER OF FUNCTIONS

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

-MISC5-

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Pub. L. 104-169, Aug. 3, 1996, 110 Stat. 1482, as amended by Pub. L. 105-30, Sec. 1, July 25, 1997, 111 Stat. 248, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'National Gambling Impact Study Commission Act'.

''SEC. 2. FINDINGS.

''The Congress finds that -

''(1) the most recent Federal study of gambling in the United

States was completed in 1976;

''(2) legalization of gambling has increased substantially over the past 20 years, and State, local, and Native American tribal governments have established gambling as a source of jobs and additional revenue;

''(3) the growth of various forms of gambling, including electronic gambling and gambling over the Internet, could affect interstate and international matters under the jurisdiction of the Federal Government;

''(4) questions have been raised regarding the social and economic impacts of gambling, and Federal, State, local, and Native American tribal governments lack recent, comprehensive information regarding those impacts; and

''(5) a Federal commission should be established to conduct a comprehensive study of the social and economic impacts of gambling in the United States.

''SEC. 3. NATIONAL GAMBLING IMPACT STUDY COMMISSION.

''(a) Establishment of Commission. - There is established a commission to be known as the National Gambling Impact Study Commission (hereinafter referred to in this Act as 'the Commission'). The Commission shall -

''(1) be composed of 9 members appointed in accordance with subsection (b); and

''(2) conduct its business in accordance with the provisions of this Act.

''(b) Membership. -

''(1) In general. - The Commissioners shall be appointed for the life of the Commission as follows:

''(A) 3 shall be appointed by the President of the United States.

''(B) 3 shall be appointed by the Speaker of the House of Representatives.

''(C) 3 shall be appointed by the Majority Leader of the Senate.

''(2) Persons eligible. - The members of the Commission shall be individuals who have knowledge or expertise, whether by experience or training, in matters to be studied by the Commission under section 4. The members may be from the public or private sector, and may include Federal, State, local, or Native American tribal officers or employees, members of academia, non-profit organizations, or industry, or other interested individuals.

''(3) Consultation required. - The President, the Speaker of the House of Representatives, and the Majority Leader of the Senate shall consult among themselves prior to the appointment of the members of the Commission in order to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission under section 4.

''(4) Completion of appointments; vacancies. - The President, the Speaker of the House of Representatives, and the Majority Leader of the Senate shall conduct the consultation required under paragraph (3) and shall each make their respective appointments not later than 60 days after the date of enactment of this Act (Aug. 3, 1996). Any vacancy that occurs during the life of the Commission shall not affect the powers of the Commission, and shall be filled in the same manner as the

original appointment not later than 60 days after the vacancy occurs.

''(5) Operation of the commission. -

''(A) Chairmanship. - The President, the Speaker of the House of Representatives, and the Majority Leader of the Senate shall jointly designate one member as the Chairman of the Commission. In the event of a disagreement among the appointing authorities, the Chairman shall be determined by a majority vote of the appointing authorities. The determination of which member shall be Chairman shall be made not later than 15 days after the appointment of the last member of the Commission, but in no case later than 75 days after the date of enactment of this Act.

''(B) Meetings. - The Commission shall meet at the call of the Chairman. The initial meeting of the Commission shall be conducted not later than 30 days after the appointment of the last member of the Commission, or not later than 30 days after the date on which appropriated funds are available for the Commission, whichever is later.

''(C) Quorum; voting; rules. - A majority of the members of the Commission shall constitute a quorum to conduct business, but the Commission may establish a lesser quorum for conducting hearings scheduled by the Commission. Each member of the Commission shall have one vote, and the vote of each member shall be accorded the same weight. The Commission may establish by majority vote any other rules for the conduct of the Commission's business, if such rules are not inconsistent with this Act or other applicable law.

''SEC. 4. DUTIES OF THE COMMISSION.

''(a) Study. -

''(1) In general. - It shall be the duty of the Commission to conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States on -

''(A) Federal, State, local, and Native American tribal governments; and

''(B) communities and social institutions generally, including individuals, families, and businesses within such communities and institutions.

''(2) Matters to be studied. - The matters studied by the Commission under paragraph (1) shall at a minimum include -

''(A) a review of existing Federal, State, local, and Native American tribal government policies and practices with respect to the legalization or prohibition of gambling, including a review of the costs of such policies and practices;

''(B) an assessment of the relationship between gambling and levels of crime, and of existing enforcement and regulatory practices that are intended to address any such relationship;

''(C) an assessment of pathological or problem gambling, including its impact on individuals, families, businesses, social institutions, and the economy;

''(D) an assessment of the impacts of gambling on individuals, families, businesses, social institutions, and the economy generally, including the role of advertising in promoting gambling and the impact of gambling on depressed economic areas;

''(E) an assessment of the extent to which gambling provides revenues to State, local, and Native American tribal

governments, and the extent to which possible alternative revenue sources may exist for such governments; and

''(F) an assessment of the interstate and international effects of gambling by electronic means, including the use of interactive technologies and the Internet.

''(b) Report. - No later than 2 years after the date on which the Commission first meets, the Commission shall submit to the President, the Congress, State Governors, and Native American tribal governments a comprehensive report of the Commission's findings and conclusions, together with any recommendations of the Commission. Such report shall include a summary of the reports submitted to the Commission by the Advisory Commission on Intergovernmental Relations and National Research Council under section 7, as well as a summary of any other material relied on by the Commission in the preparation of its report.

''SEC. 5. POWERS OF THE COMMISSION.

''(a) Hearings. -

''(1) In general. - The Commission may hold such hearings, sit and act at such times and places, administer such oaths, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under section 4.

''(2) Witness expenses. - Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

''(b) Subpoenas. -

''(1) In general. - If a person fails to supply information

requested by the Commission, the Commission may by majority vote require by subpoena the production of any written or recorded information, document, report, answer, record, account, paper, computer file, or other data or documentary evidence necessary to carry out its duties under section 4. The Commission shall transmit to the Attorney General a confidential, written notice at least 10 days in advance of the issuance of any such subpoena. A subpoena under this paragraph may require the production of materials from any place within the United States.

''(2) Interrogatories. - The Commission may, with respect only to information necessary to understand any materials obtained through a subpoena under paragraph (1), issue a subpoena requiring the person producing such materials to answer, either through a sworn deposition or through written answers provided under oath (at the election of the person upon whom the subpoena is served), to interrogatories from the Commission regarding such information. A complete recording or transcription shall be made of any deposition made under this paragraph.

''(3) Certification. - Each person who submits materials or information to the Commission pursuant to a subpoena issued under paragraph (1) or (2) shall certify to the Commission the authenticity and completeness of all materials or information submitted. The provisions of section 1001 of title 18, United States Code, shall apply to any false statements made with respect to the certification required under this paragraph.

''(4) Treatment of subpoenas. - Any subpoena issued by the Commission under paragraph (1) or (2) shall comply with the requirements for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure (28 App.

U.S.C.).

''(5) Failure to obey a subpoena. - If a person refuses to obey a subpoena issued by the Commission under paragraph (1) or (2), the Commission may apply to a United States district court for an order requiring that person to comply with such subpoena. The application may be made within the judicial district in which that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

''(c) Information From Federal Agencies. - The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties under section 4. Upon the request of the Commission, the head of such department or agency may furnish such information to the Commission.

''(d) Information To Be Kept Confidential. - The Commission shall be considered an agency of the Federal Government for purposes of section 1905 of title 18, United States Code, and any individual employed by an individual, entity, or organization under contract to the Commission under section 7 shall be considered an employee of the Commission for the purposes of section 1905 of title 18, United States Code. Information obtained by the Commission, other than information available to the public, shall not be disclosed to any person in any manner, except -

''(1) to Commission employees or employees of any individual, entity, or organization under contract to the Commission under section 7 for the purpose of receiving, reviewing, or processing such information;

''(2) upon court order; or

''(3) when publicly released by the Commission in an aggregate or summary form that does not directly or indirectly disclose -

''(A) the identity of any person or business entity; or

''(B) any information which could not be released under section 1905 of title 18, United States Code.

''SEC. 6. COMMISSION PERSONNEL MATTERS.

''(a) Compensation of Members. - Each member of the Commission who is not an officer or employee of the Federal Government, or whose compensation is not precluded by a State, local, or Native American tribal government position, shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(b) Travel Expenses. - The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Commission.

''(c) Staff. -

''(1) In general. - The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional

personnel as may be necessary to enable the Commission to perform its duties. The employment and termination of an executive director shall be subject to confirmation by a majority of the members of the Commission.

''(2) Compensation. - The executive director shall be compensated at a rate not to exceed the rate payable for Level V of the Executive Schedule under section 5316 of title 5, United States Code. The Chairman may fix the compensation of other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for Level V of the Executive Schedule under section 5316 of such title.

''(3) Detail of government employees. - Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privilege.

''(d) Procurement of Temporary and Intermittent Services. - The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

''(e) Applicability of Federal Tort Claims Provisions. - For purposes of sections 1346(b) and 2401(b) and chapter 171 of title 28, United States Code, the Commission is a 'Federal agency' and

each of the members and personnel of the Commission is an 'employee of the Government'.

''SEC. 7. CONTRACTS FOR RESEARCH.

''(a) Advisory Commission on Intergovernmental Relations. -

''(1) In general. - In carrying out its duties under section 4, the Commission shall contract with the Advisory Commission on Intergovernmental Relations for -

''(A) a thorough review and cataloging of all applicable Federal, State, local, and Native American tribal laws, regulations, and ordinances that pertain to gambling in the United States; and

''(B) assistance in conducting the studies required by the Commission under section 4(a), and in particular the review and assessments required in subparagraphs (A), (B), and (E) of paragraph (2) of such section.

''(2) Report required. - The contract entered into under paragraph (1) shall require that the Advisory Commission on Intergovernmental Relations submit a report to the Commission detailing the results of its efforts under the contract no later than 15 months after the date upon which the Commission first meets.

''(b) National Research Council. -

''(1) In general. - In carrying out its duties under section 4, the Commission shall contract with the National Research Council of the National Academy of Sciences for assistance in conducting the studies required by the Commission under section 4(a), and in particular the assessment required under subparagraph (C) of paragraph (2) of such section.

''(2) Report required. - The contract entered into under

paragraph (1) shall require that the National Research Council submit a report to the Commission detailing the results of its efforts under the contract no later than 15 months after the date upon which the Commission first meets.

''(c) Other Organizations. - Nothing in this section shall be construed to limit the ability of the Commission to enter into contracts with other entities or organizations for research necessary to carry out the Commission's duties under section 4.

''SEC. 8. DEFINITIONS.

''For the purposes of this Act:

''(1) Gambling. - The term 'gambling' means any legalized form of wagering or betting conducted in a casino, on a riverboat, on an Indian reservation, or at any other location under the jurisdiction of the United States. Such term includes any casino ***game***, parimutuel betting, sports-related betting, lottery, pull-tab ***game***, slot machine, any type of video ***gaming***, computerized wagering or betting activities (including any such activity conducted over the Internet), and philanthropic or charitable ***gaming*** activities.

''(2) Native american tribal government. - The term 'Native American tribal government' means an Indian tribe, as defined under section 4(5) of the Indian ***Gaming*** Regulatory Act of 1988 (25 U.S.C. 2703(5)).

''(3) State. - The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

''(a) In General. - There are authorized to be appropriated to the Commission, the Advisory Commission on Intergovernmental Relations, and the National Academy of Sciences such sums as may be necessary to carry out the purposes of this Act. Any sums appropriated shall remain available, without fiscal year limitation, until expended.

''(b) Limitation. - No payment may be made under section 6 or 7 of this Act except to the extent provided for in advance in an appropriation Act.

''SEC. 10. TERMINATION OF THE COMMISSION.

''The Commission shall terminate 60 days after the Commission submits the report required under section 4(b).''

(Pub. L. 105-30, Sec. 2, 3, July 25, 1997, 111 Stat. 248, provided that:

(''SEC. 2. CONSTRUCTION.

(''The amendment made by section 1 (amending section 6 of Pub. L. 104-169, set out above) shall not be construed to imply that any commission is not a 'Federal agency' or that any of the members or personnel of a commission is not an 'employee of the Government' for purposes of sections 1346(b) and 2401(b) and chapter 171 of title 28, United States Code.

(''SEC. 3. EFFECTIVE DATE.

(''The amendment made by section 1 shall be effective as of August 3, 1996.'')

PRIORITY OF STATE LAWS

Enactment of this section as not indicating an intent on the part of the Congress to occupy the field in which this section operates to the exclusion of State of local law on the same subject matter, or to relieve any person of any obligation imposed by any State or

local law, see section 811 of Pub. L. 91-452, set out as a Priority of State Laws note under section 1511 of this title.

COMMISSION ON REVIEW OF NATIONAL POLICY TOWARD GAMBLING

Sections 804-809 of Pub. L. 91-452 established Commission on Review of National Policy Toward Gambling, provided for its membership and compensation of members and staff, empowered Commission to subpoena witnesses and grant immunity, required Commission to make a study of gambling in United States and existing Federal, State, and local policy and practices with respect to prohibition and taxation of gambling activities and to make a final report of its findings and recommendations to President and to Congress within four years of its establishment, and provided for its termination sixty days after submission of final report.

CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1961. Definitions

-STATUTE-

As used in this chapter -

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of

title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588

(relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or

section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two

acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States,

the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

-SOURCE-

(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 941; amended Pub. L. 95-575, Sec. 3(c), Nov. 2, 1978, 92 Stat. 2465; Pub. L. 95-598, title III, Sec. 314(g), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 98-473, title II, Sec. 901(g), 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub. L. 98-547, title II, Sec. 205, Oct. 25, 1984, 98 Stat. 2770; Pub. L. 99-570, title I, Sec. 1365(b), Oct. 27, 1986, 100 Stat. 3207-35; Pub. L. 99-646, Sec. 50(a), Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100-690, title VII, Sec. 7013, 7020(c), 7032, 7054, 7514, Nov. 18, 1988, 102 Stat. 4395, 4396, 4398, 4402, 4489; Pub. L. 101-73, title IX, Sec. 968, Aug. 9, 1989, 103 Stat. 506; Pub. L. 101-647, title XXXV, Sec. 3560, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 103-322, title IX, Sec. 90104, title XVI, Sec. 160001(f), title XXXIII, Sec. 330021(1), Sept. 13, 1994, 108 Stat. 1987, 2037, 2150; Pub. L. 103-394, title III, Sec. 312(b), Oct. 22, 1994, 108 Stat. 4140; Pub. L. 104-132, title IV, Sec. 433, Apr. 24, 1996, 110 Stat. 1274; Pub. L. 104-153, Sec. 3, July 2, 1996, 110 Stat. 1386; Pub. L. 104-208, div. C, title II, Sec. 202, Sept. 30, 1996, 110 Stat.

3009-565; Pub. L. 104-294, title VI, Sec. 601(b)(3), (i)(3), 604(b)(6), Oct. 11, 1996, 110 Stat. 3499, 3501, 3506.)

-REFTEXT-

REFERENCES IN TEXT

Section 102 of the Controlled Substances Act, referred to in par. (1)(A), (D), is classified to section 802 of Title 21, Food and Drugs.

The Currency and Foreign Transactions Reporting Act, referred to in par. (1)(E), is title II of Pub. L. 91-508, Oct. 26, 1970, 84 Stat. 1118, which was repealed and reenacted as subchapter II of chapter 53 of Title 31, Money and Finance, by Pub. L. 97-258, Sec. 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31.

The Immigration and Nationality Act, referred to in par. (1)(F), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (Sec. 1101 et seq.) of Title 8, Aliens and Nationality. Sections 274, 277, and 278 of the Act are classified to sections 1324, 1327, and 1328 of Title 8, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The effective date of this chapter, referred to in par. (5), is Oct. 15, 1970.

-MISC2-

AMENDMENTS

1996 - Par. (1)(B). Pub. L. 104-294, Sec. 604(b)(6), amended directory language of Pub. L. 103-322, Sec. 160001(f). See 1994 Amendment note below.

Pub. L. 104-294, Sec. 601(i)(3), substituted "2260" for "2258".

Pub. L. 104-208 struck out "if the act indictable under section 1028 was committed for the purpose of financial gain" before ", section 1029", inserted "section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers)," after "section 1344 (relating to financial institution fraud),", struck out "if the act indictable under section 1542 was committed for the purpose of financial gain" before ", section 1543", "if the act indictable under section 1543 was committed for the purpose of financial gain" before ", section 1544", "if the act indictable under section 1544 was committed for the purpose of financial gain" before ", section 1546", and "if the act indictable under section 1546 was committed for the purpose of financial gain" before ", sections 1581-1588".

Pub. L. 104-153 inserted ", section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks)" after "sections 2314 and 2315 (relating to interstate transportation of stolen property)".

Pub. L. 104-132, Sec. 433(1), (2), inserted "section 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under section 1028 was committed for the purpose of financial gain," before "section 1029" and "section 1542 (relating to false statement in application and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581-1588 (relating to peonage and slavery)," after "section 1513 (relating to retaliating against a witness, victim, or an informant),".

Par. (1)(D). Pub. L. 104-294, Sec. 601(b)(3), substituted "section 157 of this title" for "section 157 of that title".

Par. (1)(F). Pub. L. 104-132, Sec. 433(3), (4), added subpar. (F).

1994 - Par. (1)(A). Pub. L. 103-322, Sec. 330021(1), substituted "kidnapping" for "kidnaping".

Pub. L. 103-322, Sec. 90104, substituted "a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act)" for "narcotic or other dangerous drugs".

Par. (1)(B). Pub. L. 103-322, Sec. 160001(f), as amended by Pub. L. 104-294, Sec. 604(b)(6), substituted "2251, 2251A, 2252, and

2258" for "2251-2252".

Par. (1)(D). Pub. L. 103-394 inserted "(except a case under section 157 of that title)" after "title 11".

Pub. L. 103-322, Sec. 90104, substituted "a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act)" for "narcotic or other dangerous drugs".

1990 - Par. (1)(B). Pub. L. 101-647 substituted "section 1029 (relating to" for "section 1029 (relative to" and struck out "sections 2251 through 2252 (relating to sexual exploitation of children)," before ", section 1958".

1989 - Par. (1). Pub. L. 101-73 inserted "section 1344 (relating to financial institution fraud)," after "section 1343 (relating to wire fraud),".

1988 - Par. (1)(B). Pub. L. 100-690, Sec. 7514, inserted "sections 2251 through 2252 (relating to sexual exploitation of children),".

Pub. L. 100-690, Sec. 7054, inserted ", section 1029 (relative to fraud and related activity in connection with access devices)" and ", section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251-2252 (relating to sexual exploitation of children)".

Pub. L. 100-690, Sec. 7032, substituted "section 2321" for "section 2320".

Pub. L. 100-690, Sec. 7013, made technical amendment to directory language of Pub. L. 99-646. See 1986 Amendment note below.

Par. (10). Pub. L. 100-690, Sec. 7020(c), inserted "the Associate Attorney General of the United States," after "Deputy Attorney General of the United States,".

1986 - Par. (1)(B). Pub. L. 99-646, as amended by Pub. L. 100-690, Sec. 7013, inserted "section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant)," after "section 1511 (relating to the obstruction of State or local law enforcement),".

Pub. L. 99-570 inserted "section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity),".

1984 - Par. (1)(A). Pub. L. 98-473, Sec. 1020(1), inserted "dealing in obscene matter," after "extortion,".

Par. (1)(B). Pub. L. 98-547 inserted "sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles)," and "section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts),".

Pub. L. 98-473, Sec. 1020(2), inserted "sections 1461-1465 (relating to obscene matter),".

Par. (1)(E). Pub. L. 98-473, Sec. 901(g), inserted cl. (E).

1978 - Par. (1)(B). Pub. L. 95-575 inserted "sections 2341-2346 (relating to trafficking in contraband cigarettes),".

Par. (1)(D). Pub. L. 95-598 substituted "fraud connected with a case under title 11" for "bankruptcy fraud".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(6) of Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-575 effective Nov. 2, 1978, see section 4 of Pub. L. 95-575, set out as an Effective Date note under section 2341 of this title.

SHORT TITLE OF 1984 AMENDMENT

Section 301 of chapter III (Sec. 301-322) of title II of Pub. L. 98-473 provided that: "This title (probably means this chapter, enacting sections 1589, 1600, 1613a, and 1616 of Title 19, Customs Duties and sections 853, 854, and 970 of Title 21, Food and Drugs, amending section 1963 of this title and sections 1602, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1618, 1619, and 1644 of Title 19, sections 824, 848, and 881 of Title 21, and section 524 of Title 28, Judiciary and Judicial Procedure, and repealing section 7607 of Title 26, Internal Revenue Code) may be cited as the 'Comprehensive Forfeiture Act of 1984'."

SHORT TITLE

Section 1 of Pub. L. 91-452 provided in part: "That this Act (enacting this section, sections 841 to 848, 1511, 1623, 1955, 1962 to 1968, 3331 to 3334, 3503, 3504, 3575 to 3578, and 6001 to 6005 of this title, and section 1826 of Title 28, Judiciary and Judicial Procedure, amending sections 835, 1073, 1505, 1954, 2424, 2516,

2517, 3148, 3486, and 3500 of this title, sections 15, 87f, 135c, 499m, and 2115 of Title 7, Agriculture, section 25 of Title 11, Bankruptcy, section 1820 of Title 12, Banks and Banking, sections 49, 77v, 78u, 79r, 80a-41, 80b-9, 155, 717m, 1271, and 1714 of Title 15, Commerce and Trade, section 825f of Title 16, Conservation, section 1333 of Title 19, Customs Duties, section 373 of Title 21, Food and Drugs, section 161 of Title 29, Labor, section 506 of Title 33, Navigation and Navigable Waters, sections 405 and 2201 of Title 42, The Public Health and Welfare, sections 157 and 362 of Title 45, Railroads, section 1124 of former Title 46, Shipping, section 409 of Title 47, Telegraphs, Telephones, and Radio telegraphs, sections 9, 43, 46, 916, 1017, and 1484 of former Title 49, Transportation, section 792 of Title 50, War and National Defense, and sections 643a, 1152, 2026, and former section 2155 of Title 50, Appendix, repealing sections 837, 895, 1406, and 2514 of this title, sections 32 and 33 of Title 15; sections 4874 and 7493 of Title 26, Internal Revenue Code, section 827 of former Title 46, sections 47 and 48 of former Title 49, and sections 121 to 144 of Title 50, enacting provisions set out as notes under this section and sections 841, 1511, 1955, preceding 3331, preceding 3481, 3504, and 6001 of this title, and repealing provisions set out as a note under section 2510 of this title) may be cited as the 'Organized Crime Control Act of 1970'."

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (Sec. 151 et seq.), chapter 96 (Sec. 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed

after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

SEPARABILITY

Section 1301 of Pub. L. 91-452 provided that: "If the provisions of any part of this Act (see Short Title note set out above) or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby."

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 1 of Pub. L. 91-452 provided in part that:

"The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues

to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

"It is the purpose of this Act (see Short Title note above) to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

LIBERAL CONSTRUCTION OF PROVISIONS; SUPERSEDURE OF FEDERAL OR STATE LAWS; AUTHORITY OF ATTORNEYS REPRESENTING UNITED STATES

Section 904 of title IX of Pub. L. 91-452 provided that:

"(a) The provisions of this title (enacting this chapter and amending sections 1505, 2516, and 2517 of this title) shall be liberally construed to effectuate its remedial purposes.

"(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

"(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to -

"(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

"(2) invoke the power of any such court to compel the

production of any evidence before any such grand jury; or

"(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person."

PRESIDENT'S COMMISSION ON ORGANIZED CRIME; TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE

Pub. L. 98-368, July 17, 1984, 98 Stat. 490, provided for the Commission established by Ex. Ord. No. 12435, formerly set out below, authority relating to taking of testimony, receipt of evidence, subpoena power, testimony of persons in custody, immunity, service of process, witness fees, access to other records and information, Federal protection for members and staff, closure of meetings, rules, and procedures, for the period of July 17, 1984, until the earlier of 2 years or the expiration of the Commission.

-EXEC-

EXECUTIVE ORDER NO. 12435

Ex. Ord. No. 12435, July 28, 1983, 48 F.R. 34723, as amended Ex. Ord. No. 12507, Mar. 22, 1985, 50 F.R. 11835, which established and provided for the administration of the President's Commission on Organized Crime, was revoked by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 924, 1956, 1959 of this title; title 7 section 12a.

-CITE-

15 USC Sec. 1177 01/26/98

-EXPCITE-

CHAPTER 119 - WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

-HEAD-

Sec. 2516. Authorization for interception of wire, oral, or electronic communications

-STATUTE-

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, (FOOTNOTE 1) or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of -

(FOOTNOTE 1) See 1984 Amendment note below.

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United

States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 1014 (relating to loans and credit applications generally; renewals and discounts), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or

transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), sections 2251 and 2252 (sexual exploitation of children), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), and section 1341 (relating to mail fraud), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating

to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline) or section 46502 (relating to aircraft piracy) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(l) the location of any fugitive from justice from an offense described in this section;

(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

(n) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(o) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);

(p) (FOOTNOTE 2) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or

(FOOTNOTE 2) So in original. Two subpars. (p) have been enacted.

(p) (FOOTNOTE 2) any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the

principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

-SOURCE-

(Added Pub. L. 90-351, title III, Sec. 802, June 19, 1968, 82 Stat. 216; amended Pub. L. 91-452, title VIII, Sec. 810, title IX, Sec. 902(a), title XI, Sec. 1103, Oct. 15, 1970, 84 Stat. 940, 947, 959; Pub. L. 91-644, title IV, Sec. 16, Jan. 2, 1971, 84 Stat. 1891; Pub. L. 95-598, title III, Sec. 314(h), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 97-285, Sec. 2(e), 4(e), Oct. 6, 1982, 96 Stat. 1220, 1221; Pub. L. 98-292, Sec. 8, May 21, 1984, 98 Stat. 206; Pub. L. 98-473, title II, Sec. 1203(c), Oct. 12, 1984, 98 Stat. 2152; Pub. L. 99-508, title I, Sec. 101(c)(1)(A), 104, 105, Oct. 21, 1986, 100 Stat. 1851, 1855; Pub. L. 99-570, title I, Sec. 1365(c), Oct. 27, 1986, 100 Stat. 3207-35; Pub. L. 100-690, title VI, Sec. 6461, title VII, Sec. 7036, 7053(d), 7525, Nov. 18, 1988, 102 Stat. 4374, 4399, 4402, 4502; Pub. L. 101-298, Sec. 3(b), May 22, 1990, 104 Stat. 203; Pub. L. 101-647, title XXV, Sec. 2531, title XXXV, Sec. 3568, Nov. 29, 1990, 104 Stat. 4879, 4928; Pub. L. 103-272, Sec. 5(e)(11), July 5, 1994, 108 Stat. 1374; Pub. L. 103-322, title XXXIII, Sec. 330011(c)(1), (q)(1), (r), 330021(1), Sept. 13, 1994, 108 Stat. 2144, 2145, 2150; Pub. L. 103-414, title II, Sec. 208, Oct. 25, 1994, 108 Stat. 4292; Pub. L. 103-429, Sec. 7(a)(4)(A), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 104-132, title IV, Sec. 434, Apr. 24, 1996, 110 Stat. 1274; Pub. L. 104-208, div. C, title II, Sec. 201, Sept. 30, 1996, 110 Stat. 3009-564; Pub. L. 104-287, Sec. 6(a)(2), Oct. 11, 1996, 110 Stat. 3398; Pub. L. 104-294, title I, Sec. 102, title VI, Sec. 601(d), Oct. 11, 1996, 110 Stat. 3491, 3499.)

-REFTEXT-

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in par. (1)(a), is act Aug. 30, 1954, ch. 1073, 68 Stat. 921, as amended, which is classified generally to chapter 23 (Sec. 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Arms Export Control Act, referred to in par. (1)(k), is Pub. L. 90-269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (Sec. 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Section 5861 of the Internal Revenue Code of 1986, referred to in par. (1)(o), is classified to section 5861 of Title 26, Internal Revenue Code.

The Federal Rules of Criminal Procedure, referred to in par. (3), are set out in the Appendix to this title.

-MISC2-

AMENDMENTS

1996 - Par. (1)(a). Pub. L. 104-294, Sec. 102, which directed amendment of par. 1(c) by inserting "chapter 90 (relating to protection of trade secrets)," after "chapter 37 (relating to espionage)," was executed by making the insertion in par. (1)(a) to reflect the probable intent of Congress.

Par. (1)(c). Pub. L. 104-208, Sec. 201(1), substituted "section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of

citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents)" for "or section 1992 (relating to wrecking trains)" before semicolon at end.

Par. (1)(j). Pub. L. 104-287, Sec. 6(a)(2), amended directory language of Pub. L. 103-272, Sec. 5(e)(11) as amended by Pub. L. 103-429, Sec. 7(a)(4)(A). See 1994 Amendment note below.

Par. (1)(l). Pub. L. 104-208, Sec. 201(2), and Pub. L. 104-294, Sec. 601(d)(1), amended subpar. (l) identically, striking out "or" after semicolon at end.

Par. (1)(m). Pub. L. 104-208, Sec. 201(3), (4), added subpar. (m). Former subpar. (m) redesignated (n).

Par. (1)(n). Pub. L. 104-294, Sec. 601(d)(2), which directed substitution of "or" for "and" after semicolon at end, could not be executed because of prior amendments by Pub. L. 104-132, Sec. 434(1) and Pub. L. 104-208, Sec. 201(3). See below.

Pub. L. 104-208, Sec. 201(3), redesignated subpar. (m) as (n). Former subpar. (n) redesignated (o).

Pub. L. 104-132, Sec. 434(1), struck out "and" at end.

Par. (1)(o). Pub. L. 104-208, Sec. 201(3), redesignated subpar. (n) as (o). Former subpar. (o) redesignated (p).

Pub. L. 104-132 added subpar. (o) and redesignated former subpar.

(o) as (p).

Par. (1)(p). Pub. L. 104-208, Sec. 201(3), redesignated subpar. (o), relating to felony violation of section 1028, etc., as (p).

Pub. L. 104-132, Sec. 434(2), redesignated subpar. (o), relating to conspiracy, as (p).

1994 - Par. (1). Pub. L. 103-414 in introductory provisions inserted "or acting Deputy Assistant Attorney General" after "Deputy Assistant Attorney General".

Par. (1)(c). Pub. L. 103-322, Sec. 330021(1), substituted "kidnapping" for "kidnaping" in two places.

Pub. L. 103-322, Sec. 330011(c)(1), amended directory language of Pub. L. 101-298, Sec. 3(b). See 1990 Amendment note below.

Par. (1)(j). Pub. L. 103-322, Sec. 330011(r), amended directory language of Pub. L. 101-647, Sec. 2531(3). See 1990 Amendment note below.

Pub. L. 103-322, Sec. 330011(q)(1), repealed Pub. L. 101-647, Sec. 3568. See 1990 Amendment note below.

Pub. L. 103-272, Sec. 5(e)(11), as amended by Pub. L. 103-429, Sec. 7(a)(4)(A); Pub. L. 104-287, Sec. 6(a)(2), substituted "section 60123(b) (relating to destruction of a natural gas pipeline) or section 46502 (relating to aircraft piracy) of title 49;" for "section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958 (relating to aircraft piracy);".

1990 - Par. (1)(c). Pub. L. 101-647, Sec. 2531(1), inserted "section 215 (relating to bribery of bank officials)," before "section 224", "section 1032 (relating to concealment of

assets)," before section 1084, "section 1014 (relating to loans and credit applications generally; renewals and discounts)," before "sections 1503," and "section 1344 (relating to bank fraud)," before "sections 2251 and 2252" and struck out "the section in chapter 65 relating to destruction of an energy facility," after "retaliating against a Federal official),".

Pub. L. 101-298, Sec. 3(b), as amended by Pub. L. 103-322, Sec. 330011(c)(1), inserted "section 175 (relating to biological weapons)," after "section 33 (relating to destruction of motor vehicles or motor vehicle facilities),".

Par. (1)(j). Pub. L. 101-647, Sec. 3568, which directed amendment of subsec. (j) by substituting "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or section 902(i) or (n) of the Federal Aviation Act of 1958 (relating to aircraft piracy)" for "any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code", and which was probably intended as an amendment to par. (1)(j), was repealed by Pub. L. 103-322, Sec. 330011(q)(1).

Pub. L. 101-647, Sec. 2531(3), as amended by Pub. L. 103-322, Sec. 330011(r), substituted "any violation of section 11(c)(2) of the Natural Gas Pipeline Safety Act of 1968 (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 902 of the Federal Aviation Act of 1958 (relating to aircraft piracy)" for "any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection

(i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code".

Par. (1)(m). Pub. L. 101-647, Sec. 2531(2)(A), struck out subpar. (m) relating to conspiracy which read as follows: "any conspiracy to commit any of the foregoing offenses."

Par. (1)(o). Pub. L. 101-647, Sec. 2531(2)(B)-(D), added subpar. (o).

1988 - Par. (1). Pub. L. 100-690, Sec. 7036(a)(1), inserted "or" after "Associate Attorney General," in introductory provisions.

Par. (1)(a). Pub. L. 100-690, Sec. 7036(c)(1), which directed the amendment of subpar. (a) by substituting "(relating to riots)," for "(relating to riots);" was executed by substituting "(relating to riots)," for "(relating to riots)" as the probable intent of Congress.

Par. (1)(c). Pub. L. 100-690, Sec. 7053(d), which directed the amendment of section 2516(c) by substituting "1958" for "1952A" and "1959" for "1952B" was executed by making the substitutions in par. (1)(c) as the probable intent of Congress.

Pub. L. 100-690, Sec. 7036(b), struck out "section 2252 or 2253 (sexual exploitation of children)," after "wire, radio, or television)," and substituted "section 2321" for "the second section 2320".

Pub. L. 100-690, Sec. 7036(a)(2), which directed the amendment of par. (1) by striking the comma that follows a comma was executed to subpar. (c) by striking out the second comma after "to mail fraud)".

Par. (1)(i). Pub. L. 100-690, Sec. 7525, added subpar. (i) and

redesignated former subpar. (i) as (j).

Par. (1)(j). Pub. L. 100-690, Sec. 7525, redesignated former subpar. (i) as (j). Former subpar. (j) redesignated (k).

Pub. L. 100-690, Sec. 7036(c)(2), which directed amendment of subpar. (j) by striking "or;" was executed by striking "or" after "Export Control Act);" to reflect the probable intent of Congress.

Par. (1)(k). Pub. L. 100-690, Sec. 7525, redesignated former subpar. (j) as (k). Former subpar. (k) redesignated (l).

Pub. L. 100-690, Sec. 7036(c)(3), struck out "or" at end.

Par. (1)(l). Pub. L. 100-690, Sec. 7525, redesignated former subpar. (k) as (l). Former subpar. (l) redesignated (m).

Par. (1)(m). Pub. L. 100-690, Sec. 7525, redesignated former subpar. (l) relating to conspiracy as (m).

Pub. L. 100-690, Sec. 6461, added subpar. (m) relating to sections 922 and 924.

Par. (1)(n). Pub. L. 100-690, Sec. 6461, added subpar. (n).

1986 - Pub. L. 99-508, Sec. 101(c)(1)(A), substituted "wire, oral, or electronic" for "wire or oral" in section catchline.

Par. (1). Pub. L. 99-508, Sec. 104, substituted "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division" for "or any Assistant Attorney General" in introductory provisions.

Par. (1)(a). Pub. L. 99-508, Sec. 105(a)(5), inserted "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel)," struck out "or" after "(relating to treason)," and inserted "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or

chapter 81 (relating to piracy)".

Par. (1)(c). Pub. L. 99-570, which directed the amendment of subpar. (c) by inserting "section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (prohibition of relating to business enterprises of gambling)," was executed by inserting this phrase after "section 1955 (prohibition of business enterprises of gambling)," as the probable intent of Congress.

Pub. L. 99-508, Sec. 105(a)(1), inserted "section 751 (relating to escape)," "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," and "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," substituted "2312, 2313, 2314," for "2314", inserted ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," substituted ", section 351" for "or section 351", and inserted ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to

wrecking trains)".

Par. (1)(h) to (l). Pub. L. 99-508, Sec. 105(a)(2)-(4), added subpars. (h) to (k) and redesignated former subpar. (h) as (l).

Par. (2). Pub. L. 99-508, Sec. 101(c)(1)(A), substituted "wire, oral, or electronic" for "wire or oral" in two places.

Par. (3). Pub. L. 99-508, Sec. 105(b), added par. (3).

1984 - Par. (1). Pub. L. 98-473, Sec. 1203(c)(4), which directed the amendment of the first par. of par. (1) by inserting "Deputy Attorney General, Associate Attorney General," after "Attorney General." was executed by making the insertion after the first reference to "Attorney General," to reflect the probable intent of Congress.

Par. (1)(c). Pub. L. 98-473, Sec. 1203(c)(2), inserted references to sections 1512 and 1513 after "1503".

Pub. L. 98-473, Sec. 1203(c)(1), inserted "section 1343 (fraud by wire, radio, or television), section 2252 or 2253 (sexual exploitation of children)," after "section 664 (embezzlement from pension and welfare funds),".

Pub. L. 98-292 inserted "sections 2251 and 2252 (sexual exploitation of children)," after "section 664 (embezzlement from pension and welfare funds),".

Par. (1)(g), (h). Pub. L. 98-473, Sec. 1203(c)(3), added par. (g) and redesignated former par. (g) as (h).

1982 - Par. (1)(c). Pub. L. 97-285 substituted "(Presidential and Presidential staff assassination, kidnaping, and assault)" for "(Presidential assassinations, kidnapping, and assault)" after "section 1751" and substituted "(violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnaping,

and assault)" for "(violations with respect to congressional assassination, kidnapping, and assault)" after "section 351".

1978 - Par. (1)(e). Pub. L. 95-598 substituted "fraud connected with a case under title 11" for "bankruptcy fraud".

1971 - Par. (1)(c). Pub. L. 91-644 inserted reference to section 351 offense (violations with respect to congressional assassination, kidnaping, and assault).

1970 - Par. (1)(c). Pub. L. 91-452 inserted reference to sections 844(d), (e), (f), (g), (h), or (i), 1511, 1955, and 1963 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 6(a) of Pub. L. 104-287 provided that the amendment made by that section is effective July 5, 1994.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 7(a) of Pub. L. 103-429 provided that the amendment made by section 7(a)(4)(A) of Pub. L. 103-429 is effective July 5, 1994.

Section 330011(c)(1) of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 3(b) of Pub. L. 101-298 took effect.

Section 330011(q)(1) of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 3568 of Pub. L. 101-647 took effect.

Section 330011(r) of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 2531(3) of Pub. L. 101-647 took effect.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 101(c)(1)(A) and 105 of Pub. L. 99-508 effective 90 days after Oct. 21, 1986, and, in case of conduct

pursuant to court order or extension, applicable only with respect to court orders and extensions made after such date, with special rule for State authorizations of interceptions pursuant to section 2516(2) of this title, and amendment by section 104 of Pub. L. 99-508 effective Oct. 21, 1986, see section 111 of Pub. L. 99-508, set out as a note under section 2510 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (Sec. 151 et seq.), chapter 96 (Sec. 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2511, 2518 of this title; title 28 section 594.

-CITE-

26 USC Sec. 1441 01/26/98

-EXPCITE-

TITLE 25 - INDIANS

CHAPTER 29 - INDIAN GAMING REGULATION

-HEAD-

Sec. 2701. Findings

-STATUTE-

The Congress finds that -

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

-SOURCE-

(Pub. L. 100-497, Sec. 2, Oct. 17, 1988, 102 Stat. 2467.)

-MISC1-

SHORT TITLE

Section 1 of Pub. L. 100-497 provided: "That this Act (enacting this chapter and sections 1166 to 1168 of Title 18, Crimes and Criminal Procedure) may be cited as the 'Indian Gaming Regulatory Act'."

-CITE-

25 USC Sec. 941l 01/26/98

-EXPCITE-

Sec. 2702. Declaration of policy

-STATUTE-

The purpose of this chapter is -

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to

protect such gaming as a means of generating tribal revenue.

-SOURCE-

(Pub. L. 100-497, Sec. 3, Oct. 17, 1988, 102 Stat. 2467.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

-CITE-

25 USC Sec. 2701 01/26/98

-EXPCITE-

Sec. 2703. Definitions

-STATUTE-

For purposes of this chapter -

(1) The term "Attorney General" means the Attorney General of the United States.

(2) The term "Chairman" means the Chairman of the National Indian Gaming Commission.

(3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 2704 of this title.

(4) The term "Indian lands" means -

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which -

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term "class II gaming" means -

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) -

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or

designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that -

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include -

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on October 17, 1988, any gaming described in

subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

(9) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term "Secretary" means the Secretary of the Interior.

-SOURCE-

(Pub. L. 100-497, Sec. 4, Oct. 17, 1988, 102 Stat. 2467; Pub. L. 102-238, Sec. 2(a), Dec. 17, 1991, 105 Stat. 1908; Pub. L. 102-497, Sec. 16, Oct. 24, 1992, 106 Stat. 3261.)

-MISC1-

AMENDMENTS

1992 - Par. (7)(E). Pub. L. 102-497 struck out "or Montana" after "Wisconsin".

1991 - Par. (7)(E), (F). Pub. L. 102-238 added subpars. (E) and (F).

CLASS II GAMING WITH RESPECT TO INDIAN TRIBES IN WISCONSIN OR MONTANA ENGAGED IN NEGOTIATING TRIBAL-STATE COMPACTS

Pub. L. 101-301, Sec. 6, May 24, 1990, 104 Stat. 209, provided that: "Notwithstanding any other provision of law, the term 'class II gaming' includes, for purposes of applying Public Law 100-497 (25 U.S.C. 2701 et seq.) with respect to any Indian tribe located in the State of Wisconsin or the State of Montana, during the 1-year period beginning on the date of enactment of this Act (May 24, 1990), any gaming described in section 4(7)(B)(ii) of Public Law 100-497 (25 U.S.C. 2703(7)(B)(ii)) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated made a request, by no later than November 16, 1988, to the State in which such gaming is operated to negotiate a Tribal-State compact under section 11(d)(3) of Public Law 100-497 (25 U.S.C. 2710(d)(3))."

TRIBAL-STATE COMPACT COVERING INDIAN TRIBES IN MINNESOTA; OPERATION OF CLASS II GAMES; ALLOWANCE OF ADDITIONAL YEAR FOR NEGOTIATIONS

Pub. L. 101-121, title I, Sec. 118, Oct. 23, 1989, 103 Stat. 722,

provided that: "Notwithstanding any other provision of law, the term 'Class II gaming' in Public Law 100-497 (25 U.S.C. 2701 et seq.), for any Indian tribe located in the State of Minnesota, includes, during the period commencing on the date of enactment of this Act (Oct. 23, 1989) and continuing for 365 days from that date, any gaming described in section 4(7)(B)(ii) of Public Law 100-497 (25 U.S.C. 2703(7)(B)(ii)) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdication (sic) over the lands on which such gaming was operated, requested the State of Minnesota, no later than 30 days after the date of enactment of Public Law 100-497 (Oct. 17, 1988), to negotiate a tribal-state compact pursuant to section 11(d)(3) of Public Law 100-497 (25 U.S.C. 2710(d)(3))."

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1775b of this title; title 10 section 2323a; title 26 sections 45A, 168, 3402; title 28 sections 3701, 3704; title 31 section 5312.

-CITE-

25 USC Sec. 2702 01/26/98

-EXPCITE-

Sec. 2704. National Indian Gaming Commission

-STATUTE-

(a) Establishment

There is established within the Department of the Interior a

Commission to be known as the National Indian Gaming Commission.

(b) Composition; investigation; term of office; removal

(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2)(A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission -

(i) two members, including the Chairman, shall have a term of office of three years; and

(ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who -

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility

for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 2711 of this title.

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies

Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6) of this section.

(d) Quorum

Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) Vice Chairman

The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) Meetings

The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

(g) Compensation

(1) The Chairman of the Commission shall be paid at a rate equal

to that of level IV of the Executive Schedule under section 5315 of title 5.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5.

(3) All members of the Commission shall be reimbursed in accordance with title 5 for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

-SOURCE-

(Pub. L. 100-497, Sec. 5, Oct. 17, 1988, 102 Stat. 2469.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2703 of this title.

-CITE-

25 USC Sec. 1708 01/26/98

-EXPCITE-

Sec. 2705. Powers of Chairman

-STATUTE-

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to -

(1) issue orders of temporary closure of gaming activities as provided in section 2713(b) of this title;

(2) levy and collect civil fines as provided in section 2713(a)

of this title;

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 2710(d)(9) and 2711 of this title.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

-SOURCE-

(Pub. L. 100-497, Sec. 6, Oct. 17, 1988, 102 Stat. 2470.)

-CITE-

25 USC Sec. 2703 01/26/98

-EXPCITE-

Sec. 2706. Powers of Commission

-STATUTE-

(a) Budget approval; civil fines; fees; subpoenas; permanent orders

The Commission shall have the power, not subject to delegation -

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713(a) of this title;

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this

title;

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713(b)(2) of this title.

(b) Monitoring; inspection of premises; investigations; access to records; mail; contracts; hearings; oaths; regulations

The Commission -

(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;

(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and

private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

(c) Report

The Commission shall submit a report with minority views, if any, to the Congress on December 31, 1989, and every two years thereafter. The report shall include information on -

(1) whether the associate commissioners should continue as full or part-time officials;

(2) funding, including income and expenses, of the Commission;

(3) recommendations for amendments to the (FOOTNOTE 1) chapter; and

(FOOTNOTE 1) So in original. Probably should be "this".

(4) any other matter considered appropriate by the Commission.

-SOURCE-

(Pub. L. 100-497, Sec. 7, Oct. 17, 1988, 102 Stat. 2470.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2710 of this title.

-CITE-

25 USC Sec. 2704 01/26/98

-EXPCITE-

Sec. 2707. Commission staffing

-STATUTE-

(a) General Counsel

The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5.

(b) Staff

The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of title 5 governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) Temporary services

The Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Federal agency personnel

Upon the request of the Chairman, the head of any Federal agency

is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

(e) Administrative support services

The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

-SOURCE-

(Pub. L. 100-497, Sec. 8, Oct. 17, 1988, 102 Stat. 2471.)

-REFTEXT-

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

-MISC2-

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, Sec. 101(c)(1)) of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2703, 2705, 2711, 2712, 2713, 2714, 2719 of this title; title 18 section 1166.

-CITE-

25 USC Sec. 1775g 01/26/98

-EXPCITE-

Sec. 2708. Commission; access to information

-STATUTE-

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

-SOURCE-

(Pub. L. 100-497, Sec. 9, Oct. 17, 1988, 102 Stat. 2472.)

-CITE-

25 USC Sec. 2707 01/26/98

-EXPCITE-

Sec. 2709. Interim authority to regulate gaming

-STATUTE-

Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to

regulation of Indian gaming by the Commission.

-SOURCE-

(Pub. L. 100-497, Sec. 10, Oct. 17, 1988, 102 Stat. 2472.)

-CITE-

25 USC Sec. 2717a 01/26/98

-EXPCITE-

Sec. 2710. Tribal gaming ordinances

-STATUTE-

(a) Jurisdiction over class I and class II gaming activity

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if -

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance

or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that -

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than -

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which

adequately protects the environment and the public health and safety; and

(F) there is an adequate system which -

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes -

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if -

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate,

particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall

not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if -

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian

tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which -

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section (FOOTNOTE 1)

(FOOTNOTE 1) So in original. Probably should be followed by a comma.

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has -

(A) conducted its gaming activity in a manner which -

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for -

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation -

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are -

(A) authorized by an ordinance or resolution that -

(i) is adopted by the governing body of the Indian tribe

having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that -

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711(e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian

tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection -

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be

affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to -

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of title 15 shall not apply to any gaming conducted under a Tribal-State compact that -

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction

over -

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that -

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith

with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe (FOOTNOTE 2) to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court -

(FOOTNOTE 2) So in original. Probably should not be capitalized.

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is

submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures -

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates -

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

(e) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

-SOURCE-

(Pub. L. 100-497, Sec. 11, Oct. 17, 1988, 102 Stat. 2472.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1775b, 2703 of this title.

-CITE-

25 USC Sec. 2705 01/26/98

-EXPCITE-

Sec. 2711. Management contracts

-STATUTE-

(a) Class II gaming activity; information on operators

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 2710(b)(1) of this title, but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be

required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this chapter, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval

The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least -

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming

activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension

By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) Disapproval

The Chairman shall not approve any contract if the Chairman determines that -

(1) any person listed pursuant to subsection (a)(1)(A) of this section -

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this chapter or has refused to respond to questions propounded pursuant to subsection (a)(2) of this section; or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved

pursuant to this chapter; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) Modification or voiding

The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) Interest in land

No management contract for the operation and management of a gaming activity regulated by this chapter shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) Authority

The authority of the Secretary under section 81 of this title, relating to management contracts regulated pursuant to this chapter, is hereby transferred to the Commission.

(i) Investigation fee

The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

-SOURCE-

(Pub. L. 100-497, Sec. 12, Oct. 17, 1988, 102 Stat. 2479.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2704, 2705, 2710, 2712, 2714 of this title.

-CITE-

25 USC Sec. 2710 01/26/98

-EXPCITE-

Sec. 2712. Review of existing ordinances and contracts

-STATUTE-

(a) Notification to submit

As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to October 17, 1988, adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this chapter, or any amendment made by this chapter, unless disapproved under this section.

(b) Approval or modification of ordinance or resolution

(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a) of this section, the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 2710(b) of this title.

(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section conforms to the requirements of section 2710(b) of this title, the Chairman shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section does not conform to the requirements of section 2710(b) of this title, the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.

(c) Approval or modification of management contract

(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a) of this section, the Chairman shall subject such contract to the requirements and process of section 2711 of this title.

(2) If the Chairman determines that a management contract submitted under subsection (a) of this section, and the management contractor under such contract, meet the requirements of section 2711 of this title, the Chairman shall approve the management contract.

(3) If the Chairman determines that a contract submitted under subsection (a) of this section, or the management contractor under a contract submitted under subsection (a) of this section, does not meet the requirements of section 2711 of this title, the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has

been approved by the Secretary prior to October 17, 1988, the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.

-SOURCE-

(Pub. L. 100-497, Sec. 13, Oct. 17, 1988, 102 Stat. 2481.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2710, 2713, 2714 of this title.

-CITE-

25 USC Sec. 2711 01/26/98

-EXPCITE-

Sec. 2713. Civil penalties

-STATUTE-

(a) Authority; amount; appeal; written complaint

(1) Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this chapter, any regulation prescribed by the Commission pursuant to this chapter, or tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and

collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this chapter, by regulations prescribed under this chapter, or by tribal regulations, ordinances, or resolutions, approved under section 2710 or 2712 of this title, that may result in the imposition of a fine under subsection (a)(1) of this section, the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b) Temporary closure; hearing

(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this chapter, of regulations prescribed by the Commission pursuant to this chapter, or of tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing,

the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) Appeal from final decision

A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5.

(d) Regulatory authority under tribal law

Nothing in this chapter precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this chapter or with any rules or regulations adopted by the Commission.

-SOURCE-

(Pub. L. 100-497, Sec. 14, Oct. 17, 1988, 102 Stat. 2482.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2705, 2706, 2714 of this title.

-CITE-

25 USC Sec. 2712 01/26/98

-EXPCITE-

Sec. 2714. Judicial review

-STATUTE-

Decisions made by the Commission pursuant to sections 2710, 2711, 2712, and 2713 of this title shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5.

-SOURCE-

(Pub. L. 100-497, Sec. 15, Oct. 17, 1988, 102 Stat. 2483.)

-CITE-

25 USC Sec. 2708 01/26/98

-EXPCITE-

Sec. 2715. Subpoena and deposition authority

-STATUTE-

(a) Attendance, testimony, production of papers, etc.

By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Geographical location

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Refusal of subpoena; court order; contempt

Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Depositions; notice

A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Oath or affirmation required

Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the

deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witness fees

Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

-SOURCE-

(Pub. L. 100-497, Sec. 16, Oct. 17, 1988, 102 Stat. 2483.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2706 of this title.

-CITE-

25 USC Sec. 2714 01/26/98

-EXPCITE-

Sec. 2716. Investigative powers

-STATUTE-

(a) Confidential information

Except as provided in subsection (b) of this section, the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5.

(b) Provision to law enforcement officials

The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

(c) Attorney General

The Attorney General shall investigate activities associated with gaming authorized by this chapter which may be a violation of Federal law.

-SOURCE-

(Pub. L. 100-497, Sec. 17, Oct. 17, 1988, 102 Stat. 2484.)

-CITE-

25 USC Sec. 1775 01/26/98

-EXPCITE-

Sec. 2717. Commission funding

-STATUTE-

(a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter.

(2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be -

(i) no more than 2.5 percent of the first $1,500,000, and

(ii) no more than 5 percent of amounts in excess of the first $1,500,000,

of the gross revenues from each activity regulated by this chapter.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed $8,000,000.

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this chapter for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments

authorized by subsection (a) of this section for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

-SOURCE-

(Pub. L. 100-497, Sec. 18, Oct. 17, 1988, 102 Stat. 2484; Pub. L. 105-83, title I, Sec. 123(a)(1)-(2)(B), Nov. 14, 1997, 111 Stat. 1566.)

-MISC1-

AMENDMENTS

1997 - Subsec. (a)(1). Pub. L. 105-83, Sec. 123(a)(1), substituted "gaming operation that conducts a class II or class III gaming activity" for "class II gaming activity".

Subsec. (a)(2)(A)(i). Pub. L. 105-83, Sec. 123(a)(2)(A), substituted "no more than 2.5 percent" for "no less than 0.5 percent nor more than 2.5 percent".

Subsec. (a)(2)(B). Pub. L. 105-83, Sec. 123(a)(2)(B), substituted "$8,000,000" for "$1,500,000".

APPLICATION TO SELF-REGULATED TRIBES

Section 123(a)(2)(C) of Pub. L. 105-83 provided that: "(N)othing in subsection (a) of this section (amending this section) shall apply to self-regulated tribes such as the Mississippi Band of Choctaw."

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2706, 2710, 2717a, 2718 of this title.

-CITE-

25 USC Sec. 2713 01/26/98

-EXPCITE-

Sec. 2717a. Availability of class II gaming activity fees to carry out duties of Commission

-STATUTE-

In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 2717 of this title shall be available to carry out the duties of the Commission, to remain available until expended.

-SOURCE-

(Pub. L. 101-121, title I, Oct. 23, 1989, 103 Stat. 718.)

-COD-

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1990, and not as part of the Indian Gaming Regulatory Act which comprises this chapter.

-CITE-

25 USC Sec. 1775b 01/26/98

-EXPCITE-

Sec. 2718. Authorization of appropriations

-STATUTE-

(a) Subject to section 2717 of this title, there are authorized to be appropriated, for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title.

(b) Notwithstanding section 2717 of this title, there are authorized to be appropriated to fund the operation of the Commission, $2,000,000 for fiscal year 1998, and $2,000,000 for each fiscal year thereafter. The amounts authorized to be appropriated in the preceding sentence shall be in addition to the amounts authorized to be appropriated under subsection (a) of this section.

-SOURCE-

(Pub. L. 100-497, Sec. 19, Oct. 17, 1988, 102 Stat. 2485; Pub. L. 102-238, Sec. 2(b), Dec. 17, 1991, 105 Stat. 1908; Pub. L. 105-83, title I, Sec. 123(b), Nov. 14, 1997, 111 Stat. 1566; Pub. L. 105-119, title VI, Sec. 627, Nov. 26, 1997, 111 Stat. 2522.)

-MISC1-

AMENDMENTS

1997 - Subsec. (a). Pub. L. 105-119 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Subject to the provisions of section 2717 of this title, there are hereby authorized to be appropriated for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title for the fiscal year immediately preceding the fiscal year involved, for the operation of the Commission."

Pub. L. 105-83, Sec. 123(b)(1), substituted "for fiscal year

1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title for the fiscal year immediately preceding the fiscal year involved," for "such sums as may be necessary".

Subsec. (b). Pub. L. 105-83, Sec. 123(b)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: "Notwithstanding the provisions of section 2717 of this title, there are hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for each of the fiscal years beginning October 1, 1988, and October 1, 1989. Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992."

1991 - Subsec. (b). Pub. L. 102-238 inserted at end "Notwithstanding the provisions of section 2717 of this title, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992."

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2717 of this title.

-CITE-

25 USC Sec. 2715 01/26/98

-EXPCITE-

Sec. 2719. Gaming on lands acquired after October 17, 1988

-STATUTE-

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless -

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and -

(A) such lands are located in Oklahoma and -

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when -

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best

interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of -

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to -

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of

such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of title 26

(1) The provisions of title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

-SOURCE-

(Pub. L. 100-497, Sec. 20, Oct. 17, 1988, 102 Stat. 2485.)

-CITE-

25 USC Sec. 2717 01/26/98

-EXPCITE-

Sec. 2720. Dissemination of information

-STATUTE-

Consistent with the requirements of this chapter, sections 1301, 1302, 1303 and 1304 of title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

-SOURCE-

(Pub. L. 100-497, Sec. 21, Oct. 17, 1988, 102 Stat. 2486.)

-CITE-

25 USC Sec. 2716 01/26/98

-EXPCITE-

Sec. 2721. Severability

-STATUTE-

In the event that any section or provision of this chapter, or amendment made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

-SOURCE-

(Pub. L. 100-497, Sec. 22, Oct. 17, 1988, 102 Stat. 2486.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this

Act", meaning Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, known as the Indian Gaming Regulatory Act, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

-CITE-

25 USC Sec. 2720 01/26/98

-EXPCITE-

CHAPTER 14 - MISCELLANEOUS

SUBCHAPTER XXXI-A - ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS: RESTORATION OF FEDERAL SUPERVISION

-HEAD-

Sec. 737. Gaming activities

-STATUTE-

(a) In general

All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of the prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.-86-07 which was approved and certified on March 10, 1986.

(b) No State regulatory jurisdiction

Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.

(c) Jurisdiction over enforcement against members

Notwithstanding section 736(f) of this title, the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) of this section that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.

-SOURCE-

(Pub. L. 100-89, title II, Sec. 207, Aug. 18, 1987, 101 Stat. 672.)

-CITE-

25 USC Sec. 2718 01/26/98

-EXPCITE-

SUBCHAPTER XLIII-A - CATAWBA INDIAN TRIBE OF SOUTH CAROLINA; RESTORATION OF FEDERAL TRUST RELATIONSHIP

-HEAD-

Sec. 941l. Games of chance

-STATUTE-

(a) Inapplicability of Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the Tribe.

(b) Games of chance generally

The Tribe shall have the rights and responsibilities set forth in the Settlement Agreement and the State Act with respect to the conduct of games of chance. Except as specifically set forth in the Settlement Agreement and the State Act, all laws, ordinances, and regulations of the State, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation.

-SOURCE-

(Pub. L. 103-116, Sec. 14, Oct. 27, 1993, 107 Stat. 1136.)

-REFTEXT-

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (a), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (Sec. 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

-CITE-

25 USC Sec. 2706 01/26/98

-EXPCITE-

SUBCHAPTER LXXVIII - YSLETA DEL SUR PUEBLO: RESTORATION OF FEDERAL SUPERVISION

-HEAD-

Sec. 1300g-6. Gaming activities

-STATUTE-

(a) In general

All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. Any violation of the prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas. The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.-02-86 which was approved and certified on March 12, 1986.

(b) No State regulatory jurisdiction

Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.

(c) Jurisdiction over enforcement against members

Notwithstanding section 1300g-4(f) of this title, the courts of the United States shall have exclusive jurisdiction over any offense in violation of subsection (a) of this section that is committed by the tribe, or by any member of the tribe, on the reservation or on lands of the tribe. However, nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.

-SOURCE-

(Pub. L. 100-89, title I, Sec. 107, Aug. 18, 1987, 101 Stat. 668.)

-CITE-

-EXPCITE-

CHAPTER 19 - INDIAN LAND CLAIMS SETTLEMENTS

SUBCHAPTER I - RHODE ISLAND INDIAN CLAIMS SETTLEMENT

Part A - General Provisions

-HEAD-

Sec. 1708. Applicability of State law; treatment of settlement lands under Indian Gaming Regulatory Act

-STATUTE-

(a) In general

Except as otherwise provided in this subchapter, the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.

(b) Treatment of settlement lands under Indian Gaming Regulatory Act

For purposes of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), settlement lands shall not be treated as Indian lands.

-SOURCE-

(Pub. L. 95-395, Sec. 9, Sept. 30, 1978, 92 Stat. 817; Pub. L. 104-208, div. A, title I, Sec. 101(d) (title III, Sec. 330), Sept. 30, 1996, 110 Stat. 3009-181, 3009-227.)

-REFTEXT-

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (b), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (Sec. 2701 et seq.) of this

title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

-MISC2-

AMENDMENTS

1996 - Pub. L. 104-208 substituted "Applicability of State law; treatment of settlement lands under Indian Gaming Regulatory Act" for "Applicability of State law" in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1702 of this title.

-CITE-

25 USC Sec. 2709 01/26/98

-EXPCITE-

SUBCHAPTER III - FLORIDA INDIAN (MICCOSUKEE) LAND CLAIMS SETTLEMENT

Part A - Florida Indian Land Claims Settlement Act of 1982

-HEAD-

Sec. 1747. Transfer of lands to United States

-STATUTE-

(a) Acceptance by Secretary

The Secretary is authorized and directed to accept the transfer to the United States, to be held in trust for the use and benefit of the Miccosukee Tribe of Indians of Florida, of the lands authorized to be conveyed to the Miccosukee Tribe by section 285.061, Florida Statutes, and the lands described in Dedication Deed No. 23228 from the Trustees of the Internal Improvement Trust Fund subject to the provisions of section 285.061, Florida Statutes, and of this section.

(b) Jurisdiction of State of Florida

(1) Notwithstanding the conveyance of any lands by the State of Florida to the United States in trust for the Miccosukee Tribe of Indians of Florida, the assumption of jurisdiction in favor of the State of Florida contained in section 285.16, Florida Statutes, pursuant to section 7 of the Act of August 15, 1953 (67 Stat. 588), as in effect prior to its repeal, shall continue in full force and effect on such lands unless the State shall retrocede such civil or criminal jurisdiction in whole or in part.

(2)(A) The laws of Florida relating to alcoholic beverages (chapters 561, 562, 563, 564, and 565, Florida Statutes), gambling (chapter 849, Florida Statutes), sale of cigarettes (chapter 210, Florida Statutes), and their successor laws, shall have the same force and effect within said transferred lands as they have elsewhere within the State and the State shall have jurisdiction over offenses committed by or against Indians under said laws to the same extent the State has jurisdiction over said offenses committed elsewhere within the State.

(B) Nothing in subparagraph (A) shall permit the exercise of jurisdiction by the State of Florida as to any matter to which

section 1162(b) of title 18 or section 1360(b) of title 28 applies.

(c) Transfer of lands as subject to existing leases, etc.; additional water rights

(1) Any transfer of lands under this section shall be subject to all existing leases, easements, and rights-of-way, and all the rights, easements, and reservations in favor of the Central and Southern Florida Flood Control District (now the South Florida Water Management District) and shall not increase, diminish, modify, or otherwise affect the extent to which chapter 373, Florida Statutes, and its successor laws, have force and effect within such lands.

(2) Any transfer of lands under this section shall not confer upon the Miccosukee Tribe, or upon the lands within the reservation, any additional water rights.

-SOURCE-

(Pub. L. 97-399, Sec. 8, Dec. 31, 1982, 96 Stat. 2015.)

-REFTEXT-

REFERENCES IN TEXT

Section 7 of Act August 15, 1953 (67 Stat. 588), as in effect prior to its repeal, referred to in subsec. (b)(1), is section 7 of act Aug. 15, 1953, ch. 505, 67 Stat. 590, which was set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 90-284, title IV, Sec. 403(b), Apr. 11, 1968, 82 Stat. 79.

-CITE-

8 USC Sec. 1101 01/26/98

-EXPCITE-

SUBCHAPTER V - MASSACHUSETTS INDIAN LAND CLAIMS SETTLEMENT

-HEAD-

Sec. 1771g. Applicability of State law

-STATUTE-

Except as otherwise expressly provided in this subchapter or in the State Implementing Act, the settlement lands and any other land that may now or hereafter be owned by or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts, shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, Massachusetts (including those laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance).

-SOURCE-

(Pub. L. 100-95, Sec. 9, Aug. 18, 1987, 101 Stat. 709.)

-CITE-

25 USC Sec. 1772d 01/26/98

-EXPCITE-

SUBCHAPTER VI - FLORIDA INDIAN (SEMINOLE) LAND CLAIMS SETTLEMENT

-HEAD-

Sec. 1772d. Special provisions for Seminole Tribe

-STATUTE-

(a) Acceptance of land by Secretary in trust for Seminole Tribe

Notwithstanding any clouds on title, the Secretary is authorized and directed, as soon as practicable after December 31, 1987, to accept the transfer to the United States, to be held in trust and as a reservation for the use and benefit of the Seminole Tribe of Florida, the approximate 15 sections of land being described as follows:

Beginning at the southwest corner of section 31, township 48 south, Range 35 east; thence easterly along the south border of sections 31, 32 and 33, township 48 south, Range 35 east, to the westernmost boundary of the levee 28 works in section 33, township 48 south, Range 35 east; thence continuing north along the westernmost boundary of the levee 28 works to the point at which the westernmost boundary of the levee 28 works intersects the southernmost boundary of the levee 4 works in section 9, township 48 south, Range 35 east; thence continuing westerly along the southernmost boundary of the levee 4 works to the point at which the southernmost boundary of the levee 4 works intersects the dividing line between township 48 south, Range 35 east and township 48 south, Range 34 east at the Broward County and Hendry County line; and thence continuing south along said line to the point of beginning; said lands situate, lying and being in Broward County, Florida.

(b) Survey of Seminole Federal Reservations in Florida

Before the expiration of the 3-year period beginning on December 31, 1987, the Secretary shall -

(1) conduct a cadastral survey of those portions of the

Seminole Federal Reservations in Florida not previously surveyed by the Department of the Interior, including all lands taken into trust as reservations under the authority of this subchapter;

(2) publish the correct legal descriptions of the Seminole Reservations in the Federal Register within 180 days after the survey is completed.

(c) Acceptance of land in future by Secretary in trust for Seminole Tribe

If, pursuant to paragraph 6 of the Settlement Agreement, there is a subsequent agreement between the tribe, the State, and the district providing that lands exchanged with the tribe or acquired by the tribe may be taken into Federal trust as a reservation for the tribe, the Secretary shall accept the transfer of such lands to the United States, to be held in trust for the use and benefit of the tribe pursuant to the terms and conditions of the subsequent agreement unless -

(1) the total amount of land previously taken in trust under this subsection exceeds the amount of land transferred to the State and Water District by the tribe under the Settlement Agreement;

(2) the Secretary determines in writing that either the size, location, or condition of the land, or the terms and conditions under which it is transferred would place an unreasonable burden on the United States as trustee;

(3) the land is not in Florida; or

(4) the land is not agricultural in nature.

(d) Civil and criminal jurisdiction over lands acquired by United States in trust for Seminole Tribe

(1) Notwithstanding the acquisition of any land under subsection (a) or (c) of this section by the United States in trust for the tribe, the assumption of jurisdiction in favor of the State contained in section 285.16, Florida Statutes, pursuant to section 7 of the Act of August 15, 1953, (FOOTNOTE 1) (67 Stat. 588; Public Law 280), shall continue in full force and effect on such lands unless the United States accepts a retrocession by the State of such civil or criminal jurisdiction in whole or in part under section 1323 of this title. The laws of Florida relating to alcoholic beverages, gambling, sale of cigarettes, and their successor laws, shall have the same force and effect within said transferred lands as they have elsewhere within the State. The State, with respect to the transferred lands, shall also have jurisdiction over offenses committed by or against Indians under said laws to the same extent the State has jurisdiction over said offenses committed elsewhere within the State.

(FOOTNOTE 1) So in original. The comma probably should not appear.

(2) Nothing in this subsection shall be construed as permitting the exercise of the above jurisdiction by the State regarding matters to which section 1162(b) of title 18 and section 1360(b) of title 28 apply.

(3) The scope of tribal sovereignty over transferred lands, with the specific exceptions of law relating to cigarettes, gambling and alcohol described in this subsection, shall be as required by applicable law with regard to existing tribal lands held in reservation or Federal trust status. Such transfer shall not confer upon the tribe, or upon the lands within the reservation,

any additional water rights. Tribal water rights shall be deemed to be defined in the compact.

-SOURCE-

(Pub. L. 100-228, Sec. 6, Dec. 31, 1987, 101 Stat. 1559.)

-REFTEXT-

REFERENCES IN TEXT

Section 7 of the Act of August 15, 1953, referred to in subsec. (d)(1), is section 7 of act Aug. 15, 1953, ch. 505, 67 Stat. 590, which was set out as a note under section 1360 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 90-284, title IV, Sec. 403(b), Apr. 11, 1968, 82 Stat. 79.

-CITE-

47 USC Sec. 228 01/26/98

-EXPCITE-

SUBCHAPTER IX - MOHEGAN NATION (CONNECTICUT) LAND CLAIMS SETTLEMENT

-HEAD-

Sec. 1775. Findings and purposes

-STATUTE-

(a) Findings

Congress finds the following:

(1) The Mohegan Tribe of Indians of Connecticut received recognition by the United States pursuant to the administrative process under part 83 of title 25 of the Code of Federal Regulations.

(2) The Mohegan Tribe of Indians of Connecticut is the successor in interest to the aboriginal entity known as the Mohegan Indian Tribe.

(3) The Mohegan Tribe has existed in the geographic area that is currently the State of Connecticut for a long period preceding the colonial period of the history of the United States.

(4) Certain lands were sequestered as tribal lands by the Colony of Connecticut and subsequently by the State of Connecticut.

(5) The Mohegan Tribe of Indians of Connecticut v. State of Connecticut, et al. (Civil Action No. H-77-434, pending before the United States District Court for the Southern District of Connecticut) relates to the ownership of certain lands within the State of Connecticut.

(6) Such action will likely result in economic hardships for residents of the State of Connecticut, including residents of the town of Montville, Connecticut, by encumbering the title to lands in the State, including lands that are not currently the subject of the action.

(7) The State of Connecticut and the Mohegan Tribe have executed agreements for the purposes of resolving all disputes between the State of Connecticut and the Mohegan Tribe and providing a settlement for the action referred to in paragraph (5).

(8) In order to implement the agreements referred to in paragraphs (5) and (6) of section 1775a of this title that address matters of jurisdiction with respect to certain offenses committed by and against members of the Mohegan Tribe and other

Indians in Indian country and matters of gaming-related development, it is necessary for the Congress to enact legislation.

(9) The town of Montville, Connecticut, will -

(A) be affected by the loss of a tax base from, and jurisdiction over, lands that will be held in trust by the United States on behalf of the Mohegan Tribe; and

(B) serve as the host community for the gaming operations of the Mohegan Tribe.

(10) The town of Montville and the Mohegan Tribe have entered into an agreement to resolve issues extant between them and to establish the basis for a cooperative government-to-government relationship.

(b) Purposes

The purposes of this subchapter are as follows:

(1) To facilitate the settlement of claims against the State of Connecticut by the Mohegan Tribe.

(2) To facilitate the removal of any encumbrance to any title to land in the State of Connecticut that would have resulted from the action referred to in subsection (a) of this section.

-SOURCE-

(Pub. L. 103-377, Sec. 2, Oct. 19, 1994, 108 Stat. 3501.)

-MISC1-

SHORT TITLE

Section 1 of Pub. L. 103-377 provided that: "This Act (enacting this subchapter) may be cited as the 'Mohegan Nation of Connecticut Land Claims Settlement Act of 1994'."

-CITE-

25 USC Sec. 1300g-6 01/26/98

-EXPCITE-

Sec. 1775b. Action by Secretary

-STATUTE-

(a) In general

The Secretary is authorized to carry out the duties specified in subsection (b) of this section at such time as the Secretary makes a determination that -

(1) in accordance with the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the State of Connecticut has entered into a binding compact with the Mohegan Tribe providing for class III tribal gaming operations (as defined in section 4(8) of such Act (25 U.S.C. 2703(8)));

(2) the compact has been approved by the Secretary pursuant to section 11(d)(8) of such Act (25 U.S.C. 2710(d)(8)); and

(3) pursuant to transfers carried out pursuant to the State Agreement, the United States holds title to lands described in exhibit B of the State Agreement in trust for the Mohegan Tribe to be used as the initial Indian reservation of the Mohegan Tribe.

(b) Publication by Secretary

If the Secretary makes a determination under subsection (a) of this section that the conditions specified in paragraphs (1) through (3) of that subsection have been met, the Secretary shall

publish the determination, together with the State Agreement, in the Federal Register.

(c) Effect of publication

(1) In general

Upon the publication of the determination and the State Agreement in the Federal Register pursuant to subsection (b) of this section, a transfer, waiver, release, relinquishment, or other commitment made by the Mohegan Tribe in accordance with the terms and conditions of the State Agreement shall be in full force and effect.

(2) Approval by the United States

(A) The United States hereby approves any transfer, waiver, release, relinquishment, or other commitment carried out pursuant to paragraph (1).

(B) A transfer made pursuant to paragraph (1) shall be deemed to have been made in accordance with all provisions of Federal law that specifically apply to transfers of lands or natural resources from, by, or on behalf of an Indian, Indian nation, or tribe of Indians (including the Act popularly known as the "Trade and Intercourse Act of 1790"; section 4 of the Act of July 22, 1790 (1 Stat. 137, chapter 33)). The approval of the United States made pursuant to subparagraph (A) shall apply to the transfer beginning on the date of the transfer.

(d) Extinguishment of claims

(1) In general

Subject to subsections (f)(2) and (g) of this section, the following claims are hereby extinguished:

(A) Any claim to land within the State of Connecticut based

upon aboriginal title by the Mohegan Tribe.

(B) Any other claim that the Mohegan Tribe may have with respect to any public or private lands or natural resources in Connecticut, including any claim or right based on recognized title, including -

(i) any claim that the Mohegan Tribe may have to the tribal sequestered lands bounded out to the Tribe in 1684, consisting of some 20,480 acres lying between the Thames River, New London bounds, Norwich bounds, and Colchester bounds;

(ii) any claim that the Mohegan Tribe may have based on a survey conducted under the authority of the Connecticut General Assembly in 1736 of lands reserved and sequestered by the General Assembly for the sole use and improvement of the Mohegan Indian Tribe; and

(iii) any claim that the Mohegan Tribe may have based on any action by the State carried out in 1860 or 1861 or otherwise made by the State to allot, reallot, or confirm any lands of the Mohegan Tribe to individual Indians or other persons.

(2) Approval by the United States

An extinguishment made pursuant to this subsection shall be deemed to have been made in accordance with all provisions of Federal law that specifically apply to transfers of lands or natural resources from, by, or on behalf of an Indian, Indian nation, or tribe of Indians (including the Act popularly known as the "Trade and Intercourse Act of 1790"; section 4 of the Act of July 22, 1790 (1 Stat. 137, chapter 33)).

(e) Transfers

Subject to subsection (g) of this section, any transfer of lands or natural resources located within the State of Connecticut, including any such transfer made pursuant to any applicable Federal or State law (including any applicable treaty), made by, from, or on behalf of the Mohegan Tribe or any predecessor or successor in interest of the Mohegan Tribe shall be deemed to be in full force and effect, as provided in subsection (c)(1) of this section.

(f) Limitation

(1) In general

Except as provided in paragraph (2) and subject to subsection (g) of this section, by virtue of the approval by the United States under this section of a transfer of land or the extinguishment of aboriginal title, any claim by the Mohegan Tribe against the United States, any State or political subdivision of a State, or any other person or entity, by the Mohegan Tribe, that -

(A) arises after the transfer or extinguishment is carried out; and

(B) is based on any interest in or right involving any claim to lands or natural resources described in this section, including claims for trespass damages or claims for use and occupancy,

shall, beginning on the date of the transfer of land or the extinguishment of aboriginal title, be considered an extinguished claim.

(2) Exception

The limitation under paragraph (1) shall not apply to any

interest in lands or natural resources that is lawfully acquired by the Mohegan Tribe or a member of the Mohegan Tribe after the applicable date specified in paragraph (1).

(g) Statutory construction

(1) Aboriginal interests

Nothing in this section may be construed to extinguish any aboriginal right, title, interest, or claim to lands or natural resources, to the extent that such right, title, interest, or claim is an excepted interest, as defined under section 1(a) of the State Agreement.

(2) Personal claims

Nothing in this section may be construed to offset or eliminate the personal claim of any individual Indian if the individual Indian pursues such claim under any law of general applicability.

-SOURCE-

(Pub. L. 103-377, Sec. 4, Oct. 19, 1994, 108 Stat. 3502.)

-REFTEXT-

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (a)(1), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (Sec. 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Trade and Intercourse Act of 1790, referred to in subsecs. (c)(2)(B) and (d)(2), is act July 22, 1790, ch. 33, 1 Stat. 137, which is not classified to the Code.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1775g of this title.

-CITE-

25 USC Sec. 2721 01/26/98

-EXPCITE-

Sec. 1775g. Effect of revocation of State Agreement

-STATUTE-

(a) In general

If, during the 15-year period beginning on the date on which the Secretary publishes a determination pursuant to section 1775b(b) of this title, the State Agreement is invalidated by a court of competent jurisdiction, or if the gaming compact described in section 1775b(a)(1) of this title or any agreement between the State of Connecticut and the Mohegan Tribe to implement the compact is invalidated by a court of competent jurisdiction -

(1) the transfers, waivers, releases, relinquishments, and other commitments made by the Mohegan Tribe under section 1(a) of the State Agreement shall cease to be of any force or effect;

(2) section 1775b of this title shall not apply to the lands or interests in lands or natural resources of the Mohegan Tribe or any of its members, and the title to the lands or interests in lands or natural resources shall be determined as if such section were never enacted; and

(3) the approval by the United States of prior transfers and the extinguishment of claims and aboriginal title of the Mohegan

Tribe otherwise made under section 1775b of this title shall be void.

(b) Right of Mohegan Tribe to reinstate claim

(1) In general

If a State Agreement or compact or agreement described in subsection (a) of this section is invalidated by a court of competent jurisdiction, the Mohegan Tribe or its members shall have the right to reinstate a claim to lands or interests in lands or natural resources to which the Tribe or members are entitled as a result of the invalidation, within a reasonable time, but not later than the later of -

(A) 180 days after the Mohegan Tribe receives written notice of such determination of an invalidation described in subsection (a) of this section; or

(B) if the determination of the invalidation is subject to an appeal, 180 days after the court of last resort enters a judgment.

(2) Defenses

Notwithstanding any other provision of law, if a party to an action described in paragraph (1) reinstates the action during the period described in paragraph (1)(B) -

(A) no defense, such as laches, statute of limitations, law of the case, res judicata, or prior disposition may be asserted based on the withdrawal of the action and reinstatement of the action; and

(B) the substance of any discussions leading to the State Agreement may not be admissible in any subsequent litigation, except that, if any such action is reinstated, any defense that

would have been available to the State of Connecticut at the time the action was withdrawn -

(i) may be asserted; and

(ii) is not waived by anything in the State Agreement or by subsequent events occurring between the withdrawal action and commencement of the reinstated action.

-SOURCE-

(Pub. L. 103-377, Sec. 9, Oct. 19, 1994, 108 Stat. 3506.)

-CITE-

25 USC Sec. 1771g 01/26/98

-EXPCITE-

TITLE 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

CHAPTER 1 - NORMAL TAXES AND SURTAXES

Subchapter A - Determination of Tax Liability

PART IV - CREDITS AGAINST TAX

Subpart D - Business Related Credits

-HEAD-

Sec. 45A. Indian employment credit

-STATUTE-

(a) Amount of credit

For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of -

(1) the sum of -

(A) the qualified wages paid or incurred during such taxable year, plus

(B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

(b) Qualified wages; qualified employee health insurance costs

For purposes of this section -

(1) Qualified wages

(A) In general

The term ''qualified wages'' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

(B) Coordination with work opportunity credit

The term ''qualified wages'' shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51.

(2) Qualified employee health insurance costs

(A) In general

The term ''qualified employee health insurance costs'' means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

(B) Exception for amounts paid under salary reduction arrangements

No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

(3) Limitation

The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed $20,000.

(c) Qualified employee

For purposes of this section -

(1) In general

Except as otherwise provided in this subsection, the term ''qualified employee'' means, with respect to any period, any employee of an employer if -

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

(C) the principal place of abode of such employee while performing such services is on or near the reservation in which

the services are performed.

(2) Individuals receiving wages in excess of $30,000 not eligible

An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

(3) Inflation adjustment

The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d).

(4) Employment must be trade or business employment

An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

(5) Certain employees not eligible

The term ''qualified employee'' shall not include -

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II,

or III ***gaming*** as defined in section 4 of the Indian ***Gaming*** Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such ***gaming*** activity.

(6) Indian tribe defined

The term ''Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) Indian reservation defined

The term ''Indian reservation'' has the meaning given such term by section 168(j)(6).

(d) Early termination of employment by employer

(1) In general

If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer -

(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

(2) Carrybacks and carryovers adjusted

In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

(3) Subsection not to apply in certain cases

(A) In general

Paragraph (1) shall not apply to -

(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated -

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee

continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of -

(A) determining the amount of any credit allowable under this chapter, and

(B) determining the amount of the tax imposed by section 55.

(e) Other definitions and special rules

For purposes of this section -

(1) Wages

The term ''wages'' has the same meaning given to such term in section 51.

(2) Controlled groups

(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

(3) Certain other rules made applicable

Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(4) Coordination with nonrevenue laws

Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the

enactment of this paragraph.

(5) Special rule for short taxable years

For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

(f) Termination

This section shall not apply to taxable years beginning after December 31, 2003.

-SOURCE-

(Added Pub. L. 103-66, title XIII, Sec. 13322(b), Aug. 10, 1993, 107 Stat. 559; amended Pub. L. 104-188, title I, Sec. 1201(e)(1), Aug. 20, 1996, 110 Stat. 1772.)

-REFTEXT-

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(6), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (Sec. 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (e)(4), is the date of enactment of Pub. L. 103-66, which was approved Aug. 10, 1993.

-MISC2-

AMENDMENTS

1996 - Subsec. (b)(1)(B). Pub. L. 104-188, which directed that

subsec. (b)(1)(B) of this section be amended in the text by substituting ''work opportunity credit'' for ''targeted jobs credit'', was executed by making the substitution in the heading, to reflect the probable intent of Congress, because the phrase ''targeted jobs credit'' appeared only in the heading, and not in the text, of subpar. (B).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103-66, set out as an Effective Date of 1993 Amendment note under section 38 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 39, 196, 280C of this title.

-EXPCITE-

Subchapter B - Computation of Taxable Income

PART IV - TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

Subpart A - Private Activity Bonds

-HEAD-

Sec. 144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond

-STATUTE-

(a) Qualified small issue bond

(1) In general

For purposes of this part, the term "qualified small issue bond" means any bond issued as part of an issue the aggregate authorized face amount of which is $1,000,000 or less and 95 percent or more of the net proceeds of which are to be used -

(A) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or

(B) to redeem part or all of a prior issue which was issued for purposes described in subparagraph (A) or this subparagraph.

(2) Certain prior issues taken into account

If -

(A) the proceeds of 2 or more issues of bonds (whether or not the issuer of each such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

(B) the principal user of such facilities is or will be the same person or 2 or more related persons, and

(C) but for this paragraph, paragraph (1) (or the corresponding provision of prior law) would apply to each such issue,

then, for purposes of paragraph (1), in determining the aggregate face amount of any later issue there shall be taken into account

the aggregate face amount of tax-exempt bonds issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(3) Related persons

For purposes of this subsection, a person is a related person to another person if -

(A) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

(B) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

(4) $10,000,000 limit in certain cases

(A) In general

At the election of the issuer with respect to any issue, this subsection shall be applied -

(i) by substituting "$10,000,000" for "$1,000,000" in paragraph (1), and

(ii) in determining the aggregate face amount of such issue, by taking into account not only the amount described in paragraph (2), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (B) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding tax-exempt issues to which paragraph

(1) (or the corresponding provision of prior law) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in paragraph (2).

(B) Facilities taken into account

For purposes of subparagraph (A)(ii), the facilities described in this subparagraph are facilities -

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or 2 or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

(C) Certain capital expenditures not taken into account

For purposes of subparagraph (A)(ii), any capital expenditure -

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance,

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a

mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000), or

(iv) described in clause (i) or (ii) of section 41(b)(2)(A) for which a deduction was allowed under section 174(a),

shall not be taken into account.

(D) Limitation on loss of tax exemption

In applying subparagraph (A)(ii) with respect to capital expenditures made after the date of any issue, no bond issued as a part of such issue shall cease to be treated as a qualified small issue bond by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(E) Certain refinancing issues

In the case of any issue described in paragraph (1)(B), an election may be made under subparagraph (A) of this paragraph only if all of the prior issues being redeemed are issues to which paragraph (1) (or the corresponding provision of prior law) applied. In applying subparagraph (A)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under paragraph (1) (or the corresponding provision of prior law).

(F) Aggregate amount of capital expenditures where there is urban development action grant

In the case of any issue 95 percent or more of the net proceeds of which are to be used to provide facilities with

respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974, capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).

(5) Issues for residential purposes

This subsection shall not apply to any bond issued as part of an issue 5 percent or more of the net proceeds of which are to be used directly or indirectly to provide residential real property for family units.

(6) Limitations on treatment of bonds as part of the same issue

(A) In general

For purposes of this subsection, separate lots of bonds which (but for this subparagraph) would be treated as part of the same issue shall be treated as separate issues unless the proceeds of such lots are to be used with respect to 2 or more facilities -

(i) which are located in more than 1 State, or

(ii) which have, or will have, as the same principal user the same person or related persons.

(B) Franchises

For purposes of subparagraph (A), a person (other than a governmental unit) shall be considered a principal user of a facility if such person (or a group of related persons which includes such person) -

(i) guarantees, arranges, participates in, or assists with the issuance (or pays any portion of the cost of issuance) of any bond the proceeds of which are to be used to finance or

refinance such facility, and

(ii) provides any property, or any franchise, trademark, or trade name (within the meaning of section 1253), which is to be used in connection with such facility.

(7) Subsection not to apply if bonds issued with certain other tax-exempt bonds

This subsection shall not apply to any bond issued as part of an issue (other than an issue to which paragraph (4) applies) if the interest on any other bond which is part of such issue is excluded from gross income under any provision of law other than this subsection.

(8) Restrictions on financing certain facilities

This subsection shall not apply to an issue if -

(A) more than 25 percent of the net proceeds of the issue are to be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service, or the provision of recreation or entertainment; or

(B) any portion of the proceeds of the issue is to be used to provide the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, or racetrack.

(9) Aggregation of issues with respect to single project

For purposes of this subsection, 2 or more issues part or all of the net proceeds of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of

offices, stores, or warehouses using substantial common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue).

(10) Aggregate limit per taxpayer

(A) In general

This subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any test-period beneficiary (when increased by the outstanding tax-exempt facility-related bonds of such beneficiary) exceeds $40,000,000.

(B) Outstanding tax-exempt facility-related bonds

(i) In general

For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt facility-related bonds of any person who is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in clause (ii) -

(I) which are allocated to such beneficiary, and

(II) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(ii) Bonds taken into account

For purposes of clause (i), the bonds referred to in this clause are -

(I) exempt facility bonds, qualified small issue bonds,

and qualified redevelopment bonds, and

(II) industrial development bonds (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) to which section 141(a) does not apply.

(C) Allocation of face amount of issue

(i) In general

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary of a facility financed by the proceeds of such issue (other than an owner of such facility) is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility used by such beneficiary bears to the entire facility.

(ii) Owners

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary who is an owner of a facility financed by the proceeds of such issue is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility owned by such beneficiary bears to the entire facility.

(D) Test-period beneficiary

For purposes of this paragraph, except as provided in regulations, the term "test-period beneficiary" means any person who is an owner or a principal user of facilities being financed by the issue at any time during the 3-year period beginning on the later of -

(i) the date such facilities were placed in service, or

(ii) the date of issue.

(E) Treatment of related persons

For purposes of this paragraph, all persons who are related (within the meaning of paragraph (3)) to each other shall be treated as 1 person.

(11) Limitation on acquisition of depreciable farm property

(A) In general

This subsection shall not apply to any issue if more than $250,000 of the net proceeds of such issue are to be used to provide depreciable farm property with respect to which the principal user is or will be the same person or 2 or more related persons.

(B) Depreciable farm property

For purposes of this paragraph, the term "depreciable farm property" means property of a character subject to the allowance for depreciation which is to be used in a trade or business of farming.

(C) Prior issues taken into account

In determining the amount of proceeds of an issue to be used as described in subparagraph (A), there shall be taken into account the aggregate amount of each prior issue to which paragraph (1) (or the corresponding provisions of prior law) applied which were or will be so used.

(12) Termination dates

(A) In general

This subsection shall not apply to -

(i) any bond (other than a bond described in clause (ii))

issued after December 31, 1986, or

(ii) any bond (or series of bonds) issued to refund a bond issued on or before such date unless -

(I) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(II) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(III) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of clause (ii)(I), average maturity shall be determined in accordance with section 147(b)(2)(A).

(B) Bonds issued to finance manufacturing facilities and farm property

Subparagraph (A) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide -

(i) any manufacturing facility, or

(ii) any land or property in accordance with section 147(c)(2).

(C) Manufacturing facility

For purposes of this paragraph, the term "manufacturing facility" means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property). A rule similar to the rule of section 142(b)(2) shall apply for purposes of the preceding

sentence. For purposes of the 1st sentence of this subparagraph, the term "manufacturing facility" includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this sentence) if -

(i) such facilities are located on the same site as the manufacturing facility, and

(ii) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

(b) Qualified student loan bond

For purposes of this part -

(1) In general

The term "qualified student loan bond" means any bond issued as part of an issue the applicable percentage or more of the net proceeds of which are to be used directly or indirectly to make or finance student loans under -

(A) a program of general application to which the Higher Education Act of 1965 applies if -

(i) limitations are imposed under the program on -

(I) the maximum amount of loans outstanding to any student, and

(II) the maximum rate of interest payable on any loan,

(ii) the loans are directly or indirectly guaranteed by the Federal Government,

(iii) the financing of loans under the program is not limited by Federal law to the proceeds of tax-exempt bonds, and

(iv) special allowance payments under section 438 of the

Higher Education Act of 1965 -

(I) are authorized to be paid with respect to loans made under the program, or

(II) would be authorized to be made with respect to loans under the program if such loans were not financed with the proceeds of tax-exempt bonds, or

(B) a program of general application approved by the State if no loan under such program exceeds the difference between the total cost of attendance and other forms of student assistance (not including loans pursuant to section 428B(a)(1) of the Higher Education Act of 1965 (relating to parent loans) or subpart I (FOOTNOTE 1) of part C of title VII of the Public Health Service Act (relating to student assistance)) for which the student borrower may be eligible. A program shall not be treated as described in this subparagraph if such program is described in subparagraph (A).

(FOOTNOTE 1) See References in Text note below.

A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a)).

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means -

(A) 90 percent in the case of the program described in paragraph (1)(A), and

(B) 95 percent in the case of the program described in paragraph (1)(B).

(3) Student borrowers must be residents of issuing State, etc.

A student loan shall be treated as being made or financed under a program described in paragraph (1) with respect to an issue only if the student is -

(A) a resident of the State from which the volume cap under section 146 for such loan was derived, or

(B) enrolled at an educational institution located in such State.

(4) Discrimination on basis of school location not permitted

A program shall not be treated as described in paragraph (1)(A) if such program discriminates on the basis of the location (in the United States) of the educational institution in which the student is enrolled.

(c) Qualified redevelopment bond

For purposes of this part -

(1) In general

The term "qualified redevelopment bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used for 1 or more redevelopment purposes in any designated blighted area.

(2) Additional requirements

A bond shall not be treated as a qualified redevelopment bond unless -

(A) the issue described in paragraph (1) is issued pursuant to -

(i) a State law which authorizes the issuance of such bonds

for redevelopment purposes in blighted areas, and

(ii) a redevelopment plan which is adopted before such issuance by the governing body described in paragraph (4)(A) with respect to the designated blighted area,

(B)(i) the payment of the principal and interest on such issue is primarily secured by taxes of general applicability imposed by a general purpose governmental unit, or

(ii) any increase in real property tax revenues (attributable to increases in assessed value) by reason of the carrying out of such purposes in such area is reserved exclusively for debt service on such issue (and similar issues) to the extent such increase does not exceed such debt service,

(C) each interest in real property located in such area -

(i) which is acquired by a governmental unit with the proceeds of the issue, and

(ii) which is transferred to a person other than a governmental unit,

is transferred for fair market value,

(D) the financed area with respect to such issue meets the no additional charge requirements of paragraph (5), and

(E) the use of the proceeds of the issue meets the requirements of paragraph (6).

(3) Redevelopment purposes

For purposes of paragraph (1) -

(A) In general

The term "redevelopment purposes" means, with respect to any designated blighted area -

(i) the acquisition (by a governmental unit having the

power to exercise eminent domain) of real property located in such area,

(ii) the clearing and preparation for redevelopment of land in such area which was acquired by such governmental unit,

(iii) the rehabilitation of real property located in such area which was acquired by such governmental unit, and

(iv) the relocation of occupants of such real property.

(B) New construction not permitted

The term "redevelopment purposes" does not include the construction (other than the rehabilitation) of any property or the enlargement of an existing building.

(4) Designated blighted area

For purposes of this subsection -

(A) In general

The term "designated blighted area" means any blighted area designated by the governing body of a local general purpose governmental unit in the jurisdiction of which such area is located.

(B) Blighted area

The term "blighted area" means any area which the governing body described in subparagraph (A) determines to be a blighted area on the basis of the substantial presence of factors such as excessive vacant land on which structures were previously located, abandoned or vacant buildings, substandard structures, vacancies, and delinquencies in payment of real property taxes.

(C) Designated areas may not exceed 20 percent of total assessed value of real property in government's jurisdiction

(i) In general

An area may be designated by a governmental unit as a blighted area only if the designation percentage with respect to such area, when added to the designation percentages of all other designated blighted areas within the jurisdiction of such governmental unit, does not exceed 20 percent.

(ii) Designation percentage

For purposes of this subparagraph, the term "designation percentage" means, with respect to any area, the percentage (determined at the time such area is designated) which the assessed value of real property located in such area is of the total assessed value of all real property located within the jurisdiction of the governmental unit which designated such area.

(iii) Exception where bonds not outstanding

The designation percentage of a previously designated blighted area shall not be taken into account under clause (i) if no qualified redevelopment bond (or similar bond) is or will be outstanding with respect to such area.

(D) Minimum designated area

(i) In general

Except as provided in clause (ii), an area shall not be treated as a designated blighted area for purposes of this subsection unless such area is contiguous and compact and its area equals or exceeds 100 acres.

(ii) 10-acre minimum in certain cases

Clause (i) shall be applied by substituting "10 acres" for "100 acres" if not more than 25 percent of the financed

area is to be provided (pursuant to the issue and all other such issues) to 1 person. For purposes of the preceding sentence, all related persons (as defined in subsection (a)(3)) shall be treated as 1 person. For purposes of this clause, an area provided to a developer on a short-term interim basis shall not be treated as provided to such developer.

(5) No additional charge requirements

The financed area with respect to any issue meets the requirements of this paragraph if, while any bond which is part of such issue is outstanding -

(A) no owner or user of property located in the financed area is subject to a charge or fee which similarly situated owners or users of comparable property located outside such area are not subject, and

(B) the assessment method or rate of real property taxes with respect to property located in the financed area does not differ from the assessment method or rate of real property taxes with respect to comparable property located outside such area.

For purposes of the preceding sentence, the term "comparable property" means property which is of the same type as the property to which it is being compared and which is located within the jurisdiction of the designating governmental unit.

(6) Use of proceeds requirements

The use of the proceeds of an issue meets the requirements of this paragraph if -

(A) not more than 25 percent of the net proceeds of such

issue are to be used to provide (including the provision of land for) facilities described in subsection (a)(8) or section 147(e), and

(B) no portion of the proceeds of such issue is to be used to provide (including the provision of land for) any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(7) Financed area

For purposes of this subsection, the term "financed area" means, with respect to any issue, the portion of the designated blighted area with respect to which the proceeds of such issue are to be used.

(8) Restriction on acquisition of land not to apply

Section 147(c) (other than paragraphs (1)(B) and (2) thereof) shall not apply to any qualified redevelopment bond.

-SOURCE-

(Added Pub. L. 99-514, title XIII, Sec. 1301(b), Oct. 22, 1986, 100 Stat. 2621; amended Pub. L. 100-647, title I, Sec. 1013(a)(4)(A), (B)(i), (ii), (C), (5), title VI, Sec. 6176(a), Nov. 10, 1988, 102 Stat. 3537, 3538, 3726; Pub. L. 101-239, title VII, Sec. 7105, Dec. 19, 1989, 103 Stat. 2306; Pub. L. 101-508, title XI, Sec. 11409(a), Nov. 5, 1990, 104 Stat. 1388-478; Pub. L. 102-227, title I, Sec. 109(a), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103-66, title XIII, Sec. 13122(a), Aug. 10, 1993, 107 Stat. 432.)

-REFTEXT-

REFERENCES IN TEXT

Section 119 of the Housing and Community Development Act of 1974, referred to in subsec. (a)(4)(F), is classified to section 5318 of Title 42, The Public Health and Welfare.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(10)(B)(ii)(II), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

The Higher Education Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (Sec. 1001 et seq.) of Title 20, Education. Section 428B(a) of that Act as enacted in the general amendment of part B of title IV of that Act by Pub. L. 99-498, title IV, Sec. 402(a), Oct. 17, 1986, 100 Stat. 1386, which is classified to section 1078-2 of Title 20, does not contain a par. (1). Section 438 of that Act is classified to section 1087-1 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (b)(1)(B), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart I of part C of title VII of the Act was classified generally to subpart I (Sec. 294 et seq.) of part C of subchapter V of chapter 6A of Title 42, The Public Health and Welfare, prior to the general revision of subchapter V of chapter 6A by Pub. L. 102-408, title I, Sec. 102, Oct. 13, 1992, 106 Stat. 1994. See subpart I (Sec. 292 et seq.) of part A of revised subchapter V of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 144, acts Aug. 16, 1954, ch. 736, 68A Stat. 41; Feb. 26, 1964, Pub. L. 88-272, title I, Sec. 112(c), title II, Sec. 232(c), 78 Stat. 24, 110; Dec. 10, 1971, Pub. L. 92-178, title II, Sec. 206, title III, Sec. 301(c), 85 Stat. 511, 520; Oct. 4, 1976, Pub. L. 94-455, title V, Sec. 501(b)(3)-(5), title XIX, Sec. 1906(b)(13)(A), 90 Stat. 1558, 1559, 1834, related to method for electing to take standard deduction, prior to repeal by Pub. L. 95-30, title I, Sec. 101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

1993 - Subsec. (a)(12)(B). Pub. L. 103-66 amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "In the case of any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide -

"(i) any manufacturing facility, or

"(ii) any land or property in accordance with section

147(c)(2),

subparagraph (A) shall be applied by substituting 'June 30, 1992' for 'December 31, 1986'."

1991 - Subsec. (a)(12)(B). Pub. L. 102-227 substituted "June 30, 1992" for "December 31, 1991".

1990 - Subsec. (a)(12)(B). Pub. L. 101-508 substituted "December 31, 1991" for "September 30, 1990".

1989 - Subsec. (a)(12)(B). Pub. L. 101-239 substituted "by substituting 'September 30, 1990' for 'December 31, 1986' " for "by substituting '1989' for '1986' ".

1988 - Subsec. (a)(12)(A). Pub. L. 100-647, Sec. 1013(a)(4)(B)(ii), inserted sentence at end that for purposes of cl. (ii)(I), average maturity be determined in accordance with section 147(b)(2)(A).

Subsec. (a)(12)(A)(ii). Pub. L. 100-647, Sec. 1013(a)(4)(A), inserted "(or series of bonds)" before "issued to refund" in introductory text.

Subsec. (a)(12)(A)(ii)(I). Pub. L. 100-647, Sec. 1013(a)(4)(B)(i), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "the refunding bond has a maturity date not later than the maturity date of the refunded bond,".

Subsec. (a)(12)(A)(ii)(III), (IV). Pub. L. 100-647, Sec. 1013(a)(4)(C), redesignated subcl. (IV) as (III) and struck out former subcl. (III) which provided that this subsection apply when the interest rate on the refunding bond is lower than the interest rate on the refunded bond.

Subsec. (a)(12)(C). Pub. L. 100-647, Sec. 6176(a), inserted sentence at end defining "manufacturing facility".

Subsec. (b)(1). Pub. L. 100-647, Sec. 1013(a)(5), in subpar. (B) struck out "to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply" after "by the State", substituted "of the Higher Education Act of 1965" for "of such Act", amended last sentence generally, and inserted a new flush sentence at end of par. (1). Prior to amendment, last sentence of subpar. (B) read as follows: "A bond issued as part of an issue shall be treated as a qualified student loan bond only if no bond which is part of such issue meets the

private business tests of paragraphs (1) and (2) of section 141(b)."

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13122(b) of Pub. L. 103-66 provided that: "The amendment made by subsection (a) (amending this section) shall apply to bonds issued after June 30, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Section 109(b) of Pub. L. 102-227 provided that: "The amendment made by this section (amending this section) shall apply to bonds issued after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11409(b) of Pub. L. 101-508 provided that: "The amendment made by this section (amending this section) shall apply to bonds issued after September 30, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(4)(A), (B)(i), (ii), (C), (5) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 6176(b) of Pub. L. 100-647 provided that:

"(1) In general. - The amendment made by subsection (a) (amending this section) shall apply to bonds issued after the date of the enactment of this Act (Nov. 10, 1988).

"(2) Refundings. - The amendment made by subsection (a) shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued on or before the date of the enactment of this Act if -

"(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

"(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code."

APPLICATION OF SUBSECTION (A)(12)(A)(II)(I) TO REFUNDING BONDS ISSUED BEFORE JULY 1, 1987

Section 1013(a)(4)(B)(iii) of Pub. L. 100-647 provided that: "A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code if such bond met the requirement of such subclause as in effect before the amendments made by this subparagraph (amending this section)."

TERMINATION DATE FOR EXEMPTION FOR CERTAIN SMALL ISSUES UNDER SECTION 103(B)(6)

Section 1013(c)(12)(B) of Pub. L. 100-647 provided that: "The date applicable under section 144(a)(12)(B) of the 1986 Code shall be treated as contained in section 103(b)(6)(N)(iii) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act (Oct. 22, 1986), for purposes of any bond issued to refund a bond to which such section 103(b)(6)(N)(iii) applies."

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25, 142, 145, 147, 149, 269A, 414, 1394, 1396, 1397B, 4988, 7871 of this title.

-CITE-

15 USC Sec. 3001 01/26/98

-EXPCITE-

Sec. 147. Other requirements applicable to certain private activity bonds

-STATUTE-

(a) Substantial user requirement

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond for any period during which it is held by a person who is a substantial user of the facilities or by a related person of such a substantial user.

(2) Related person

For purposes of paragraph (1), the following shall be treated as related persons -

(A) 2 or more persons if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b),

(B) 2 or more persons which are members of the same controlled group of corporations (as defined in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein),

(C) a partnership and each of its partners (and their spouses and minor children), and

(D) an S corporation and each of its shareholders (and their spouses and minor children).

(b) Maturity may not exceed 120 percent of economic life

(1) General rule

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if it is issued as part of an issue and -

(A) the average maturity of the bonds issued as part of such issue, exceeds

(B) 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue.

(2) Determination of averages

For purposes of paragraph (1) -

(A) the average maturity of any issue shall be determined by taking into account the respective issue prices of the bonds issued as part of such issue, and

(B) the average reasonably expected economic life of the facilities being financed with any issue shall be determined by taking into account the respective cost of such facilities.

(3) Special rules

(A) Determination of economic life

For purposes of this subsection, the reasonably expected economic life of any facility shall be determined as of the later of -

(i) the date on which the bonds are issued, or

(ii) the date on which the facility is placed in service (or expected to be placed in service).

(B) Treatment of land

(i) Land not taken into account

Except as provided in clause (ii), land shall not be taken into account under paragraph (1)(B).

(ii) Issues where 25 percent or more of proceeds used to finance land

If 25 percent or more of the net proceeds of any issue is to be used to finance land, such land shall be taken into account under paragraph (1)(B) and shall be treated as having an economic life of 30 years.

(4) Special rule for pooled financing of 501(c)(3) organization

(A) In general

At the election of the issuer, a qualified 501(c)(3) bond shall be treated as meeting the requirements of paragraph (1) if such bond meets the requirements of subparagraph (B).

(B) Requirements

A qualified 501(c)(3) bond meets the requirements of this subparagraph if -

(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

(ii) each loan described in clause (i) satisfies the requirements of paragraph (1) (determined by treating each loan as a separate issue),

(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an

amount equal to 120 percent of the lendable proceeds of such issue, and

(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued).

(5) Special rule for certain FHA insured loans

Paragraph (1) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance mortgage loans insured under FHA 242 or under a similar Federal Housing Administration program (as in effect on the date of the enactment of the Tax Reform Act of 1986) where the loan term approved by such Administration plus the maximum maturity of debentures which could be issued by such Administration in satisfaction of its obligations exceeds the term permitted under paragraph (1).

(c) Limitation on use for land acquisition

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if -

(A) it is issued as part of an issue and 25 percent or more of the net proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein), or

(B) any portion of the proceeds of such issue is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

(2) Exception for first-time farmers

(A) In general

If the requirements of subparagraph (B) are met with respect to any land, paragraph (1) shall not apply to such land, and subsection (d) shall not apply to property to be used thereon for farming purposes, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of $250,000.

(B) Acquisition by first-time farmers

The requirements of this subparagraph are met with respect to any land if -

(i) such land is to be used for farming purposes, and

(ii) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

(C) First-time farmer

For purposes of this paragraph -

(i) In general

The term "first-time farmer" means any individual if such

individual -

(I) has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated, and

(II) has not received financing under this paragraph in an amount which, when added to the financing to be provided under this paragraph, exceeds $250,000.

(ii) Aggregation rules

Any ownership or material participation, or financing received, by an individual's spouse or minor child shall be treated as ownership and material participation, or financing received, by the individual.

(iii) Insolvent farmer

For purposes of clause (i), farmland which was previously owned by the individual and was disposed of while such individual was insolvent shall be disregarded if section 108 applied to indebtedness with respect to such farmland.

(D) Farm

For purposes of this paragraph, the term "farm" has the meaning given such term by section 6420(c)(2).

(E) Substantial farmland

For purposes of this paragraph, the term "substantial farmland" means any parcel of land unless -

(i) such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located, and

(ii) the fair market value of the land does not at any time while held by the individual exceed $125,000.

(F) Used equipment limitation

For purposes of this paragraph, in no event may the amount of financing provided by reason of this paragraph to a first-time farmer for personal property -

(i) of a character subject to the allowance for depreciation,

(ii) the original use of which does not begin with such farmer, and

(iii) which is to be used for farming purposes,

exceed $62,500. A rule similar to the rule of subparagraph (C)(ii) shall apply for purposes of the preceding sentence.

(G) Acquisition from related person

For purposes of this paragraph and section 144(a), the acquisition by a first-time farmer of land or personal property from a related person (within the meaning of section 144(a)(3)) shall not be treated as an acquisition from a related person, if -

(i) the acquisition price is for the fair market value of such land or property, and

(ii) subsequent to such acquisition, the related person does not have a financial interest in the farming operation with respect to which the bond proceeds are to be used.

(3) Exception for certain land acquired for environmental purposes, etc.

Any land acquired by a governmental unit (or issuing authority) in connection with an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf shall not be taken into account under paragraph (1) if -

(A) such land is acquired for noise abatement or wetland preservation, or for future use as an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf, and

(B) there is not other significant use of such land.

(d) Acquisition of existing property not permitted

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the net proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the 1st use of such property is pursuant to such acquisition.

(2) Exception for certain rehabilitations

Paragraph (1) shall not apply with respect to any building (and the equipment therefor) if -

(A) the rehabilitation expenditures with respect to such building, equal or exceed

(B) 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the issue.

A rule similar to the rule of the preceding sentence shall apply in the case of structures other than a building except that subparagraph (B) shall be applied by substituting "100 percent" for "15 percent".

(3) Rehabilitation expenditures

For purposes of this subsection -

(A) In general

Except as provided in this paragraph, the term

"rehabilitation expenditures" means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this subparagraph, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

(B) Certain expenditures not included

The term "rehabilitation expenditures" does not include any expenditure described in section 47(c)(2)(B).

(C) Period during which expenditures must be incurred

The term "rehabilitation expenditures" shall not include any amount which is incurred after the date 2 years after the later of -

(i) the date on which the building was acquired, or

(ii) the date on which the bond was issued.

(4) Special rule for certain projects

In the case of a project involving 2 or more buildings, this subsection shall be applied on a project basis.

(e) No portion of bonds may be issued for skyboxes, airplanes, gambling establishments, etc.

A private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the proceeds of such issue

is to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(f) Public approval required for private activity bonds

(1) In general

A private activity bond shall not be a qualified bond unless such bond satisfies the requirements of paragraph (2).

(2) Public approval requirement

(A) In general

A bond shall satisfy the requirements of this paragraph if such bond is issued as a part of an issue which has been approved by -

(i) the governmental unit -

(I) which issued such bond, or

(II) on behalf of which such bond was issued, and

(ii) each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than 1 governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only 1 such unit need approve such issue).

(B) Approval by a governmental unit

For purposes of subparagraph (A), an issue shall be treated as having been approved by any governmental unit if such issue is approved -

(i) by the applicable elected representative of such

governmental unit after a public hearing following reasonable public notice, or

(ii) by voter referendum of such governmental unit.

(C) Special rules for approval of facility

If there has been public approval under subparagraph (A) of the plan for financing a facility, such approval shall constitute approval under subparagraph (A) for any issue -

(i) which is issued pursuant to such plan within 3 years after the date of the 1st issue pursuant to the approval, and

(ii) all or substantially all of the proceeds of which are to be used to finance such facility or to refund previous financing under such plan.

(D) Refunding bonds

No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) unless the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A).

(E) Applicable elected representative

For purposes of this paragraph -

(i) In general

The term "applicable elected representative" means with respect to any governmental unit -

(I) an elected legislative body of such unit, or

(II) the chief elected executive officer, the chief elected State legal officer of the executive branch, or any other elected official of such unit designated for purposes of this paragraph by such chief elected executive officer or by State law.

If the office of any elected official described in subclause (II) is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term.

(ii) No applicable elected representative

If (but for this clause) a governmental unit has no applicable elected representative, the applicable elected representative for purposes of clause (i) shall be the applicable elected representative of the governmental unit -

(I) which is the next higher governmental unit with such a representative, and

(II) from which the authority of the governmental unit with no such representative is derived.

(3) Special rule for approval of airports or high-speed intercity rail facilities

If -

(A) the proceeds of an issue are to be used to finance a facility or facilities located at an airport or high-speed intercity rail facilities, and

(B) the governmental unit issuing such bonds is the owner or

operator of such airport or high-speed intercity rail facilities,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport or high-speed intercity rail facilities for purposes of this subsection.

(4) Special rules for scholarship funding bond issues and volunteer fire department bond issues

(A) Scholarship funding bonds

In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued. Where more than one governmental unit within a State has made a request described in section 150(d)(2)(B), the State may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(B) Volunteer fire department bonds

In the case of a bond of a volunteer fire department which meets the requirements of section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(g) Restriction on issuance costs financed by issue

(1) In general

A private activity bond shall not be a qualified bond if the

issuance costs financed by the issue (of which such bond is a part) exceed 2 percent of the proceeds of the issue.

(2) Special rule for small mortgage revenue bond issues

In the case of an issue of qualified mortgage bonds or qualified veterans' mortgage bonds, paragraph (1) shall be applied by substituting "3.5 percent" for "2 percent" if the proceeds of the issue do not exceed $20,000,000.

(h) Certain rules not to apply to mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds

(1) Mortgage revenue bonds and qualified student loan bonds

Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond.

(2) Qualified 501(c)(3) bonds

Subsections (a), (c), and (d) shall not apply to any qualified 501(c)(3) bond and subsection (e) shall be applied as if it did not contain "health club facility" with respect to such a bond.

-SOURCE-

(Added Pub. L. 99-514, title XIII, Sec. 1301(b), Oct. 22, 1986, 100 Stat. 2635; amended Pub. L. 100-647, title I, Sec. 1013(a)(11)-(13)(B), (29), (36), title VI, Sec. 6180(b)(4), (5), Nov. 10, 1988, 102 Stat. 3539, 3543, 3544, 3728; Pub. L. 101-239, title VII, Sec. 7816(s)(3), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 101-508, title XI, Sec. 11813(b)(8), Nov. 5, 1990, 104 Stat. 1388-552; Pub. L. 104-188, title I, Sec. 1117(a), (b), Aug. 20, 1996, 110 Stat. 1764.)

-REFTEXT-

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

-MISC2-

AMENDMENTS

1996 - Subsec. (c)(2)(E)(i). Pub. L. 104-188, Sec. 1117(b), substituted "30 percent" for "15 percent".

Subsec. (c)(2)(G). Pub. L. 104-188, Sec. 1117(a), added subpar. (G).

1990 - Subsec. (d)(3)(B). Pub. L. 101-508 substituted "section 47(c)(2)(B)" for "section 48(g)(2)(B)".

1989 - Subsec. (c)(3). Pub. L. 101-239 inserted a comma after "mass commuting facility" in introductory provisions and in subpar. (A).

1988 - Subsec. (c)(3). Pub. L. 100-647, Sec. 6180(b)(4), inserted "high-speed intercity rail facility" after "mass commuting facility" in introductory text and in subpar. (A).

Subsec. (e). Pub. L. 100-647, Sec. 1013(a)(11), struck out "treated as" after "shall not be".

Subsec. (f)(2)(D). Pub. L. 100-647, Sec. 1013(a)(29), substituted "the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A)" for "the maturity date of such bond is later than the maturity date of the bond to be refunded".

Subsec. (f)(2)(E)(i). Pub. L. 100-647, Sec. 1013(a)(36), inserted sentence at end relating to treatment of an individual appointed to

fill a vacancy in the office of an elected official.

Subsec. (f)(3). Pub. L. 100-647, Sec. 6180(b)(5), inserted "or high-speed intercity rail facilities" after "airports" in heading and after "airport" in subpars. (A) and (B) and in last sentence.

Subsec. (f)(4). Pub. L. 100-647, Sec. 1013(a)(12), added par. (4).

Subsec. (g)(1). Pub. L. 100-647, Sec. 1013(a)(13)(A), substituted "proceeds" for "aggregate face amount".

Subsec. (g)(2). Pub. L. 100-647, Sec. 1013(a)(13)(B), substituted "proceeds" for "aggregate authorized face amount" and "do" for "does".

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1117(c) of Pub. L. 104-188 provided that: "The amendments made by this section (amending this section) shall apply to bonds issued after the date of the enactment of this Act (Aug. 20, 1996)."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 29 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(13)(C) of Pub. L. 100-647 provided that: "The amendments made by this paragraph (amending this section) shall apply to bonds issued after June 30, 1987."

Amendment by section 1013(a)(11), (12), (29), (36) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 6180(b)(4), (5) of Pub. L. 100-647 applicable to bonds issued after Nov. 10, 1988, see section 6180(c) of Pub. L. 100-647, set out as a note under section 142 of this title.

EFFECTIVE DATE

Subsec. (f) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of

determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42, 141, 142, 144, 146, 148, 150, 265, 1394 of this title.

-CITE-

15 USC Sec. 1175 01/26/98

-EXPCITE-

PART VI - ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

-HEAD-

Sec. 168. Accelerated cost recovery system

-STATUTE-

(a) General rule

Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using -

(1) the applicable depreciation method,

(2) the applicable recovery period, and

(3) the applicable convention.

(b) Applicable depreciation method

For purposes of this section -

(1) In general

Except as provided in paragraphs (2) and (3), the applicable depreciation method is -

(A) the 200 percent declining balance method,

(B) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

(2) 150 percent declining balance method in certain cases

Paragraph (1) shall be applied by substituting "150 percent" for "200 percent" in the case of -

(A) any 15-year or 20-year property,

(B) any property used in a farming business (within the meaning of section 263A(e)(4)), or

(C) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(3) Property to which straight line method applies

The applicable depreciation method shall be the straight line method in the case of the following property:

(A) Nonresidential real property.

(B) Residential rental property.

(C) Any railroad grading or tunnel bore.

(D) Property with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(E) Property described in subsection (e)(3)(D)(ii).

(F) Water utility property described in subsection (e)(5).

(4) Salvage value treated as zero

Salvage value shall be treated as zero.

(5) Election

An election under paragraph (2)(C) or (3)(D) may be made with respect to 1 or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

(c) Applicable recovery period

For purposes of this section -

(1) In general

Except as provided in paragraph (2), the applicable recovery period shall be determined in accordance with the following table:

In the case of:	The applicable recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year property	15 years
20-year property	20 years
Water utility property	25 years
Residential rental property	27.5 years
Nonresidential real property	39 years.
Any railroad grading or tunnel bore	50 years.

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(2) Property for which 150 percent method elected

In the case of property to which an election under subsection (b)(2)(C) applies, the applicable recovery period shall be determined under the table contained in subsection (g)(2)(C).

(d) Applicable convention

For purposes of this section -

(1) In general

Except as otherwise provided in this subsection, the applicable convention is the half-year convention.

(2) Real property

In the case of -

(A) nonresidential real property,

(B) residential rental property, and

(C) any railroad grading or tunnel bore,

the applicable convention is the mid-month convention.

(3) Special rule where substantial property placed in service during last 3 months of taxable year

(A) In general

Except as provided in regulations, if during any taxable year -

(i) the aggregate bases of property to which this section applies placed in service during the last 3 months of the taxable year, exceed

(ii) 40 percent of the aggregate bases of property to which this section applies placed in service during such taxable year,

the applicable convention for all property to which this section applies placed in service during such taxable year shall be the

mid-quarter convention.

(B) Certain property not taken into account

For purposes of subparagraph (A), there shall not be taken into account -

(i) any nonresidential real property (FOOTNOTE 1) residential rental property, and railroad grading or tunnel bore, and

(FOOTNOTE 1) So in original. Probably should be "property,".

(ii) any other property placed in service and disposed of during the same taxable year.

(4) Definitions

(A) Half-year convention

The half-year convention is a convention which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

(B) Mid-month convention

The mid-month convention is a convention which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.

(C) Mid-quarter convention

The mid-quarter convention is a convention which treats all property placed in service during any quarter of a taxable year (or disposed of during any quarter of a taxable year) as placed in service (or disposed of) on the mid-point of such quarter.

(e) Classification of property

For purposes of this section -

(1) In general

Except as otherwise provided in this subsection, property shall be classified under the following table:

Property shall be treated as:	If such property has a class life (in years) of:
3-year property	4 or less
5-year property	More than 4 but less than 10
7-year property	10 or more but less than 16
10-year property	16 or more but less than 20
15-year property	20 or more but less than 25
20-year property	25 or more.

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(2) Residential rental or nonresidential real property

(A) Residential rental property

(i) Residential rental property

The term "residential rental property" means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

(ii) Definitions

For purposes of clause (i) -

(I) the term "dwelling unit" means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(B) Nonresidential real property

The term "nonresidential real property" means section 1250 property which is not -

(i) residential rental property, or

(ii) property with a class life of less than 27.5 years.

(3) Classification of certain property

(A) 3-year property

The term "3-year property" includes -

(i) any race horse which is more than 2 years old at the time it is placed in service,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service, and

(iii) any qualified rent-to-own property.

(B) 5-year property

The term "5-year property" includes -

(i) any automobile or light general purpose truck,

(ii) any semi-conductor manufacturing equipment,

(iii) any computer-based telephone central office switching equipment,

(iv) any qualified technological equipment,

(v) any section 1245 property used in connection with research and experimentation, and

(vi) any property which -

(I) is described in subparagraph (A) of section 48(a)(3)

(or would be so described if "solar and wind" were substituted for "solar" in clause (i) thereof),

(II) is described in paragraph (15) of section 48(l) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and is a qualifying small power production facility within the meaning of section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), as in effect on September 1, 1986, or

(III) is described in section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

Nothing in any provision of law shall be construed to treat property as not being described in clause (vi)(I) (or the corresponding provisions of prior law) by reason of being public utility property (within the meaning of section 48(a)(3)).

(C) 7-year property

The term "7-year property" includes -

(i) any railroad track, and

(ii) any property which -

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph.

(D) 10-year property

The term "10-year property" includes -

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)), and

(ii) any tree or vine bearing fruit or nuts.

(E) 15-year property

The term "15-year property" includes -

(i) any municipal wastewater treatment plant,

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications, and

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet).

(4) Railroad grading or tunnel bore

The term "railroad grading or tunnel bore" means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track.

(5) Water utility property

The term "water utility property" means property -

(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

(B) any municipal sewer.

(f) Property to which section does not apply

This section shall not apply to -

(1) Certain methods of depreciation

Any property if -

(A) the taxpayer elects to exclude such property from the application of this section, and

(B) for the 1st taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciated under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the ret method or similar method).

(2) Certain public utility property

Any public utility property (within the meaning of subsection (i)(10)) if the taxpayer does not use a normalization method of accounting.

(3) Films and video tape

Any motion picture film or video tape.

(4) Sound recordings

Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied.

(5) Certain property placed in service in churning transactions

(A) In general

Property -

(i) described in paragraph (4) of section 168(e) (as in effect before the amendments made by the Tax Reform Act of 1986), or

(ii) which would be described in such paragraph if such paragraph were applied by substituting "1987" for "1981" and "1986" for "1980" each place such terms appear.

(B) Subparagraph (A)(ii) not to apply

Clause (ii) of subparagraph (A) shall not apply to -

(i) any residential rental property or nonresidential real property,

(ii) any property if, for the 1st taxable year in which such property is placed in service -

(I) the amount allowable as a deduction under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than,

(II) the amount allowable as a deduction under this section (as in effect on or after such date and using the half-year convention) for such taxable year, or

(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor.

(C) Special rule

In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986.

(g) Alternative depreciation system for certain property

(1) In general

In the case of -

(A) any tangible property which during the taxable year is used predominantly outside the United States,

(B) any tax-exempt use property,

(C) any tax-exempt bond financed property,

(D) any imported property covered by an Executive order under

paragraph (6), and

(E) any property to which an election under paragraph (7) applies,

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

(2) Alternative depreciation system

For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using -

(A) the straight line method (without regard to salvage value),

(B) the applicable convention determined under subsection (d), and

(C) a recovery period determined under the following table:

In the case of:	The recovery period shall be:
(i) Property not described in clause (ii) or (iii)	The class life.
(ii) Personal property with no class life	12 years.
(iii) Nonresidential real and residential rental property	40 years.
(iv) Any railroad grading or tunnel bore or water utility property	50 years.

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(3) Special rules for determining class life

(A) Tax-exempt use property subject to lease

In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall in no event be less than 125 percent of the lease term.

(B) Special rule for certain property assigned to classes

For purposes of paragraph (2), in the case of property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

If property is described in subparagraph:	The class life is:
(A)(iii)	4
(B)(ii)	5
(B)(iii)	9.5
(C)(i)	10
(D)(i)	15
(D)(ii)	20
(E)(i)	24
(E)(ii)	24
(E)(iii)	20

(C) Qualified technological equipment

In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

(D) Automobiles, etc.

In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be

5 years.

(E) Certain real property

In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

(4) Exception for certain property used outside United States

Subparagraph (A) of paragraph (1) shall not apply to -

(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(B) rolling stock which is used within and without the United States and which is -

(i) of a rail carrier subject to part A of subtitle IV of title 49, or

(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(E) any container of a United States person which is used in the transportation of property to and from the United States;

(F) any property (other than a vessel or an aircraft) of a

United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

(G) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936) or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or

deposits under such waters;

(K) any property described in section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term "northern portion of the Western Hemisphere" means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

(5) Tax-exempt bond financed property

For purposes of this subsection -

(A) In general

Except as otherwise provided in this paragraph, the term "tax-exempt bond financed property" means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a).

(B) Allocation of bond proceeds

For purposes of subparagraph (A), the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

(C) Qualified residential rental projects

The term "tax-exempt bond financed property" shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

(6) Imported property

(A) Countries maintaining trade restrictions or engaging in discriminatory acts

If the President determines that a foreign country -

(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

(B) Imported property

For purposes of this subsection, the term "imported property" means any property if -

(i) such property was completed outside the United States, or

(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

(7) Election to use alternative depreciation system

(A) In general

If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

(B) Election irrevocable

An election under subparagraph (A), once made, shall be irrevocable.

(h) Tax-exempt use property

(1) In general

For purposes of this section -

(A) Property other than nonresidential real property

Except as otherwise provided in this subsection, the term "tax-exempt use property" means that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity.

(B) Nonresidential real property

(i) In general

In the case of nonresidential real property, the term "tax-exempt use property" means that portion of the property leased to a tax-exempt entity in a disqualified lease.

(ii) Disqualified lease

For purposes of this subparagraph, the term "disqualified lease" means any lease of the property to a tax-exempt entity, but only if -

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing,

(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such lease has a lease term in excess of 20 years, or

(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

(iii) 35-percent threshold test

Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in

disqualified leases is more than 35 percent of the property.

(iv) Treatment of improvements

For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(v) Leasebacks during 1st 3 months of use not taken into account

Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(C) Exception for short-term leases

(i) In general

Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

(ii) Short-term lease

For purposes of clause (i), the term "short-term lease" means any lease the term of which is -

(I) less than 3 years, and

(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of nonresidential real property and property with no present class life, subclause (II) shall not apply.

(D) Exception where property used in unrelated trade or business

The term "tax-exempt use property" shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of

which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.

(E) Nonresidential real property defined

For purposes of this paragraph, the term "nonresidential real property" includes residential rental property.

(2) Tax-exempt entity

(A) In general

For purposes of this subsection, the term "tax-exempt entity" means -

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter, and

(iii) any foreign person or entity.

(B) Exception for certain property subject to United States tax and used by foreign person or entity

Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is -

(i) subject to tax under this chapter, or

(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within

which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(C) Foreign person or entity

For purposes of this paragraph, the term "foreign person or entity" means -

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

(D) Treatment of certain taxable instrumentalities

For purposes of this subsection, a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if -

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

(E) Certain previously tax-exempt organizations

(i) In general

For purposes of this subsection, an organization shall be treated as an organization described in subparagraph (A)(ii)

with respect to any property (other than property held by such organization) if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first used by such organization. The preceding sentence and subparagraph (D)(ii) shall not apply to the Federal Home Loan Mortgage Corporation.

(ii) Election not to have clause (i) apply

(I) In general

In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

(II) Tax-exempt use period

For purposes of subclause (I), the term "tax-exempt use period" means the period beginning with the taxable year in which the property described in subclause (I) is first used by the organization and ending with the close of the 15th taxable year following the last taxable year of the applicable recovery period of such property.

(III) Election

Any election under subclause (I), once made, shall be irrevocable.

(iii) Treatment of successor organizations

Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this subparagraph of such predecessor organization.

(iv) First used

For purposes of this subparagraph, property shall be treated as first used by the organization -

(I) when the property is first placed in service under a lease to such organization, or

(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.

(3) Special rules for certain high technology equipment

(A) Exemption where lease term is 5 years or less

For purposes of this section, the term "tax-exempt use property" shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less.

(B) Exception for certain property

(i) In general

For purposes of subparagraph (A), the term "qualified technological equipment" shall not include any property leased to a tax-exempt entity if -

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is

exempt from tax under section 103(a),

(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

(ii) Leasebacks during 1st 3 months of use not taken into account

Subclause (II) of clause (i) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(4) Related entities

For purposes of this subsection -

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have -

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection.

(5) Tax-exempt use of property leased to partnerships, etc., determined at partner level

For purposes of this subsection -

(A) In general

In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (6)(C)) of such property as being leased to such partner.

(B) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(C) Presumption with respect to foreign entities

Unless it is otherwise established to the satisfaction of the

Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

(6) Treatment of property owned by partnerships, etc.

(A) In general

For purposes of this subsection, if -

(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall (except as provided in paragraph (1)(D)) be treated as tax-exempt use property.

(B) Qualified allocation

For purposes of subparagraph (A), the term "qualified allocation" means any allocation to a tax-exempt entity which -

(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under

section 704(c) shall not be taken into account.

(C) Determination of proportionate share

(i) In general

For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

(ii) Determination where allocations vary

For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

(D) Determination of whether property used in unrelated trade or business

For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.

(E) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraphs (A), (B), (C), and (D) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(F) Treatment of certain taxable entities

(i) In general

For purposes of this paragraph and paragraph (5), except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

(ii) Election

If a tax-exempt controlled entity makes an election under this clause -

(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph and paragraph (5), and

(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

(iii) Tax-exempt controlled entity

(I) In general

The term "tax-exempt controlled entity" means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (2)(E))

if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

(II) Only 5-percent shareholders taken into account in case of publicly traded stock

For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (4)) shall be treated as 1 entity.

(III) Section 318 to apply

For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).

(G) Regulations

For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (8) for purposes of this paragraph -

(i) shall set forth the proper treatment for partnership guaranteed payments, and

(ii) may provide for the exclusion or segregation of items.

(7) Lease

For purposes of this subsection, the term "lease" includes any grant of a right to use property.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(i) Definitions and special rules

For purposes of this section -

(1) Class life

Except as provided in this section, the term "class life" means the class life (if any) which would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) and as if the taxpayer had made an election under such subsection). The Secretary, through an office established in the Treasury, shall monitor and analyze actual experience with respect to all depreciable assets. The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(2) Qualified technological equipment

(A) In general

The term "qualified technological equipment" means -

(i) any computer or peripheral equipment,

(ii) any high technology telephone station equipment installed on the customer's premises, and

(iii) any high technology medical equipment.

(B) Computer or peripheral equipment defined

For purposes of this paragraph -

(i) In general

The term "computer or peripheral equipment" means -

(I) any computer, and

(II) any related peripheral equipment.

(ii) Computer

The term "computer" means a programmable electronically activated device which -

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) Related peripheral equipment

The term "related peripheral equipment" means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) Exceptions

The term "computer or peripheral equipment" shall not include -

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(C) High technology medical equipment

For purposes of this paragraph, the term "high technology medical equipment" means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(3) Lease term

(A) In general

In determining a lease term -

(i) there shall be taken into account options to renew, and

(ii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

(B) Special rule for fair rental options on nonresidential real property or residential rental property

For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

(4) General asset accounts

Under regulations, a taxpayer may maintain 1 or more general asset accounts for any property to which this section applies. Except as provided in regulations, all proceeds realized on any disposition of property in a general asset account shall be included in income as ordinary income.

(5) Changes in use

The Secretary shall, by regulations, provide for the method of

determining the deduction allowable under section 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

(6) Treatments of additions or improvements to property

In the case of any addition to (or improvement of) any property -

(A) any deduction under subsection (a) for such addition or improvement shall be computed in the same manner as the deduction for such property would be computed if such property had been placed in service at the same time as such addition or improvement, and

(B) the applicable recovery period for such addition or improvement shall begin on the later of -

(i) the date on which such addition (or improvement) is placed in service, or

(ii) the date on which the property with respect to which such addition (or improvement) was made is placed in service.

(7) Treatment of certain transferees

(A) In general

In the case of any property transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of computing the depreciation deduction determined under this section with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor. In any case where this section as in effect before the amendments made by

section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.

(B) Transactions covered

The transactions described in this subparagraph are -

(i) any transaction described in section 332, 351, 361, 721, or 731, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).

(C) Property reacquired by the taxpayer

Under regulations, property which is disposed of and then reacquired by the taxpayer shall be treated for purposes of computing the deduction allowable under subsection (a) as if such property had not been disposed of.

(8) Treatment of leasehold improvements

(A) In general

In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(B) Treatment of lessor improvements which are abandoned at termination of lease

An improvement -

(i) which is made by the lessor of leased property for the

lessee of such property, and

(ii) which is irrevocably disposed of or abandoned by the lessor at the termination of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed of by the lessor when so disposed of or abandoned.

(C) Cross reference

For treatment of qualified long-term real property constructed or improved in connection with cash or rent reduction from lessor to lessee, see section 110(b).

(9) Normalization rules

(A) In general

In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2) -

(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such property differs from the amount that would be allowable as a deduction under section 167 using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax

expense under clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

(B) Use of inconsistent estimates and projections, etc.

(i) In general

One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

(ii) Use of inconsistent estimates and projections

The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

(iii) Regulatory authority

The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

(C) Public utility property which does not meet normalization rules

In the case of any public utility property to which this section does not apply by reason of subsection (f)(2), the allowance for depreciation under section 167(a) shall be an

amount computed using the method and period referred to in subparagraph (A)(i).

(10) Public utility property

The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of -

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(11) Research and experimentation

The term "research and experimentation" has the same meaning as the term research and experimental has under section 174.

(12) Section 1245 and 1250 property

The terms "section 1245 property" and "section 1250 property" have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(13) Single purpose agricultural or horticultural structure

(A) In general

The term "single purpose agricultural or horticultural structure" means -

(i) a single purpose livestock structure, and

(ii) a single purpose horticultural structure.

(B) Definitions

For purposes of this paragraph -

(i) Single purpose livestock structure

The term "single purpose livestock structure" means any enclosure or structure specifically designed, constructed, and used -

(I) for housing, raising, and feeding a particular type of livestock and their produce, and

(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

(ii) Single purpose horticultural structure

The term "single purpose horticultural structure" means -

(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

(iii) Structures which include work space

An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for -

(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

(II) the maintenance of the enclosure or structure, and

(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

(iv) Livestock

The term "livestock" includes poultry.

(14) Qualified rent-to-own property

(A) In general

The term "qualified rent-to-own property" means property held by a rent-to-own dealer for purposes of being subject to a rent-to-own contract.

(B) Rent-to-own dealer

The term "rent-to-own dealer" means a person that, in the ordinary course of business, regularly enters into rent-to-own contracts with customers for the use of consumer property, if a substantial portion of those contracts terminate and the property is returned to such person before the receipt of all payments required to transfer ownership of the property from such person to the customer.

(C) Consumer property

The term "consumer property" means tangible personal property of a type generally used within the home for personal use.

(D) Rent-to-own contract

The term "rent-to-own contract" means any lease for the use of consumer property between a rent-to-own dealer and a customer who is an individual which -

(i) is titled "Rent-to-Own Agreement" or "Lease Agreement with Ownership Option," or uses other similar language,

(ii) provides for level (or decreasing where no payment is less than 40 percent of the largest payment), regular periodic payments (for a payment period which is a week or month),

(iii) provides that legal title to such property remains with the rent-to-own dealer until the customer makes all the payments described in clause (ii) or early purchase payments required under the contract to acquire legal title to the item of property,

(iv) provides a beginning date and a maximum period of time for which the contract may be in effect that does not exceed 156 weeks or 36 months from such beginning date (including renewals or options to extend),

(v) provides for payments within the 156-week or 36-month period that, in the aggregate, generally exceed the normal retail price of the consumer property plus interest,

(vi) provides for payments under the contract that, in the aggregate, do not exceed $10,000 per item of consumer property,

(vii) provides that the customer does not have any legal obligation to make all the payments referred to in clause (ii) set forth under the contract, and that at the end of each payment period the customer may either continue to use the consumer property by making the payment for the next payment period or return such property to the rent-to-own dealer in good working order, in which case the customer does not incur any further obligations under the contract and is not entitled to a return of any payments previously made

under the contract, and

(viii) provides that the customer has no right to sell, sublease, mortgage, pawn, pledge, encumber, or otherwise dispose of the consumer property until all the payments stated in the contract have been made.

(j) Property on Indian reservations

(1) In general

For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

(2) Applicable recovery period for Indian reservation property

For purposes of paragraph (1) -

In the case of:	The applicable recovery period is:
3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years.

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(3) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for property

to which paragraph (1) applies shall be determined under this section without regard to any adjustment under section 56.

(4) Qualified Indian reservation property defined

For purposes of this subsection -

(A) In general

The term "qualified Indian reservation property" means property which is property described in the table in paragraph (2) and which is -

(i) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,

(ii) not used or located outside the Indian reservation on a regular basis,

(iii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and

(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703)).

(B) Exception for alternative depreciation property

The term "qualified Indian reservation property" does not include any property to which the alternative depreciation system under subsection (g) applies, determined -

(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

(ii) after the application of section 280F(b) (relating to listed property with limited business use).

(C) Special rule for reservation infrastructure investment

(i) In general

Subparagraph (A)(ii) shall not apply to qualified infrastructure property located outside of the Indian reservation if the purpose of such property is to connect with qualified infrastructure property located within the Indian reservation.

(ii) Qualified infrastructure property

For purposes of this subparagraph, the term "qualified infrastructure property" means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which -

(I) benefits the tribal infrastructure,

(II) is available to the general public, and

(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

(5) Real estate rentals

For purposes of this subsection, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business within an Indian reservation.

(6) Indian reservation defined

For purposes of this subsection, the term "Indian reservation" means a reservation, as defined in -

(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term "former Indian reservations in Oklahoma" as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).

(7) Coordination with nonrevenue laws

Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.

(8) Termination

This subsection shall not apply to property placed in service after December 31, 2003.

-SOURCE-

(Added Pub. L. 97-34, title II, Sec. 201(a), Aug. 13, 1981, 95 Stat. 203; amended Pub. L. 97-248, title II, Sec. 206, 208(a)(1), (2)(A), (b), 209(a), (b), 216(a), 224(c)(1), (2), Sept. 3, 1982, 96 Stat. 431, 432, 435, 442, 445, 470, 489; Pub. L. 97-354, Sec. 5(a)(19), (20), Oct. 19, 1982, 96 Stat. 1693, 1694; Pub. L. 97-424, title V, Sec. 541(a)(1), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 97-448, title I, Sec. 102(a)(1)-(5), (8)-(10)(A), (f)(4), Jan. 12, 1983, 96 Stat. 2367, 2368, 2371; Pub. L. 98-369, div. A, title I, Sec. 12(a)(3), 31(a), (d), 32(a), 111(a)-(e)(4), (9), 113(a)(2), (b)(1), (2)(A), title IV, Sec. 474(r)(7), title VI, Sec. 612(e)(4),

(5), 628(b), July 18, 1984, 98 Stat. 503, 509, 518, 530, 631-633, 636, 637, 840, 912, 931; Pub. L. 99-121, title I, Sec. 103(a), (b)(1)(A), (2)-(4), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99-514, title II, Sec. 201(a), title XVIII, Sec. 1802(a)(1)-(2)(E)(i), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)-(2)(C)(i), (4)(A), (B), (b)(1), (2), Oct. 22, 1986, 100 Stat. 2121, 2786-2789, 2791, 2818-2821; Pub. L. 100-647, title I, Sec. 1002(a)(5)-(8), (11), (16)(B), (21), (23)(A), (i)(2)(A)-(G), 1018(b)(2), title VI, Sec. 6027(a), (b), 6028(a), 6029(a)-(c), 6253, Nov. 10, 1988, 102 Stat. 3353-3356, 3370, 3371, 3577, 3693, 3694, 3753; Pub. L. 101-239, title VII, Sec. 7816(e), (f), (w), Dec. 19, 1989, 103 Stat. 2421, 2423; Pub. L. 101-508, title XI, Sec. 11801(c)(8)(B), 11812(b)(2), 11813(b)(9), Nov. 5, 1990, 104 Stat. 1388-524, 1388-534, 1388-552; Pub. L. 103-66, title XIII, Sec. 13151(a), 13321(a), Aug. 10, 1993, 107 Stat. 448, 558; Pub. L. 104-88, title III, Sec. 304(a), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104-188, title I, Sec. 1120(a), (b), 1121(a), 1613(b)(1)-(4), 1702(h)(1), 1704(t)(54), Aug. 20, 1996, 110 Stat. 1765, 1766, 1850, 1873, 1890; Pub. L. 105-34, title X, Sec. 1086(b), title XII, Sec. 1213(c), title XVI, Sec. 1604(c)(1), Aug. 5, 1997, 111 Stat. 957, 1001, 1097.)

-REFTEXT-

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (e)(3)(B)(vi)(II), (III), (g)(4)(K), and (i)(1), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

Section 168(e) as in effect before the amendments made by the Tax Reform Act of 1986, referred to in subsec. (f)(5)(A)(i), is subsec.

(e) of this section prior to the general amendment of this section by Pub. L. 99-514.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(B)(ii)(I), probably means the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsecs. (f)(5)(B)(iii), (C) and (i)(7)(A), is Pub. L. 99-514, section 201(a) of which amended this section generally.

The Communications Satellite Act of 1962, referred to in subsec. (i)(10)(C), is Pub. L. 87-624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (Sec. 701 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

The date of the enactment of this sentence, referred to in subsec. (j)(6), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

The date of the enactment of this paragraph, referred to in subsec. (j)(7), is the date of enactment of Pub. L. 103-66, which was approved Aug. 10, 1993.

-MISC2-

PRIOR PROVISIONS

A prior section 168, acts Aug. 16, 1954, ch. 746, 68A Stat. 52; Aug. 26, 1957, Pub. L. 85-165, Sec. 4, 71 Stat. 414; Sept. 2, 1958, Pub. L. 85-866, title I, Sec. 9(a), (b), 72 Stat. 1608, 1609, related to deductions with respect to amortization of emergency facilities, prior to repeal by Pub. L. 94-455, title XIX, Sec. 1951(b)(4)(A), Oct. 4, 1976, 90 Stat. 1837.

Section 1951(b)(4)(B) of Pub. L. 94-455 provided that: "Notwithstanding the repeal made by subparagraph (A) (repealing former section 168), if a certificate was issued before January 1, 1960, with respect to an emergency facility which is or has been placed in service before the date of the enactment of this Act (Oct. 4, 1976), the provisions of (former) section 168 shall not, with respect to such facility, be considered repealed. The benefit of deductions by reason of the preceding sentence shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary in accordance with regulations prescribed under section 642(f)."

AMENDMENTS

1997 - Subsec. (e)(3)(A)(iii). Pub. L. 105-34, Sec. 1086(b)(1), added cl. (iii).

Subsec. (g)(3)(B). Pub. L. 105-34, Sec. 1086(b)(2), inserted table item relating to subpar. (A)(iii).

Subsec. (i)(8)(C). Pub. L. 105-34, Sec. 1213(c), added subpar. (C).

Subsec. (i)(14). Pub. L. 105-34, Sec. 1086(b)(3), added par. (14).

Subsec. (j)(6). Pub. L. 105-34, Sec. 1604(c)(1), inserted concluding provisions "For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term 'former Indian reservations in Oklahoma' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part

151 (as in effect on the date of the enactment of this sentence)."

1996 - Subsec. (b)(3)(F). Pub. L. 104-188, Sec. 1613(b)(1), added subpar. (F).

Subsec. (c)(1). Pub. L. 104-188, Sec. 1613(b)(2), inserted table item relating to water utility property.

Subsec. (e)(3)(B). Pub. L. 104-188, Sec. 1702(h)(1)(B), inserted closing provisions.

Subsec. (e)(3)(B)(vi)(I). Pub. L. 104-188, Sec. 1704(t)(54), provided that section 11813(b)(9)(A)(i) of Pub. L. 101-508 shall be applied as if a comma appeared after "(3)(A)(ix)" in the material proposed to be stricken. See 1990 Amendment note below.

Subsec. (e)(3)(B)(vi)(III). Pub. L. 104-188, Sec. 1702(h)(1)(A), added subcl. (III).

Subsec. (e)(3)(E)(iii). Pub. L. 104-188, Sec. 1120(a), added cl. (iii).

Subsec. (e)(3)(F). Pub. L. 104-188, Sec. 1613(b)(3)(B)(i), struck out subpar. (F) which read as follows: "20-year property. - The term '20-year property' includes any municipal sewers."

Subsec. (e)(5). Pub. L. 104-188, Sec. 1613(b)(3)(A), added par. (5).

Subsec. (g)(2)(C)(iv). Pub. L. 104-188, Sec. 1613(b)(4), inserted "or water utility property" after "tunnel bore".

Subsec. (g)(3)(B). Pub. L. 104-188, Sec. 1120(b), inserted table item relating to subpar. (E)(iii).

Pub. L. 104-188, Sec. 1613(b)(3)(B)(ii), struck out table item relating to subpar. (F) for which the class life was 50.

Subsec. (g)(4)(K). Pub. L. 104-188, Sec. 1702(h)(1)(C), substituted "section 48(l)(3)(A)(ix) (as in effect on the day

before the date of the enactment of the Revenue Reconciliation Act of 1990)" for "section 48(a)(3)(A)(iii)".

Subsec. (i)(8). Pub. L. 104-188, Sec. 1121(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section."

1995 - Subsec. (g)(4)(B)(i). Pub. L. 104-88 substituted "rail carrier subject to part A of subtitle IV" for "domestic railroad corporation providing transportation subject to subchapter I of chapter 105".

1993 - Subsec. (c)(1). Pub. L. 103-66, Sec. 13151(a), substituted "39 years" for "31.5 years" in table item relating to nonresidential real property.

Subsec. (j). Pub. L. 103-66, Sec. 13321(a), added subsec. (j).

1990 - Subsec. (e)(2)(A). Pub. L. 101-508, Sec. 11812(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The term 'residential rental property' has the meaning given such term by section 167(j)(2)(B)."

Subsec. (e)(3)(B)(vi)(I). Pub. L. 101-508, Sec. 11813(b)(9)(A)(i), which directed the substitution of "subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof)" for "paragraph (3)(A)(viii), (3)(A)(ix) or (4) of section 48(l)" was executed by making the substitution for "paragraph (3)(A)(viii), (3)(A)(ix), or (4) of section 48(l)".

See 1996 Amendment note above.

Subsec. (e)(3)(B)(vi)(II). Pub. L. 101-508, Sec. 11813(b)(9)(A)(ii), inserted "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "48(l)".

Subsec. (e)(3)(D)(i). Pub. L. 101-508, Sec. 11813(b)(9)(B)(i), substituted "subsection (i)(13)" for "section 48(p)".

Subsec. (f)(2). Pub. L. 101-508, Sec. 11812(b)(2)(C), substituted "subsection (i)(10)" for "section 167(l)(3)(A)."

Subsec. (g)(4). Pub. L. 101-508, Sec. 11813(b)(9)(C), substituted heading for one which read: "Property used predominantly outside the United States" and amended text generally. Prior to amendment, text read as follows: "For purposes of this subsection, rules similar to the rules under section 48(a)(2) (including the exceptions contained in subparagraph (B) thereof) shall apply in determining whether property is used predominantly outside the United States. In addition to the exceptions contained in such subparagraph (B), there shall be excepted any satellite or other spacecraft (or any interest therein) held by a United States person if such satellite or spacecraft was launched from within the United States."

Subsec. (i)(1). Pub. L. 101-508, Sec. 11812(b)(2)(D), inserted at end "The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990."

Subsec. (i)(7)(B)(i). Pub. L. 101-508, Sec. 11801(c)(8)(B), struck out, "371(a), 374(a)," after "361,".

Subsec. (i)(9)(A)(ii). Pub. L. 101-508, Sec. 11812(b)(2)(E), struck out "(determined without regard to section 167(l))" after "section 167".

Subsec. (i)(10). Pub. L. 101-508, Sec. 11812(b)(2)(B), amended par. (10) generally. Prior to amendment, par. (10) read as follows: "The term 'public utility property' has the meaning given such term by section 167(l)(3)(A)."

Subsec. (i)(13). Pub. L. 101-508, Sec. 11813(b)(9)(B)(ii), added par. (13).

1989 - Subsec. (b)(3)(D), (E). Pub. L. 101-239, Sec. 7816(f), redesignated subpar. (D), relating to property described in subsec. (e)(3)(D)(ii), as (E).

Subsec. (b)(5). Pub. L. 101-239, Sec. 7816(e)(1), substituted "paragraph (2)(C)" for "paragraph (2)(B)".

Subsec. (c)(2). Pub. L. 101-239, Sec. 7816(e)(2), substituted "subsection (b)(2)(C)" for "subsection (b)(2)(B)".

Subsec. (i)(1). Pub. L. 101-239, Sec. 7816(w), made clarifying amendment to directory language of Pub. L. 100-647, Sec. 6253, see 1988 Amendment note below.

1988 - Subsec. (b)(2). Pub. L. 100-647, Sec. 1002(a)(11)(A), substituted "150 percent declining balance method in certain cases" for "15-year and 20-year property" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of 15-year and 20-year property, paragraph (1) shall be applied by substituting '150 percent' for '200 percent'."

Subsec. (b)(2)(B), (C). Pub. L. 100-647, Sec. 6028(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(3)(C). Pub. L. 100-647, Sec. 1002(i)(2)(B)(i), added

subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 100-647, Sec. 6029(b), added subpar. (D) relating to property described in subsec. (e)(3)(D)(ii).

Pub. L. 100-647, Sec. 1002(i)(2)(B)(i), redesignated subpar. (C), relating to property with respect to which the taxpayer elects under par. (5), as (D).

Subsec. (b)(5). Pub. L. 100-647, Sec. 1002(i)(2)(B)(ii), substituted "paragraph (3)(D)" for "paragraph (3)(C)".

Pub. L. 100-647, Sec. 1002(a)(11)(B), substituted "paragraph (2)(B) or (3)(C)" for "paragraph (3)(C)".

Subsec. (c). Pub. L. 100-647, Sec. 1002(a)(11)(C), amended subsec. (c) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (c)(1). Pub. L. 100-647, Sec. 1002(i)(2)(A), inserted table item relating to any railroad grading or tunnel bore.

Subsec. (d)(2)(C). Pub. L. 100-647, Sec. 1002(i)(2)(D), added subpar. (C).

Subsec. (d)(3)(A)(i). Pub. L. 100-647, Sec. 1002(a)(5), struck out "and which are" after "this section applies".

Subsec. (d)(3)(B). Pub. L. 100-647, Sec. 1002(a)(23)(A), struck out "real" after "Certain" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of subparagraph (A), nonresidential real property and residential rental property shall not be taken into account."

Subsec. (d)(3)(B)(i). Pub. L. 100-647, Sec. 1002(i)(2)(E), substituted "residential rental property, and railroad grading or tunnel bore" for "and residential rental property".

Subsec. (e)(3)(B)(v). Pub. L. 100-647, Sec. 1002(a)(21),

substituted "any section 1245 property" for "any property".

Subsec. (e)(3)(C). Pub. L. 100-647, Sec. 6027(b)(1)(C), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: "any single-purpose agricultural or horticultural structure (within the meaning of section 48(p)), and".

Subsec. (e)(3)(D). Pub. L. 100-647, Sec. 6029(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "The term '10-year property' includes any single purpose agricultural or horticultural structure (within the meaning of section 48(p))."

Pub. L. 100-647, Sec. 6027(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (e)(3)(E), (F). Pub. L. 100-647, Sec. 6027(a), redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(4). Pub. L. 100-647, Sec. 1002(i)(2)(C), added par. (4).

Subsec. (f)(4). Pub. L. 100-647, Sec. 1002(a)(16)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Any sound recording described in section 48(r)(5)."

Subsec. (f)(5)(B)(ii). Pub. L. 100-647, Sec. 1002(a)(6)(A)(i), substituted "1st taxable year" for "1st full taxable year".

Subsec. (f)(5)(B)(iii). Pub. L. 100-647, Sec. 1002(a)(6)(A)(ii), added cl. (iii).

Subsec. (f)(5)(C). Pub. L. 100-647, Sec. 100-647, Sec. 1002(a)(6)(B), added subpar. (C).

Subsec. (g)(2)(C). Pub. L. 100-647, Sec. 1002(i)(2)(F), added

item (iv) in table.

Subsec. (g)(3)(B). Pub. L. 100-647, Sec. 6029(c), substituted "(D)(i)" for "(D)" and added item for "(D)(ii)" in table.

Pub. L. 100-647, Sec. 6027(b)(2), substituted "(D)" for "(C)(ii)", "(E)(i)" for "(D)(i)", "(E)(ii)" for "(D)(ii)", and "(F)" for "(E)" in table.

Subsec. (h)(2)(B). Pub. L. 100-647, Sec. 1002(a)(8), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(i) Income from property subject to United States tax. - Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is -

"(I) subject to tax under this chapter, or

"(II) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

"(ii) Movies and sound recordings. - Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)) or any sound recording (as defined in section 48(r)(5))."

Subsec. (i)(1). Pub. L. 100-647, Sec. 6253, as amended by Pub. L.

101-239, Sec. 7816(w), amended par. (1) generally, substituting a single par. relating to class life for former subpar. (A) relating to class life generally, (B) relating to Secretarial authority, (C) relating to effect of modification, (D) prohibiting modification of assigned property before January 1, 1992, and (E) relating to assigned property and item.

Subsec. (i)(1)(E)(iii). Pub. L. 100-647, Sec. 1002(i)(2)(G), added cl. (iii), which provided: "Special rule for railroad grading or tunnel bores. - In the case of any property which is a railroad grading or tunnel bore -

"(I) such property shall be treated as an assigned property,

"(II) the recovery period applicable to such property shall be treated as an assigned item, and

"(III) clause (ii) of subparagraph (D) shall not apply."

Subsec. (i)(7)(A). Pub. L. 100-647, Sec. 1002(a)(7)(A), inserted at end "In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect."

Subsec. (i)(7)(B). Pub. L. 100-647, Sec. 1002(a)(7)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The transactions described in this subparagraph are any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731. Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B)."

Subsec. (i)(7)(D). Pub. L. 100-647, Sec. 1002(a)(7)(C), struck out subpar. (D) which read as follows: "This paragraph shall not

apply to any transaction to which subsection (f)(5) applies (relating to churning transactions)."

Subsec. (j)(9)(E). Pub. L. 100-647, Sec. 1018(b)(2), amended subpar. (E), as amended by section 1802(a)(2) of Pub. L. 99-514 and as in effect before the general amendment by section 201(a) of Pub. L. 99-514, by substituting "this paragraph and paragraph (8)" for "this paragraph" in cls. (i) and (ii)(I) and by striking out cl. (iii) and inserting a new cl. (iii) which read as follows:

"Tax-exempt controlled entity. -

"(I) In general. - The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

"(II) Only 5-percent shareholders taken into account in case of publicly traded stock. - For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (7)) shall be treated as 1 entity.

"(III) Section 318 to apply. - For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof)."

1986 - Pub. L. 99-514, Sec. 201(a), amended section generally, applicable, with exceptions enumerated in sections 203, 204, and 251(d) of Pub. L. 99-514 (set out as notes below and under section 46 of this title), to property placed in service after Dec. 31, 1986, modifying existing accelerated cost recovery system by substituting new subsecs. (a) to (i) for former subsecs. (a) to (k). See following paragraphs of 1986 Amendment note for amendments to former text by sections 1802 and 1809 of Pub. L. 99-514.

Subsec. (b)(2)(A). Pub. L. 99-514, Sec. 1809(a)(2)(A)(i)(I), struck out closing provisions relating to determination, in the case of 19-year real property, of applicable percentage in taxable year in which the property is placed in service.

Subsec. (b)(2)(B). Pub. L. 99-514, Sec. 1809(a)(2)(A)(i)(II), substituted "Mid-month convention for 19-year real property" for "Special rule for year of disposition" in heading and amended text generally, substituting "In the case of 19-year real property, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (using a mid-month convention) in which the property is in service." for prior provisions.

Subsec. (b)(3)(A). Pub. L. 99-514, Sec. 1809(a)(1)(A), which directed that the table be amended by striking "and low-income housing" in last item, was executed by striking "and low-income housing" after "19-year real property" in next-to-the-last item, to reflect the probable intent of Congress, because that phrase did not appear in last item.

Pub. L. 99-514, Sec. 1809(a)(1)(B), inserted at the end item for

low-income housing with recovery periods of 15, 35, or 45 years.

Subsec. (b)(4)(B). Pub. L. 99-514, Sec. 1809(a)(2)(B), substituted "Monthly convention" for "Special rule for year of disposition" in heading and amended text generally, substituting "In the case of low-income housing, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (treating all property placed in service or disposed of during any month as placed in service or disposed of on the first day of such month) in which the property is in service." for prior provisions.

Subsec. (f)(2)(B). Pub. L. 99-514, Sec. 1809(a)(2)(A)(ii), redesignated existing provisions as entire subpar. (B), struck out "(i) In general", redesignated subcls. (I) and (II) as cls. (i) and (ii), and in cl. (ii) struck out "(taking into account the next to the last sentence of subsection (b)(2)(A))" after "assign percentages" and struck out heading, "(ii) Special rule for disposition" and text, "In the case of a disposition of 19-year real property or low-income housing described in clause (i), subsection (b)(2)(B) shall apply."

Subsec. (f)(10)(A). Pub. L. 99-514, Sec. 1809(b)(1), amended subpar. (A) generally, substituting "In the case of recovery property transferred in a transaction described in subparagraph (B), for purposes of computing the deduction allowable under subsection (a) with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor -

"(i) if the transaction is described in subparagraph (B)(i),

the transferee shall be treated in the same manner as the transferor, or

"(ii) if the transaction is described in clause (ii) or (iii) of subparagraph (B) and the transferor made an election with respect to such property under subsection (b)(3) or (f)(2)(C), the transferee shall be treated as having made the same election (or its equivalent)."

for prior provisions.

Subsec. (f)(10)(B). Pub. L. 99-514, Sec. 1809(b)(2), inserted at end "Clause (i) shall not apply in the case of the termination of a partnership under section 708(b)(1)(B)."

Subsec. (f)(12)(B)(ii). Pub. L. 99-514, Sec. 1809(a)(4)(A), amended cl. (ii) generally, substituting "In the case of 19-year real property, the amount of the deduction allowed shall be determined by using the straight-line method (without regard to salvage value) and a recovery period of 19 years." for prior provisions.

Subsec. (f)(12)(C). Pub. L. 99-514, Sec. 1809(a)(4)(B), substituted "Exception for low- and moderate-income housing" for "Exception for projects for residential rental property" in heading and amended text generally, substituting "Subparagraph (A) shall not apply to -

"(i) any low-income housing, and

"(ii) any other recovery property which is placed in service in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A)."

for prior provisions.

Subsec. (f)(14), (15). Pub. L. 99-514, Sec. 1802(b)(1), redesignated the par. (13) relating to motor vehicle operating leases as (14) and redesignated former par. (14) as (15).

Subsec. (j)(2)(B)(ii). Pub. L. 99-514, Sec. 1809(a)(2)(C)(i), substituted "Cross reference" for "19-year real property" in heading and amended text generally, substituting "For other applicable conventions, see paragraphs (2)(B) and (4)(B) of subsection (b)." for prior provisions.

Subsec. (j)(3)(D). Pub. L. 99-514, Sec. 1802(a)(1), inserted at end "For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease."

Subsec. (j)(4)(E)(i). Pub. L. 99-514, Sec. 1802(a)(2)(A), (G), substituted "any property (other than property held by such organization)" for "any property of which such organization is the lessee", "first used by" for "first leased to", and "preceding sentence and subparagraph (D)(ii)" for "preceding sentence".

Subsec. (j)(4)(E)(ii). Pub. L. 99-514, Sec. 1802(a)(2)(B), (C), struck out "of which such organization is the lessee" after "respect to any property" in subcl. (I) and substituted "is first used by the organization" for "is placed in service under the lease" in subcl. (II).

Subsec. (j)(4)(E)(iv). Pub. L. 99-514, Sec. 1802(a)(2)(D), added cl. (iv), first used, which read as follows: "For purposes of this subparagraph, property shall be treated as first used by the organization -

"(I) when the property is first placed in service under a

lease to such organization, or

"(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity."

Subsec. (j)(5)(C)(iv). Pub. L. 99-514, Sec. 1802(a)(3), struck out cl. (iv), relating to exclusion of property not subject to rapid obsolescence.

Subsec. (j)(8), (9)(A). Pub. L. 99-514, Sec. 1802(a)(4)(A), (B)(i), struck out "and paragraphs (4) and (5) of section 48(a)" after "For purposes of this subsection" in introductory provisions.

Subsec. (j)(9)(B)(i). Pub. L. 99-514, Sec. 1802(a)(4)(B)(ii), inserted a comma between "loss" and "deduction".

Subsec. (j)(9)(D). Pub. L. 99-514, Sec. 1802(a)(7)(A), added subpar. (D), determination of whether property used in unrelated trade or business, which read as follows: "For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514." Former subpar. (D) was redesignated (E).

Subsec. (j)(9)(E). Pub. L. 99-514, Sec. 1802(a)(7), redesignated former subpar. (D) as (E) and substituted "(C), and (D)" for "and (C)". Former subpar. (E), was redesignated (F).

Pub. L. 99-514, Sec. 1802(a)(2)(E)(i), added subpar. (E),

treatment of certain taxable entities, consisting of cl. (i), in general, which read: "For purposes of this paragraph, except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.", cl. (ii), election, which read: "If a tax-exempt controlled entity makes an election under this clause -

"(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph, and

"(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.", and cl. (iii), tax-exempt controlled entity, which read "The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (by value) of the stock in such corporation is held (directly or through the application of section 318 determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof) by 1 or more tax-exempt entities." Former subpar. (E) was redesignated (F).

Subsec. (j)(9)(F). Pub. L. 99-514, Sec. 1802(a)(7)(A),

redesignated former subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 99-514, Sec. 1802(a)(2)(E)(i), redesignated former subpar. (E) as (F).

Subsec. (j)(9)(G). Pub. L. 99-514, Sec. 1802(a)(7)(A), redesignated former subpar. (F) as (G).

1985 - Subsec. (b)(2). Pub. L. 99-121, Sec. 103(b)(1)(A), substituted "19-year real property" for "18-year real property" in heading and wherever appearing in text.

Subsec. (b)(2)(A)(i). Pub. L. 99-121, Sec. 103(a), substituted "19-year recovery period" for "18-year recovery period".

Subsec.(b)(3)(A). Pub. L. 99-121, Sec. 103(b)(1)(A), substituted "19-year real property" for "18-year real property" in table.

Pub. L. 99-121, Sec. 103(b)(2), substituted "19, 35, or 45 years" for "18, 35, or 45" in table.

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 99-121, Sec. 103(b)(1)(A), substituted "19-year real property" for "18-year real property" wherever appearing.

Subsec. (c)(2)(D). Pub. L. 99-121, Sec. 103(b)(1)(A), substituted "19-year real property" for "18-year real property" in heading and in text.

Subsec. (d)(2)(B). Pub. L. 99-121, Sec. 103(b)(1)(A), substituted "19-year real property" for "18-year real property".

Subsec. (f)(1)(B)(ii). Pub. L. 99-121, Sec. 103(b)(3)(B), substituted "March 15, 1984, and before May, 9, 1985, the" for "March 15, 1984, the".

Subsec. (f)(1)(B)(iii), (iv). Pub. L. 99-121, Sec. 103(b)(3)(A), (C), added cl. (iii), redesignated former cl. (iii) as (iv), and in

cl. (iv) substituted ", (ii), or (iii)" for "or (ii)".

Subsec. (f)(2), (5). Pub. L. 99-121, Sec. 103(b)(1)(A), substituted "19-year real property" for "18-year real property" wherever appearing.

Subsec. (f)(12)(B)(ii). Pub. L. 99-121, Sec. 103(b)(4), substituted "19-year real property" for "15-year real property" in heading and wherever appearing in text, and substituted "19 years" for "15 years".

Subsec. (j). Pub. L. 99-121, Sec. 103(b)(1)(A), substituted "19-year real property" for "18-year real property" wherever appearing in headings, table, and text.

1984 - Subsec. (b)(2). Pub. L. 98-369, Sec. 111(a)(1), substituted "18-year real property" for "15-year real property" in heading and wherever appearing in text.

Pub. L. 98-369, Sec. 111(d), inserted in provision following cl. (ii) "(using a mid-month convention)".

Subsec. (b)(2)(A). Pub. L. 98-369, Sec. 111(b)(3)(A), struck out in text following cl. (ii) provision that for purposes of this subparagraph "low-income housing" means property described in section 1250(a)(1)(B)(i), (ii), (iii), or (iv).

Subsec. (b)(2)(A)(i). Pub. L. 98-369, Sec. 111(a)(2), substituted "18-year recovery period" for "15-year recovery period".

Subsec. (b)(2)(A)(ii). Pub. L. 98-369, Sec. 111(a)(3), struck out "(200 percent declining balance method in the case of low-income housing)" after "declining balance method".

Subsec. (b)(2)(B). Pub. L. 98-369, Sec. 111(d), inserted "(using a mid-month convention)".

Subsec. (b)(3)(A). Pub. L. 98-369, Sec. 111(e)(9)(A), substituted

"under paragraph (1), (2), or (4)" for "under paragraphs (1) and (2)".

Pub. L. 98-369, Sec. 111(e)(9)(B), substituted in table "18-year real property and low-income housing" for "15-year real property" and "18" for "15" and struck out "years" after "45".

Subsec. (b)(3)(B)(ii). Pub. L. 98-369, Sec. 111(e)(2), substituted "18-year real property or low-income housing," for "15-year real property".

Subsec. (b)(3)(B)(iii). Pub. L. 98-369, Sec. 111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (b)(4). Pub. L. 98-369, Sec. 111(b)(1), added par. (4).

Subsec. (c)(2)(D). Pub. L. 98-369, Sec. 111(b)(3)(B), amended subpar. (D) generally, substituting "18-year real property" for "15-year real property" in heading and text and including within such definition section 1250 property which is not low-income housing.

Subsec. (c)(2)(F), (G). Pub. L. 98-369, Sec. 111(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(2)(B). Pub. L. 98-369, Sec. 111(e)(3), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (e). Pub. L. 98-369, Sec. 113(b)(2)(A), substituted "title" for "section" in provision preceding par. (1).

Subsec. (e)(5). Pub. L. 98-369, Sec. 113(b)(1), added par. (5).

Subsec. (f)(1)(B). Pub. L. 98-369, Sec. 111(c), designated existing provision as cl. (i), inserted heading, inserted ", and

before March 16, 1984," and struck out provision that for the purposes of the preceding sentence, the method of computing the deduction allowable with respect to such first component be determined as if it were a separate building, which provision is covered in cl. (iii), and added cls. (ii) and (iii).

Subsec. (f)(2)(B). Pub. L. 98-369, Sec. 111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property" wherever appearing.

Subsec. (f)(2)(C)(i). Pub. L. 98-369, Sec. 111(e)(4), substituted in table "18-year real property or low-income housing" for "15-year real property".

Subsec. (f)(2)(C)(ii)(II), (E), (5). Pub. L. 98-369, Sec. 111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (f)(8)(B)(ii)(I). Pub. L. 98-369, Sec. 12(a)(3)(A), in par. (8) as amended by section 209(a) of Pub. L. 97-248, substituted "1990" for "1986".

Subsec. (f)(12)(C). Pub. L. 98-369, Sec. 628(b)(1), designated provisions preceding cl. (i) and cl. (i) as subpar. (C), and struck out cls. (ii), (iii), and (iv) which dealt with the application of subpar. (A) to a sewage or solid waste disposal facility, an air or water pollution control facility or a facility which has received an urban development action grant under section 119 of the Housing and Community Development Act of 1974.

Subsec. (f)(12)(D), (E). Pub. L. 98-369, Sec. 628(b)(2), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: "For purposes of this paragraph, the term 'existing facility' means a plant or property in operation before

July 1, 1982."

Subsec. (f)(13). Pub. L. 98-369, Sec. 32(a), added second par. (13) relating to motor vehicle operating leases.

Subsec. (f)(14). Pub. L. 98-369, Sec. 113(a)(2), added par. (14).

Subsec. (g)(2). Pub. L. 98-369, Sec. 31(d), inserted "If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group."

Subsec. (i)(1)(D)(i). Pub. L. 98-369, Sec. 474(r)(7)(D), in subsec. (i) as amended by section 209(b) of Pub. L. 97-248, substituted "subparts A, B, and D of part IV" for "subpart A of part IV".

Pub. L. 98-369, Sec. 474(r)(7)(A), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97-248, substituted "subparts A, B, and D of part IV" for "subpart A of part IV".

Subsec. (i)(1)(D)(iii). Pub. L. 98-369, Sec. 612(e)(5), in subsec. (i) as amended by section 209(b) of Pub. L. 97-248, substituted "section 26(b)(2)" for "section 25(b)(2)".

Pub. L. 98-369, Sec. 612(e)(4), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97-248, substituted "section 26(b)(2)" for "section 25(b)(2)".

Pub. L. 98-369, Sec. 474(r)(7)(E), in subsec. (i) as amended by section 209(b) of Pub. L. 97-248, substituted "section 25(b)(2)" for "the last sentence of section 53(a)".

Pub. L. 98-369, Sec. 474(r)(7)(B), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97-248, substituted "section

25(b)(2)" for "the last sentence of section 53(a)".

Subsec. (i)(4)(A). Pub. L. 98-369, Sec. 12(a)(3)(B), in subsec. (i) as amended by section 209(b) of Pub. L. 97-248, substituted "1989" for "1985" in cls. (i) and (ii).

Pub. L. 98-369, Sec. 474(r)(7)(C), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97-248, substituted "section 38" for "subpart A of part IV of subchapter A of this chapter".

Subsecs. (j), (k). Pub. L. 98-369, Sec. 31(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1983 - Subsec. (b)(2)(A). Pub. L. 97-448, Sec. 102(a)(5), substituted "In the case of 15-year real property" for "For purposes of this subparagraph" in third sentence.

Subsec. (c)(2)(F). Pub. L. 97-448, Sec. 102(a)(8), added subpar. (F).

Subsec. (d)(2)(B). Pub. L. 97-448, Sec. 102(a)(2), substituted "paragraph (7) or (10) of subsection (f)" for "subsection (f)(7)".

Subsec. (e)(3)(C), (D). Pub. L. 97-424, Sec. 541(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(4)(D). Pub. L. 97-448, Sec. 102(a)(9)(A), inserted provision that, in the case of the acquisition of property by any partnership which results from the termination of another partnership under section 708(b)(1)(B), the determination of whether the acquiring partnership is related to the other partnership shall be made immediately before the event resulting in such termination occurs.

Subsec. (e)(4)(H), (I). Pub. L. 97-448, Sec. 102(a)(9)(B), added subpars. (H) and (I).

Subsec. (f)(4)(B). Pub. L. 97-448, Sec. 102(f)(4), substituted "Election made on return" for "Made on return" as the subpar. (B) heading, designated existing provisions as cl. (i), added heading for cl. (i), substituted "Except as provided in clause (ii), any election" for "Any election", in cl. (i) as so designated, and added cl. (ii).

Subsec. (f)(5). Pub. L. 97-448, Sec. 102(a)(1), inserted provision that, in the case of 15-year real property, the first sentence of this paragraph shall not apply to the taxable year in which the property is placed in service or disposed of.

Subsec. (f)(8)(D). Pub. L. 97-448, Sec. 102(a)(10)(A), amended subpar. (D), as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), by inserting at end thereof the following new sentence: "Under regulations prescribed by the Secretary, public utility property shall not be treated as qualified leased property unless the requirements of rules similar to the rules of subsection (e)(3) of this section and section 46(f) are met with respect to such property." See 1982 Amendment note below for subsec. (f)(8)(D).

Subsec. (f)(13). Pub. L. 97-448, Sec. 102(a)(3), added par. (13).

Subsec. (g)(8)(A). Pub. L. 97-448, Sec. 102(a)(4)(B), substituted "Qualified coal utilization property" for "In general" in heading.

Subsec. (g)(8)(B). Pub. L. 97-448, Sec. 102(a)(4)(C), substituted "Coal utilization property" for "In general" in heading.

Subsec. (h)(4). Pub. L. 97-448, Sec. 102(a)(4)(A), substituted "coal utilization property which would otherwise be 15-year public utility property" for "coal utilization property which is not

3-year property, 5-year property, or 10-year property (determined without regard to this paragraph)".

1982 - Subsec. (b)(1). Pub. L. 97-248, Sec. 206(a), substituted "table" for "tables" in introductory provisions, struck out designation "(A)" preceding the table and struck out subpar. (A) heading which had limited the application of the table to property placed in service after Dec. 31, 1980, and before Jan. 1, 1985, and struck out subpars. (B) and (C), which had provided tables, respectively, for property placed in service in 1985 and for property placed in service after Dec. 31, 1985.

Subsec. (e)(4). Pub. L. 97-248, Sec. 206(b), 224(c)(1), substituted "1981" for "1986" in heading, in subpar. (E) inserted provision that a similar rule shall apply in the case of a deemed liquidation under section 338, and struck out former subpar. (H) which had provided for special rules for property placed in service before certain percentages took effect.

Subsec. (f)(8). Pub. L. 97-248, Sec. 209(a), amended par. (8) generally, substituting provisions relating to special rules for finance leases for provisions relating to special rule for leases.

Subsec. (f)(8)(A). Pub. L. 97-248, Sec. 208(a)(2)(A), inserted "except as provided in subsection (i)," before "for purposes of this subtitle".

Subsec. (f)(8)(B)(i)(I). Pub. L. 97-354, Sec. 5(a)(19), substituted "an S corporation" for "an electing small business corporation (within the meaning of section 1371(b))" in subsec. (f)(8)(B)(i)(I) as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248).

Pub. L. 97-248, Sec. 208(b)(1), inserted "which is not a related

person with respect to the lessee".

Subsec. (f)(8)(B)(iii). Pub. L. 97-248, Sec. 208(b)(2), in subcl. (I) substituted "120 percent of the present class life of the property, or" for "90 percent of the useful life of such property for purposes of section 167, or", and in subcl. II substituted "the period equal to the recovery period determined with respect to such property under subsection (i)(2)" for "150 percent of the present class life of such property".

Subsec. (f)(8)(C)(i). Pub. L. 97-354, Sec. 5(a)(20), in par. (8) as amended by section 209(a) of Pub. L. 97-248, substituted "an S corporation" for "an electing small business corporation within the meaning of section 1371(b)".

Subsec. (f)(8)(D). Pub. L. 97-248, Sec. 208(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

"(D) Qualified leased property defined. - For purposes of subparagraph (A), the term 'qualified leased property' means recovery property (other than a qualified rehabilitated building within the meaning of section 48(g)(1)) which is -

"(i) new section 38 property (as defined in section 48(b)) of the lessor which is leased within 3 months after such property was placed in service and which, if acquired by the lessee, would have been new section 38 property of the lessee,

"(ii) property -

"(I) which was new section 38 property of the lessee,

"(II) which was leased within 3 months after such property was placed in service by the lessee, and

"(III) with respect to which the adjusted basis of the

lessor does not exceed the adjusted basis of the lessee at the time of the lease, or

"(iii) property which is a qualified mass commuting vehicle (as defined in section 103(b)(9)) and which is financed in whole or in part by obligations the interest on which is excludable from income under section 103(a).

For purposes of this title (other than this subparagraph), any property described in clause (i) or (ii) to which subparagraph (A) applies shall be deemed originally placed in service not earlier than the date such property is used under the lease. In the case of property placed in service after December 31, 1980, and before the date of the enactment of this subparagraph, this subparagraph shall be applied by submitting 'the date of the enactment of this subparagraph' for 'such property was placed in service'." See 1983 Amendment note above for subsec. (f)(8)(D).

Subsec. (f)(8)(H) to (K). Pub. L. 97-248, Sec. 208(b)(4), added subpars. (H) to (J) and redesignated former subpar. (H) as (K).

Subsec. (f)(10)(B)(i). Pub. L. 97-248, Sec. 224(c)(2), struck out "(other than a transaction with respect to which the basis is determined under section 334(b)(2))" after "section 332".

Subsec. (f)(12). Pub. L. 97-248, Sec. 216(a), added par. (12).

Subsec. (i). Pub. L. 97-248, Sec. 209(b), amended subsec. (i) generally, substituting provisions concerning limitations relating to leases of finance lease property for provisions concerning limitations relating to lease of qualified leased property.

Pub. L. 97-248, Sec. 208(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97-248, Sec. 208(a)(1), redesignated former

subsec. (i) as (j).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1086(b) of Pub. L. 105-34 applicable to property placed in service after Aug. 5, 1997, see section 1086(c) of Pub. L. 105-34, set out as a note under section 167 of this title.

Amendment by section 1213(c) of Pub. L. 105-34 applicable to leases entered into after Aug. 5, 1997, see section 1213(e) of Pub. L. 105-34, set out as an Effective Date note under section 110 of this title.

Section 1604(c)(2) of Pub. L. 105-34 provided that: "The amendment made by paragraph (1) (amending this section) shall apply as if included in the amendments made by section 13321 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66), except that such amendment shall not apply -

"(A) with respect to property (with an applicable recovery period under section 168(j) of the Internal Revenue Code of 1986 of 6 years or less) held by the taxpayer if the taxpayer claimed the benefits of section 168(j) of such Code with respect to such property on a return filed before March 18, 1997, but only if such return is the first return of tax filed for the taxable year in which such property was placed in service, or

"(B) with respect to wages for which the taxpayer claimed the benefits of section 45A of such Code for a taxable year on a return filed before March 18, 1997, but only if such return was the first return of tax filed for such taxable year."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1120(c) of Pub. L. 104-188 provided that: "The

amendments made by this section (amending this section) shall apply to property which is placed in service on or after the date of the enactment of this Act (Aug. 20, 1996) and to which section 168 of the Internal Revenue Code of 1986 applies after the amendment made by section 201 of the Tax Reform Act of 1986 (Pub. L. 99-514). A taxpayer may elect (in such form and manner as the Secretary of the Treasury may prescribe) to have such amendments apply with respect to any property placed in service before such date and to which such section so applies."

Section 1121(b) of Pub. L. 104-188 provided that: "Subparagraph (B) of section 168(i)(8) of the Internal Revenue Code of 1986, as added by the amendment made by subsection (a), shall apply to improvements disposed of or abandoned after June 12, 1996."

Section 1613(b)(5) of Pub. L. 104-188 provided that: "The amendments made by this subsection (amending this section) shall apply to property placed in service after June 12, 1996, other than property placed in service pursuant to a binding contract in effect before June 10, 1996, and at all times thereafter before the property is placed in service."

Amendment by section 1702(h)(1) of Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section

701 of Title 49, Transportation.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13151(b) of Pub. L. 103-66 provided that:

"(1) In general. - Except as provided in paragraph (2), the amendment made by subsection (a) (amending this section) shall apply to property placed in service by the taxpayer on or after May 13, 1993.

"(2) Exception. - The amendments made by this section (amending this section) shall not apply to property placed in service by the taxpayer before January 1, 1994, if -

"(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before May 13, 1993, or

"(B) the construction of such property was commenced by or for the taxpayer or a qualified person before May 13, 1993.

For purposes of this paragraph, the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer."

Section 13321(b) of Pub. L. 103-66 provided that: "The amendment made by this section (amending this section) shall apply to property placed in service after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(2) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to

rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(9) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 29 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1002(a)(23)(B) of Pub. L. 100-647 provided that: "Clause (ii) of section 168(d)(3)(B) of the 1986 Code (as added by subparagraph (A)) shall apply to taxable years beginning after March 31, 1988, unless the taxpayer elects, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have such clause apply to taxable years beginning on or before such date."

Amendment by sections 1002(a)(5)-(8), (11), (16)(B), (21), (i)(2)(A)-(G), and 1018(b)(2) of Pub. L. 100-647 effective, except

as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 6027(c) of Pub. L. 100-647 provided that:

"(1) In general. - Except as provided in paragraph (2), the amendments made by this section (amending this section) shall apply to property placed in service after December 31, 1988.

"(2) Exception. - The amendments made by this section shall not apply to any property if such property is placed in service before January 1, 1990, and if such property -

"(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

"(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988."

Section 6028(b) of Pub. L. 100-647 provided that:

"(1) In general. - Except as provided in paragraph (2), the amendments made by this section (amending this section) shall apply to property placed in service after December 31, 1988.

"(2) Exception. - The amendments made by this section shall not apply to any property if such property is placed in service before July 1, 1989, and if such property -

"(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

"(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988."

Section 6029(d) of Pub. L. 100-647 provided that: "The amendments made by this section (amending this section) shall apply to property placed in service after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULES

Sections 203 and 204 of Pub. L. 99-514, as amended by Pub. L. 99-509, title VIII, Sec. 8071, Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100-647, title I, Sec. 1002(c)(1), (2), (4)-(8), (d)(1)-(7)(A), (8)-(35), Nov. 10, 1988, 102 Stat. 3358-3367, provided that:

"SEC. 203. EFFECTIVE DATES; GENERAL TRANSITIONAL RULES.

"(a) General Effective Dates. -

"(1) Section 201. -

"(A) In general. - Except as provided in this section, section 204, and section 251(d) (set out as a note under section 46 of this title), the amendments made by section 201 (amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

"(B) Election to have amendments made by section 201 apply. - A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have the amendments made by section 201 apply to any property placed in service after July 31, 1986, and before January 1, 1987. No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 would not apply by reason of section 168(f)(5) of such Code if such property were placed in service after December 31, 1986.

"(2) Section 202. -

"(A) In general. - The amendments made by section 202 (amending section 179 of this title) shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

"(B) Special rule for fiscal years including january 1, 1987. - In the case of any taxable year (other than a calendar year) which includes January 1, 1987, for purposes of applying the amendments made by section 202 to property placed in service during such taxable year and after December 31, 1986 -

"(i) the limitation of section 179(b)(1) of the Internal Revenue Code of 1986 (as amended by section 202) shall be reduced by the aggregate deduction under section 179 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 (Oct. 22, 1986)) for section 179 property placed in service during such taxable year and before January 1, 1987,

"(ii) the limitation of section 179(b)(2) of such Code (as so amended) shall be applied by taking into account the cost of all section 179 property placed in service during such taxable year, and

"(iii) the limitation of section 179(b)(3) of such Code shall be applied by taking into account the taxable income for the entire taxable year reduced by the amount of any deduction under section 179 of such Code for property placed in service during such taxable year and before January 1, 1987.

"(b) General Transitional Rule. -

"(1) In general. - The amendments made by section 201 (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not apply to -

"(A) any property which is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on March 1, 1986,

"(B) property which is constructed or reconstructed by the taxpayer if -

"(i) the lesser of (I) $1,000,000, or (II) 5 percent of the cost of such property has been incurred or committed by March 1, 1986, and

"(ii) the construction or reconstruction of such property began by such date, or

"(C) an equipped building or plant facility if construction has commenced as of March 1, 1986, pursuant to a written specific plan and more than one-half of the cost of such equipped building or facility has been incurred or committed by such date.

For purposes of this paragraph, all members of the same affiliated group of corporations (within the meaning of section 1504 of the Internal Revenue Code of 1986) filing a consolidated return shall be treated as one taxpayer.

"(2) Requirement that certain property be placed in service before certain date. -

"(A) In general. - Paragraph (1) and section 204(a) (other than paragraph (8) or (12) thereof) shall not apply to any property unless such property has a class life of at least 7

years and is placed in service before the applicable date determined under the following table:

"In the case of property with a class life of:	The applicable date is:
At least 7 but less than 20 years	January 1, 1989
20 years or more	January 1, 1991.

"(B) Residential rental and nonresidential real property. - In the case of residential rental property and nonresidential real property, the applicable date is January 1, 1991.

"(C) Class lives. - For purposes of subparagraph (A) -

"(i) the class life of property to which section 168(g)(3)(B) of the Internal Revenue Code of 1986 (as added by section 201) applies shall be the class life in effect on January 1, 1986, except that computer-based telephone central office switching equipment described in section 168(e)(3)(B)(iii) of such Code shall be treated as having a class life of 6 years,

"(ii) property described in section 204(a) shall be treated as having a class life of 20 years, and

"(iii) property with no class life shall be treated as having a class life of 12 years.

"(D) Substitution of applicable dates. - If any provision of this Act (see Tables for classification) substitutes a date for an applicable date, this paragraph shall be applied by using such date.

"(3) Property qualifies if sold and leased back in 3 months. - Property shall be treated as meeting the requirements of paragraphs (1) and (2) or section 204(a) with respect to any taxpayer if such property is acquired by the taxpayer from a person -

"(A) in whose hands such property met the requirements of paragraphs (1) and (2) or section 204(a) (or would have met such requirements if placed in service by such person), or

"(B) who placed the property in service before January 1, 1987,

and such property is leased back by the taxpayer to such person, or is leased to such person, not later than the earlier of the applicable date under paragraph (2) or the day which is 3 months after such property was placed in service.

"(4) Plant facility. - For purposes of paragraph (1), the term 'plant facility' means a facility which does not include any building (or with respect to which buildings constitute an insignificant portion) and which is -

"(A) a self-contained single operating unit or processing operation,

"(B) located on a single site, and

"(C) identified as a single unitary project as of March 1, 1986.

"(c) Property Financed With Tax-Exempt Bonds. -

"(1) In general. - Except as otherwise provided in this subsection or section 204, subparagraph (C) of section 168(g)(1) of the Internal Revenue Code of 1986 (as added by this Act) shall apply to property placed in service after December 31, 1986, in

taxable years ending after such date, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after March 1, 1986.

"(2) Exceptions. -

"(A) Construction or binding agreements. - Subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply to obligations with respect to a facility -

"(i)(I) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before March 2, 1986, and was completed on or after such date,

"(II) with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before March 2, 1986, and some of such expenditures are incurred on or after such date, or

"(III) acquired on or after March 2, 1986, pursuant to a binding contract entered into before such date, and

"(ii) described in an inducement resolution or other comparable preliminary approval adopted by the issuing authority (or by a voter referendum) before March 2, 1986.

"(B) Refunding. -

"(i) In general. - Except as provided in clause (ii), in the case of property placed in service after December 31, 1986, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before March 2, 1986, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall apply only with

respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

"(ii) Significant expenditures. - In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1987, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before March 2, 1986.

"(C) Facilities. - In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before March 2, 1986, for purposes of subparagraphs (A) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

"(D) Significant expenditures. - For purposes of this paragraph, the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

"(d) Mid-Quarter Convention. - In the case of any taxable year beginning before October 1, 1987 in which property to which the amendments made by section 201 (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) do not apply is placed in service,

such property shall be taken into account in determining whether section 168(d)(3) of the Internal Revenue Code of 1986 (as added by section 201) applies for such taxable year to property to which such amendments apply. The preceding sentence shall only apply to property which would be taken into account if such amendments did apply.

"(e) Normalization Requirements. -

"(1) In general. - A normalization method of accounting shall not be treated as being used with respect to any public utility property for purposes of section 167 or 168 of the Internal Revenue Code of 1986 if the taxpayer, in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces the excess tax reserve more rapidly or to a greater extent than such reserve would be reduced under the average rate assumption method.

"(2) Definitions. - For purposes of this subsection -

"(A) Excess tax reserve. - The term 'excess tax reserve' means the excess of -

"(i) the reserve for deferred taxes (as described in section 167(l)(3)(G)(ii) or 168(e)(3)(B)(ii) of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act (Oct. 22, 1986)), over

"(ii) the amount which would be the balance in such reserve if the amount of such reserve were determined by assuming that the corporate rate reductions provided in this Act (see Tables for classification) were in effect for all prior periods.

"(B) Average rate assumption method. - The average rate

assumption method is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes. Under such method, if timing differences for the property reverse, the amount of the adjustment to the reserve for the deferred taxes is calculated by multiplying -

"(i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property as of the beginning of the period in question, by

"(ii) the amount of the timing differences which reverse during such period.

"SEC. 204. ADDITIONAL TRANSITIONAL RULES.

"(a) Other Transitional Rules. -

"(1) Urban renovation projects. -

"(A) In general. - The amendments made by section 201 (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not apply to any property which is an integral part of any qualified urban renovation project.

"(B) Qualified urban renovation project. - For purposes of subparagraph (A), the term 'qualified urban renovation project' means any project -

"(i) described in subparagraph (C), (D), (E), or (G) which before March 1, 1986, was publicly announced by a political subdivision of a State for a renovation of an urban area within its jurisdiction,

"(ii) described in subparagraph (C), (D) or (G) which

before March 1, 1986, was identified as a single unitary project in the internal financing plans of the primary developer of the project,

"(iii) described in subparagraph (C) or (D), which is not substantially modified on or after March 1, 1986, and

"(iv) described in subparagraph (F) or (H).

"(C) Project where agreement on december 19, 1984. - A project is described in this subparagraph if -

"(i) a political subdivision granted on July 11, 1985, development rights to the primary developer-purchaser of such project, and

"(ii) such project was the subject of a development agreement between a political subdivision and a bridge authority on December 19, 1984.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1994' for 'January 1, 1991' each place it appears.

"(D) Certain additional projects. - A project is described in this subparagraph if it is described in any of the following clauses of this subparagraph and the primary developer of all such projects is the same person:

"(i) A project is described in this clause if the development agreement with respect thereto was entered into during April 1984 and the estimated cost of the project is approximately $194,000,000.

"(ii) A project is described in this clause if the development agreement with respect thereto was entered into during May 1984 and the estimated cost of the project is

approximately $190,000,000.

"(iii) A project is described in this clause if the project has an estimated cost of approximately $92,000,000 and at least $7,000,000 was spent before September 26, 1985, with respect to such project.

"(iv) A project is described in this clause if the estimated project cost is approximately $39,000,000 and at least $2,000,000 of construction cost for such project were incurred before September 26, 1985.

"(v) A project is described in this clause if the development agreement with respect thereto was entered into before September 26, 1985, and the estimated cost of the project is approximately $150,000,000.

"(vi) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $107,000,000.

"(vii) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $59,000,000.

"(viii) A project is described in this clause if the Board of Directors of the primary developer approved such project in December 1983, following selection of the developer by a city council on September 26, 1983, and the estimated cost of such project is approximately $107,000,000.

"(E) Project where plan confirmed on october 4, 1984. - A project is described in this subparagraph if -

"(i) a State or an agency, instrumentality, or political subdivision thereof approved the filing of a general project plan on June 18, 1981, and on October 4, 1984, a State or an agency, instrumentality, or political subdivision thereof confirmed such plan,

"(ii) the project plan as confirmed on October 4, 1984, included construction or renovation of office buildings, a hotel, a trade mart, theaters, and a subway complex, and

"(iii) significant segments of such project were the subject of one or more conditional designations granted by a State or an agency, instrumentality, or political subdivision thereof to one or more developers before January 1, 1985.

The preceding sentence shall apply with respect to a property only to the extent that a building on such property site was identified as part of the project plan before September 26, 1985, and only to the extent that the size of the building on such property site was not substantially increased by reason of a modification to the project plan with respect to such property on or after such date. For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for 'January 1, 1991' each place it appears.

"(F) A project is described in this subparagraph if it is a sports and entertainment facility which -

"(i) is to be used by both a National Hockey League team and a National Basketball Association team;

"(ii) is to be constructed on a platform utilizing air rights over land acquired by a State authority and identified

as site B in a report dated May 30, 1984, prepared for a State urban development corporation; and

"(iii) is eligible for real property tax, and power and energy benefits pursuant to the provisions of State legislation approved and effective July 7, 1982.

A project is also described in this subparagraph if it is a mixed-use development which is -

"(I) to be constructed above a public railroad station utilized by the national railroad passenger corporation and commuter railroads serving two States; and

"(II) will include the reconstruction of such station so as to make it a more efficient transportation center and to better integrate the station with the development above, such reconstruction plans to be prepared in cooperation with a State transportation authority.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for the applicable date that would otherwise apply.

"(G) A project is described in this subparagraph if -

"(i) an inducement resolution was passed on March 9, 1984, for the issuance of obligations with respect to such project,

"(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

"(iii) an application was submitted on January 31, 1984, for an Urban Development Action Grant with respect to such project, and

"(iv) an Urban Development Action Grant was preliminarily

approved for all or part of such project on July 3, 1986.

"(H) A project is described in this subparagraph if it is a redevelopment project, with respect to which $10,000,000 in industrial revenue bonds were approved by a State Development Finance Authority on January 15, 1986, a village transferred approximately $4,000,000 of bond volume authority to the State in June 1986, and a binding Redevelopment Agreement was executed between a city and the development team on June 30, 1986.

"(2) Certain projects granted ferc licenses, etc. - The amendments made by section 201 (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not apply to any property which is part of a project -

"(A) which is certified by the Federal Energy Regulatory Commission before March 2, 1986, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 (see Short Title note set out under 16 U.S.C. 2601),

"(B) which was granted before March 2, 1986, a hydroelectric license for such project by the Federal Energy Regulatory Commission, or

"(C) which is a hydroelectric project of less than 80 megawatts that filed an application for a permit, exemption, or license with the Federal Energy Regulatory Commission before March 2, 1986.

"(3) Supply or service contracts. - The amendments made by section 201 shall not apply to any property which is readily identifiable with and necessary to carry out a written supply or

service contract, or agreement to lease, which was binding on March 1, 1986.

"(4) Property treated under prior tax acts. - The amendments made by section 201 shall not apply -

"(A) to property described in section 12(c)(2) (as amended by the Technical and Miscellaneous Revenue Act of 1988), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984 (sections 12(c)(2) and 31(g)(5), (17)(J) of Pub. L. 98-369, set out below),

"(B) to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984 (section 209(d)(1)(B) of Pub. L. 97-248, as amended, set out below), and

"(C) to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 (section 216(b)(3) of Pub. L. 97-248, set out below).

"(5) Special rules for property included in master plans of integrated projects. - The amendments made by section 201 shall not apply to any property placed in service pursuant to a master plan which is clearly identifiable as of March 1, 1986, for any project described in any of the following subparagraphs of this paragraph:

"(A) A project is described in this subparagraph if -

"(i) the project involves production platforms for offshore drilling, oil and gas pipeline to shore, process and storage facilities, and a marine terminal, and

"(ii) at least $900,000,000 of the costs of such project were incurred before September 26, 1985.

"(B) A project is described in this subparagraph if -

"(i) such project involves a fiber optic network of at least 20,000 miles, and

"(ii) before September 26, 1985, construction commenced pursuant to the master plan and at least $85,000,000 was spent on construction.

"(C) A project is described in this subparagraph if -

"(i) such project passes through at least 10 States and involves intercity communication links (including one or more repeater sites, terminals and junction stations for microwave transmissions, regenerators or fiber optics and other related equipment),

"(ii) the lesser of $150,000,000 or 5 percent of the total project cost has been expended, incurred, or committed before March 2, 1986, by one or more taxpayers each of which is a member of the same affiliated group (as defined in section 1504(a) (of the Internal Revenue Code of 1986)), and

"(iii) such project consists of a comprehensive plan for meeting network capacity requirements as encompassed within either:

"(I) a November 5, 1985, presentation made to and accepted by the Chairman of the Board and the president of the taxpayer, or

"(II) the approvals by the Board of Directors of the parent company of the taxpayer on May 3, 1985, and September 22, 1985, and of the executive committee of said board on December 23, 1985.

"(D) A project is described in this subparagraph if -

"(i) such project is part of a flat rolled product

modernization plan which was initially presented to the Board of Directors of the taxpayer on July 8, 1983,

"(ii) such program will be carried out at 3 locations, and

"(iii) such project will involve a total estimated minimum capital cost of at least $250,000,000.

"(E) A project is described in this subparagraph if the project is being carried out by a corporation engaged in the production of paint, chemicals, fiberglass, and glass, and if -

"(i) the project includes a production line which applies a thin coating to glass in the manufacture of energy efficient residential products, if approved by the management committee of the corporation on January 29, 1986,

"(ii) the project is a turbogenerator which was approved by the president of such corporation and at least $1,000,000 of the cost of which was incurred or committed before such date,

"(iii) the project is a waste-to-energy disposal system which was initially approved by the management committee of the corporation on March 29, 1982, and at least $5,000,000 of the cost of which was incurred before September 26, 1985,

"(iv) the project, which involves the expansion of an existing service facility and the addition of new lab facilities needed to accommodate topcoat and undercoat production needs of a nearby automotive assembly plant, was approved by the corporation's management committee on March 5, 1986, or

"(v) the project is part of a facility to consolidate and modernize the silica production of such corporation and the

project was approved by the president of such corporation on August 19, 1985.

"(F) A project is described in this subparagraph if -

"(i) such project involves a port terminal and oil pipeline extending generally from the area of Los Angeles, California, to the area of Midland, Texas, and

"(ii) before September 26, 1985, there is a binding contract for dredging and channeling with respect thereto and a management contract with a construction manager for such project.

"(G) A project is described in this subparagraph if -

"(i) the project is a newspaper printing and distribution plant project with respect to which a contract for the purchase of 8 printing press units and related equipment to be installed in a single press line was entered into on January 8, 1985, and

"(ii) the contract price for such units and equipment represents at least 50 percent of the total cost of such project.

"(H) A project is described in this subparagraph if it is the second phase of a project involving direct current transmission lines spanning approximately 190 miles from the United States-Canadian border to Ayer, Massachusetts, alternating current transmission lines in Massachusetts from Ayers to Millbury to West Medway, DC-AC converted terminals to Monroe, New Hampshire, and Ayer, Massachusetts, and other related equipment and facilities.

"(I) A project is described in this subparagraph if it

involves not more than two natural gas-fired combined cycle electric generating units each having a net electrical capability of approximately 233 megawatts, and a sales contract for approximately one-half of the output of the 1st unit was entered into in December 1985.

"(J) A project is described in this subparagraph if -

"(i) the project involves an automobile manufacturing facility (including equipment and incidental appurtenances) to be located in the United States, and

"(ii) either -

"(I) the project was the subject of a memorandum of understanding between 2 automobile manufacturers that was signed before September 25, 1985, the automobile manufacturing facility (including equipment and incidental appurtenances) will involve a total estimated cost of approximately $750,000,000, and will have an annual production capacity of approximately 240,000 vehicles or

"(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of existing facilities to produce new models of a vehicle not currently produced in the United States, such facilities will be placed in service by July 1, 1987, and such Board action occurred in July 1985 with respect to a $602,000,000 expenditure, a $438,000,000 expenditure, and a $321,000,000 expenditure.

"(K) A project is described in this subparagraph if -

"(i) the project involves a joint venture between a utility company and a paper company for a supercalendered

paper mill, and at least $50,000,000 was incurred or committed with respect to such project before March 1, 1986, or

"(ii) the project involves a paper mill for the manufacture of newsprint (including a cogeneration facility) is generally based on a written design and feasibility study that was completed on December 15, 1981, and will be placed in service before January 1, 1991, or

"(iii) the project is undertaken by a Maine corporation and involves the modernization of pulp and paper mills in Millinocket and/or East Millinocket, Maine, or

"(iv) the project involves the installation of a paper machine for production of coated publication papers, the modernization of a pulp mill, and the installation of machinery and equipment with respect to related processes, as of December 31, 1985, in excess of $50,000,000 was incurred for the project, as of July 1986, in excess of $150,000,000 was incurred for the project, and the project is located in Pine Bluff, Arkansas, or

"(v) the project involves property of a type described in ADR classes 26.1, 26.2, 25, 00.3 and 00.4 included in a paper plant which will manufacture and distribute tissue, towel or napkin products; is located in Effingham County, Georgia; and is generally based upon a written General Description which was submitted to the Georgia Department of Revenue on or about June 13, 1985.

"(L) A project is described in this subparagraph if -

"(i) a letter of intent with respect to such project was

executed on June 4, 1985, and

"(ii) a 5-percent downpayment was made in connection with such project for 2 10-unit press lines and related equipment.

"(M) A project is described in this subparagraph if -

"(i) the project involves the retrofit of ammonia plants,

"(ii) as of March 1, 1986, more than $390,000 had been expended for engineering and equipment, and

"(iii) more than $170,000 was expensed in 1985 as a portion of preliminary engineering expense.

"(N) A project is described in this subparagraph if the project involves bulkhead intermodal flat cars which are placed in service before January 1, 1987, and either -

"(i) more than $2,290,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 300 platforms, or

"(ii) more than $95,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 850 platforms.

"(O) A project is described in this subparagraph if -

"(i) the project involves the production and transportation of oil and gas from a well located north of the Arctic Circle, and

"(ii) more than $200,000,000 of cost had been incurred or committed before September 26, 1985.

"(P) A project is described in this subparagraph if -

"(i) a commitment letter was entered into with a financial institution on January 23, 1986, for the financing of the project,

"(ii) the project involves intercity communication links (including microwave and fiber optics communications systems and related property),

"(iii) the project consists of communications links between -

"(I) Omaha, Nebraska, and Council Bluffs, Iowa,

"(II) Waterloo, Iowa and Sioux City, Iowa,

"(III) Davenport, Iowa and Springfield, Illinois, and

"(iv) the estimated cost of such project is approximately $13,000,000.

"(Q) A project is described in this subparagraph if -

"(i) such project is a mining modernization project involving mining, transport, and milling operations,

"(ii) before September 26, 1985, at least $20,000,000 was expended for engineering studies which were approved by the Board of Directors of the taxpayer on January 27, 1983, and

"(iii) such project will involve a total estimated minimum cost of $350,000,000.

"(R) A project is described in this subparagraph if -

"(i) such project is a dragline acquired in connection with a 3-stage program which began in 1980 to increase production from a coal mine,

"(ii) at least $35,000,000 was spent before September 26, 1985, on the 1st 2 stages of the program, and

"(iii) at least $4,000,000 was spent to prepare the mine site for the dragline.

"(S) A project is described in this subparagraph if - it is

a project consisting of a mineral processing facility using a heap leaching system (including waste dumps, low-grade dumps, a leaching area, and mine roads) and if -

"(i) convertible subordinated debentures were issued in August 1985, to finance the project,

"(ii) construction of the project was authorized by the Board of Directors of the taxpayer on or before December 31, 1985,

"(iii) at least $750,000 was paid or incurred with respect to the project on or before December 31, 1985, and

"(iv) the project is placed in service on or before December 31, 1986.

"(T) A project is described in this subparagraph if it is a plant facility on Alaska's North Slope which is placed in service before January 1, 1988, and -

"(i) the approximate cost of which is $675,000,000, of which approximately $400,000,000 was spent on off-site construction,

"(ii) the approximate cost of which is $445,000,000, of which approximately $400,000,000 was spent on off-site construction and more than 50 percent of the project cost was spent prior to December 31, 1985, or

"(iii) the approximate cost of which is $375,000,000, of which approximately $260,000,000 was spent on off-site construction.

"(U) A project is described in this subparagraph if it involves the connecting of existing retail stores in the downtown area of a city to a new covered area, the total

project will be 250,000 square feet, a formal Memorandum of Understanding relating to development of the project was executed with the city on July 2, 1986, and the estimated cost of the project is $18,186,424.

"(V) A project is described in this subparagraph if it includes a 200,000 square foot office tower, a 200-room hotel, a 300,000 square foot retail center, an 800-space parking facility, the total cost is projected to be $60,000,000, and $1,250,000 was expended with respect to the site before August 25, 1986.

"(W) A project is described in this subparagraph if it is a joint use and development project including an integrated hotel, convention center, office, related retail facilities and public mass transportation terminal, and vehicle parking facilities which satisfies the following conditions:

"(i) is developed within certain air space rights and upon real property exchanged for such joint use and development project which is owned or acquired by a state department of transportation, a regional mass transit district in a county with a population of at least 5,000,000 and a community redevelopment agency;

"(ii) such project affects an existing, approximately 40 acre public mass transportation bus-way terminal facility located adjacent to an interstate highway;

"(iii) a memorandum of understanding with respect to such joint use and development project is executed by a state department of transportation, such a county regional mass transit district and a community redevelopment agency on or

before December 31, 1986, and

"(iv) a major portion of such joint use and development project is placed in service by December 31, 1990.

"(X) A project is described in this subparagraph if -

"(i) it is an $8,000,000 project to provide advanced control technology for adipic acid at a plant, which was authorized by the company's Board of Directors in October 1985, at December 31, 1985, $1,400,000 was committed and $400,000 expended with respect to such project, or

"(ii) it is an $8,300,000 project to achieve compliance with State and Federal regulations for particulates emissions, which was authorized by the company's Board of Directors in December 1985, by March 31, 1986, $250,000 was committed and $250,000 was expended with respect to such project, or

"(iii) it is a $22,000,000 project for the retrofit of a plant that makes a raw material for aspartame, which was approved in the company's December 1985 capital budget, if approximately $3,000,000 of the $22,000,000 was spent before August 1, 1986.

"(Y) A project is described in this subparagraph if such project passes through at least 9 States and involves an intercity communication link (including multiple repeater sites and junction stations for microwave transmissions and amplifiers for fiber optics); the link from Buffalo to New York/Elizabeth was completed in 1984; the link from Buffalo to Chicago was completed in 1985; and the link from New York to Washington is completed in 1986.

"(Z) A project is described in this subparagraph if -

"(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

"(ii) before January 1, 1986, at least $15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network.

"(6) Natural gas pipeline. - The amendments made by section 201 (amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not apply to any interstate natural gas pipeline (and related equipment) if -

"(A) 3 applications for the construction of such pipeline were filed with the Federal Energy Regulatory Commission before November 22, 1985 (and 2 of which were filed before September 26, 1985), and

"(B) such pipeline has 1 of its terminal points near Bakersfield, California.

"(7) Certain leasehold improvements. - The amendments made by section 201 shall not apply to any reasonable leasehold improvements, equipment and furnishings placed in service by a lessee or its affiliates if -

"(A) the lessee or an affiliate is the original lessee of each building in which such property is to be used,

"(B) such lessee is obligated to lease the building under an agreement to lease entered into before September 26, 1985, and such property is provided for such building, and

"(C) such buildings are to serve as world headquarters of the lessee and its affiliates.

For purposes of this paragraph, a corporation is an affiliate of another corporation if both corporations are members of a controlled group of corporations within the meaning of section 1563(a) of the Internal Revenue Code of 1954 without regard to section 1563(b)(2) of such Code. Such lessee shall include a securities firm that meets the requirements of subparagraph (A), except the lessee is obligated to lease the building under a lease entered into on June 18, 1986.

"(8) Solid waste disposal facilities. - The amendments made by section 201 (amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not apply to the taxpayer who originally places in service any qualified solid waste disposal facility (as defined in section 7701(e)(3)(B) of the Internal Revenue Code of 1986) if before March 2, 1986 -

"(A) there is a binding written contract between a service recipient and a service provider with respect to the operation of such facility to pay for the services to be provided by such facility,

"(B) a service recipient or governmental unit (or any entity related to such recipient or unit) made a financial commitment of at least $200,000 for the financing or construction of such facility,

"(C) such facility is the Tri-Cities Solid Waste Recovery Project involving Fremont, Newark, and Union City, California, and has received an authority to construct from the Environmental Protection Agency or from a State or local agency authorized by the Environmental Protection Agency to issue air

quality permits under the Clean Air Act (42 U.S.C. 7401 et seq.),

"(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

"(E) such facility is to serve Haverhill, Massachusetts.

"(9) Certain submersible drilling units. - In the case of a binding contract entered into on October 30, 1984, for the purchase of 6 semi-submersible drilling units at a cost of $425,000,000, such units shall be treated as having an applicable date under subsection (section) 203(b)(2) of January 1, 1991.

"(10) Wastewater or sewage treatment facility. - The amendments made by section 201 (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not apply to any property which is part of a wastewater or sewage treatment facility if -

"(A) site preparation for such facility commenced before September 1985, and a parish council approved a service agreement with respect to such facility on December 4, 1985;

"(B) a city-parish advertised in September 1985, for bids for construction of secondary treatment improvements for such facility, in May 1985, the city-parish received statements from 16 firms interested in privatizing the wastewater treatment facilities, and the metropolitan council selected a privatizer at its meeting on November 20, 1985, and adopted a resolution authorizing the Mayor to enter into contractual negotiation with the selected privatizer;

"(C) the property is part of a wastewater treatment facility serving Greenville, South Carolina with respect to which a binding service agreement between a privatizer and the Western Carolina Regional Sewer Authority with respect to such facility was signed before January 1, 1986; or

"(D) such property is part of a wastewater treatment facility (located in Cameron County, Texas, within one mile of the City of Harlingen), an application for a wastewater discharge permit was filed with respect to such facility on December 4, 1985, and a City Commission approved a letter of intent relating to a service agreement with respect to such facility on August 7, 1986; or a wastewater facility (located in Harlingen, Texas) which is a subject of such letter of intent and service agreement and the design of which was contracted for in a letter of intent dated January 23, 1986.

"(11) Certain aircraft. - The amendments made by section 201 (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not apply to any new aircraft with 19 or fewer passenger seats if -

"(A) the aircraft is manufactured in the United States. For purposes of this subparagraph, an aircraft is 'manufactured' at the point of its final assembly,

"(B) the aircraft was in inventory or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986, and

"(C) the aircraft is purchased or subject to a binding

contract on or before December 31, 1986, and is delivered and placed in service by the purchaser, before July 1, 1987.

"(12) Certain satellites. - The amendments made by section 201 shall not apply to any satellite with respect to which -

"(A) on or before January 28, 1986, there was a binding contract to construct or acquire a satellite, and

"(i) an agreement to launch was in existence on that date, or

"(ii) on or before August 5, 1983, the Federal Communications Commission had authorized the construction and for which the authorized party has a specific although undesignated agreement to launch in existence on January 28, 1986;

"(B) by order adopted on July 25, 1985, the Federal Communications Commission granted the taxpayer an orbital slot and authorized the taxpayer to launch and operate 2 satellites with a cost of approximately $300,000,000; or

"(C) the International Telecommunications Satellite Organization or the International Maritime Satellite Organization entered into written binding contracts before May 1, 1985.

"(13) Certain nonwire line cellular telephone systems. - The amendments made by section 201 shall not apply to property that is part of a nonwire line system in the Domestic Public Cellular Radio Telecommunications Service for which the Federal Communications Commission has issued a construction permit before September 26, 1985, but only if such property is placed in service before January 1, 1987.

"(14) Certain cogeneration facilities. - The amendments made by section 201 shall not apply to projects consisting of 1 or more facilities for the cogeneration and distribution of electricity and steam or other forms of thermal energy if -

"(A) at least $100,000 was paid or incurred with respect to the project before March 1, 1986, a memorandum of understanding was executed on September 13, 1985, and the project is placed in service before January 1, 1989,

"(B) at least $500,000 was paid or incurred with respect to the projects before May 6, 1986, the projects involve a 22-megawatt combined cycle gas turbine plant and a 45-megawatt coal waste plant, and applications for qualifying facility status were filed with the Federal Energy Regulatory Commission on March 5, 1986,

"(C) the project cost approximates $125,000,000 to $140,000,000 and an application was made to the Federal Energy Regulatory Commission in July 1985,

"(D) an inducement resolution for such facility was adopted on September 10, 1985, a development authority was given an inducement date of September 10, 1985, for a loan not to exceed $80,000,000 with respect to such facility, and such facility is expected to have a capacity of approximately 30 megawatts of electric power and 70,000 pounds of steam per hour,

"(E) at least $1,000,000 was incurred with respect to the project before May 6, 1986, the project involves a 52-megawatt combined cycle gas turbine plant and a petition was filed with the Connecticut Department of Public Utility Control to approve a power sales agreement with respect to the project on March

27, 1986,

"(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

"(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for 'January 1, 1989'.

"(15) Certain electric generating stations. - The amendments made by section 201 shall not apply to a project located in New Mexico consisting of a coal-fired electric generating station (including multiple generating units, coal mine equipment, and transmission facilities) if -

"(A) a tax-exempt entity will own an equity interest in all property included in the project (except the coal mine equipment), and

"(B) at least $72,000,000 was expended in the acquisition of coal leases, land and water rights, engineering studies, and other development costs before May 6, 1986.

For purposes of this paragraph, section 203(b)(2) shall be applied by substituting 'January 1, 1996' for 'January 1, 1991' each place it appears.

"(16) Sports arenas. -

"(A) Indoor sports facility. - The amendments made by

section 201 shall not apply to up to $20,000,000 of improvements made by a lessee of any indoor sports facility pursuant to a lease from a State commission granting the right to make limited and specified improvements (including planned seat explanations), if architectural renderings of the project were commissioned and received before December 22, 1985.

"(B) Metropolitan sports arena. - The amendments made by section 201 shall not apply to any property which is part of an arena constructed for professional sports activities in a metropolitan area, provided that such arena is capable of seating no less than 18,000 spectators and a binding contract to incur significant expenditures for its construction was entered into before June 1, 1986.

"(17) Certain waste-to-energy facilities. - The amendments made by section 201 shall not apply to 2 agricultural waste-to-energy powerplants (and required transmission facilities), in connection with which a contract to sell 100 megawatts of electricity to a city was executed in October 1984.

"(18) Certain coal-fired plants. - The amendments made by section 201 shall not apply to one of three 540 megawatt coal-fired plants that are placed in service after a sale leaseback occurring after January 1, 1986, if -

"(A) the Board of Directors of an electric power cooperation authorized the investigation of a sale leaseback of a nuclear generation facility by resolution dated January 22, 1985, and

"(B) a loan was extended by the Rural Electrification Administration on February 20, 1986, which contained a covenant with respect to used property leasing from unit II.

"(19) Certain rail systems. -

"(A) The amendments made by section 201 shall not apply to a light rail transit system, the approximate cost of which is $235,000,000, if, with respect to which, the board of directors of a corporation (formed in September 1984 for the purpose of developing, financing, and operating the system) authorized a $300,000 expenditure for a feasibility study in April 1985.

"(B) The amendments made by section 201 shall not apply to any project for rehabilitation of regional railroad rights of way and properties including grade crossings which was authorized by the Board of Directors of such company prior to October 1985; and/or was modified, altered or enlarged as a result of termination of company contracts, but approved by said Board of Directors no later than January 30, 1986, and which is in the public interest, and which is subject to binding contracts or substantive commitments by December 31, 1987.

"(20) Certain detergent manufacturing facility. - The amendments made by section 201 shall not apply to a laundry detergent manufacturing facility, the approximate cost of which is $13,200,000, with respect to which a project agreement was fully executed on March 17, 1986.

"(21) Certain resource recovery facility. - The amendments made by section 201 shall not apply to any of 3 resource recovery plants, the aggregate cost of which approximates $300,000,000, if an industrial development authority adopted a bond resolution with respect to such facilities on December 17, 1984, and the projects were approved by the department of commerce of a

Commonwealth on December 27, 1984.

"(22) The amendments made by section 201 shall not apply to a computer and office support center building in Minneapolis, with respect to which the first contract, with an architecture firm, was signed on April 30, 1985, and a construction contract was signed on March 12, 1986.

"(23) Certain district heating and cooling facilities. - The amendments made by section 201 shall not apply to pipes, mains, and related equipment included in district heating and cooling facilities, with respect to which the development authority of a State approved the project through an inducement resolution adopted on October 8, 1985, and in connection with which approximately $11,000,000 of tax-exempt bonds are to be issued.

"(24) Certain vessels. -

"(A) Certain offshore vessels. - The amendments made by section 201 shall not apply to any offshore vessel the construction contract for which was signed on February 28, 1986, and the approximate cost of which is $9,000,000.

"(B) Certain inland river vessel. - The amendments made by section 201 shall not apply to a project involving the reconstruction of an inland river vessel docked on the Mississippi River at St. Louis, Missouri, on July 14, 1986, and with respect to which:

"(i) the estimated cost of reconstruction is approximately $39,000,000;

"(ii) reconstruction was commenced prior to December 1, 1985;

"(iii) at least $17,000,000 was expended before December

31, 1985; and

"(C) Special automobile carrier vessels. - The amendments made by section 201 shall not apply to two new automobile carrier vessels which will cost approximately $47,000,000 and will be constructed by a United States-flag carrier to operate, under the United States-flag and with an American crew, to transport foreign automobiles to the United States, in a case where negotiations for such transportation arrangements commenced in April 1985, formal contract bids were submitted prior to the end of 1985, and definitive transportation contracts were awarded in May 1986.

"(D) The amendments made by section 201 shall not apply to a 562-foot passenger cruise ship, which was purchased in 1980 for the purpose of returning the vessel to United States service, the approximate cost of refurbishment of which is approximately $47,000,000.

"(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $7,200,000.

"(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986.

"(25) Certain wood energy projects. - The amendments made by section 201 shall not apply to two wood energy projects for which applications with the Federal Energy Regulatory Commission were filed before January 1, 1986, which are described as follows:

"(A) a 26.5 megawatt plant in Fresno, California, and

"(B) a 26.5 megawatt plant in Rocklin, California.

"(26) The amendments made by section 201 shall not apply to property which is a geothermal project of less than 20 megawatts that was certified by the Federal Energy Regulatory Commission on July 14, 1986, as a qualifying small power production facility for purposes of the Public Utility Regulatory Policies Act of 1978 (see Short Title note set out under 16 U.S.C. 2601) pursuant to an application filed with the Federal Energy Regulatory Commission on April 17, 1986.

"(27) Certain economic development projects. - The amendments made by section 201 shall not apply to any of the following projects:

"(A) A mixed use development on the East River the total cost of which is approximately $400,000,000, with respect to which a letter of intent was executed on January 24, 1984, and with respect to which approximately $2.5 million had been spent by March 1, 1986.

"(B) A 356-room hotel, banquet, and conference facility (including 540,000 square feet of office space) the approximate cost of which is $158,000,000, with respect to which a letter of intent was executed on June 1, 1984, and with respect to which an inducement resolution and bond resolution was adopted on August 20, 1985.

"(C) Phase 1 of a 4-phase project involving the construction of laboratory space and ground-floor retail space the estimated cost of which is $22,000,000 and with respect to which a memoradum (sic) of understanding was made on August 29, 1983.

"(D) A project involving the development of a 490,000 square foot mixed-use building at 152 W. 57th Street, New York, New York, the estimated cost of which is $100,000,000, and with respect to which a building permit application was filed in May 1986.

"(E) A mixed-use project containing a 300 unit, 12-story hotel, garage, two multi-rise office buildings, and also included a park, renovated riverboat, and barge with festival marketplace, the capital outlays for which approximate $68,000,000.

"(F) The construction of a three-story office building that will serve as the home office for an insurance group and its affiliated companies, with respect to which a city agreed to transfer its ownership of the land for the project in a Redevelopment Agreement executed on September 18, 1985, once certain conditions are met.

"(G) A commercial bank formed under the laws of the State of New York which entered into an agreement on September 5, 1985, to construct its headquarters at 60 Wall Street, New York, New York, with respect to such headquarters.

"(H) Any property which is part of a commercial and residential project, the first phase of which is currently under construction, to be developed on land which is the subject of an ordinance passed on July 20, 1981, by the city

council of the city in which such land is located, designating such land and the improvements to be placed thereon as a residential-business planned development, which development is being financed in part by the proceeds of industrial development bonds in the amount of $62,600,000 issued on December 4, 1985.

"(I) A 600,000 square foot mixed use building known as Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1993' for the applicable date which would otherwise apply.

"(28) The amendments made by section 201 shall not apply to an $80,000,000 capital project steel seamless tubular casings minimill and melting facility located in Youngstown, Ohio, which was purchased by the taxpayer in April 1985, and -

"(A) the purchase and renovation of which was approved by a committee of the Board of Directors on February 22, 1985, and

"(B) as of December 31, 1985, more than $20,000,000 was incurred or committed with respect to the renovation.

"(29) The amendments made by section 201 shall not apply to any project for residential rental property if -

"(A) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

"(B) such project was the subject of a law suit filed on October 25, 1985.

"(30) The amendments made by section 201 shall not apply to a

30 megawatt electric generating facility fueled by geothermal and wood waste, the approximate cost of which is $55,000,000, and with respect to which a 30-year power sales contract was executed on March 22, 1985.

"(31) The amendments made by section 201 shall not apply to railroad maintenance-of-way equipment, with respect to which a Boston bank entered into a firm binding contract with a major northeastern railroad before March 2, 1986, to finance $10,500,000 of such equipment, if all of the equipment was placed in service before August 1, 1986.

"(32) The amendment made by section 201 shall not apply to -

"(A) a facility constructed on approximately seven acres of land located on Ogle's Poso Creek Oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an application for an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in May 1985,

"(B) a facility constructed on approximately seven acres of land located on Teorco's Jasmin oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in July 1985,

"(C) the Mountain View Apartments, in Hadley, Massachusetts,

"(D) a facility expected to have a capacity of not less than 65 megawatts of electricity, the steam from which is to be sold

to a pulp and paper mill, with respect to which application was made to the Federal Regulatory Commission for certification as a qualified facility on November 1, 1985, and received such certification on January 24, 1986,

"(E) $5,000,000 of equipment ordered in 1986, in connection with a 60,000 square foot plant in Masontown, Pennsylvania, that was completed in 1983,

"(F) a magnetic resonance imaging machine, with respect to which a binding contract to purchase was entered into in April 1986, in connection with the construction of a magnetic resonance imaging clinic with respect to which a Determination of Need certification was obtained from a State Department of Public Health on October 22, 1985, if such property is placed in service before December 31, 1986,

"(G) a company located in Salina, Kansas, which has been engaged in the construction of highways and city streets since 1946, but only to the extent of $1,410,000 of investment in new section 38 property,

"(H) a $300,000 project undertaken by a small metal finishing company located in Minneapolis, Minnesota, the first parts of which were received and paid for in January 1986, with respect to which the company received Board approval to purchase the largest piece of machinery it has ever ordered in 1985,

"(I) A $1,200,000 finishing machine that was purchased on April 2, 1986 and placed into service in September 1986 by a company located in Davenport, Iowa,

"(J) A 25 megawatt small power production facility, with

respect to which Qualifying Facility status numbered QF86-593-000 was granted on March 5, 1986,

"(K) A 250 megawatt coal-fired electric plant in northeastern Nevada estimated to cost $600,000,000 and known as the Thousand Springs project, on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate (and section 203(b)(2) shall be applied with respect to such plant by substituting 'January 1, 1995' for 'January 1, 1991'),

"(L) 128 units of rental housing in connection with the Point Gloria Limited Partnership,

"(M) property which is part of the Kenosha Downtown Redevelopment Project and which is financed with the proceeds of bonds issued pursuant to section 1317(6)(W) (set out as a note under section 141 of this title),

"(N) Lakeland Park Phase II, in Baton Rouge, Louisiana,

"(O) the Santa Rosa Hotel, in Pensacola, Florida,

"(P) the Sheraton Baton Rouge, in Baton Rouge, Louisiana,

"(Q) $300,000 of equipment placed in service in 1986, in connection with the renovation of the Best Western Townhouse Convention Center in Cedar Rapids, Iowa,

"(R) the segment of a nationwide fiber optics telecommunications network placed in service by SouthernNet, the total estimated cost of which is $37,000,000,

"(S) two cogeneration facilities, to be placed in service by the Reading Anthracite Coal Company (or any subsidiary thereof), costing approximately $110,000,000 each, with respect to which filings were made with the Federal Energy Regulatory

Commission by December 31, 1985, and which are located in Pennsylvania,

"(T) a portion of a fiber optics network placed in service by LDX NET after December 31, 1988, but only to the extent the cost of such portion does not exceed $25,000,000,

"(U) 3 newly constructed fishing vessels, and one vessel that is overhauled, constructed by Mid Coast Marine, but only to the extent of $6,700,000 of investment,

"(V) $350,000 of equipment acquired in connection with the reopening of a plant in Bristol, Rhode Island, which plant was purchased by Buttonwoods, Ltd., Associates on February 7, 1986,

"(W) $4,046,000 of equipment placed in service by Brendle's Incorporated, acquired in connection with a Distribution Center,

"(X) a multi-family mixed-use housing project located in a home rule city, the zoning for which was changed to residential business planned development on November 26, 1985, and with respect to which both the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions,

"(Y) the Myrtle Beach Convention Center, in South Carolina, to the extent of $25,000,000 of investment, and

"(Z) railroad cars placed in service by the Pullman Leasing Company, pursuant to an April 3, 1986 purchase order, costing approximately $10,000,000.

"(33) The amendments made by section 201 (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not

apply to -

"(A) $400,000 of equipment placed in service by Super Key Market, if such equipment is placed in service before January 1, 1987,

"(B) the Trolley Square project, the total project cost of which is $24,500,000, and the amount of depreciable real property of which is $14,700,000.

"(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately $60,000,000, and

"(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately $60,000,000,

"(D) the City of Los Angeles Co-composting project, the estimated cost of which is $62,000,000, with respect to which, on July 17, 1985, the California Pollution Control Financing Authority issued an initial resolution in the maximum amount of $75,000,000 to finance this project,

"(E) the St. Charles, Missouri Mixed-Use Center,

"(F) Oxford Place in Tulsa, Oklahoma,

"(G) an amount of investment generating $20,000,000 of investment tax credits attributable to property used on the Illinois Diversatech Campus,

"(H) $25,000,000 of equipment used in the Melrose Park Engine Plant that is sold and leased back by Navistar,

"(I) 80,000 vending machines, for a cost approximating $3,400,000 placed into service by Folz Vending Co.,

"(J) A 25.85 megawatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986,

"(K) Burbank Manors, in Illinois, and

"(L) a cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985.

"(40) (FOOTNOTE 2) Certain trucks, etc. - The amendments made by section 201 shall not apply to trucks, tractor units, and trailers which a privately held truck leasing company headquartered in Des Moines, Iowa, contracted to purchase in September 1985 but only to the extent the aggregate reduction in Federal tax liability by reason of the application of this paragraph does not exceed $8,500,000.

(FOOTNOTE 2) So in original. Par. (40) probably should follow par. (39).

"(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used exclusively on the plant premises if -

"(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

"(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

"(C) ground clearing for such plant began before August 1986, and

"(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

"(35) The amendments made by section 201 shall not apply to any property which is part of the multifamily housing at the Columbia Point Project in Boston, Massachusetts. A project shall be treated as not described in the preceding sentence and as not described in section 252(f)(1)(D) (set out as a note under section 42 of this title) unless such project includes at substantially all times throughout the compliance period (within the meaning of section 42(i)(1) of the Internal Revenue Code of 1986), a facility which provides health services to the residents of such project for fees commensurate with the ability of such individuals to pay for such services.

"(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if -

"(A) in July of 1984 an initial binding construction contract was entered into for such facility,

"(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

"(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

"(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility if, prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

"(38) The amendments made by section 201 shall not apply to -

"(A) a $28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

"(B) an electrical cogeneration plant in Bethel, Maine which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which $200,000 of the expected $2,000,000 cost had been committed before June 15, 1986,

"(C) a mixed income housing project in Portland, Maine which is known as the Back Bay Tower and which is expected to cost $17,300,000,

"(D) the Eastman Place project and office building in Rochester, New York, which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

"(E) the Marquis Two project in Atlanta, Georgia which has a total budget of $72,000,000 and the construction phase of which began under a contract entered into on March 26, 1986,

"(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed $8,500,000,

"(G) the expansion of the capacity of an oil refining facility in Rosemont, Minnesota from 137,000 to 207,000 barrels per day which is expected to be completed by December 31, 1990,

and

"(H) a project in Ransom, Pennsylvania which will burn coal waste (known as 'culm') with an approximate cost of $64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

"(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina.

"(b) Special Rule for Certain Property. - The provisions of section 168(f)(8) of the Internal Revenue Code of 1954 (as amended by section 209 of the Tax Equity and Fiscal Responsibility Act of 1982) shall continue to apply to any transaction permitted by reason of section 12(c)(2) of the Tax Reform Act of 1984 or section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982 (as amended by the Tax Reform Act of 1984) (section 12(c)(2) of Pub. L. 98-369 and section 209(d)(1)(B) of Pub. L. 97-248, respectively, set out below).

"(c) Applicable Date in Certain Cases. -

"(1) Section 203(b)(2) shall be applied by substituting 'January 1, 1992' for 'January 1, 1991' in the following cases.

"(A) in the case of a 2-unit nuclear powered electric generating plant (and equipment and incidental appurtenances), located in Pennsylvania and constructed pursuant to contracts entered into by the owner operator of the facility before December 31, 1975, including contracts with the

engineer/constructor and the nuclear steam system supplier, such contracts shall be treated as contracts described in section 203(b)(1)(A),

"(B) a cogeneration facility with respect to which an application with the Federal Energy Regulatory Commission was filed on August 2, 1985, and approved October 15, 1985.

"(C) in the case of a 1,300 megawatt coal-fired steam powered electric generating plant (and related equipment and incidental appurtenances), which the three owners determined in 1984 to convert from nuclear power to coal power and for which more than $600,000,000 had been incurred or committed for construction before September 25, 1985, except that no investment tax credit will be allowable under section 49(d)(3) added by section 211(a) of this Act (section 49(d) of this title does not contain a par. (3)) for any qualified progress expenditures made after December 31, 1990.

"(2) Section 203(b)(2) shall be applied by substituting 'April 1, 1992' for the applicable date that would otherwise apply, in the case of the second unit of a twin steam electric generating facility and related equipment which was granted a certificate of public convenience and necessity by a public service commission prior to January 1, 1982, if the first unit of the facility was placed in service prior to January 1, 1985, and before September 26, 1985, more than $100,000,000 had been expended toward the construction of the second unit.

"(3) Section 203(b)(2) shall be applied by substituting 'January 1, 1990,' (or, in the case of a project described in subparagraph (B), by substituting 'April 1, 1992') for the

applicable date that would otherwise apply in the case of -

"(A) new commercial passenger aircraft used by a domestic airline, if a binding contract with respect to such aircraft was entered into on or before April 1, 1986, and such aircraft has a present class life of 12 years,

"(B) a pumped storage hydroelectric project with respect to which an application was made to the Federal Energy Regulatory Commission for a license on February 4, 1974, and license was issued August 1, 1977, the project number of which is 2740, and

"(C) a newsprint mill in Pend Oreille county, Washington, costing about $290,000,000.

In the case of an aircraft described in subparagraph (A), section 203(b)(1)(A) shall be applied by substituting 'April 1, 1986' for 'March 1, 1986' and section 49(e)(1)(B) of the Internal Revenue Code of 1986 shall not apply.

"(4) The amendments made by section 201 (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall not apply to a limited amount of the following property or a limited amount of property set forth in a submission before September 16, 1986, by the following taxpayers:

"(A) Arena project, Michigan, but only with respect to $78,000,000 of investments.

"(B) Campbell Soup Company, Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Michigan, South Carolina, Texas, New Jersey, and Delaware, but only with respect to $9,329,000 of regular investment tax credits.

"(C) The Southeast Overtown/Park West development, Florida,

but only with respect to $200,000,000 of investments.

"(D) Equipment placed in service and operated by Leggett and Platt before July 1, 1987, but only with respect to $2,000,000 of regular investment tax credits, and subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to such equipment.

"(E) East Bank Housing Project.

"(F) $1,561,215 of investments by Standard Telephone Company.

"(G) Five aircraft placed in service before January 1, 1987, by Presidential Air.

"(H) A rehabilitation project by Ann Arbor Railroad, but only with respect to $2,900,000 of investments.

"(I) Property that is part of a cogeneration project located in Ada, Michigan, but only with respect to $30,000,000 of investments.

"(J) Anchor Store Project, Michigan, but only with respect to $21,000,000 of investments.

"(K) A waste-fired electrical generating facility of Biogen Power, but only with respect to $34,000,000 of investments.

"(L) $14,000,000 of television transmitting towers placed in service by Media General, Inc., which were subject to binding contracts as of January 21, 1986, and will be placed in service before January 1, 1988,

"(M) Interests of Samuel A. Hardage (whether owned individually or in partnership form).

"(N) Two aircraft of Mesa Airlines with an aggregate cost of $5,723,484.

"(O) Yarn-spinning equipment used at Spray Cotton Mills, but only with respect to $3,000,000 of investments.

"(P) 328 units of low-income housing at Angelus Plaza, but only with respect to $20,500,000 of investments.

"(Q) One aircraft of Continental Aviation Services with a cost of approximately $15,000,000 that was purchased pursuant to a contract entered into during March of 1983 and that is placed in service by December 31, 1988.

"(d) Railroad Grading and Tunnel Bores. -

"(1) In general. - In the case of expenditures for railroad grading and tunnel bores which were incurred by a common carrier by railroad to replace property destroyed in a disaster occurring on or about April 17, 1983, near Thistle, Utah, such expenditures, to the extent not in excess of $15,000,000, shall be treated as recovery property which is 5-year property under section 168 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) and which is placed in service at the time such expenditures were incurred.

"(2) Business interruption proceeds. - Business interruption proceeds received for loss of use, revenues, or profits in connection with the disaster described in paragraph (1) and devoted by the taxpayer described in paragraph (1) to the construction of replacement track and related grading and tunnel bore expenditures shall be treated as constituting an amount received from the involuntary conversion of property under section 1033(a)(2) of such Code.

"(3) Effective date. - This subsection shall apply to taxable years ending after April 17, 1983.

"(e) Treatment of Certain Disaster Losses. -

"(1) In general. - In the case of a disaster described in paragraph (2), at the election of the taxpayer, the amendments made by section 201 of this Act (amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) -

"(A) shall not apply to any property placed in service during 1987 or 1988, or

"(B) shall apply to any property placed in service during 1985 or 1986,

which is property to replace property lost, damaged, or destroyed in such disaster.

"(2) Disaster to which section applies. - This section shall apply to a flood which occurred on November 3 through 7, 1985, and which was declared a natural disaster area by the President of the United States."

Section 1002(c)(3) of Pub. L. 100-647 provided that: "Notwithstanding section 203 of the Reform Act (section 203 of Pub. L. 99-514, set out above), the amendments made by section 201 of the Reform Act (section 201 of Pub. L. 99-514, amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title) shall apply to any real property which was acquired before January 1, 1987, and was converted on or after such date from personal use to a use for which depreciation is allowable."

Amendment by section 201(a) of Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations,

and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

Amendment by sections 1802(a)(1)-(2)(D), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)-(2)(B), (4)(A), (B) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Section 1802(a)(2)(E)(ii) of Pub. L. 99-514 provided that:

"(I) Except as otherwise provided in this clause, the amendment made by clause (i) (amending this section) shall apply to property placed in service after September 27, 1985; except that such amendment shall not apply to any property acquired pursuant to a binding written contract in effect on such date (and at all times thereafter).

"(II) If an election under this subclause is made with respect to any property, the amendment made by clause (i) shall apply to such property whether or not placed in service on or before September 27, 1985."

Section 1809(a)(2)(C)(i) of Pub. L. 99-514 provided in part that amendment by section 1809(a)(2)(C)(i) of Pub. L. 99-514 is effective on and after Oct. 22, 1986.

Section 1809(b)(3) of Pub. L. 99-514 provided that: "The amendments made by this subsection (amending this section) shall apply to property placed in service by the transferee after December 31, 1985, in taxable years ending after such date."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 105(b) of Pub. L. 99-121, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) In general. - Except as otherwise provided in this subsection, the amendments made by section 103 (amending this section and sections 47, 48, 57, 312, and 1245 of this title) shall apply with respect to property placed in service by the taxpayer after May 8, 1985.

"(2) Exception. - The amendments made by section 103 shall not apply to property placed in service by the taxpayer before January 1, 1987, if -

"(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before May 9, 1985, or

"(B) construction of such property was commenced by or for the taxpayer or a qualified person before May 9, 1985.

For purposes of this paragraph, the term 'qualified person' means any person whose rights in such a contract or such property are transferred to the taxpayer, but only if such property is not placed in service before such rights are transferred to the taxpayer.

"(3) Special rule for components. - For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as amended by section 103) to components placed in service after December 31, 1986, property to which paragraph (2) of this subsection applies shall be treated as placed in service by the taxpayer before May 9, 1985.

"(4) Technical correction. - The amendment made by paragraph (6) of section 103(b) (amending section 47 of this title) shall apply

as if included in the amendments made by section 111 of the Tax Reform Act of 1984 (Pub. L. 98-369, see Effective Date of 1984 Amendment note below).

"(5) Special rule for leasing of qualified rehabilitated buildings. - The amendment made by paragraph (5) of section 103(b) to section 48(g)(2)(B)(v) of the Internal Revenue Code of 1986 shall not apply to leases entered into before May 22, 1985, but only if the lessee signed the lease before May 17, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 12 of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

Section 31(g) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, title XVIII, Sec. 1802(a)(2)(F), (10)(A)-(D)(i), (E)-(G), Oct. 22, 1986, 100 Stat. 2095, 2788, 2790, 2791; Pub. L. 100-647, title I, Sec. 1018(b)(1), Nov. 10, 1988, 102 Stat. 3577, provided that:

"(1) In general. - Except as otherwise provided in this subsection, the amendments made by this section (amending this section and sections 46, 48, and 7701 of this title) shall apply -

"(A) to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date, and

"(B) to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983.

"(2) Leases entered into on or before may 23, 1983. - The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if the property is leased

pursuant to -

"(A) a lease entered into on or before May 23, 1983 (or a sublease under such a lease), or

"(B) any renewal or extension of a lease entered into on or before May 23, 1983, if such renewal or extension is pursuant to an option exercisable by the tax-exempt entity which was held by the tax-exempt entity on May 23, 1983.

"(3) Binding contracts, etc. -

"(A) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if such lease is pursuant to 1 or more written binding contracts which, on May 23, 1983, and at all times thereafter, required -

"(i) the taxpayer (or his predecessor in interest under the contract) to acquire, construct, reconstruct, or rehabilitate such property, and

"(ii) the tax-exempt entity (or a tax-exempt predecessor thereof) to be the lessee of such property.

"(B) Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as added by this section) shall not apply with respect to any property owned by a partnership if -

"(i) such property was acquired by such partnership on or before October 21, 1983, or

"(ii) such partnership entered into a written binding contract which, on October 21, 1983, and at all times thereafter, required the partnership to acquire or construct such property.

"(C) The amendments made by this section shall not apply with

respect to any property leased to a tax-exempt entity (other than any foreign person or entity) -

"(i) if -

"(I) on or before May 23, 1983, the taxpayer (or his predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, reconstruct, or rehabilitate such property and such property had not previously been used by the tax-exempt entity, or

"(II) the taxpayer or the tax-exempt entity acquired the property after June 30, 1982, and on or before May 23, 1983, or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982, and on or before May 23, 1983, and

"(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of such property.

"(4) Official governmental action on or before november 1, 1983. -

"(A) In general. - The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than the United States, any agency or instrumentality thereof, or any foreign person or entity) if -

"(i) on or before November 1, 1983, there was significant official governmental action with respect to the project or its design, and

"(ii) the lease to the tax-exempt entity is pursuant to a written binding contract entered into before January 1, 1985,

which requires the tax-exempt entity to be the lessee of the property.

"(B) Significant official governmental action. - For purposes of subparagraph (A), the term 'significant official governmental action' does not include granting of permits, zoning changes, environmental impact statements, or similar governmental actions.

"(C) Special rule for credit unions. - In the case of any property leased to a credit union pursuant to a written binding contract with an expiration date of December 31, 1984, which was entered into by such organization on August 23, 1984 -

"(i) such credit union shall not be treated as an agency or instrumentality of the United States; and

"(ii) clause (ii) of subparagraph (A) shall be applied by substituting 'January 1, 1987' for 'January 1, 1985'.

"(D) Special rule for greenville auditorium board. - For purposes of this paragraph, significant official governmental action taken by the Greenville County Auditorium Board of Greenville, South Carolina, before May 23, 1983, shall be treated as significant official governmental action with respect to the coliseum facility subject to a binding contract to lease which was in effect on January 1, 1985.

"(E) Treatment of certain historic structures. - If -

"(i) on June 16, 1982, the legislative body of the local governmental unit adopted a bond ordinance to provide funds to renovate elevators in a deteriorating building owned by the local governmental unit and listed in the National Register, and

"(ii) the chief executive officer of the local governmental

unit, in connection with the renovation of such building, made an application on June 1, 1983, to a State agency for a Federal historic preservation grant and made an application on June 17, 1983, to the Economic Development Administration of the United States Department of Commerce for a grant,

the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met.

"(5) Mass commuting vehicles. - The amendments made by this section shall not apply to any qualified mass commuting vehicle (as defined in section 103(b)(9) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954)) which is financed in whole or in part by obligations the interest on which is excludable from gross income under section 103(a) of such Code if -

"(A) such vehicle is placed in service before January 1, 1988, or

"(B) such vehicle is placed in service on or after such date -

"(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

"(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

"(6) Certain turbines and boilers. - The amendments made by this section shall not apply to any property described in section 208(d)(3)(E) of the Tax Equity and Fiscal Responsibility Act of 1982 (section 208(d)(3)(E) of Pub. L. 97-248, set out as an Effective Date of 1982 Amendments note below).

"(7) Certain facilities for which ruling requests filed on or before may 23, 1983. - The amendments made by this section shall

not apply with respect to any facilities described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 (relating to certain sewage or solid waste disposal facilities), as in effect on the day before the date of the enactment of this Act (July 18, 1984), if a ruling request with respect to the lease of such facility to the tax-exempt entity was filed with the Internal Revenue Service on or before May 23, 1983.

"(8) Recovery period for certain qualified sewage facilities. -

"(A) In general. - In the case of any property (other than 15-year real property) which is part of a qualified sewage facility, the recovery period used for purposes of paragraph (1) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall be 12 years. For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

"(B) Qualified sewage facility. - For purposes of subparagraph (A), the term 'qualified sewage facility' means any facility which is part of the sewer system of a city, if -

"(i) on June 15, 1983, the City Council approved a resolution under which the city authorized the procurement of equity investments for such facility, and

"(ii) on July 12, 1983, the Industrial Development Board of the city approved a resolution to issue a $100,000,000 industrial development bond issue to provide funds to purchase such facility.

"(9) Property used by the postal service. - In the case of property used by the United States Postal Service, paragraphs (1) and (2) shall be applied by substituting 'October 31' for 'May 23'.

"(10) Existing appropriations. - The amendments made by this section shall not apply to personal property leased to or used by the United States if -

"(A) an express appropriation has been made for rentals under such lease for the fiscal year 1983 before May 23, 1983, and

"(B) the United States or an agency or instrumentality thereof has not provided an indemnification against the loss of all or a portion of the tax benefits claimed under the lease or service contract.

"(11) Special rule for certain partnerships. -

"(A) Partnerships for which qualifying action existed before october 21, 1983. - Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired, directly or indirectly, before January 1, 1985, by any partnership described in subparagraph (B).

"(B) Application filed before october 21, 1983. - A partnership is described in this subparagraph if -

"(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

"(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

"(iii) the marketing of partnership units in such

partnership is completed not later than two years after the later of the date of the enactment of this Act (July 18, 1984) or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

"(C) Partnerships for which qualifying action existed before march 6, 1984. - Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired directly or indirectly, before January 1, 1986, by any partnership described in subparagraph (D). For purposes of this subparagraph, property shall be deemed to have been acquired prior to January 1, 1986, if the partnership had entered into a written binding contract to acquire such property prior to January 1, 1986 and the closing of such contract takes place within 6 months of the date of such contract (24 months in the case of new construction).

"(D) Partnership organized before march 6, 1984. - A partnership is described in this subparagraph if -

"(i) before March 6, 1984, the partnership was organized and publicly announced the maximum amount (as shown in the registration statement, prospectus or partnership agreement, whichever is greater) of interests which would be sold in the partnership, and

"(ii) the marketing or partnership interests in such partnership was completed not later than the 90th day after the date of the enactment of this Act (July 18, 1984) and the aggregate amount of interest in such partnership sold does not

exceed the maximum amount described in clause (i).

"(12) Special rule for amendment made by subsection (c)(2). - The amendment made by subsection (c)(2) (amending section 48(g)(2)(B)(i) of this title) to the extent it relates to subsection (f)(12) of section 168 of the Internal Revenue Code of 1986 shall take effect as if it had been included in the amendments made by section 216(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (section 216(a) of Pub. L. 97-248, which amended this section).

"(13) Special rule for service contracts not involving tax-exempt entities. - In the case of a service contract or other arrangement described in section 7701(e) of the Internal Revenue Code of 1986 (as added by this section) with respect to which no party is a tax-exempt entity, such section 7701(e) shall not apply to -

"(A) such contract or other arrangement if such contract or other arrangement was entered into before November 5, 1983, or

"(B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on November 5, 1983.

"(14) Property leased to section 593 organizations. - For purposes of the amendment made by subsection (f) (enacting section 46(e)(4) of this title), paragraphs (1), (2), and (4) shall be applied by substituting -

"(A) 'November 5, 1983' for 'May 23, 1983' and 'November 1, 1983', as the case may be, and

"(B) 'organization described in section 593 of the Internal Revenue Code of 1986' for 'tax-exempt entity'.

"(15) Special rules relating to foreign persons or entities. -

"(A) In general. - In the case of tax-exempt use property which is used by a foreign person or entity, the amendments made by this section shall not apply to any property which -

"(i) is placed in service by the taxpayer before January 1, 1984, and

"(ii) is used by such foreign person or entity pursuant to a lease entered into before January 1, 1984.

"(B) Special rule for subleases. - If tax-exempt use property is being used by a foreign person or entity pursuant to a sublease under a lease described in subparagraph (A)(ii), subparagraph (A) shall apply to such property only if such property was used before January 1, 1984, by any foreign person or entity pursuant to such lease.

"(C) Binding contracts, etc. - The amendments made by this section shall not apply with respect to any property (other than aircraft described in subparagraph (D)) leased to a foreign person or entity -

"(i) if -

"(I) on or before May 23, 1983, the taxpayer (or a predecessor in interest under the contract) or the foreign person or entity entered into a written binding contract to acquire, construct, or rehabilitate such property and such property had not previously been used by the foreign person or entity, or

"(II) the taxpayer or the foreign person or entity acquired the property or completed the construction, reconstruction, or rehabilitation of the property after

December 31, 1982 and on or before May 23, 1983, and

"(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1984, which requires the foreign person or entity to be the lessee of such property.

"(D) Certain aircraft. - The amendments made by this section shall not apply with respect to any wide-body, four-engine, commercial aircraft used by a foreign person or entity if -

"(i) on or before November 1, 1983, the foreign person or entity entered into a written binding contract to acquire such aircraft, and

"(ii) such aircraft is originally placed in service by such foreign person or entity (or its successor in interest under the contract) after May 23, 1983, and before January 1, 1986.

"(E) Use after 1983. - Qualified container equipment placed in service before January 1, 1984, which is used before such date by a foreign person shall not, for purposes of section 47 of the Internal Revenue Code of 1986, be treated as ceasing to be section 38 property by reason of the use of such equipment before January 1, 1985, by a foreign person or entity. For purposes of this subparagraph, the term 'qualified container equipment' means any container, container chassis, or container trailer of a United States person with a present class life of not more than 6 years.

"(16) Organizations electing exemption from rules relating to previously tax-exempt organizations must elect taxation of exempt arbitrage profits. -

"(A) In general. - An organization may make the election under section 168(j)(4)(E)(ii) of the Internal Revenue Code of 1986

(relating to election not to have rules relating to previously tax-exempt organizations apply) only if such organization elects the tax treatment of exempt arbitrage profits described in subparagraph (B).

"(B) Taxation of exempt arbitrage profits. -

"(i) In general. - In the case of an organization which elects the application of this subparagraph, there is hereby imposed a tax on the exempt arbitrage profits of such organization.

"(ii) Rate of tax, etc. - The tax imposed by clause (i) -

"(I) shall be the amount of tax which would be imposed by section 11 of such Code if the exempt arbitrage profits were taxable income (and there were no other taxable income), and

"(II) shall be imposed for the first taxable year of the tax-exempt use period (as defined in section 168(j)(4)(E)(ii) of such Code).

"(C) Exempt arbitrage profits. -

"(i) In general. - For purposes of this paragraph, the term exempt arbitrage profits means the aggregate amount described in clauses (i) and (ii) of subparagraph (D) of section 103(c)(6) of such Code for all taxable years for which the organization was exempt from tax under section 501(a) of such Code with respect to obligations -

"(I) associated with property described in section 168(j)(4)(E)(i), and

"(II) issued before January 1, 1985.

"(ii) Application of section 103(b)(6). - For purposes of this paragraph, section 103(b)(6) of such Code shall apply to

obligations issued before January 1, 1985, but the amount described in clauses (i) and (ii) of subparagraph (D) thereof shall be determined without regard to clauses (i)(II) and (ii) of subparagraph (F) thereof.

"(D) Other laws applicable. -

"(i) In general. - Except as provided in clause (ii), all provisions of law, including penalties, applicable with respect to the tax imposed by section 11 of such Code shall apply with respect to the tax imposed by this paragraph.

"(ii) No credits against tax, etc. - The tax imposed by this paragraph shall not be treated as imposed by section 11 of such Code for purposes of -

"(I) part VI of subchapter A of chapter 1 of such Code (relating to minimum tax for tax preferences), and

"(II) determining the amount of any credit allowable under subpart A of part IV of such subchapter.

"(E) Election. - Any election under subparagraph (A) -

"(i) shall be made at such time and in such manner as the Secretary may prescribe,

"(ii) shall apply to any successor organization which is engaged in substantially similar activities, and

"(iii) once made, shall be irrevocable.

"(17) Certain transitional leased property. - The amendments made by this section shall not apply to property described in section 168(c)(2)(D) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act (July 18, 1984), and which is described in any of the following subparagraphs:

"(A) Property is described in this subparagraph if such property is leased to a university, and -

"(i) on June 16, 1983, the Board of Administrators of the university adopted a resolution approving the rehabilitation of the property in connection with an overall campus development program; and

"(ii) the property houses a basketball arena and university offices.

"(B) Property is described in this subparagraph if such property is leased to a charitable organization, and -

"(i) on August 21, 1981, the charitable organization acquired the property, with a view towards rehabilitating the property; and

"(ii) on June 12, 1982, an arson fire caused substantial damage to the property, delaying the planned rehabilitation.

"(C) Property is described in this subparagraph if such property is leased to a corporation that is described in section 501(c)(3) of the Internal Revenue Code of 1986 (relating to organizations exempt from tax) pursuant to a contract -

"(i) which was entered into on August 3, 1983; and

"(ii) under which the corporation first occupied the property on December 22, 1983.

"(D) Property is described in this subparagraph if such property is leased to an educational institution for use as an Arts and Humanities Center and with respect to which -

"(i) in November 1982, an architect was engaged to design a planned renovation;

"(ii) in January 1983, the architectural plans were

completed;

"(iii) in December 1983, a demolition contract was entered into; and

"(iv) in March 1984, a renovation contract was entered into.

"(E) Property is described in this subparagraph if such property is used by a college as a dormitory, and -

"(i) in October 1981, the college purchased the property with a view towards renovating the property;

"(ii) renovation plans were delayed because of a zoning dispute; and

"(iii) in May 1983, the court of highest jurisdiction in the State in which the college is located resolved the zoning dispute in favor of the college.

"(F) Property is described in this subparagraph if such property is a fraternity house related to a university with respect to which -

"(i) in August 1982, the university retained attorneys to advise the university regarding the rehabilitation of the property;

"(ii) on January 21, 1983, the governing body of the university established a committee to develop rehabilitation plans;

"(iii) on January 10, 1984, the governor of the state in which the university is located approved historic district designation for an area that includes the property; and

"(iv) on February 2, 1984, historic preservation certification applications for the property were filed with a historic landmarks commission.

"(G) Property is described in this subparagraph if such property is leased to a retirement community with respect to which -

"(i) on January 5, 1977, a certificate of incorporation was filed with the appropriate authority of the state in which the retirement community is located; and

"(ii) on November 22, 1983, the Board of Trustees adopted a resolution evidencing the intention to begin immediate construction of the property.

"(H) Property is described in this subparagraph if such property is used by a university, and -

"(i) in July 1982, the Board of Trustees of the university adopted a master plan for the financing of the property; and

"(ii) as of August 1, 1983, at least $60,000 in private expenditures had been expended in connection with the property. In the case of Clemson University, the preceding sentence applies only to the Continuing Education Center and the component housing project.

"(I) Property is described in this subparagraph if such property is used by a university as a fine arts center and the Board of Trustees of such university authorized the sale-leaseback agreement with respect to such property on March 7, 1984.

"(J) Property is described in this subparagraph if such property is used by a tax-exempt entity as an international trade center, and

"(i) prior to 1982, an environmental impact study for such property was completed;

"(ii) on June 24, 1981, a developer made a written commitment to provide one-third of the financing for the development of such property; and

"(iii) on October 20, 1983, such developer was approved by the Board of Directors of the tax-exempt entity.

"(K) Property is described in this subparagraph if such property is used by university of osteopathic medicine and health sciences, and on or before December 31, 1983, the Board of Trustees of such university approved the construction of such property.

"(L) Property is described in this subparagraph if such property is used by a tax-exempt entity, and -

"(i) such use is pursuant to a lease with a taxpayer which placed substantial improvements in service;

"(ii) on May 23, 1983, there existed architectural plans and specifications (within the meaning of sec. 48(g)(1)(C)(ii) of the Internal Revenue Code of 1986); and

"(iii) prior to May 23, 1983, at least 10 percent of the total cost of such improvements was actually paid or incurred.

Property is described in this subparagraph if such property was leased to a tax-exempt entity pursuant to a lease recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984, and a deed of such property was recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984.

"(M) Property is described in this subparagraph if such property is used as a convention center and on June 2, 1983, the City Council of the city in which the center is located provided for over $6 million for the project.

"(18) Special rule for amendment made by subsection (c)(1). -

"(A) In general. - The amendment made by subsection (c)(1) (enacting section 48(g)(2)(B)(vi) of this title) shall not apply to property -

"(i) leased by the taxpayer on or before November 1, 1983, or

"(ii) leased by the taxpayer after November 1, 1983, if on or before such date the taxpayer entered into a written binding contract requiring the taxpayer to lease such property.

"(B) Limitation. - Subparagraph (A) shall apply to the amendment made by subsection (c)(1) only to the extent such amendment relates to property described in subclause (II), (III), or (IV) of section 168(j)(3)(B)(ii) of the Internal Revenue Code of 1986 (as added by this section).

"(19) Special rule for certain energy management contracts. -

"(A) In general. - The amendments made by subsection (e) (amending section 7701 of this title) shall not apply to property used pursuant to an energy management contract that was entered into prior to May 1, 1984.

"(B) Definition of energy management contract. - For purposes of subparagraph (A), the term 'energy management contract' means a contract for the providing of energy conservation or energy management services.

"(20) Definitions. - For purposes of this subsection -

"(A) Tax-exempt entity. - The term 'tax-exempt entity' has the same meaning as when used in section 168(j) of the Internal Revenue Code of 1986 (as added by this section), except that such term shall include any related entity (within the meaning of such

section).

"(B) Treatment of improvements. -

"(i) In general. - For purposes of this subsection, an improvement to property shall not be treated as a separate property unless such improvement is a substantial improvement with respect to such property.

"(ii) Substantial improvement. - For purposes of clause (i), the term 'substantial improvement' has the meaning given such term by section 168(f)(1)(C) of such Code determined -

"(I) by substituting 'property' for 'building' each place it appears therein,

"(II) by substituting '20 percent' for '25 percent' in clause (ii) thereof, and

"(III) without regard to clause (iii) thereof.

"(C) Foreign person or entity. - The term 'foreign person or entity' has the meaning given to such term by subparagraph (C) of section 168(j)(4) of such Code (as added by this section). For purposes of this subparagraph and subparagraph (A), such subparagraph (C) shall be applied without regard to the last sentence thereof.

"(D) Leases and subleases. - The determination of whether there is a lease or sublease to a tax-exempt entity shall take into account sections 168(j)(6)(A), 168(j)(8)(A), and 7701(e) of the Internal Revenue Code of 1986 (as added by this section)."

(Section 1802(a)(10)(B) of Pub. L. 99-514 provided in part that amendment by section 1802(a)(10)(B) of Pub. L. 99-514, amending section 31(g)(15)(D)(ii) of Pub. L. 98-369, set out above, is effective with respect to property placed in service by the

taxpayer after July 18, 1984.)

(Section 1802(a)(10)(D)(ii) of Pub. L. 99-514 provided that: "The amendment made by clause (i) (amending section 31(g)(20)(B)(ii) of Pub. L. 98-369, set out above) shall not apply to any property if -

"(I) on or before March 28, 1985, the taxpayer (or a predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, or rehabilitate the property, or

"(II) the taxpayer or the tax-exempt entity began the construction, reconstruction, or rehabilitation of the property on or before March 28, 1985.")

Section 32(c) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, title XVIII, Sec. 1802(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2791, provided that: "The amendment made by subsection (a) (amending this section) shall apply to agreements described in section 168(f)(14) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as added by subsection (a)) entered into more than 90 days after the date of the enactment of this Act (July 18, 1984)."

Section 111(g) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) In general. - Except as otherwise provided in this subsection, the amendments made by this section (amending this section and sections 48, 51, 312, and 1245 of this title) shall apply with respect to property placed in service by the taxpayer after March 15, 1984.

"(2) Exception. - The amendments made by this section shall not apply to property placed in service by the taxpayer before January

1, 1987, if -

"(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before March 16, 1984, or

"(B) construction of such property was commenced by or for the taxpayer or a qualified person before March 16, 1984.

For purposes of this paragraph the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer, but only if such property is not placed in service by such person before such rights are transferred to the taxpayer.

"(3) Special rules for application of paragraph (2). -

"(A) Certain inventory. - In the case of any property which -

"(i) is held by a person as property described in section 1221(1) (26 U.S.C. 1221(1)), and

"(ii) is disposed of by such person before January 1, 1985, such person shall not, for purposes of paragraph (2), be treated as having placed such property in service before such property is disposed of merely because such person rented such property or held such property for rental. No deduction for depreciation or amortization shall be allowed to such person with respect to such property,

"(B) Certain property financed by bonds. - In the case of any property with respect to which -

"(i) bonds were issued to finance such property before 1984, and

"(ii) an architectural contract was entered into before March 16, 1984,

paragraph (2) shall be applied by substituting 'May 2' for 'March 16'.

"(4) Special rule for components. - For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as amended by this section) to components placed in service after December 31, 1986, property to which paragraph (2) applies shall be treated as placed in service by the taxpayer before March 16, 1984.

"(5) Special rule for mid-month convention. - In the case of the amendment made by subsection (d) (amending subsec. (b)(2)(A), (B) of this section) -

"(A) paragraph (1) shall be applied by substituting 'June 22, 1984' for 'March 15, 1984', and

"(B) paragraph (2) shall be applied by substituting 'June 23, 1984' for 'March 15, 1984' each place it appears."

Amendment by section 113(a)(2) of Pub. L. 98-369 applicable to property placed in service after Mar. 15, 1984, in taxable years ending after such date, see section 113(c)(1) of Pub. L. 98-369, set out as a note under section 48 of this title.

Section 113(c)(2) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) The amendments made by paragraphs (1) of subsection (b) (amending this section) shall apply to any motion picture film or video tape placed in service before, on, or after the date of the enactment of this Act (July 18, 1984), except that such amendment shall not apply to -

"(i) any qualified film placed in service by the taxpayer before March 15, 1984, if the taxpayer treated such film as

recovery property for purposes of section 168 of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) on a return of tax under chapter 1 of such Code filed before March 16, 1984, or

"(ii) any qualified film placed in service by the taxpayer before January 1, 1985, if -

"(I) 20 percent or more of the production costs of such film were incurred before March 16, 1984, and

"(II) the taxpayer treats such film as recovery property for purposes of section 168 of such Code.

No credit shall be allowable under section 38 of such Code with respect to any qualified film described in clause (ii), except to the extent provided in section 48(k) of such Code.

"(B) The amendment made by paragraph (2) and (3) of subsection (b) (amending this section and sections 46 and 48 of this title) shall apply as if included in the amendments made by section 201(a), 211(a)(1), and 211(f)(1) of the Economic Recovery Tax Act of 1981 (sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97-34, enacting this section and amending section 46 of this title).

"(C) The amendment made by paragraph (4) of subsection (b) (amending section 48 of this title) shall take effect as if included in the amendments made by section 205(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (section 205(a)(1) of Pub. L. 97-248, amending section 48 of this title).

"(D) For purposes of this paragraph, the terms 'qualified film' and 'production costs' have the same respective meanings as when used in section 48(k) of the Internal Revenue Code of 1986."

Amendment by section 474(r)(7) of Pub. L. 98-369 applicable to

taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 612(e) of Pub. L. 98-369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

Amendment by section 628(b) of Pub. L. 98-369 applicable to property placed in service after Dec. 31, 1983, with certain conditions and exceptions, see section 631(b) of Pub. L. 98-369, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by title I of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

Section 102(a)(10)(B) of Pub. L. 97-448, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subparagraph (A) (amending this section) shall apply with respect to property to which the provisions of section 168(f)(8) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) apply."

Amendment by section 541 of Pub. L. 97-424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97-424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

Section 208(d) of Pub. L. 97-248, as amended by Pub. L. 97-448, title III, Sec. 306(a)(4), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98-369, div. A, title X, Sec. 1067(a), July 18, 1984, 98 Stat. 1048; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) In general. - Except as otherwise provided in this subsection, the amendments made by subsections (a) and (b) of this section (amending this section and section 47 of this title) shall apply to agreements entered into after July 1, 1982, or to property placed in service after July 1, 1982.

"(2) Transitional rule for certain safe harbor lease property. -

"(A) In general. - The amendments made by subsections (a) and (b) (amending this section and section 47 of this title) shall not apply to transitional safe harbor lease property.

"(B) Special rule for certain provisions. - Subparagraph (A) shall not apply with respect to the provisions of paragraph (6) of section 168(i) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as added by subsection (a)(1)), to the provisions of section 168(f)(8)(J) of such Code (as added by subsection (b)(4)), or to the amendment made by subsection (b)(1).

"(3) Transitional safe harbor lease property. - For purposes of this subsection, the term 'transitional safe harbor lease property' means property described in any of the following subparagraphs:

"(A) In general. - Property is described in this subparagraph

if such property is placed in service before January 1, 1983, if -

"(i) with respect to such property a binding contract to acquire or to construct such property was entered into by the lessee after December 31, 1980, and before July 2, 1982, or

"(ii) such property was acquired by the lessee, or construction of such property was commenced by or for the lessee, after December 31, 1980, and before July 2, 1982.

"(B) Certain qualified lessees. - Property is described in this subparagraph if such property is placed in service before July 1, 1982, and with respect to which -

"(i) an agreement to which section 168(f)(8)(A) of the Internal Revenue Code of 1986 applies was entered into before August 15, 1982, and

"(ii) the lessee under such agreement is a qualified lessee (within the meaning of paragraph (6)).

"(C) Automotive manufacturing property. -

"(i) In general. - Property is described in this subparagraph if -

"(I) such property is used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture of automobiles or light-duty trucks,

"(II) such property is automotive manufacturing property, and

"(III) such property would be described in subparagraph (A) if 'October 1' were substituted for 'January 1'.

"(ii) Light-duty truck. - For purposes of this subparagraph,

the term 'light-duty truck' means any truck with a gross vehicle weight of 13,000 pounds or less. Such term shall not include any truck tractor.

"(iii) Automotive manufacturing property. - For purposes of this subparagraph, the term 'automotive manufacturing property' means machinery, equipment, and special tools of the type included in the former asset depreciation range guideline classes 37.11 and 37.12.

"(iv) Special tools used by certain vendors. - For purposes of this subparagraph, any special tools owned by a taxpayer described in subclause (I) of clause (i) which are used by a vendor solely for the production of component parts for sale to the taxpayer shall be treated as automotive manufacturing property used directly by such taxpayer.

"(D) Certain aircraft. - Property is described in this subparagraph if such property -

"(i) is a commercial passenger aircraft (other than a helicopter), and

"(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), subparagraph (A)(ii) shall be applied by substituting 'June 25, 1981' for 'December 31, 1980' and by substituting 'February 20, 1982' for 'July 2, 1982' and construction of the aircraft shall be treated as having been begun during the period referred to in subparagraph (A)(ii) if during such period construction or reconstruction of a subassembly was commenced, or the stub wing

join occurred.

"(E) Turbines and boilers. - Property is described in this subparagraph if such property -

"(i) is a turbine or boiler of a cooperative organization engaged in the furnishing of electric energy to persons in rural areas, and

"(ii) would be property described in subparagraph (A) if 'July 1' were substituted for 'January 1'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

"(F) Property used in the production of steel. - Property is described in this subparagraph if such property -

"(i) is used by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture or production of steel, and

"(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

"(G) Coal gasification facilities. -

"(i) In general. - Property is described in this subparagraph if such property -

"(I) is used directly in connection with the manufacture or production of low sulfur gaseous fuel from coal, and

"(II) would be described in subparagraph (A) if 'July 1, 1984' were substituted for 'January 1, 1983'.

"(ii) Special rule. - For purposes of determining whether

property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

"(iii) Limitation on amount. - Clause (i) shall only apply to the lease of an undivided interest in the property in an amount which does not exceed the lesser of -

"(I) 50 percent of the cost basis of such property, or

"(II) $67,500,000.

"(iv) Placed in service. - In the case of property to which this subparagraph applies -

"(I) such property shall be treated as placed in service when the taxpayer receives an operating permit with respect to such property from a State environmental protection agency, and

"(II) the term of the lease with respect to such property shall be treated as being 5 years.

"(4) Special rule for antiavoidance provisions. - The provisions of paragraph (6) of section 168(i) of such Code (as added by subsection (a)(1)), and the amendment made by subsection (b)(1) (amending this section) shall apply to leases entered into after February 19, 1982, in taxable years ending after such date.

"(5) Special rule for mass commuting vehicles. - The amendments made by this section (other than section 168(i)(1) and (7) of such Code, as added by subsection (a)(1) or section 168(f)(8)(J) of such Code, as added by subsection (b)(4)) and section 209 (amending this section and section 48 of this title) shall not apply to qualified

leased property described in section 168(f)(8)(D)(V) of such Code (as in effect after the amendments made by this section) which -

"(A) is placed in service before January 1, 1988, or

"(B) is placed in service after such date -

"(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

"(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

"(6) Qualified lessee defined. -

"(A) In general. - The term 'qualified lessee' means a taxpayer which is a lessee of an agreement to which section 168(f)(8)(A) of such Code applies and which -

"(i) had net operating losses in each of the three most recent taxable years ending before July 1, 1982, and had an aggregate net operating loss for the five most recent taxable years ending before July 1, 1982, and

"(ii) which uses the property subject to the agreement to manufacture and produce within the United States a class of products in an industry with respect to which -

"(I) the taxpayer produced less than 5 percent of the total number of units (or value) of such products during the period covering the three most recent taxable years of the taxpayer ending before July 1, 1982, and

"(II) four or fewer United States persons (including as one person an affiliated group as defined in section 1504(a)) other than the taxpayer manufactured 85 percent or more of the total number of all units (or value) within such class of

products manufactured and produced in the United States during such period.

"(B) Class of products. - For purposes of subparagraph (A) -

"(i) the term 'class of products' means any of the categories designated and numbered as a 'class of products' in the 1977 Census of Manufacturers compiled and published by the Secretary of Commerce under title 13 of the United States Code, and

"(ii) information -

"(I) compiled or published by the Secretary of Commerce, as part of or in connection with the Statistical Abstract of the United States or the Census of Manufacturers, regarding the number of units (or value) of a class of products manufactured and produced in the United States during any period, or

"(II) if information under subclause (I) is not available, so compiled or published with respect to the number of such units shipped or sold by such manufacturers during any period,

shall constitute prima facie evidence of the total number of all units of such class of products manufactured and produced in the United States in such period.

"(6) Underpayments of tax for 1982. - No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1954 (relating to failure by corporation to pay estimated income tax) for any period before October 15, 1982, with respect to any underpayment of estimated tax by a taxpayer with respect to any tax imposed by chapter 1 of such Code to the extent that such

underpayment was created or increased by any provision of this section.

"(7) Coordination with at risk rules. - Subparagraph (J) of section 168(f)(8) of the Internal Revenue Code of 1986 (as added by subsection (b)(4)) shall take effect as provided in such subparagraph (J)."

(Section 1067(c) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) (enacting section 208(d)(3)(G) of Pub. L. 97-248, set out above) shall take effect as if included in the provision of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)."

Section 209(d) of Pub. L. 97-248; as amended by Pub. L. 98-369, div. A, title I, Sec. 12(a)(1), (2), July 18, 1984, 98 Stat. 503, provided that:

"(1) Subsection (a). -

"(A) In general. - Except as provided in subparagraph (B) and paragraph (2), the amendments made by this section (amending this section and section 48 of this title) shall apply to agreements entered into after December 31, 1987.

"(B) Special rule for farm property aggregating $150,000 or less. -

"(i) In general. - The amendments made by subsection (a) (amending this section) shall also apply to any agreement entered into after July 1, 1982, and before January 1, 1988, if the property subject to such agreement is section 38 property which is used for farming purposes (within the meaning of section 2032A(e)(5)).

"(ii) $150,000 limitation. - The provisions of clause (i)

shall not apply to any agreement if the sum of -

"(I) the cost basis of the property subject to the agreement, plus

"(II) the cost basis of any property subject to an agreement to which this subparagraph previously applied, which was entered into during the same calendar year, and with respect to which the lessee was the lessee of the agreement described in subclause (I) (or any related person within the meaning of section 168(e)(4)(D)),

exceeds $150,000. For purposes of subclause (II), in the case of an individual, there shall not be taken into account any agreement of any individual who is a related person involving property which is used in a trade or business of farming of such related person which is separate from the trade or business of farming of the lessee described in subclause (II).

"(2) Special rule for definition of new section 38 property. - The amendment made by subsection (c) (amending section 48 of this title) shall apply to property placed in service after December 31, 1983."

Section 216(b) of Pub. L. 97-248, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) In general. - Except as otherwise provided in this subsection, the amendments made by this section (amending this section) shall apply with respect to property placed in service after December 31, 1982, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after June 30, 1982.

"(2) Exceptions. -

"(A) Construction or binding agreement. - The amendments made by this section (amending this section) shall not apply with respect to facilities the original use of which commences with the taxpayer and -

"(i) the construction, reconstruction, or rehabilitation of which began before July 1, 1982, or

"(ii) with respect to which a binding agreement to incur significant expenditures was entered into before July 1, 1982.

"(B) Refunding. -

"(i) In general. - Except as provided in clause (ii), in the case of property placed in service after December 31, 1982 which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before July 1, 1982, the amendments made by this section (amending this section) shall apply only with respect to the basis in such property which has not been recovered before the date such refunding obligation is issued.

"(ii) Significant expenditures. - In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1983, the amendments made by this section shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before July 1, 1982.

In the case of an inducement resolution adopted by an issuing authority before July 1, 1982, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations

described in such resolution, the term 'facilities' means the facilities described in such resolution.

"(3) Certain projects for residential real property. - For purposes of clause (i) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as added by this section), any obligation issued to finance a project described in the table contained in paragraph (1) of section 1104(n) of the Mortgage Subsidy Bond Tax Act of 1980 (section 1104(n) of Pub. L. 96-499, set out as a note under section 103A of this title) shall be treated as an obligation described in section 103(b)(4)(A) of the Internal Revenue Code of 1986."

Amendment by section 224(c)(1), (2) of Pub. L. 97-248 to apply to any target corporation, within the meaning of section 338 of this title, with respect to which the acquisition date, within the meaning of such section, occurs after Aug. 31, 1982, and also to apply to certain acquisitions before September 1, 1982, but not to apply in the case of certain acquisitions of financial institutions, see section 224(d) of Pub. L. 97-248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE

Section 209(a)-(c) of Pub. L. 97-34, as amended by Pub. L. 97-448, title I, Sec. 102(d)(1), (g), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) General Rule. - Except as otherwise provided in this section, the amendments made by this subtitle (subtitle A (Sec. 201-209) of title II of Pub. L. 97-34, enacting this section, amending sections 44E, 46, 50A, 53, 57, 167, 172, 179, 263, 312,

381, 453, 812, 825, 964, 1033, 1245, and 1250 of this title, and enacting provisions set out as notes under this section and sections 46 and 167 of this title) shall apply to property placed in service after December 31, 1980, in taxable years ending after such date.

"(b) Special Rule for RRB Property. - The amendment made by subsection (c) of section 203 (amending section 167 of this title and enacting provisions set out as notes under section 167 of this title) shall take effect on January 1, 1981, and shall apply with respect to taxable years ending after such date.

"(c) Special Rule for Carryovers. -

"(1)(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (b) of section 207 (amending sections 172, 812, and 825 of this title) shall apply to net operating losses in taxable years ending after December 31, 1975.

"(B) The amendments made by subparagraph (B)(i) of section 207(a)(2) (amending section 172 of this title) shall take effect as if they had been included in the amendments made by section 1(a) of Public Law 96-595 (amending section 172 of this title); except that the amendments made by such subparagraph shall apply only to net operating losses in taxable years ending after December 31, 1972.

"(C) If any net operating loss for any taxable year ending on or before December 31, 1975, could be a net operating loss carryover to a taxable year ending in 1981 by reason of subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (as in effect on the day before the date of the enactment of this Act (Aug. 13, 1981) and as modified

by section 1(b) of Public Law 96-595 (set out as an Effective Date of 1980 Amendment note under section 172 of this title)), such net operating loss shall be a net operating loss carryover under section 172 of such Code to each of the 15 taxable years following the taxable year of such loss.

"(2)(A) The amendments made by subsection (c)(1) of section 207 (amending sections 46 and 50A of this title) shall apply to unused credit years ending after December 31, 1973.

"(B) The amendment made by subsection (c)(2) of section 207 (amending section 53 of this title) shall apply to unused credit years beginning after December 31, 1976.

"(C) The amendments made by subsection (c)(3) of section 207 (amending section 44E of this title) shall apply to unused credit years ending after September 30, 1980.

"(3) Carryover must have been alive in 1981. - The amendments made by subsections (a), (b), and (c) of section 207 (amending sections 44E, 46, 50A, 53, 172, 812, and 825 of this title) shall not apply to any amount which, under the law in effect on the day before the date of the enactment of this Act (Aug. 13, 1981), could not be carried to a taxable year ending in 1981."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (Sec. 1101-1147 and 1171-1177) or title XVIII (Sec. 1800-1899A) of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN FARM FINANCE LEASES

Section 1801(a)(2) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, Sec. 1018(a), Nov. 10, 1988, 102 Stat. 3577, provided that:

"(A) In general. - If -

"(i) any partnership or grantor trust is the lessor under a specified agreement,

"(ii) such partnership or grantor trust met the requirements of section 168(f)(8)(C)(i) of the Internal Revenue Code of 1954 (relating to special rules for finance leases) when the agreement was entered into, and

"(iii) a person became a partner in such partnership (or a beneficiary in such trust) after its formation but before September 26, 1985,

then, for purposes of applying the revenue laws of the United States in respect to such agreement, the portion of the property allocable to partners (or beneficiaries) not described in clause (iii) shall be treated as if it were subject to a separate agreement and the portion of such property allocable to the partner or beneficiary described in clause (iii) shall be treated as if it

were subject to a separate agreement.

"(B) Specified agreement. - For purposes of subparagraph (A), the term 'specified agreement' means an agreement to which subparagraph (B) of section 209(d)((1)) of the Tax Equity and Fiscal Responsibility Act of 1982 (section 209(d)(1) of Pub. L. 97-248, set out as a note above) applies which is -

"(i) an agreement dated as of December 20, 1982, as amended and restated as of February 1, 1983, involving approximately $8,734,000 of property at December 31, 1983,

"(ii) an agreement dated as of December 15, 1983, as amended and restated as of January 3, 1984, involving approximately $13,199,000 of property at December 31, 1984, or

"(iii) an agreement dated as of October 25, 1984, as amended and restated as of December 1, 1984, involving approximately $966,000 of property at December 31, 1984."

CERTAIN RESIDENTIAL REAL PROPERTY TREATED AS RESIDENTIAL RENTAL PROPERTY

Section 1809(a)(4)(C) of Pub. L. 99-514 provided that: "Any property described in paragraph (3) of section 631(d) of the Tax Reform Act of 1984 (section 631(d) of Pub. L. 99-369, set out as a note under section 103 of this title) shall be treated as property described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1954 (now 1986) as amended by subparagraph (B)."

COORDINATION WITH IMPUTED INTEREST CHANGES

Section 1809(a)(5) of Pub. L. 99-514 provided that: "In the case of any property placed in service before May 9, 1985 (or treated as placed in service before such date by section 105(b)(3) of Public Law 99-121 (set out as a note above)) -

"(A) any reference in any amendment made by this subsection (amending this section and sections 57 and 312 of this title) to 19-year real property shall be treated as a reference to 18-year real property, and

"(B) section 168(f)(12)(B)(ii) of the Internal Revenue Code of 1954 (now 1986) (as amended by paragraph (4)(A)) shall be applied by substituting '18 years' for '19 years'."

TERMINATION OF SAFE HARBOR LEASING RULES

Section 12(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (relating to special rules for leasing), as in effect after the amendments made by section 208 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248) but before the amendments made by section 209 of such Act, shall not apply to agreements entered into after December 31, 1983. The preceding sentence shall not apply to property described in paragraph (3)(G) or (5) of section 208(d) of such Act (set out as an Effective Date of 1982 Amendments note above)."

TRANSITIONAL RULES FOR 1984 AMENDMENT

Section 12(c) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, title XVIII, Sec. 1801(a)(1), Oct. 22, 1986, 100 Stat. 2095, 2785; Pub. L. 100-647, title I, Sec. 1002(d)(7)(B), Nov. 10, 1988, 102 Stat. 3360, provided that:

"(1) In general. - The amendments made by subsection (a) (amending this section and section 208(d) of Pub. L. 97-248, set out as an Effective Date of 1982 Amendments note above) shall not apply with respect to any property if -

"(A) a binding contract to acquire or to construct such property was entered into by or for the lessee before March 7, 1984, or

"(B) such property was acquired by the lessee, or the construction of such property was begun, by or for the lessee, before March 7, 1984.

The preceding sentence shall not apply to any property with respect to which an election is made under this sentence at such time after the date of the enactment of the Tax Reform Act of 1986 (Oct. 22, 1986) as the Secretary of the Treasury or his delegate may prescribe.

"(2) Special rule for certain automotive property. -

"(A) In general. - The amendments made by subsection (a) shall not apply to property -

"(i) which is automotive manufacturing property, and

"(ii) with respect to which the lessee is a qualified lessee (within the meaning of section 208(d)(6) of the Tax Equity and Fiscal Responsibility Act of 1982) (Pub. L. 97-248, set out as an Effective Date of 1982 Amendments note above).

"(B) $150,000,000 limitation. - The provisions of subparagraph (A) shall not apply to any agreement if the sum of -

"(i) the cost basis of the property subject to the agreement, plus

"(ii) the cost basis of any property subject to an agreement to which subparagraph (A) previously applied and with respect to which the lessee was the lessee under the agreement described in clause (i) (or any related person within the meaning of section 168(e)(4)(D) of the Internal Revenue Code of

1986 (formerly I.R.C. 1954)),

exceeds $150,000,000.

"(C) Automotive manufacturing property. - For purposes of this paragraph, the term 'automotive manufacturing property' means -

"(i) property used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacturing of automobiles or trucks (other than truck tractors) with a gross vehicle weight of 13,000 pounds or less,

"(ii) machinery, equipment, and special tools of the type included in former depreciation range guideline classes 37.11 and 37.12, and

"(iii) any special tools owned by the taxpayer which are used by a vendor solely for the production of component parts for sale to the taxpayer.

"(3) Special rule for certain cogeneration facilities. - The amendments made by subsection (a) shall not apply with respect to any property which is part of a coal-fired cogeneration facility -

"(A) for which an application for certification was filed with the Federal Energy Regulatory Commission on December 30, 1983,

"(B) for which an application for a construction permit was filed with a State environmental protection agency on February 20, 1984, and

"(C) which is placed in service before January 1, 1988."

SPECIAL LEASING RULE REGARDING COAL GASIFICATION FACILITIES

Section 1067(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amount of any recapture under section 47 of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) with respect to the credit allowed

under section 38 of such Code with respect to progress expenditures (within the meaning of section 46(d) of such Code) shall apply only to the percentage of the cost basis of the coal gasification facility to which the amendment made by subsection (a) (amending section 208(d) of Pub. L. 97-248, set out as an Effective Date of 1982 Amendments note above) applies."

CERTAIN LEASES BEFORE OCTOBER 20, 1981, TREATED AS QUALIFIED LEASES

Section 208(c) of Pub. L. 97-248, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Nothing in paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954), or in any regulations prescribed thereunder, shall be treated as making such paragraph inapplicable to any agreement entered into before October 20, 1981, solely because under such agreement 1 party to such agreement is entitled to the credit allowable under section 38 of such Code with respect to property and another party to such agreement is entitled to the deduction allowable under section 168 of such Code with respect to such property. Section 168(f)(8)(B)(ii) of such Code shall not apply to the party entitled to such credit."

MOTOR VEHICLE OPERATING LEASES

Section 210 of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title I, Sec. 32(b), title VII, Sec. 712(d), July 18, 1984, 98 Stat. 531, 947; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) In general. - In the case of any qualified motor vehicle agreement entered into on or before the 90th day after the date of the enactment of the Tax Reform Act of 1984 (July 18, 1984), the fact that such agreement contains a terminal rental adjustment

clause shall not be taken into account in determining whether such agreement is a lease.

"(b) Definitions. - For purposes of this section -

"(1) Qualified motor vehicle agreement. - The term 'qualified motor vehicle agreement' means any agreement with respect to a motor vehicle (including a trailer) -

"(A) which was entered into before -

"(i) the enactment of any law, or

"(ii) the publication by the Secretary of the Treasury or his delegate of any regulation,

which provides that any agreement with a terminal rental adjustment clause is not a lease,

"(B) with respect to which the lessor under the agreement -

"(i) is personally liable for the repayment of, or

"(ii) has pledged property (but only to the extent of the net fair market value of the lessor's interest in such property), other than property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement, as security for,

all amounts borrowed to finance the acquisition of property subject to the agreement, and

"(C) with respect to which the lessee under the agreement uses the property subject to the agreement in a trade or business or for the production of income.

"(2) Terminal rental adjustment clause. - The term 'terminal rental adjustment clause' means a provision of an agreement which permits or requires the rental price to be adjusted upward or

downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property. Such term also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in the preceding sentence.

"(c) Exception Where Lessee Took Position on Return. - Subsection (a) shall not apply to deny a deduction for interest paid or accrued claimed by a lessee with respect to a qualified motor vehicle agreement on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) which was filed before the date of the enactment of this Act (Sept. 3, 1982) or to deny a credit for investment in depreciable property claimed by the lessee on such a return pursuant to an agreement with the lessor that the lessor would not claim the credit."

INFORMATION RETURNS WITH RESPECT TO SAFE HARBOR LEASES

Pub. L. 97-119, title I, Sec. 112, Dec. 29, 1981, 95 Stat. 1640, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) Requirement of Return. -

"(1) In general. - Except as provided in paragraph (2), paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (relating to special rule for leases) shall not apply with respect to an agreement unless a return, signed by the lessor and lessee and containing the information required to be included in the return pursuant to subsection (b), has been filed with the Internal Revenue Service not later than

the 30th day after the date on which the agreement is executed.

"(2) Special rules for agreements executed before january 1, 1982. -

"(A) In general. - In the case of an agreement executed before January 1, 1982, such agreement shall cease on February 1, 1982, to be treated as a lease under section 168(f)(8) unless a return, signed by the lessor and containing the information required to be included in subsection (b), has been filed with the Internal Revenue Service not later than January 31, 1982.

"(B) Filing by lessee. - If the lessor does not file a return under subparagraph (A), the return requirement under subparagraph (A) shall be satisfied if such return is filed by the lessee before January 31, 1982.

"(3) Certain failure to file. - If -

"(A) a lessor or lessee fails to file any return within the time prescribed by this subsection, and

"(B) such failure is shown to be due to reasonable cause and not due to willful neglect,

the lessor or lessee shall be treated as having filed a timely return if a return is filed within a reasonable time after the failure is ascertained.

"(b) Information Required. - The information required to be included in the return pursuant to this subsection is as follows:

"(1) The name, address, and taxpayer identifying number of the lessor and the lessee (and parent company if a consolidated return is filed);

"(2) The district director's office with which the income tax

returns of the lessor and lessee are filed;

"(3) A description of each individual property with respect to which the election is made;

"(4) The date on which the lessee places the property in service, the date on which the lease begins and the term of the lease;

"(5) The recovery property class and the ADR midpoint life of the leased property;

"(6) The payment terms between the parties to the lease transaction;

"(7) Whether the ACRS deductions and the investment tax credit are allowable to the same taxpayer;

"(8) The aggregate amount paid to outside parties to arrange or carry out the transaction;

"(9) For the lessor only: the unadjusted basis of the property as defined in section 168(d)(1);

"(10) For the lessor only: if the lessor is a partnership or a grantor trust, the name, address, and taxpayer identifying number of the partners or the beneficiaries, and the district director's office with which the income tax return of each partner or beneficiary is filed; and

"(11) Such other information as may be required by the return or its instructions.

Paragraph (8) shall not apply with respect to any person for any calendar year if it is reasonable to estimate that the aggregate adjusted basis of the property of such person which will be subject to subsection (a) for such year is $1,000,000 or less.

"(c) Coordination With Other Information Requirements. - In the

case of agreements executed after December 31, 1982, to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, the provisions of this section shall be modified to coordinate such provisions with the other information requirements of the Internal Revenue Code of 1986."

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE FOR NORMALIZATION REQUIREMENTS

Section 209(d)(1) of Pub. L. 97-34, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If, by the terms of the applicable rate order last entered before the date of the enactment of this Act (Aug. 13, 1981) by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of section 168(e)(3) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) with respect to property because, for an accounting period ending after December 31, 1980, such public utility used a method of accounting other than a normalization method of accounting, such regulated public utility shall not fail to meet such requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility uses a normalization method of accounting. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act, required a regulated public utility to use a method of accounting with respect to the deduction allowable by section 167 which, under section 167(l), it was not permitted to use."

INTERIM REGULATIONS WITH RESPECT TO NORMALIZATION; AUTHORITY TO PRESCRIBE

Section 209(d)(4) of Pub. L. 97-34, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Until Congress acts further, the Secretary of the Treasury or his delegate may prescribe such interim regulations as may be necessary or appropriate to determine whether the requirements of section 168(e)(3)(B) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) have been met with respect to property placed in service after December 31, 1980."

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42, 45A, 47, 50, 56, 110, 142, 167, 170, 179, 263A, 280F, 291, 312, 381, 404, 460, 467, 512, 514, 860E, 865, 936, 1031, 1245, 1250, 1393, 1397B, 1397C, 4052 of this title; title 10 section 2401.

Subchapter F - Exempt Organizations

PART VI - POLITICAL ORGANIZATIONS

-HEAD-

Sec. 527. Political organizations

-STATUTE-

(a) General rule

A political organization shall be subject to taxation under this subtitle only to the extent provided in this section. A political

organization shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(b) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the political organization taxable income of every political organization. Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b).

(2) Alternative tax in case of capital gains

If for any taxable year any political organization has a net capital gain, then, in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such a tax is less than the tax imposed by paragraph (1)) which shall consist of the sum of -

(A) a partial tax, computed as provided by paragraph (1), on the political organization taxable income determined by reducing such income by the amount of such gain, and

(B) an amount determined as provided in section 1201(a) on such gain.

(c) Political organization taxable income defined

(1) Taxable income defined

For purposes of this section, the political organization taxable income of any organization for any taxable year is an amount equal to the excess (if any) of -

(A) the gross income for the taxable year (excluding any exempt function income), over

(B) the deductions allowed by this chapter which are directly

connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

(2) Modifications

For purposes of this subsection -

(A) there shall be allowed a specific deduction of $100,

(B) no net operating loss deduction shall be allowed under section 172, and

(C) no deduction shall be allowed under part VIII of subchapter B (relating to special deductions for corporations).

(3) Exempt function income

For purposes of this subsection, the term "exempt function income" means any amount received as -

(A) a contribution of money or other property,

(B) membership dues, a membership fee or assessment from a member of the political organization,

(C) proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business, or

(D) proceeds from the conducting of any bingo game (as defined in section 513(f)(2)),

to the extent such amount is segregated for use only for the exempt function of the political organization.

(d) Certain uses not treated as income to candidate

For purposes of this title, if any political organization -

(1) contributes any amount to or for the use of any political organization which is treated as exempt from tax under subsection

(a) of this section,

(2) contributes any amount to or for the use of any organization described in paragraph (1) or (2) of section 509(a) which is exempt from tax under section 501(a), or

(3) deposits any amount in the general fund of the Treasury or in the general fund of any State or local government,

such amount shall be treated as an amount not diverted for the personal use of the candidate or any other person. No deduction shall be allowed under this title for the contribution or deposit of any amount described in the preceding sentence.

(e) Other definitions

For purposes of this section -

(1) Political organization

The term "political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) Exempt function

The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable

as a deduction under section 162(a).

(3) Contributions

The term "contributions" has the meaning given to such term by section 271(b)(2).

(4) Expenditures

The term "expenditures" has the meaning given to such term by section 271(b)(3).

(f) Exempt organization, which is not political organization, must include certain amounts in gross income

(1) In general

If an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount during the taxable year directly (or through another organization) for an exempt function (within the meaning of subsection (e)(2)), then, notwithstanding any other provision of law, there shall be included in the gross income of such organization for the taxable year, and shall be subject to tax under subsection (b) as if it constituted political organization taxable income, an amount equal to the lesser of -

(A) the net investment income of such organization for the taxable year, or

(B) the aggregate amount so expended during the taxable year for such an exempt function.

(2) Net investment income

For purposes of this subsection, the term "net investment income" means the excess of -

(A) the gross amount of income from interest, dividends, rents, and royalties, plus the excess (if any) of gains from

the sale or exchange of assets over the losses from the sale or exchange of assets, over

(B) the deductions allowed by this chapter which are directly connected with the production of the income referred to in subparagraph (A).

For purposes of the preceding sentence, there shall not be taken into account items taken into account for purposes of the tax imposed by section 511 (relating to tax on unrelated business income).

(3) Certain separate segregated funds

For purposes of this subsection and subsection (e)(1), a separate segregated fund (within the meaning of section 610 of title 18) or of any similar State statute, or within the meaning of any State statute which permits the segregation of dues moneys for exempt functions (within the meaning of subsection (e)(2)) which is maintained by an organization described in section 501(c) which is exempt from tax under section 501(a) shall be treated as a separate organization.

(g) Treatment of newsletter funds

(1) In general

For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of paragraph (3)) for nomination or election to, any Federal, State, or local elective public office, for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) Additional modifications

In the case of any fund described in paragraph (1) -

(A) the exempt function shall be only the preparation and circulation of the newsletter, and

(B) the specific deduction provided by subsection (c)(2)(A) shall not be allowed.

(3) Candidate

For purposes of paragraph (1), the term "candidate" means, with respect to any Federal, State, or local elective public office, an individual who -

(A) publicly announces that he is a candidate for nomination or election to such office, and

(B) meets the qualifications prescribed by law to hold such office.

(h) Special rule for principal campaign committees

(1) In general

In the case of a political organization, which is a principal campaign committee, paragraph (1) of subsection (b) shall be applied by substituting "the appropriate rates" for "the highest rate".

(2) Principal campaign committee defined

(A) In general

For purposes of this subsection, the term "principal campaign committee" means the political committee designated by a candidate for Congress as his principal campaign committee for purposes of -

(i) section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)), and

(ii) this subsection.

(B) Designation

A candidate may have only 1 designation in effect under subparagraph (A)(ii) at any time and such designation -

(i) shall be made at such time and in such manner as the Secretary may prescribed by regulations, and

(ii) once made, may be revoked only with the consent of the Secretary.

Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate.

-SOURCE-

(Added Pub. L. 93-625, Sec. 10(a), Jan. 3, 1975, 88 Stat. 2116; amended Pub. L. 94-455, title XIX, Sec. 1901(b)(33)(C), Oct. 4, 1976, 90 Stat. 1801; Pub. L. 95-502, title III, Sec. 302(a), Oct. 21, 1978, 92 Stat. 1702; Pub. L. 95-600, title III, Sec. 301(b)(6), Nov. 6, 1978, 92 Stat. 2821; Pub. L. 97-34, title I, Sec. 128(a), Aug. 13, 1981, 95 Stat. 203; Pub. L. 98-369, div. A, title IV, Sec. 474(r)(16), title VII, Sec. 722(c), July 18, 1984, 98 Stat. 843, 973; Pub. L. 99-514, title I, Sec. 112(b)(1), Oct. 22, 1986, 100 Stat. 2108; Pub. L. 100-647, title I, Sec. 1001(b)(3)(B), Nov. 10, 1988, 102 Stat. 3349.)

-REFTEXT-

REFERENCES IN TEXT

Section 610 of title 18, referred to in subsec. (f)(3), was repealed by Pub. L. 94-283, title II, Sec. 201(a), May 11, 1976, 90 Stat. 496. See section 441b of Title 2, The Congress.

-MISC2-

AMENDMENTS

1988 - Subsec. (e)(2). Pub. L. 100-647 inserted at end "Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a)."

1986 - Subsec. (g)(1). Pub. L. 99-514, Sec. 112(b)(1)(A), substituted "paragraph (3)" for "section 24(c)(2)".

Subsec. (g)(3). Pub. L. 99-514, Sec. 112(b)(1)(B), added par. (3).

1984 - Subsec. (g)(1). Pub. L. 98-369, Sec. 474(r)(16), substituted "section 24(c)(2)" for "section 41(c)(2)".

Subsec. (h)(2)(B). Pub. L. 98-369, Sec. 722(c), inserted "Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate."

1981 - Subsec. (h). Pub. L. 97-34 added subsec. (h).

1978 - Subsec. (b)(1). Pub. L. 95-600 substituted "Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b)" for "Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the political organization were a corporation and as though the political organization taxable income were the taxable income referred to in section 11" and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (c)(3)(D). Pub. L. 95-502 added subpar. (D).

1976 - Subsec. (b)(2). Pub. L. 94-455 substituted "net capital

gain" for "net section 1201 gain" after "organization has a".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(16) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 722(c) of Pub. L. 98-369 provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1981.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 128(b) of Pub. L. 97-34 provided that: "The amendments made by this section (amending this section) shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(6) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION CAMPAIGN CONTRIBUTIONS;

COLLATERAL

Section 302(b) of Pub. L. 95-502, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) (amending this section) shall apply to taxable years beginning after December 31, 1974, except that notwithstanding any other provision of law to the contrary, no amounts held at the date of enactment of this bill (Oct. 21, 1978) by an organization described in section 527(e)(1) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) in escrow, in separate accounts for the payment of Federal taxes, or in any other fund which are proceeds described in section 527(c)(3)(D) of such Code may be used, directly or indirectly, to make a contribution or expenditure (as defined in section 301(e) and (f) of the Federal Election Campaign Act of 1971; 2 U.S.C. 431(f)) in connection with any election held before January 1, 1979.

"(2) Such amounts as described in (1) above shall not be considered as security or collateral for any loan by any State or national bank or any other person or organization."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 10(e) of Pub. L. 93-625 provided that: "The amendments made by subsections (a), (b), (c), and (d) (enacting this section and amending sections 501 and 6012 of this title) shall apply to taxable years beginning after December 31, 1974."

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 84, 2501, 6012, 6033, 6113, 6711 of this title.

-CITE-

26 USC Sec. 168 01/26/98

-EXPCITE-

Subchapter N - Tax Based on Income From Sources Within or Without the United States

PART II - NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart A - Nonresident Alien Individuals

-HEAD-

Sec. 871. Tax on nonresident alien individuals

-STATUTE-

(a) Income not connected with United States business - 30 percent tax

(1) Income other than capital gains

Except as provided in subsection (h), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as -

(A) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums,

annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) gains described in section 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C) in the case of -

(i) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

(ii) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and

(D) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the

calendar year.

(3) Taxation of social security benefits

For purposes of this section and section 1441 -

(A) 85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c). (FOOTNOTE 1)

(FOOTNOTE 1) See References in Text note below.

(b) Income connected with United States business - graduated rate of tax

(1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1, 55, or 402(d)(1) on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Participants in certain exchange or training programs

For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J),

(M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income described in the second sentence of section 1441(b) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) Election to treat real property income as income connected with United States business

(1) In general

A nonresident alien individual who during the taxable year derives any income -

(A) from real property held for the production of income and located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of such real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income which is effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United

States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation

If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the 5th taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary consents to such new election.

(3) Form and time of election and revocation

An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary may by regulations prescribe.

((e) Repealed. Pub. L. 99-514, title XII, Sec. 1211(b)(5), Oct. 22, 1986, 100 Stat. 2536)

(f) Certain annuities received under qualified plans

(1) In general

For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if -

(A) all of the personal services by reason of which the annuity is payable were either -

(i) personal services performed outside the United States by an individual who, at the time of performance of such

personal services, was a nonresident alien, or

(ii) personal services described in section 864(b)(1) performed within the United States by such individual, and

(B) at the time the first amount is paid as an annuity under the annuity plan or by the trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which the trust is a part, are citizens or residents of the United States.

(2) Exclusion

Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if -

(A) the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

(B) the recipient's country of residence is a beneficiary developing country under title V of the Trade Act of 1974 (19 U.S.C. 2462). (FOOTNOTE 2)

(FOOTNOTE 2) So in original. Probably should be "(19 U.S.C. 2461 et seq.)."

(g) Special rules for original issue discount

For purposes of this section and section 881 -

(1) Original issue discount obligation

(A) In general

Except as provided in subparagraph (B), the term "original issue discount obligation" means any bond or other evidence of indebtedness having original issue discount (within the meaning

of section 1273).

(B) Exceptions

The term "original issue discount obligation" shall not include -

(i) Certain short-term obligations

Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(ii) Tax-exempt obligations

Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

(2) Determination of portion of original issue discount accruing during any period

The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

(3) Source of original issue discount

Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

(4) Stripped bonds

The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original

issue discount) shall apply for purposes of this section.

(h) Repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a nonresident individual from sources within the United States, no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term "portfolio interest" means any interest (including original issue discount) which would be subject to tax under subsection (a) but for this subsection and which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which -

(i) is not in registered form, and

(ii) is described in section 163(f)(2)(B).

(B) Certain registered obligations

Interest which is paid on an obligation -

(i) which is in registered form, and

(ii) with respect to which the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest not to include interest received by 10-percent shareholders

For purposes of this subsection -

(A) In general

The term "portfolio interest" shall not include any interest described in subparagraph (A) or (B) of paragraph (2) which is received by a 10-percent shareholder.

(B) 10-Percent shareholder

The term "10-percent shareholder" means -

(i) in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

(ii) in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

(C) Attribution rules

For purposes of determining ownership of stock under subparagraph (B)(i) the rules of section 318(a) shall apply, except that -

(i) section 318(a)(2)(C) shall be applied without regard to the 50-percent limitation therein,

(ii) section 318(a)(3)(C) shall be applied -

(I) without regard to the 50-percent limitation therein; and

(II) in any case where such section would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) which is owned by or for any shareholder of such corporation in that proportion which the value of the stock which such

shareholder owns in such corporation bears to the value of all stock in such corporation, and

(iii) any stock which a person is treated as owning after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection -

(A) In general

Except as otherwise provided in this paragraph, the term "portfolio interest" shall not include -

(i) any interest if the amount of such interest is determined by reference to -

(I) any receipts, sales or other cash flow of the debtor or a related person,

(II) any income or profits of the debtor or a related person,

(III) any change in value of any property of the debtor or a related person, or

(IV) any dividend, partnership distributions, or similar payments made by the debtor or a related person, or

(ii) any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate

to prevent avoidance of Federal income tax.

(B) Related person

The term "related person" means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

(C) Exceptions

Subparagraph (A)(i) shall not apply to -

(i) any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,

(ii) any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,

(iii) any amount of interest all or substantially all of which is determined by reference to any other amount of interest not described in subparagraph (A) (or by reference to the principal amount of indebtedness on which such other interest is paid),

(iv) any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to reduce the risk of interest rate or currency fluctuations with respect to such interest,

(v) any amount of interest determined by reference to -

(I) changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),

(II) the yield on property described in subclause (I), other than a debt instrument that pays interest described in subparagraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or

(III) changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and

(vi) any other type of interest identified by the Secretary by regulation.

(D) Exception for certain existing indebtedness

Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term -

(i) which was issued on or before April 7, 1993, or

(ii) which was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued.

(5) Certain statements

A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by -

(A) the beneficial owner of such obligation, or

(B) a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or

any class including such person) does not meet the requirements of this paragraph.

(6) Secretary may provide subsection not to apply in cases of inadequate information exchange

(A) In general

If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period -

(i) beginning on the date specified by the Secretary, and

(ii) ending on the date that the Secretary determines that the exchange of information between the United States and the foreign country is adequate to prevent the evasion of United States income tax by United States persons.

(B) Exception for certain obligations

Subparagraph (A) shall not apply to the payment of interest on any obligation which is issued on or before the date of the publication of the Secretary's determination under such subparagraph.

(7) Registered form

For purposes of this subsection, the term "registered form" has the same meaning given such term by section 163(f).

(i) Tax not to apply to certain interest and dividends

(1) In general

No tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a) on any amount described in paragraph (2).

(2) Amounts to which paragraph (1) applies

The amounts described in this paragraph are as follows:

(A) Interest on deposits, if such interest is not effectively connected with the conduct of a trade or business within the United States.

(B) A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A).

(C) Income derived by a foreign central bank of issue from bankers' acceptances.

(3) Deposits

For purposes of paragraph (2), the term "deposits" means amounts which are -

(A) deposits with persons carrying on the banking business,

(B) deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to sections 265 and 291) in computing the taxable income of such institutions, and

(C) amounts held by an insurance company under an agreement to pay interest thereon.

(j) Exemption for certain gambling winnings

No tax shall be imposed under paragraph (1)(A) of subsection (a) on the proceeds from a wager placed in any of the following games: blackjack, baccarat, craps, roulette, or big-6 wheel. The preceding sentence shall not apply in any case where the Secretary determines by regulation that the collection of the tax is administratively feasible.

(k) Cross references

(1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(e)(2).

(2) For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

(6) For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

(7) For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897.

-SOURCE-

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Sept. 2, 1958, Pub. L. 85-866, title I, Sec. 40(a), 41(a), 72 Stat. 1638, 1639; Apr. 22, 1960, Pub. L. 86-437, Sec. 2(b), 74 Stat. 79; Sept. 21, 1961, Pub.

L. 87-256, Sec. 110(b), 75 Stat. 535; Feb. 26, 1964, Pub. L. 88-272, title I, Sec. 113(b), title II, Sec. 201(d)(12), 78 Stat. 24, 32; Nov. 13, 1966, Pub. L. 89-809, title I, Sec. 103(a)(1), 80 Stat. 1547; Dec. 10, 1971, Pub. L. 92-178, title III, Sec. 313(a), (b), 85 Stat. 526, 527; Sept. 2, 1974, Pub. L. 93-406, title II, Sec. 2005(c)(8), 88 Stat. 992; Oct. 4, 1976, Pub. L. 94-455, title X, Sec. 1012(a)(2), title XIX, Sec. 1901(b)(3)(I), 1906(b)(13)(A), 90 Stat. 1613, 1793, 1834; Nov. 6, 1978, Pub. L. 95-600, title IV, Sec. 401(b)(3), 421(e)(4), 92 Stat. 2867, 2876; Apr. 1, 1980, Pub. L. 96-222, title I, Sec. 104(a)(4)(H)(v), 94 Stat. 217; Dec. 5, 1980, Pub. L. 96-499, title XI, Sec. 1122(c)(1), 94 Stat. 2687; Dec. 28, 1980, Pub. L. 96-605, title II, Sec. 227(a), 94 Stat. 3530; Aug. 13, 1981, Pub. L. 97-34, title VII, Sec. 725(c)(1), 95 Stat. 346; Apr. 20, 1983, Pub. L. 98-21, title I, Sec. 121(c)(1), title III, Sec. 335(b)(2)(B), 97 Stat. 82, 130; July 18, 1984, Pub. L. 98-369, div. A, title I, Sec. 42(a)(9), 127(a), 128(a), title IV, Sec. 412(b)(1), 98 Stat. 557, 648, 653, 792; Apr. 7, 1986, Pub. L. 99-272, title XII, Sec. 12103(b), 100 Stat. 285; Oct. 22, 1986, Pub. L. 99-514, title III, Sec. 301(b)(9), title XII, Sec. 1211(b)(4), (5), 1214(c)(1), title XVIII, Sec. 1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A), 100 Stat. 2217, 2536, 2542, 2825, 2826; Nov. 10, 1988, Pub. L. 100-647, title I, Sec. 1001(d)(2)(B), title VI, Sec. 6134(a)(1), 102 Stat. 3350, 3721; July 3, 1992, Pub. L. 102-318, title V, Sec. 521(b)(28)-(30), 106 Stat. 312; Aug. 10, 1993, Pub. L. 103-66, title XIII, Sec. 13113(d)(5), 13237(a)(1), (c)(1), 107 Stat. 430, 506, 508; Aug. 15, 1994, Pub. L. 103-296, title III, Sec. 320(a)(1)(A), 108 Stat. 1535; Dec. 8, 1994, Pub. L. 103-465, title VII, Sec. 733(a), 108 Stat. 5006; Aug. 20, 1996,

Pub. L. 104-188, title I, Sec. 1401(b)(10), 1954(b)(1), 110 Stat. 1789, 1928.)

-STATAMEND-

AMENDMENT OF SUBSECTION (B)

Pub. L. 104-188, title I, Sec. 1401(b)(10), (c), Aug. 20, 1996, 110 Stat. 1789, provided that, applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, subsection (b)(1) of this section is amended by striking "section 1, 55, or 402(d)(1)" and inserting "section 1 or 55".

-REFTEXT-

REFERENCES IN TEXT

Section 207 of the Social Security Act, referred to in subsec. (a)(3)(A), is classified to section 407 of Title 42, The Public Health and Welfare.

Section 932(c), referred to in subsec. (a)(3), was repealed and a new section 932(c) of this title, which does not relate to taxation of social security benefits, was enacted by Pub. L. 99-514, title XII, Sec. 1272(d)(1), 1274(a), Oct. 22, 1986, 100 Stat. 2594, 2596.

The Trade Act of 1974, referred to in subsec. (f)(2)(B), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title V of the Trade Act of 1974 is classified generally to subchapter V (Sec. 2461 et seq.) of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

-MISC2-

AMENDMENTS

1996 - Subsec. (f)(2)(B). Pub. L. 104-188, Sec. 1954(b)(1),

substituted "under title V" for "within the meaning of section 502".

1994 - Subsec. (a)(3)(A). Pub. L. 103-465 substituted "85 percent" for "one-half".

Subsec. (c). Pub. L. 103-296 substituted "(J), (M), or (Q)" for "(J), or (M)" in two places.

1993 - Subsec. (a)(2). Pub. L. 103-66, Sec. 13113(d)(5), inserted "such gains and losses shall be determined without regard to section 1202 and" after "except that" in second sentence.

Subsec. (h)(2)(B)(ii). Pub. L. 103-66, Sec. 13237(c)(1), substituted "paragraph (5)" for "paragraph (4)".

Subsec. (h)(4) to (7). Pub. L. 103-66, Sec. 13237(a)(1), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

1992 - Subsec. (a)(1)(B). Pub. L. 102-318, Sec. 521(b)(28), struck out "402(a)(2), 403(a)(2), or" before "631(b)".

Subsec. (b)(1). Pub. L. 102-318, Sec. 521(b)(29), substituted "402(d)(1)" for "402(e)(1)".

Subsec. (k)(1). Pub. L. 102-318, Sec. 521(b)(30), substituted "402(e)(2)" for "402(a)(4)".

1988 - Subsec. (c). Pub. L. 100-647, Sec. 1001(d)(2)(B), substituted "the second sentence of section 1441(b)" for "section 1441(b)(1) or (2)", and "(F), (J), or (M)" for "(F) or (J)" in two places.

Subsecs. (j), (k). Pub. L. 100-647, Sec. 6134(a)(1), added subsec. (j) and redesignated former subsec. (j) as (k).

1986 - Subsec. (a)(1). Pub. L. 99-514, Sec. 1810(d)(3)(A), substituted "subsection (h)" for "subsection (i)" in

introductory provisions.

Subsec. (a)(1)(C). Pub. L. 99-514, Sec. 1810(e)(2)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "in the case of -

"(i) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

"(ii) the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and".

Subsec. (a)(1)(D). Pub. L. 99-514, Sec. 1211(b)(4), struck out "or from payments which are treated as being so contingent under subsection (e)," after "sold or exchanged,".

Subsec. (a)(2). Pub. L. 99-514, Sec. 301(b)(9), struck out "such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and" after "United States, except that".

Subsec. (a)(3). Pub. L. 99-272 inserted at end "For treatment of certain citizens of possessions of the United States, see section 932(c)."

Subsec. (e). Pub. L. 99-514, Sec. 1211(b)(5), struck out subsec. (e) which related to gains from sale or exchange of certain

intangible property, par. (1) treating payments as contingent on use, etc., and par. (2) containing source rule.

Subsec. (h)(2). Pub. L. 99-514, Sec. 1810(d)(1)(A), (3)(B), inserted "which would be subject to tax under subsection (a) but for this subsection and" in introductory provisions and substituted "receives a statement" for "has received a statement" in subpar. (B)(ii).

Subsec. (h)(3)(C)(ii), (iii). Pub. L. 99-514, Sec. 1810(d)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsecs. (i), (j). Pub. L. 99-514, Sec. 1214(c)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

1984 - Subsec. (a)(1). Pub. L. 98-369, Sec. 127(a)(2), substituted "Except as provided in subsection (i), there" for "There".

Subsec. (a)(1)(A). Pub. L. 98-369, Sec. 42(a)(9), substituted "section 1273" for "section 1232(b)".

Subsec. (a)(1)(C). Pub. L. 98-369, Sec. 128(a)(1), amended subpar. (C) generally, substituting in cl. (i), "a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and" for "bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after

May 27, 1969,", substituting in cl. (ii), "the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and" for "bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and", and striking out cl. (iii) which required that in the case of the payment of interest on an obligation described in cl. (ii), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by subpar. (A) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (g). Pub. L. 98-369, Sec. 128(a)(2), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Subsec. (g)(6) to (8). Pub. L. 98-369, Sec. 412(b)(1), amended subsec. (g), relating to cross references, by striking out par. (6) referring to section 6015(j) for the requirement of making a declaration of estimated tax by certain nonresident alien individuals and redesignating pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98-369, Sec. 127(a), added subsec. (h). Former subsec. (h), relating to cross references, redesignated (i).

Pub. L. 98-369, Sec. 128(a)(2), redesignated subsec. (g), relating to cross references, as (h).

Subsec. (i). Pub. L. 98-369, Sec. 127(a)(1), redesignated subsec. (h), relating to cross references, as (i).

1983 - Subsec. (a)(3). Pub. L. 98-21, Sec. 121(c)(1), added par. (3).

Subsec. (a)(3)(A). Pub. L. 98-21, Sec. 335(b)(2)(B), inserted "(notwithstanding section 207 of the Social Security Act)" after "income".

1981 - Subsec. (g)(6). Pub. L. 97-34 substituted "6015(j)" for "6015(i)".

1980 - Subsec. (b)(1). Pub. L. 96-222 substituted "55" for "section 55".

Subsec. (f). Pub. L. 96-605 designated existing provision as par. (1), inserted heading "In general" and redesignated par. (1) as subpar. (A), cls. (A) and (B) of subpar. (A) as so redesignated as cls. (i) and (ii), and par. (2) as subpar. (B), and added par. (2).

Subsec. (g)(8). Pub. L. 96-499 added par. (8).

1978 - Subsec. (b)(1). Pub. L. 95-600, Sec. 401(b)(3), 421(e)(4), substituted "section 1, section 55, or 402(e)(1)" for "section 1, 402(e)(1), or 1201(b)".

1976 - Subsec. (a)(1)(C)(i), (ii). Pub. L. 94-455, Sec. 1901(b)(3)(I), substituted "ordinary income" for "gain from the sale or exchange of property which is not a capital asset".

Subsec. (d). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out "or his delegate" after "Secretary", each time appearing.

Subsec. (g)(7). Pub. L. 94-455, Sec. 1012(a)(2), added par. (7).

1974 - Subsec. (b)(1). Pub. L. 93-406 inserted reference to

section 402(e)(1).

1971 - Subsec. (a)(1)(A). Pub. L. 92-178, Sec. 313(a), inserted "(other than original issue discount as defined in section 1232(b))" after "interest".

Subsec. (a)(1)(C). Pub. L. 92-178, Sec. 313(b), designated existing provisions as cl. (i), inserted "and before April 1, 1972," after "September 28, 1965,", substituted "section 1232(a)(2)(B)" for "section 1232", and inserted ", in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,", and added cls. (ii) and (iii).

1966 - Subsecs. (a), (b). Pub. L. 89-809 consolidated the substance of former subsecs. (a) to (c) and, as part of the consolidation, revised the overall income tax treatment of nonresident alien individuals by substituting provisions dividing their income for tax purposes into two basic groups according to whether or not the income is effectively connected with a United States trade or business for provisions calling for different tax treatment based upon whether or not they are, or are not, engaged in a trade or business in the United States, with a further breakdown of those not engaged in trade or business in the United States as to whether their income is over or under $21,200.

Subsec. (c). Pub. L. 89-809 redesignated subsec. (d) as (c) and inserted provisions that any income described in section 1441(b)(1) or (2) which is received by such individual shall, to the extent derived from sources within the United States, be treated as

effectively connected with the conduct of a trade or business

within the United States. Substance of former subsec. (c) revised and incorporated into subsecs. (a) and (b).

Subsecs. (d) to (f). Pub. L. 89-809 added subsecs. (d) to (f) and redesignated former subsecs. (d) and (e) as (c) and (g), respectively.

Subsec. (g). Pub. L. 89-809 redesignated former subsec. (e) as (g), added pars. (2) and (4) to (6), and redesignated former pars. (1) and (2) as (3) and (1), respectively.

1964 - Subsec. (a). Pub. L. 88-272, Sec. 113(b)(2), substituted "30 percent tax" for "and gross income of not more than $15,400" in heading.

Subsec. (b). Pub. L. 88-272, Sec. 113(b)(1), (3), 201(d)(12), substituted "$19,000 in the case of a taxable year beginning in 1964 or more than $21,200 in the case of a taxable year beginning after 1964" for "$15,400", "the credit under section 35" for "the sum of the credits under sections 34 and 35" in text, and "Regular tax" for "and gross income of more than $15,400" in heading.

1961 - Subsecs. (d), (e). Pub. L. 87-256 added subsec. (d) and redesignated former subsec. (d) as (e).

1960 - Subsec. (d). Pub. L. 86-437 substituted "Cross references" for "Doubling of tax" in heading, and inserted cross reference to section 402(a)(4).

1958 - Subsec. (a)(1). Pub. L. 85-866, Sec. 40(a), inserted "section 403(a)(2)," after "section 402(a)(2),".

Subsec. (b). Pub. L. 85-866, Sec. 41(a), inserted last par. covering former provisions of par. (3), which was struck out by the amendment, and containing new provisions with references to credits

under section 34 and 35 and exclusion under section 116 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(10) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104-188, set out as a note under section 402 of this title.

Amendment by section 1954(b)(1) of Pub. L. 104-188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104-188, set out as an Effective Date note under section 2461 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 733(b) of Pub. L. 103-465 provided that: "The amendment made by subsection (a) (amending this section) shall apply to benefits paid after December 31, 1994, in taxable years ending after such date."

Section 320(c) of Pub. L. 103-296 provided that: "The amendments made by this subsection (probably means this section, which amended this section, sections 872, 1441, 3121, 3231, 3306, and 7701 of this title, and section 410 of Title 42, The Public Health and Welfare) shall take effect with the calendar quarter following the date of the enactment of this Act (Aug. 15, 1994)."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(5) of Pub. L. 103-66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103-66, set out as a note under section 53 of this title.

Section 13237(d) of Pub. L. 103-66 provided that: "The

amendments made by this section (amending this section and sections 881, 1441, 1442, and 2105 of this title) shall apply to interest received after December 31, 1993; except that the amendments made by subsection (b) (amending section 2105 of this title) shall apply to the estates of decedents dying after December 31, 1993."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(B) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 6134(b) of Pub. L. 100-647 provided that: "The amendments made by subsection (a) (amending this section and section 1441 of this title) shall take effect on the date of the enactment of this Act (Nov. 10, 1988)."

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 301(b)(9) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

Amendment by section 1211(b)(4), (5) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99-514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(1) of Pub. L. 99-514 applicable to

payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99-514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Section 12103(c) of Pub. L. 99-272 provided that: "The amendments made by this section (amending this section and section 932 of this title) shall apply to benefits received after December 31, 1983, in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(9) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Section 127(g) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-647, title VI, Sec. 6128(a), Nov. 10, 1988, 102 Stat. 3716, provided that:

"(1) In general. - Except as otherwise provided in this subsection, the amendments made by this section (amending this section and sections 163, 864, 881, 1441, 1442, and 2105 of this title) shall apply to interest received after the date of the enactment of this Act (July 18, 1984) with respect to obligations issued after such date, in taxable years ending after such date.

"(2) Subsection (d). - The amendment made by subsection (d) (amending section 2105 of this title) shall apply to obligations issued after the date of the enactment of this Act (July 18, 1984) with respect to the estates of decedents dying after such date.

"(3) Special rule for certain united states affiliate obligations. -

"(A) In general. - For purposes of the Internal Revenue Code of 1986 (formerly I.R.C. 1954), payments of interest on a United States affiliate obligation to an applicable CFC in existence on or before June 22, 1984, shall be treated as payments to a resident of the country in which the applicable CFC is incorporated.

"(B) Exception. - Subparagraph (A) shall not apply to any applicable CFC which did not meet requirements which are based on the principles set forth in Revenue Rulings 69-501, 69-377, 70-645, and 73-110 as such principles are applied in Revenue Ruling 86-6, except that the maximum debt-to-equity ratio described in such Revenue Rulings shall be increased from 5-to-1 to 25-to-1.

"(C) Definitions. -

"(i) The term 'applicable CFC' has the meaning given such term by section 121(b)(2)(D) of this Act (set out as a note under section 904 of this title), except that such section shall be applied by substituting 'the date of interest payment' for 'March 31, 1984,' in clause (i) thereof.

"(ii) The term 'United States affiliate obligation' means an obligation described in section 121(b)(2)(F) of this Act (set out as a note under section 904 of this title) which was issued

before June 22, 1984."

(Section 6128(b) of Pub. L. 100-647 provided that: "The amendment made by subsection (a) (amending section 127(g) of Pub. L. 98-369, set out above) shall apply to taxable years ending after the date of the enactment of this Act (Nov. 10, 1988).")

Section 128(d) of Pub. L. 98-369 provided that:

"(1) In general. - Except as provided in paragraph (2), the amendments made by this section (amending this section and sections 163 and 881 of this title) shall apply to payments made on or after the 60th day after the date of the enactment of this Act (July 18, 1984) with respect to obligations issued after March 31, 1972.

"(2) Subsection (c). - The amendment made by subsection (c) (amending section 163 of this title) shall apply to obligations issued after June 9, 1984."

Amendment by section 412(b)(1) of Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(c)(1) of Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 725(d) of Pub. L. 97-34 provided that: "The amendments

made by this section (amending this section and sections 6015, 6153, 6654, and 7701 of this title) shall apply to estimated tax for taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 227(b) of Pub. L. 96-605 provided that: "The amendment made by subsection (a) (amending this section) shall apply to amounts received after July 1, 1979."

Amendment by Pub. L. 96-499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96-499, set out as an Effective Date note under section 897 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(3) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95-600, set out as a note under section 1201 of this title.

Amendment by section 421(e)(4) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1012(a)(2) of Pub. L. 94-455 applicable to taxable years ending on or after Dec. 31, 1975, see section 1012(d) of Pub. L. 94-455, set out as a note under section 6013 of this title.

Amendment by section 1901(b)(3)(I) of Pub. L. 94-455 effective

for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 313(f) of Pub. L. 92-178, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments to section 871 and 881 of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) made by this section shall apply with respect to taxable years beginning after December 31, 1966. The amendments to sections 1441 and 1442 of such Code made by this section shall apply with respect to payments occurring on or after April 1, 1972."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 103(n) of Pub. L. 89-809 provided that:

"(1) The amendments made by this section (other than the amendments made by subsections (h), (i), and (k)) (amending this section and sections 1, 116, 154, 872 to 874, 875, 932, 6015, and 7701 of this title, redesignating section 877 as 878, enacting section 877 of this title, and repealing section 1493 of this title) shall apply with respect to taxable years beginning after December 31, 1966.

"(2) The amendments made by subsection (h) (amending section 1441 of this title) shall apply with respect to payments made in

taxable years of recipients beginning after December 31, 1966.

"(3) The amendments made by subsection (i) (amending section 1461 of this title) shall apply with respect to payments occurring after December 31, 1966.

"(4) The amendments made by subsection (k) (amending section 3401 of this title) shall apply with respect to remuneration paid after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 113(b)(1) of Pub. L. 88-272 effective, except for purposes of section 21 of this title, with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88-272, set out as a note under section 1 of this title.

Amendment by section 201(d)(12) of Pub. L. 88-272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88-272, set out as a note under section 37 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87-256, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-437 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 3 of Pub. L. 86-437, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 40(c) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) (amending this section) shall apply only with respect to taxable years ending after the date of the

enactment of this Act (Sept. 2, 1958). The amendments made by subsection (b) (amending section 1441 of this title) shall take effect on the day following the date of the enactment of this Act (Sept. 2, 1958)."

Section 41(c) of Pub. L. 85-866 provided that: "The amendments made by this section (amending this section and section 35 of this title) shall apply only with respect to taxable years beginning after December 31, 1957."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(4), (5) and 1214(c)(1) of Pub. L. 99-514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D (Sec. 1401-1465) of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B (Sec. 521-523) of title V of Pub. L. 102-318 require an amendment

to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (Sec. 1101-1147 and 1171-1177) or title XVIII (Sec. 1800-1899A) of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

-CROSS-

CROSS REFERENCES

Consent dividends, nonresident aliens and foreign corporations, see section 565 of this title.

Dispositions of certain stock, source of gain, see section 306 of this title.

Income tax returns, persons required to make returns of income, see section 6012 of this title.

Judicial proceedings, production of records in case of foreign corporations, foreign trusts or estates and nonresident alien individuals, see section 7456 of this title.

Nonresident alien ineligible for credit for the elderly and the permanently and totally disabled, see section 22 of this title.

Time for filing income tax returns, nonresident aliens and foreign corporations, see section 6072 of this title.

Withholding tax on -

Foreign corporations, see section 1442 of this title.

Nonresident aliens, see section 1441 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 5, 26, 32, 306, 860G, 861, 864, 873, 877, 881, 882, 884, 887, 891, 897, 906, 1235, 1276, 1278, 1441, 1442, 1444, 1445, 2105, 6012, 6049, 7701 of this title.

-CITE-

18 USC Sec. 1301 01/26/98

-EXPCITE-

PART III - TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

-HEAD-

Sec. 513. Unrelated trade or business

-STATUTE-

(a) General rule

The term ''unrelated trade or business'' means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption

under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business -

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(b) Special rule for trusts

The term ''unrelated trade or business'' means, in the case of -

(1) a trust computing its unrelated business taxable income under section 512 for purposes of section 681; or

(2) a trust described in section 401(a), or section 501(c)(17), which is exempt from tax under section 501(a);

any trade or business regularly carried on by such trust or by a partnership of which it is a member.

(c) Advertising, etc., activities

For purposes of this section, the term ''trade or business'' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

(d) Certain activities of trade shows, State fairs, etc.

(1) General rule

The term ''unrelated trade or business'' does not include qualified public entertainment activities of an organization described in paragraph (2)(C), or qualified convention and trade show activities of an organization described in paragraph (3)(C).

(2) Qualified public entertainment activities

For purposes of this subsection -

(A) Public entertainment activity

The term ''public entertainment activity'' means any entertainment or recreational activity of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes, including, but not limited to, any activity one of the purposes of which is to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment.

(B) Qualified public entertainment activity

The term ''qualified public entertainment activity'' means a public entertainment activity which is conducted by a qualifying organization described in subparagraph (C) in -

(i) conjunction with an international, national, State, regional, or local fair or exposition,

(ii) accordance with the provisions of State law which permit the activity to be operated or conducted solely by such an organization, or by an agency, instrumentality, or political subdivision of such State, or

(iii) accordance with the provisions of State law which permit such an organization to be granted a license to conduct not more than 20 days of such activity on payment to the State of a lower percentage of the revenue from such licensed activity than the State requires from organizations not described in section 501(c)(3), (4), or (5).

(C) Qualifying organization

For purposes of this paragraph, the term ''qualifying organization'' means an organization which is described in section 501(c) (3), (4), or (5) which regularly conducts, as one of its substantial exempt purposes, an agricultural and educational fair or exposition.

(3) Qualified convention and trade show activities

(A) Convention and trade show activities

The term ''convention and trade show activity'' means any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the

sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

(B) Qualified convention and trade show activity

The term ''qualified convention and trade show activity'' means a convention and trade show activity carried out by a qualifying organization described in subparagraph (C) in conjunction with an international, national, State, regional, or local convention, annual meeting, or show conducted by an organization described in subparagraph (C) if one of the purposes of such organization in sponsoring the activity is the promotion and stimulation of interest in, and demand for, the products and services of that industry in general or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization, and the show is designed to achieve such purpose through the character of the exhibits and the extent of the industry products displayed.

(C) Qualifying organization

For purposes of this paragraph, the term ''qualifying organization'' means an organization described in section 501(c)(3), (4), (5), or (6) which regularly conducts as one of its substantial exempt purposes a show which stimulates interest in, and demand for, the products of a particular industry or segment of such industry or which educates persons

in attendance regarding new developments or products and services related to the exempt activities of the organization.

(4) Such activities not to affect exempt status

An organization described in section 501(c) (3), (4), or (5) shall not be considered as not entitled to the exemption allowed under section 501(a) solely because of qualified public entertainment activities conducted by it.

(e) Certain hospital services

In the case of a hospital described in section 170(b)(1)(A)(iii), the term ''unrelated trade or business'' does not include the furnishing of one or more of the services described in section 501(e)(1)(A) to one or more hospitals described in section 170(b)(1)(A)(iii) if -

(1) such services are furnished solely to such hospitals which have facilities to serve not more than 100 inpatients;

(2) such services, if performed on its own behalf by the recipient hospital, would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption; and

(3) such services are provided at a fee or cost which does not exceed the actual cost of providing such services, such cost including straight line depreciation and a reasonable amount for return on capital goods used to provide such services.

(f) Certain bingo ***games***

(1) In general

The term ''unrelated trade or business'' does not include any trade or business which consists of conducting bingo ***games***.

(2) Bingo ***game*** defined

For purposes of paragraph (1), the term ''bingo ***game***'' means

any ***game*** of bingo -

(A) of a type in which usually -

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such ***game***,

(B) the conducting of which is not an activity ordinarily carried out on a commercial basis, and

(C) the conducting of which does not violate any State or local law.

(g) Certain pole rentals

In the case of a mutual or cooperative telephone or electric company, the term ''unrelated trade or business'' does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D)).

(h) Certain distributions of low cost articles without obligation to purchase and exchanges and rentals of member lists

(1) In general

In the case of an organization which is described in section 501 and contributions to which are deductible under paragraph (2) or (3) of section 170(c), the term ''unrelated trade or business'' does not include -

(A) activities relating to the distribution of low cost articles if the distribution of such articles is incidental to the solicitation of charitable contributions, or

(B) any trade or business which consists of -

(i) exchanging with another such organization names and addresses of donors to (or members of) such organization, or

(ii) renting such names and addresses to another such organization.

(2) Low cost article defined

For purposes of this subsection -

(A) In general

The term ''low cost article'' means any article which has a cost not in excess of $5 to the organization which distributes such item (or on whose behalf such item is distributed).

(B) Aggregation rule

If more than 1 item is distributed by or on behalf of an organization to a single distributee in any calendar year, the aggregate of the items so distributed in such calendar year to such distributee shall be treated as 1 article for purposes of subparagraph (A).

(C) Indexation of $5 amount

In the case of any taxable year beginning in a calendar year after 1987, the $5 amount in subparagraph (A) shall be increased by an amount equal to -

(i) $5, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1987'' for ''calendar year 1992'' in subparagraph (B) thereof.

(3) Distribution which is incidental to the solicitation of charitable contributions described

For purposes of this subsection, any distribution of low cost articles by an organization shall be treated as a distribution incidental to the solicitation of charitable contributions only if -

(A) such distribution is not made at the request of the distributee,

(B) such distribution is made without the express consent of the distributee, and

(C) the articles so distributed are accompanied by -

(i) a request for a charitable contribution (as defined in section 170(c)) by the distributee to such organization, and

(ii) a statement that the distributee may retain the low cost article regardless of whether such distributee makes a charitable contribution to such organization.

(i) Treatment of certain sponsorship payments

(1) In general

The term ''unrelated trade or business'' does not include the activity of soliciting and receiving qualified sponsorship payments.

(2) Qualified sponsorship payments

For purposes of this subsection -

(A) In general

The term ''qualified sponsorship payment'' means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo (or product lines) of such person's trade or business in connection with the activities of the organization that receives such payment. Such a use or acknowledgement does not include advertising such person's products or services (including messages containing qualitative or comparative language, price information, or

other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services).

(B) Limitations

(i) Contingent payments

The term ''qualified sponsorship payment'' does not include any payment if the amount of such payment is contingent upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure to one or more events.

(ii) Safe harbor does not apply to periodicals and qualified convention and trade show activities

The term ''qualified sponsorship payment'' does not include -

(I) any payment which entitles the payor to the use or acknowledgement of the name or logo (or product lines) of the payor's trade or business in regularly scheduled and printed material published by or on behalf of the payee organization that is not related to and primarily distributed in connection with a specific event conducted by the payee organization, or

(II) any payment made in connection with any qualified convention or trade show activity (as defined in subsection (d)(3)(B)).

(3) Allocation of portions of single payment

For purposes of this subsection, to the extent that a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, such portion of such payment and the other portion of such payment shall be treated as separate payments.

-SOURCE-

(Aug. 16, 1954, ch. 736, 68A Stat. 172; July 14, 1960, Pub. L. 86-667, Sec. 4, 74 Stat. 536; Dec. 30, 1969, Pub. L. 91-172, title I, Sec. 121(b)(4), (c), 83 Stat. 541, 542; Oct. 4, 1976, Pub. L. 94-455, title XIII, Sec. 1305(a), 1311(a), 90 Stat. 1716, 1729; Oct. 21, 1978, Pub. L. 95-502, title III, Sec. 301(a), 92 Stat. 1702; Dec. 28, 1980, Pub. L. 96-605, title I, Sec. 106(b), 94 Stat. 3524; Oct. 22, 1986, Pub. L. 99-514, title XVI, Sec. 1601(a), 1602(a), (b), 100 Stat. 2766, 2767; Nov. 5, 1990, Pub. L. 101-508, title XI, Sec. 11101(d)(1)(G), 104 Stat. 1388-405; Aug. 10, 1993, Pub. L. 103-66, title XIII, Sec. 13201(b)(3)(H), 107 Stat. 459; Aug. 5, 1997, Pub. L. 105-34, title IX, Sec. 965(a), 111 Stat. 893.)

-STATAMEND-

ADJUSTMENT OF LOW COST ARTICLE LIMITATION FOR TAX YEARS BEGINNING IN 1998

For adjustment of ''low cost article'' limitation under subsection (h)(2) of this section for tax years beginning in 1998, see section 3.11 of Revenue Procedure 97-57, set out as a note under section 1 of this title.

-MISC1-

AMENDMENTS

1997 - Subsec. (i). Pub. L. 105-34 added subsec. (i).

1993 - Subsec. (h)(2)(C)(ii). Pub. L. 103-66 substituted ''calendar year 1992'' for ''calendar year 1989''.

1990 - Subsec. (h)(2)(C)(ii). Pub. L. 101-508 inserted before period at end '', by substituting 'calendar year 1987' for

'calendar year 1989' in subparagraph (B) thereof''.

1986 - Subsec. (d)(3)(B). Pub. L. 99-514, Sec. 1602(a), inserted ''or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization''.

Subsec. (d)(3)(C). Pub. L. 99-514, Sec. 1602(b), substituted ''section 501(c)(3), (4), (5), or (6)'' for ''section 501(c)(5) or (6)'' and inserted ''or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization''.

Subsec. (h). Pub. L. 99-514, Sec. 1601(a), added subsec. (h).

1980 - Subsec. (g). Pub. L. 96-605 added subsec. (g).

1978 - Subsec. (f). Pub. L. 95-502 added subsec. (f).

1976 - Subsec. (d). Pub. L. 94-455, Sec. 1305(a), added subsec. (d).

Subsec. (e). Pub. L. 94-455, Sec. 1311(a), added subsec. (e).

1969 - Subsec. (a)(2). Pub. L. 91-172, Sec. 121(b)(4), inserted reference to local associations of employees described in section 501(c)(4) of this title and organized before May 27, 1969.

Subsec. (c). Pub. L. 91-172, Sec. 121(c), substituted ''Advertising, etc., activities'' for ''Special rule for certain publishing businesses'', in heading, and, in text, substituted provisions extending definition of trade or business to include any activity carried on for the production of income from the sale of goods or the performance of services, for provisions referring to publishing businesses carried on by an organization during a taxable year beginning before Jan. 1, 1953.

1960 - Subsec. (b)(2). Pub. L. 86-667 included trusts described

in section 501(c)(17).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 965(b) of Pub. L. 105-34 provided that: ''The amendment made by this section (amending this section) shall apply to payments solicited or received after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103-66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101-508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1601(b) of Pub. L. 99-514 provided that: ''The amendment made by this section (amending this section) shall apply to distributions of low cost articles and exchanges and rentals of member lists after the date of the enactment of this Act (Oct. 22, 1986).''

Section 1602(c) of Pub. L. 99-514 provided that: ''The amendments made by this section (amending this section) shall apply to activities in taxable years beginning after the date of the enactment of this Act (Oct. 22, 1986).''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 106(c)(2) of Pub. L. 96-605 provided that: ''The amendment made by subsection (b) (amending this section) shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 301(b) of Pub. L. 95-502 provided that: ''The amendment

made by subsection (a) (amending this section) shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1305(b) of Pub. L. 94-455 provided that: ''The amendments made by subsection (a) (amending this section) apply to qualified public entertainment activities in taxable years beginning after December 31, 1962, and to qualified convention and trade show activities in taxable years beginning after the date of enactment of this Act (Oct. 4, 1976).''

Section 1311(b) of Pub. L. 94-455, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section (amending this section) shall apply to all taxable years to which the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (this title) applies.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86-667, set out as a note under section 501 of this title.

CONDUCTING OF CERTAIN ***GAMES*** OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS

Pub. L. 98-369, div. A, title III, Sec. 311, July 18, 1984, 98 Stat. 786, as amended by Pub. L. 99-514, Sec. 2, title XVIII, Sec. 1834, Oct. 22, 1986, 100 Stat. 2095, 2852, provided that:

''(a) General Rule. - For purposes of section 513 of the Internal

Revenue Code of 1986 (formerly I.R.C. 1954) (defining unrelated trade or business), the term 'unrelated trade or business' does not include any trade or business which consists of conducting any ***game*** of chance if -

''(1) such ***game*** of chance is conducted by a nonprofit organization,

''(2) the conducting of such ***game*** by such organization does not violate any State or local law, and

''(3) as of October 5, 1983 -

''(A) there was a State law (originally enacted on April 22, 1977) in effect which permitted the conducting of such ***game*** of chance by such nonprofit organization, but

''(B) the conducting of such ***game*** of chance by organizations which were not nonprofit organizations would have violated such law.

''(b) Effective Date. - Subsection (a) shall apply to ***games*** of chance conducted after June 30, 1981, in taxable years ending after such date.''

(Section 1834 of Pub. L. 99-514, as amended by Pub. L. 100-647, title VI, Sec. 6201, Nov. 10, 1988, 102 Stat. 3730, provided in part that: ''The amendment made by this section (amending section 311 of Pub. L. 98-369, set out above) shall apply to ***games*** of chance conducted after October 22, 1986, in taxable years ending after such date''.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 144, 145, 150, 414, 501, 509, 512, 514, 527, 593, 1245, 1250, 3121, 4942, 7611 of this

title; title 16 section 2708; title 29 section 1002; title 39 section 3626; title 42 section 410.

-EXPCITE-

CHAPTER 3 - WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subchapter A - Nonresident Aliens and Foreign Corporations

-HEAD-

Sec. 1441. Withholding of tax on nonresident aliens

-STATUTE-

(a) General rule

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items

The items of income referred to in subsection (a) are interest

(other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made

on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and which are -

(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

(2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by -

(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(B) a foreign government,

(C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States. In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions

(1) Income connected with United States business

No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) Owner unknown

The Secretary may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) Bonds with extended maturity dates

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (as in effect before its repeal by the Tax Reform Act of 1984) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27 1/2 percent of the interest, shall not exceed the rate of 27 1/2 percent per annum.

(4) Compensation of certain aliens

Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a).

(5) Special items

In the case of gains described in section 631(b) or (c), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966, the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) Per diem of certain aliens

No deduction or withholding under subsection (a) shall be required in the case of amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) Certain annuities received under qualified plans

No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(8) Original issue discount

The Secretary may prescribe such regulations as may be necessary for the deduction and withholding of the tax on original issue discount subject to tax under section 871(a)(1)(C)

including rules for the deduction and withholding of the tax on original issue discount from payments of interest.

(9) Interest income from certain portfolio debt investments

In the case of portfolio interest (within the meaning of section 871(h)), no tax shall be required to be deducted and withheld from such interest unless the person required to deduct and withhold tax from such interest knows, or has reason to know, that such interest is not portfolio interest by reason of section 871(h)(3) or (4).

(10) Exception for certain interest and dividends

No tax shall be required to be deducted and withheld under subsection (a) from any amount described in section 871(i)(2).

(11) Certain gambling winnings

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(j).

(d) Exemption of certain foreign partnerships

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign partnership engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 871(a) on the members of such partnership who are nonresident alien individuals will not be jeopardized by the exemption.

(e) Alien resident of Puerto Rico

For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(f) Continental shelf areas

For sources of income derived from, or for services performed with respect to, the exploration or exploitation of natural resources on submarine areas adjacent to the territorial waters of the United States, see section 638.

(g) Cross reference

For provision treating 85 percent of social security benefits as subject to withholding under this section, see section 871(a)(3).

-SOURCE-

(Aug. 16, 1954, ch. 736, 68A Stat. 357; Aug. 26, 1954, ch. 937, title V, Sec. 544(f), as added July 18, 1956, ch. 627, Sec. 11(a), 70 Stat. 563; amended Aug. 14, 1957, Pub. L. 85-141, Sec. 11(b)(1), 71 Stat. 365; Sept. 2, 1958, Pub. L. 85-866, title I, Sec. 40(b), 72 Stat. 1638; Sept. 21, 1961, Pub. L. 87-256, Sec. 110(d), 75 Stat. 536; Feb. 26, 1964, Pub. L. 88-272, title III, Sec. 302(c), 78 Stat. 146; Nov. 13, 1966, Pub. L. 89-809, title I, Sec. 103(h), 80 Stat. 1553; Dec. 30, 1969, Pub. L. 91-172, title V, Sec. 505(b), 83 Stat. 634; Dec. 10, 1971, Pub. L. 92-178, title III, Sec. 313(a), (d), 85 Stat. 526, 527; Oct. 4, 1976, Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), 90 Stat. 1834; Apr. 20, 1983, Pub. L. 98-21, title I, Sec. 121(c)(2), 97 Stat. 82; July 18, 1984, Pub. L. 98-369, div. A, title I, Sec. 42(a)(13), 127(e)(1), title IV, Sec. 474(r)(29)(G), (H), 98 Stat. 557, 652, 845; Oct. 22, 1986, Pub. L. 99-514, title I, Sec. 123(b)(2), title XII, Sec. 1214(c)(3), title XVIII, Sec. 1810(d)(3)(D), 100 Stat. 2113, 2542, 2825; Nov. 10, 1988, Pub. L. 100-647, title I, Sec. 1001(d)(2)(A), title VI, Sec. 6134(a)(2), 102 Stat. 3350, 3721; Nov. 5, 1990, Pub. L. 101-508,

title XI, Sec. 11704(a)(14), 104 Stat. 1388-518; July 3, 1992, Pub. L. 102-318, title V, Sec. 521(b)(32), (33), 106 Stat. 312; Aug. 10, 1993, Pub. L. 103-66, title XIII, Sec. 13237(c)(4), 107 Stat. 508; Aug. 15, 1994, Pub. L. 103-296, title III, Sec. 320(a)(1)(B), 108 Stat. 1535; Aug. 5, 1997, Pub. L. 105-34, title XVI, Sec. 1604(g)(3), 111 Stat. 1099.)

-REFTEXT-

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (b), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

The Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (b)(2)(C), is Pub. L. 87-256, Sept. 21, 1961, 75 Stat. 527, as amended, which is classified principally to chapter 33 (Sec. 2451 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 22 and Tables.

The Tax Reform Act of 1984, referred to in subsec. (c)(3), is division A (Sec. 5 to 1082) of Pub. L. 98-369, July 18, 1984, 98 Stat. 494, which was approved July 18, 1984. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 1 of this title and Tables.

The Mutual Security Act of 1954, referred to in subsec. (c)(6), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, Sec. 2 to 11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85-141, 71 Stat. 355; June 30, 1958, Pub. L. 85-477, ch. 1, Sec. 101 to 103, ch. II,

Sec. 201 to 205, ch. III, Sec. 301, ch. IV, Sec. 401, ch. V, Sec. 501, 72 Stat. 261; July 24, 1959, Pub. L. 86-108, Sec. 2, ch. 1, Sec. 101, ch. II, Sec. 201 to 205(a) to (i), (k) to (n), ch. III, Sec. 301, ch. IV, Sec. 401(a) to (k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86-472, ch. I to V, 74 Stat. 134, which was principally classified to chapter 24 (Sec. 1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by act July 18, 1956, ch. 627, Sec. 8(m), 70 Stat. 559, Pub. L. 85-141, Sec. 2(e), 3, 4(b), 11(d), Aug. 14, 1957, 71 Stat. 356, Pub. L. 86-108, ch. II, Sec. 205(j), ch. IV, 401(1), July 24, 1959, 73 Stat. 250, Pub. L. 86-472, ch. II, Sec. 203(d), 204(k), May 14, 1960, 74 Stat. 138, Pub. L. 87-195, pt. III, Sec. 642(a)(2), Sept. 4, 1961, 75 Stat. 460, Pub. L. 94-329, title II, Sec. 212(b)(1), June 30, 1976, 90 Stat 745, except for sections 1754, 1783, 1796, 1853, 1922, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

-MISC2-

AMENDMENTS

1997 - Subsec. (g). Pub. L. 105-34 substituted "85 percent" for "one-half".

1994 - Subsec. (b). Pub. L. 103-296 substituted "(J), (M), or (Q)" for "(J), or (M)".

1993 - Subsec. (c)(9). Pub. L. 103-66 substituted "section 871(h)(3) or (4)" for "section 871(h)(3)".

1992 - Subsecs. (b), (c)(5). Pub. L. 102-318 struck out "402(a)(2), 403(a)(2), or" before "631(b)".

1990 - Subsec. (b)(2). Pub. L. 101-508 inserted "section"

before "170(b)(1)(A)(ii)".

1988 - Subsec. (b). Pub. L. 100-647, Sec. 1001(d)(2)(A), amended second sentence generally. Prior to amendment, second sentence read as follows: "The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which are incident to a qualified scholarship to which section 117(a) applies, but only to the extent such amounts are includible in gross income."

Subsec. (c)(11). Pub. L. 100-647, Sec. 6134(a)(2), added par. (11).

1986 - Subsec. (b). Pub. L. 99-514, Sec. 123(b)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: "The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are -

"(1) that portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

"(2) amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received by any such nonresident alien individual and which are incident to a scholarship or

fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includable in gross income."

Subsec. (c)(9). Pub. L. 99-514, Sec. 1810(d)(3)(D), substituted "section 871(h)" for "871(h)(2)".

Subsec. (c)(10). Pub. L. 99-514, Sec. 1214(c)(3), added par. (10).

1984 - Subsec. (a). Pub. L. 98-369, Sec. 474(r)(29)(G), struck out "except in the cases provided for in section 1451 and" before "except as otherwise provided in regulations".

Subsec. (b). Pub. L. 98-369, Sec. 42(a)(13), substituted "section 1273" for "section 1232(b)".

Subsec. (c)(3). Pub. L. 98-369, Sec. 474(r)(29)(H), inserted "(as in effect before its repeal by the Tax Reform Act of 1984)".

Subsec. (c)(9). Pub. L. 98-369, Sec. 127(e)(1), added par. (9).

1983 - Subsec. (g). Pub. L. 98-21 added subsec. (g).

1976 - Pub. L. 94-455 struck out in subsecs. (a), (c)(2), (4), (8), (d), "or his delegate" after "Secretary".

1971 - Subsec. (b). Pub. L. 92-178, Sec. 313(a), inserted "(other than original issue discount as defined in section 1232(b))" after "interest".

Subsec. (c)(8). Pub. L. 92-178, Sec. 313(d), added par. (8).

1969 - Subsec. (f). Pub. L. 91-172 added subsec. (f).

1966 - Subsec. (a). Pub. L. 89-809, Sec. 103(h)(1), substituted "or of any foreign partnership" for ", or of any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens,".

Subsec. (b). Pub. L. 89-809, Sec. 103(h)(2)-(4), struck out "(except interest on deposits with persons carrying on the banking

business paid to persons not engaged in business in the United States)" after "The items of income referred to in subsection (a) are interest" and substituted "gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966" for "and amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets" in text preceding par. (1), and inserted provision for treatment of items of income referred to in subsec. (a) in the case of nonresident alien individuals who are members of domestic partnerships.

Subsec. (c)(1). Pub. L. 89-809, Sec. 103(h)(5), substituted "in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year" for "in the case of dividends paid by a foreign corporation unless (A) such corporation is engaged in trade or business within the United States, and (B) more than 85 percent of the gross income of such corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under part I of subchapter N of chapter 1" after "shall be required".

Subsec. (c)(4). Pub. L. 89-809, Sec. 103(h)(6), struck out

provisions which had served to limit to compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals and of nonresident alien individuals for the period they are temporarily present in the United States as a nonimmigrant under subparagraph (F) and (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, the application of the exemption from deduction and withholding under subsec. (a), leaving the exemption under subsec. (a) applicable to compensation for personal services without further limitation.

Subsec. (c)(5). Pub. L. 89-809, Sec. 103(h)(7), substituted "gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), gains subject to tax under section 871 (a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966," for "amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets," and "amounts payable," for "proceeds from such sale or exchange,".

Subsec. (c)(7). Pub. L. 89-809, Sec. 103(h)(8), added par. (7).

Subsecs. (d), (e). Pub. L. 89-809, Sec. 103(h)(9), added subsec. (d) and redesignated former subsec. (d) as (e).

1964 - Subsecs. (a), (b). Pub. L. 88-272 reduced the withholding rate from 18% to 14%.

1961 - Subsec. (a). Pub. L. 87-256, Sec. 110(d)(1), required a tax equal to 18 percent of the item in the case of any item of income specified in second sentence of subsection (b).

Subsec. (b). Pub. L. 87-256, Sec. 110(d)(2), inserted provisions

listing items of income from which tax shall be deducted and withheld at the rate of 18 percent.

Subsec. (c)(4). Pub. L. 87-256, Sec. 110(d)(3), authorized the exemption from deduction and withholding of the compensation for personal services of a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subpar. (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended.

1958 - Subsecs. (b), (c)(5). Pub. L. 85-866 inserted "section 403(a)(2)," after "section 402(a)(2),".

1956 - Subsec. (c)(6). Act July 18, 1956, added section 544(f) to act Aug. 26, 1954, which section amended this subsection by adding par. (6).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1214(c)(3) of Pub. L. 99-514 applicable to payments made in a taxable year of the payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99-514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(3)(D) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(13) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(e)(1) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under

section 871 of this title.

Amendment by section 474(r)(29)(G), (H) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92-178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to payments made in taxable years of recipients beginning after Dec. 31, 1966, see section 103(n)(2) of Pub. L. 89-809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to payments made after seventh day following Feb. 24, 1964, see section 302(d) of Pub. L. 88-272, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(2) of Pub. L. 87-256 provided that: "The

amendments made by subsection (d) of this section (amending this section) shall apply with respect to payments made after December 31, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 effective Sept. 3, 1958, see section 40(c) of Pub. L. 85-866, set out as a note under section 871 of this title.

REPEALS

Section 544(f) of act Aug. 26, 1954, cited as a credit to this section, was repealed by Pub. L. 85-141, except insofar as such section 544(f) affected this section.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 123(b)(2) and 1214(c)(3) of Pub. L. 99-514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B (Sec. 521-523) of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (Sec. 1101-1147 and 1171-1177) or title XVIII (Sec. 1800-1899A) of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Pub. L. 97-248, title III, Sec. 342, Sept. 3, 1982, 96 Stat. 635, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Not later than 2 years after the date of the enactment of this Act (Sept. 3, 1982), the Secretary of the Treasury or his delegate shall prescribe regulations establishing certification procedures, refund procedures, or other procedures which ensure that any benefit of any treaty relating to withholding of tax under sections 1441 and 1442 of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) is available only to persons entitled to such benefit."

-CROSS-

CROSS REFERENCES

Consent dividends, see section 565 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 565, 860G, 871, 884, 1276, 1278, 1442, 1444, 3402, 6049, 6103, 7701 of this title; title 12 section 3413; title 25 section 2719.

-CITE-

49 USC CHAPTER 413 - FOREIGN AIR TRANSPORTATION 01/26/98

-EXPCITE-

Subtitle C - Employment Taxes

CHAPTER 24 - COLLECTION OF INCOME TAX AT SOURCE ON WAGES

-HEAD-

Sec. 3402. Income tax collected at source

-STATUTE-

(a) Requirement of withholding

(1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall -

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

(2) Amount of wages

For purposes of applying tables or procedures prescribed under

paragraph (1), the term ''the amount of wages'' means the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption. The amount of each withholding exemption shall be equal to the amount of one personal exemption provided in section 151(b), prorated to the payroll period. The maximum number of withholding exemptions permitted shall be calculated in accordance with regulations prescribed by the Secretary under this section, taking into account any reduction in withholding to which an employee is entitled under this section.

(b) Percentage method of withholding

(1) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(2) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(3) In any case in which the period, or the time described in paragraph (2), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an

employer to compute the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period.

(4) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(c) Wage bracket withholding

(1) At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee a tax (in lieu of the tax required to be deducted and withheld under subsection (a)) determined in accordance with tables prescribed by the Secretary in accordance with paragraph (6).

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in

paragraph (3), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(6) In the case of wages paid after December 31, 1969, the amount deducted and withheld under paragraph (1) shall be determined in accordance with tables prescribed by the Secretary. In the tables so prescribed, the amounts set forth as amounts of wages and amounts of income tax to be deducted and withheld shall be computed on the basis of the table for an annual payroll period prescribed pursuant to subsection (a).

(d) Tax paid by recipient

If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Included and excluded wages

If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of

not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

(f) Withholding exemptions

(1) In general

An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) an exemption for himself unless he is an individual described in section 151(d)(2);

(B) if the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A) or (D), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption;

(C) an exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) any allowance to which he is entitled under subsection (m), but only if his spouse does not have in effect a withholding exemption certificate claiming such allowance; and

(E) a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the Secretary) unless (i) he is married (as determined under section 7703) and his spouse is an employee receiving wages subject to withholding or (ii) he has withholding exemption certificates in effect with respect to more than one employer.

For purposes of this title, any standard deduction allowance under subparagraph (E) shall be treated as if it were denominated a withholding exemption.

(2) Exemption certificates

(A) On commencement of employment

On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(B) Change of status

If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall within 10 days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is

greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(C) Change of status which affects next calendar year

If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under subtitle A is different from the number to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Secretary may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled.

(3) When certificate takes effect

(A) First certificate furnished

A withholding exemption certificate furnished the employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(B) Furnished to take place of existing certificate

(i) In general

Except as provided in clauses (ii) and (iii), a withholding

exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

(ii) Employer may elect earlier effective date

At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

(iii) Change of status which affects next year

Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(4) Period during which certificate remains in effect

A withholding exemption certificate which takes effect under this subsection, or which on December 31, 1954, was in effect under the corresponding subsection of prior law, shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

(5) Form and contents of certificate

Withholding exemption certificates shall be in such form and contain such information as the Secretary may by regulations prescribe.

(6) Exemption of certain nonresident aliens

Notwithstanding the provisions of paragraph (1), a nonresident

alien individual (other than an individual described in section 3401(a)(6)(A) or (B)) shall be entitled to only one withholding exemption.

(7) Exemption where certificate with another employer is in effect

If a withholding exemption certificate is in effect with respect to one employer, an employee shall not be entitled under a certificate in effect with any other employer to any withholding exemption which he has claimed under such first certificate.

(g) Overlapping pay periods, and payment by agent or fiduciary

If a payment of wages is made to an employee by an employer -

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) with respect to a period beginning in one and ending in another calendar year, or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee,

the manner of withholding and the amount to be deducted and withheld under this chapter shall be determined in accordance with regulations prescribed by the Secretary under which the withholding

exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

(h) Alternative methods of computing amount to be withheld

The Secretary may, under regulations prescribed by him, authorize -

(1) Withholding on basis of average wages

An employer -

(A) to estimate the wages which will be paid to any employee in any quarter of the calendar year,

(B) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and

(C) to deduct and withhold upon any payment of wages to such employee during such quarter (and, in the case of tips referred to in subsection (k), within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

(2) Withholding on basis of annualized wages

An employer to determine the amount of tax to be deducted and withheld upon a payment of wages to an employee for a payroll period by -

(A) multiplying the amount of an employee's wages for a payroll period by the number of such payroll periods in the calendar year,

(B) determining the amount of tax which would be required to

be deducted and withheld upon the amount determined under subparagraph (A) if such amount constituted the actual wages for the calendar year and the payroll period of the employee were an annual payroll period, and

(C) dividing the amount of tax determined under subparagraph (B) by the number of payroll periods (described in subparagraph (A)) in the calendar year.

(3) Withholding on basis of cumulative wages

An employer, in the case of any employee who requests to have the amount of tax to be withheld from his wages computed on the basis of his cumulative wages, to -

(A) add the amount of the wages to be paid to the employee for the payroll period to the total amount of wages paid by the employer to the employee during the calendar year,

(B) divide the aggregate amount of wages computed under subparagraph (A) by the number of payroll periods to which such aggregate amount of wages relates,

(C) compute the total amount of tax that would have been required to be deducted and withheld under subsection (a) if the average amount of wages (as computed under subparagraph (B)) had been paid to the employee for the number of payroll periods to which the aggregate amount of wages (computed under subparagraph (A)) relates,

(D) determine the excess, if any, of the amount of tax computed under subparagraph (C) over the total amount of tax deducted and withheld by the employer from wages paid to the employee during the calendar year, and

(E) deduct and withhold upon the payment of wages (referred

to in subparagraph (A)) to the employee an amount equal to the excess (if any) computed under subparagraph (D).

(4) Other methods

An employer to determine the amount of tax to be deducted and withheld upon the wages paid to an employee by any other method which will require the employer to deduct and withhold upon such wages substantially the same amount as would be required to be deducted and withheld by applying subsection (a) or (c), either with respect to a payroll period or with respect to the entire taxable year.

(i) Changes in withholding

(1) In general

The Secretary may by regulations provide for increases in the amount of withholding otherwise required under this section in cases where the employee requests such changes.

(2) Treatment as tax

Any increased withholding under paragraph (1) shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(j) Noncash remuneration to retail commission salesman

In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter with respect to such remuneration, provided that such employer files with the Secretary such information with respect to such remuneration as the Secretary may by regulation prescribe.

(k) Tips

In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that the tax can be deducted and withheld by the employer, at or after the time such statement is so furnished and before the close of the calendar year in which such statement is furnished, from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer for the purpose of such deduction and withholding) as are under the control of the employer; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (16)(B) of section 3401(a) is applicable may deduct and withhold the tax with respect to such tips from any wages of the employee (excluding tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20. Such tax shall not at any time be deducted and withheld in an amount which exceeds the aggregate of such wages and funds (including funds turned over under section 3102(c)(2) or section 3202(c)(2)) minus any tax required by section 3102(a) or section 3202(a) to be collected from such wages and funds.

(l) Determination and disclosure of marital status

(1) Determination of status by employer

For purposes of applying the tables in subsections (a) and (c) to a payment of wages, the employer shall treat the employee as a

single person unless there is in effect with respect to such payment of wages a withholding exemption certificate furnished to the employer by the employee after the date of the enactment of this subsection indicating that the employee is married.

(2) Disclosure of status by employee

An employee shall be entitled to furnish the employer with a withholding exemption certificate indicating he is married only if, on the day of such furnishing, he is married (determined with the application of the rules in paragraph (3)). An employee whose marital status changes from married to single shall, at such time as the Secretary may by regulations prescribe, furnish the employer with a new withholding exemption certificate.

(3) Determination of marital status

For purposes of paragraph (2), an employee shall on any day be considered -

(A) as not married, if (i) he is legally separated from his spouse under a decree of divorce or separate maintenance, or (ii) either he or his spouse is, or on any preceding day within the calendar year was, a nonresident alien; or

(B) as married, if (i) his spouse (other than a spouse referred to in subparagraph (A)) died within the portion of his taxable year which precedes such day, or (ii) his spouse died during one of the two taxable years immediately preceding the current taxable year and, on the basis of facts existing at the beginning of such day, the employee reasonably expects, at the close of his taxable year, to be a surviving spouse (as defined in section 2(a)).

(m) Withholding allowances

Under regulations prescribed by the Secretary, an employee shall

be entitled to additional withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by such regulations) -

(1) estimated itemized deductions allowable under chapter 1 (other than the deductions referred to in section 151 and other than the deductions required to be taken into account in determining adjusted gross income under section 62(a) (other than paragraph (10) thereof)),

(2) estimated tax credits allowable under chapter 1, and

(3) such additional deductions (including the additional standard deduction under section 63(c)(3) for the aged and blind) and other items as may be specified by the Secretary in regulations.

(n) Employees incurring no income tax liability

Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee certifying that the employee -

(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f).

(o) Extension of withholding to certain payments other than wages

(1) General rule

For purposes of this chapter (and so much of subtitle F as relates to this chapter) -

(A) any supplemental unemployment compensation benefit paid to an individual,

(B) any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and

(C) any payment to an individual of sick pay which does not constitute wages (determined without regard to this subsection), if at the time the payment is made a request that such sick pay be subject to withholding under this chapter is in effect,

shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) Definitions

(A) Supplemental unemployment compensation benefits

For purposes of paragraph (1), the term ''supplemental unemployment compensation benefits'' means amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible

in the employee's gross income.

(B) Annuity

For purposes of this subsection, the term ''annuity'' means any amount paid to an individual as a pension or annuity.

(C) Sick pay

For purposes of this subsection, the term ''sick pay'' means any amount which -

(i) is paid to an employee pursuant to a plan to which the employer is a party, and

(ii) constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

(3) Amount withheld from annuity payments or sick pay

If a payee makes a request that an annuity or any sick pay be subject to withholding under this chapter, the amount to be deducted and withheld under this chapter from any payment to which such request applies shall be an amount (not less than a minimum amount determined under regulations prescribed by the Secretary) specified by the payee in such request. The amount deducted and withheld with respect to a payment which is greater or less than a full payment shall bear the same relation to the specified amount as such payment bears to a full payment.

(4) Request for withholding

A request that an annuity or any sick pay be subject to withholding under this chapter -

(A) shall be made by the payee in writing to the person making the payments and shall contain the social security

number of the payee,

(B) shall specify the amount to be deducted and withheld from each full payment, and

(C) shall take effect -

(i) in the case of sick pay, with respect to payments made more than 7 days after the date on which such request is furnished to the payor, or

(ii) in the case of an annuity, at such time (after the date on which such request is furnished to the payor) as the Secretary shall by regulations prescribe.

Such a request may be changed or terminated by furnishing to the person making the payments a written statement of change or termination which shall take effect in the same manner as provided in subparagraph (C). At the election of the payor, any such request (or statement of change or revocation) may take effect earlier than as provided in subparagraph (C).

(5) Special rule for sick pay paid pursuant to certain collective-bargaining agreements

In the case of any sick pay paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers which contains a provision specifying that this paragraph is to apply to sick pay paid pursuant to such agreement and contains a provision for determining the amount to be deducted and withheld from each payment of such sick pay -

(A) the requirement of paragraph (1)(C) that a request for withholding be in effect shall not apply, and

(B) except as provided in subsection (n), the amounts to be deducted and withheld under this chapter shall be determined in accordance with such agreement.

The preceding sentence shall not apply with respect to sick pay paid pursuant to any agreement to any individual unless the social security number of such individual is furnished to the payor and the payor is furnished with such information as is necessary to determine whether the payment is pursuant to the agreement and to determine the amount to be deducted and withheld.

(6) Coordination with withholding on designated distributions under section 3405

This subsection shall not apply to any amount which is a designated distribution (within the meaning of section 3405(e)(1)).

(p) Voluntary withholding agreements

(1) Certain Federal payments

(A) In general

If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.

(B) Amount withheld

The amount to be deducted and withheld under this chapter from any payment to which any request under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified in such request. Such a request shall apply to any payment only if the percentage specified is 7, 15, 28, or 31 percent or such other percentage as is permitted under

regulations prescribed by the Secretary.

(C) Specified Federal payments

For purposes of this paragraph, the term ''specified Federal payment'' means -

(i) any payment of a social security benefit (as defined in section 86(d)),

(ii) any payment referred to in the second sentence of section 451(d) which is treated as insurance proceeds,

(iii) any amount which is includible in gross income under section 77(a), and

(iv) any other payment made pursuant to Federal law which is specified by the Secretary for purposes of this paragraph.

(D) Requests for withholding

Rules similar to the rules that apply to annuities under subsection (o)(4) shall apply to requests under this paragraph and paragraph (2).

(2) Voluntary withholding on unemployment benefits

If, at the time a payment of unemployment compensation (as defined in section 85(b)) is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this chapter from any payment to which any request under this paragraph applies shall be an amount equal to 15 percent of such payment.

(3) Authority for other voluntary withholding

The Secretary is authorized by regulations to provide for

withholding -

(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and

(B) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Such agreement shall be in such form and manner as the Secretary may by regulations prescribe. For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

(q) Extension of withholding to certain gambling winnings

(1) General rule

Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to 28 percent of such payment.

(2) Exemption where tax otherwise withheld

In the case of any payment of winnings which are subject to withholding made to a nonresident alien individual or a foreign

corporation, the tax imposed under paragraph (1) shall not apply to any such payment subject to tax under section 1441(a) (relating to withholding on nonresident aliens) or tax under section 1442(a) (relating to withholding on foreign corporations).

(3) Winnings which are subject to withholding

For purposes of this subsection, the term ''winnings which are subject to withholding'' means proceeds from a wager determined in accordance with the following:

(A) In general

Except as provided in subparagraphs (B) and (C), proceeds of more than $5,000 from a wagering transaction, if the amount of such proceeds is at least 300 times as large as the amount wagered.

(B) State-conducted lotteries

Proceeds of more than $5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries

Proceeds of more than $5,000 from -

(i) a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii) a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount

wagered.

(4) Rules for determining proceeds from a wager

For purposes of this subsection -

(A) proceeds from a wager shall be determined by reducing the amount received by the amount of the wager, and

(B) proceeds which are not money shall be taken into account at their fair market value.

(5) Exception for bingo, keno, and slot machines

The tax imposed under paragraph (1) shall not apply to winnings from a slot machine, keno, and bingo.

(6) Statement by recipient

Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

(7) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

(r) Extension of withholding to certain taxable payments of Indian casino profits

(1) In general

Every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II

or class III ***gaming*** activity conducted or licensed by such tribe shall deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax.

(2) Exception

The tax imposed by paragraph (1) shall not apply to any payment to the extent that the payment, when annualized, does not exceed an amount equal to the sum of -

(A) the basic standard deduction (as defined in section 63(c)) for an individual to whom section 63(c)(2)(C) applies, and

(B) the exemption amount (as defined in section 151(d)).

(3) Annualized tax

For purposes of paragraph (1), the term ''annualized tax'' means, with respect to any payment, the amount of tax which would be imposed by section 1(c) (determined without regard to any rate of tax in excess of 31 percent) on an amount of taxable income equal to the excess of -

(A) the annualized amount of such payment, over

(B) the amount determined under paragraph (2).

(4) Classes of ***gaming*** activities, etc.

For purposes of this subsection, terms used in paragraph (1) which are defined in section 4 of the Indian ***Gaming*** Regulatory Act (25 U.S.C. 2701 et seq.), as in effect on the date of the enactment of this subsection, shall have the respective meanings given such terms by such section.

(5) Annualization

Payments shall be placed on an annualized basis under regulations prescribed by the Secretary.

(6) Alternate withholding procedures

At the election of an Indian tribe, the tax imposed by this subsection on any payment made by such tribe shall be determined in accordance with such tables or computational procedures as may be specified in regulations prescribed by the Secretary (in lieu of in accordance with paragraphs (2) and (3)).

(7) Coordination with other sections

For purposes of this chapter and so much of subtitle F as relates to this chapter, payments to any person which are subject to withholding under this subsection shall be treated as if they were wages paid by an employer to an employee.

(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.

-SOURCE-

(Aug. 16, 1954, ch. 736, 68A Stat. 457; Aug. 9, 1955, ch. 666, Sec. 2, 69 Stat. 605; Sept. 21, 1961, Pub. L. 87-256, Sec. 110(g)(2), 75 Stat. 537; Feb. 26, 1964, Pub. L. 88-272, title III, Sec. 302(a), (b), 78 Stat. 140; July 30, 1965, Pub. L. 89-97, title III, Sec. 313(d)(3)-(5), 79 Stat. 384; Sept. 29, 1965, Pub. L. 89-212, Sec. 2(c), 79 Stat. 859; Mar. 15, 1966, Pub. L. 89-368, title I, Sec. 101(a)-(e)(3), 80 Stat. 38-61; June 28, 1968, Pub. L. 90-364, title I, Sec. 102(c), 82 Stat. 256; June 30, 1969, Pub. L. 91-36, Sec. 2(a), 83 Stat. 42; Aug. 7, 1969, Pub. L. 91-53, Sec. 6(a), 83 Stat. 96; Dec. 30, 1969, Pub. L. 91-172, title VIII, Sec. 805(a)-(e), (f)(1), (g), 83 Stat. 686, 704-708; Dec. 10, 1971, Pub. L. 92-178, title II, Sec. 208(a), (b)(1), (c)-(h)(1), 85 Stat. 512-517; Mar. 29, 1975, Pub. L. 94-12, title II, Sec. 202(b), 205, 89 Stat. 29, 32; Dec. 23, 1975, Pub. L. 94-164, Sec. 2(b)(2), 5(a)(1), 89 Stat. 971, 975; June 30, 1976, Pub. L. 94-331, Sec. 3(a)(1), 90 Stat. 782; Sept. 3, 1976, Pub. L. 94-396, Sec. 2(a)(1), 90 Stat. 1201; Sept. 17, 1976, Pub. L. 94-414, Sec. 3(a)(1), 90 Stat. 1273; Oct. 4, 1976, Pub. L. 94-455, title IV, Sec. 401(d), title V, Sec. 502(b), 504(c)(3), title XII, Sec. 1207(d), title XIX, Sec. 1903(a)(17), 1906(b)(13)(A), 90 Stat. 1557, 1559, 1566, 1705, 1810, 1834; May 23, 1977, Pub. L. 95-30, title I, Sec. 105, title IV, Sec. 405(a), 91 Stat. 140, 156; Nov. 6, 1978, Pub. L. 95-600, title I, Sec. 101(e), 102(c), title VI, Sec. 601(b)(2), 92 Stat. 2770, 2771, 2896; Dec. 24, 1980, Pub. L. 96-601, Sec. 4(a)-(d), 94 Stat.

3496, 3497; Aug. 13, 1981, Pub. L. 97-34, title I, Sec. 101(e), 95 Stat. 184; Sept. 3, 1982, Pub. L. 97-248, title III, Sec. 317(a), 334(d), 96 Stat. 607, 627; Aug. 5, 1983, Pub. L. 98-67, title I, Sec. 104(d)(3), 97 Stat. 380; May 24, 1985, Pub. L. 99-44, Sec. 3, 99 Stat. 77; Oct. 22, 1986, Pub. L. 99-514, title I, Sec. 104(b)(15), title XIII, Sec. 1301(j)(8), 1303(b)(4), title XV, Sec. 1581(b), 100 Stat. 2106, 2658, 2766; Dec. 22, 1987, Pub. L. 100-203, title X, Sec. 10302(a), 101 Stat. 1330-429; Nov. 10, 1988, Pub. L. 100-647, title I, Sec. 1003(a)(2), 102 Stat. 3382; Nov. 5, 1990, Pub. L. 101-508, title XI, Sec. 11801(a)(41), 104 Stat. 1388-521; July 3, 1992, Pub. L. 102-318, title V, Sec. 522(b)(2)(D), 106 Stat. 314; Oct. 24, 1992, Pub. L. 102-486, title XIX, Sec. 1934(a), 1942(a), 106 Stat. 3031, 3036; Dec. 8, 1994, Pub. L. 103-465, title VII, Sec. 701(a), 702(a), 108 Stat. 4995, 4996.)

-REFTEXT-

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (l)(1), is the date of enactment of Pub. L. 89-368, which was approved Mar. 15, 1966.

Section 4 of the Indian ***Gaming*** Regulatory Act, referred to in subsec. (r)(4), is classified to section 2703 of Title 25, Indians.

The date of the enactment of this subsection, referred to in subsec. (r)(4), is the date of enactment of Pub. L. 103-465, which was approved Dec. 8, 1994.

-MISC2-

AMENDMENTS

1994 - Subsec. (p). Pub. L. 103-465, Sec. 702(a), reenacted

heading without change and amended text of subsec. (p) generally. Prior to amendment, text read as follows: ''The Secretary is authorized by regulations to provide for withholding -

''(1) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and

''(2) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the Secretary may by regulations provide. For purposes of this chapter (and so much of subtitle F as relates to this chapter) remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.''

Subsec. (r). Pub. L. 103-465, Sec. 701(a), added subsec. (r).

1992 - Subsec. (o)(6). Pub. L. 102-318 substituted ''3405(e)(1)'' for ''3405(d)(1)''.

Subsec. (q)(1). Pub. L. 102-486, Sec. 1934(a), substituted ''28 percent'' for ''20 percent''.

Subsec. (q)(3)(A), (C). Pub. L. 102-486, Sec. 1942(a), substituted ''$5,000'' for ''$1,000''.

1990 - Subsec. (a)(3). Pub. L. 101-508 struck out par. (3) which read as follows: ''Notwithstanding the provisions of this

subsection, the Secretary shall modify the tables and procedures under paragraph (1) to reflect -

''(A) the amendments made by section 101(b) of the Economic Recovery Tax Act of 1981, and such modification shall take effect on October 1, 1981, as if such amendments made a 5-percent reduction effective on such date, and

''(B) the amendments made by section 101(a) of such Act, and such modifications shall take effect -

''(i) on July 1, 1982, as if the reductions in the rate of tax under section 1 (as amended by such section) were attributable to a 10-percent reduction effective on such date, and

''(ii) on July 1, 1983, as if such reductions were attributable to a 10-percent reduction effective on such date.''

1988 - Subsec. (m)(1). Pub. L. 100-647 substituted ''section 62(a) (other than paragraph (10) thereof))'' for ''section 62) (other than paragraph (13) thereof)''.

1987 - Subsec. (f)(3)(B). Pub. L. 100-203 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be

made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term 'status determination date' means January 1, May 1, July 1, and October 1 of each year.''

1986 - Subsec. (f)(1). Pub. L. 99-514, Sec. 104(b)(15)(F), substituted ''standard deduction'' for ''zero bracket'' and ''subparagraph (E)'' for ''subparagraph (G)'' in last sentence.

Subsec. (f)(1)(A). Pub. L. 99-514, Sec. 104(b)(15)(B), inserted ''unless he is an individual described in section 151(d)(2)'' after ''himself''.

Subsec. (f)(1)(B). Pub. L. 99-514, Sec. 104(b)(15)(A), redesignated subpar. (D) as (B) and struck out former subpar. (B) which read as follows: ''one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c)(1) (relating to old age) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;''.

Pub. L. 99-514, Sec. 104(b)(15)(C), which directed that ''subparagraph (A) or (D)'' be substituted for ''subparagraph (A), (B), (C), or (F)'' was executed by making the substitution for ''subparagraph (A), (B), or (C)'', as the probable intent of Congress.

Subsec. (f)(1)(C). Pub. L. 99-514, Sec. 104(b)(15)(A), (D), redesignated subpar. (E) as (C), substituted ''section 151(c)'' for ''section 151(e)'', and struck out former subpar. (C) which read as follows: ''one additional exemption for himself if, on the basis of

facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(d)(1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;''.

Subsec. (f)(1)(D). Pub. L. 99-514, Sec. 104(b)(15)(A), redesignated subpar. (F) as (D). Former subpar. (D) redesignated (B).

Subsec. (f)(1)(E). Pub. L. 99-514, Sec. 104(b)(15)(A), (E), redesignated subpar. (G) as (E) and substituted ''standard deduction'' for ''zero bracket''. Former subpar. (E) redesignated (C).

Pub. L. 99-514, Sec. 1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (f)(1)(F), (G). Pub. L. 99-514, Sec. 104(b)(15)(A), redesignated subpars. (F) and (G) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 99-514, Sec. 1581(b), struck out ''or decreases'' after ''increases''.

Subsec. (m)(3). Pub. L. 99-514, Sec. 104(b)(15)(G), inserted ''(including the additional standard deduction under section 63(c)(3) for the aged and blind)''.

Subsec. (r). Pub. L. 99-514, Sec. 1303(b)(4), struck out subsec. (r) which provided for extension of withholding to GSOC distributions.

1985 - Subsec. (s). Pub. L. 99-44 added subsec. (s).

1983 - Subsec. (s). Pub. L. 98-67 struck out subsec. (s) which related to extension of withholding to certain payments where identifying number was not furnished or was inaccurate. See

section 3406 of this title.

1982 - Subsec. (o)(6). Pub. L. 97-248, Sec. 334(d), added par. (6).

Subsec. (s). Pub. L. 97-248, Sec. 317(a), added subsec. (s).

1981 - Subsec. (a). Pub. L. 97-34, Sec. 101(e)(1), revised subsec. (a) generally to provide for a 5-percent reduction in income tax withholding rates on Oct. 1, 1981, a further 10-percent reduction on July 1, 1982, and a final 10-percent reduction on July 1, 1983.

Subsec. (b)(1). Pub. L. 97-34, Sec. 101(e)(2)(A), redesignated par. (2) as (1). Former par. (1), which set out a table for determining amount of one withholding exemption for each of the various payroll periods, was struck out.

Subsec. (b)(2). Pub. L. 97-34, Sec. 101(e)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 97-34, Sec. 101(e)(2)(A), (B), redesignated par. (4) as (3) and substituted provisions relating to an employer's computation of the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period, for provisions relating to an employer's computation of the tax to be deducted and withheld using the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period. Former par. (3) redesignated (2).

Subsec. (b)(4), (5). Pub. L. 97-34, Sec. 101(e)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (f)(1)(G). Pub. L. 97-34, Sec. 101(e)(3), inserted ''(or

more than one exemption if so prescribed by the Secretary)'' after ''an amount equal to one exemption''.

Subsec. (i). Pub. L. 97-34, Sec. 101(e)(4), substituted provisions authorizing the Secretary by regulations to provide for increases or decreases in the amount of withholding otherwise required under this section in cases where the employee requests the changes, for provisions under which the Secretary was authorized to provide withholding in addition to that otherwise required under this section in cases in which the employer and the employee agreed to such additional withholding.

Subsec. (m). Pub. L. 97-34, Sec. 101(e)(5), revised provisions respecting additional withholding allowances for anticipated excess itemized deductions and tax credits claimed in accordance with Treasury regulations and Treasury statutory authority to provide additional withholding allowances for any additional items specified in Treasury regulations.

1980 - Subsec. (o)(1)(C). Pub. L. 96-601, Sec. 4(a), added subpar. (C).

Subsec. (o)(2)(B). Pub. L. 96-601, Sec. 4(d), struck out '', but only to the extent that the amount is includible in the gross income of such individual'' after ''pension or annuity''.

Subsec. (o)(2)(C). Pub. L. 96-601, Sec. 4(c), added subpar. (C).

Subsec. (o)(3). Pub. L. 96-601, Sec. 4(b), substituted provision authorizing amount to be withheld from annuity payments or sick pay for provision relating to request for withholding. See subsec. (o)(4) of this section.

Subsec. (o)(4), (5). Pub. L. 96-601, Sec. 4(b), added pars. (4) and (5).

1978 - Subsec. (a). Pub. L. 95-600, Sec. 101(e)(1), substituted

''With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978.'' for ''With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977.''.

Subsec. (b)(1). Pub. L. 95-600, Sec. 102(c)(1), increased the amounts set out in the table for one withholding exemption for each of the payroll period categories from $14.40, $28.80, $31.30, $62.50, $187.50, $375.00, $750.00 and $2.10 to $19.23, $38.46, $41.66, $83.33, $250.00, $500.00, $1,000.00 and $2.74, respectively.

Subsec. (m)(1). Pub. L. 95-600, Sec. 101(e)(2), 102(c)(2), substituted ''$1,000'' for ''$750'', ''$3,400'' for ''$3,200'' and

''$2,300'' for ''$2,200''.

Subsec. (r). Pub. L. 95-600, Sec. 601(b)(2), added subsec. (r).

1977 - Subsec. (a). Pub. L. 95-30, Sec. 105(a), substituted ''With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977'' for ''With respect to wages paid prior to January 1, 1978, the tables so prescribed shall be the same as the tables prescribed under this section which were in effect on January 1, 1976. With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976''.

Subsec. (f)(1). Pub. L. 95-30, Sec. 105(b)(1), substituted ''zero bracket'' for ''standard deduction'' in subpar. (G) and in provisions following subpar. (G).

Subsec. (m)(1)(B). Pub. L. 95-30, Sec. 105(b)(2), substituted

''an amount equal to $3,200 ($2,200'' for ''an amount equal to the lesser of (i) 16 percent of his estimated wages, or (ii) $2,800 ($2,400''.

Subsec. (m)(2)(A). Pub. L. 95-30, Sec. 105(b)(3)(A), (B), substituted ''section 151'' for ''sections 141 and 151'' and ''(or the zero bracket amount (within the meaning of section 63(d)))'' for ''(or the amount of the standard deduction)''.

Subsec. (m)(2)(C). Pub. L. 95-30, Sec. 105(b)(3)(C), substituted ''(or the zero bracket amount)'' for ''(or the standard deduction)''.

Subsec. (q)(3)(C). Pub. L. 95-30, Sec. 405(a), inserted reference to certain parimutuel pools and jai alai in heading and, in text, designated existing provisions as cl. (i) and added cl. (ii).

1976 - Subsec. (a). Pub. L. 94-455, Sec. 401(d)(1), 1906 (b)(13)(A), struck out ''or his delegate'' after ''Secretary'', inserted ''With respect to wages paid prior to January 1, 1978'' after ''by the Secretary'', as amended, and substituted ''prescribed under this section which were'' for ''contained in this subsection as'' after ''same as the tables'', ''1976'' for ''1975'' after ''January 1'', and ''With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976'' for ''except that the amounts set forth as amounts of income tax to be withheld with respect to wages paid after April 30, 1975, and before January 1, 1976, shall

reflect the full calendar year effect for 1975 of the amendments made by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975'' after ''effect on January 1, 1976'', as amended.

Pub. L. 94-414 substituted ''October 1, 1976'' for ''September 15, 1976''.

Pub. L. 94-396 substituted ''September 15, 1976'' for ''September 1, 1976''.

Pub. L. 94-331 substituted ''September 1, 1976'' for ''July 1, 1976''.

Subsec. (c)(4). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(6). Pub. L. 94-455, Sec. 401(d)(2), 1906(b)(13)(A), substituted ''the table for an annual payroll period prescribed pursuant to subsection (a)'' for ''table 7 contained in subsection (a)'' after ''basis of the'', as subsec. (c)(6) was in effect on the day before the date of enactment of the Tax Reduction Act of 1975, Pub. L. 94-12, which was approved on Mar. 29, 1975, and struck out ''or his delegate'' after ''Secretary''.

Subsecs. (f), (h), (i), (j). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (l). Pub. L. 94-455, Sec. 1903(a)(17), substituted ''section 2(a)'' for ''section 2(b)'' after ''as defined in''.

Subsec. (m)(1)(B). Pub. L. 94-455, Sec. 401(d)(3), reenacted subpar. (B) without change.

Subsec. (m)(2)(A). Pub. L. 94-455, Sec. 502(b), inserted ''(other than paragraph (13) thereof)'' after ''under section 62''.

Subsec. (m)(2)(D), (3)(B). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (m)(4). Pub. L. 94-455, Sec. 504(c)(3), added subpar.

(C). Sec. 1906(b)(13)(A) struck out ''or his delegate'' after ''Secretary''.

Subsecs. (n), (p). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (q). Pub. L. 94-455, Sec. 1207(d), added subsec. (q).

1975 - Subsec. (a). Pub. L. 94-164, Sec. 5(a)(1), inserted provision that the tables prescribed with respect to wages paid after Dec. 31, 1975, and before July 1, 1976, shall be the same as the tables prescribed under this subsection which were in effect on Dec. 10, 1975.

Pub. L. 94-12, Sec. 205(a), substituted provisions directing the Secretary to prescribe new withholding tables setting changed withholding rates for wages paid during the period May 1, 1975, to Dec. 31, 1975, so as to reflect the full calendar year effect for 1975 of the amendments to the minimum standard deduction, the percentage standard deduction, the earned income credit, and the additional tax credit by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975, Pub. L. 94-12, for provisions setting out 8 tables to be followed by employers in withholding taxes on wages paid.

Subsec. (c)(6). Pub. L. 94-12, Sec. 205(b), substituted ''the table for an annual payroll period prescribed pursuant to subsection (a)'' for ''table 7 contained in subsection (a)''. See 1976 Amendment note set out above.

Subsec. (m)(1)(B). Pub. L. 94-164, Sec. 2(b)(2), substituted ''$2,800'' and ''$2,400'' for ''$2,600'' and ''$2,300'' respectively in cl. (ii).

Pub. L. 94-12, Sec. 202(b), substituted ''the lesser of (i) 16

percent of his estimated wages, or (ii) $2,600 ($2,300 in the case of an individual who is not married (within the meaning of section 143) and who is not a surviving spouse (as defined in section 2(a)))'' for ''the lesser of (i) $2,000 or (ii) 15 percent of his estimated wages''.

1971 - Subsec. (a). Pub. L. 92-178, Sec. 208(a), substituted new sets of tables 1 to 8 applicable (under Sec. 208(i)(1)) with respect to wages paid after Jan. 15, 1972, for the tables applicable in the case of wages paid as provided in former: par. (1) after Dec. 31, 1969, and before July 1, 1970; par. (2) after June 30, 1970, and before Jan. 1, 1971; par. (3) after Dec. 31, 1970, and before Jan. 1, 1972; par. (4) after Dec. 31, 1971, and before Jan. 1, 1973; and par. (5) after Dec. 31, 1972. Pub. L. 92-178, Sec. 208(h)(1), made provisions of par. (3) applicable (under section 208(i)(2)) with respect to wages paid after Dec. 31, 1971, and before Jan. 16, 1972.

Subsec. (b)(1). Pub. L. 92-178, Sec. 208(b)(1), revised withholding rates upwards, substituting 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10 for 12.50; 25.00 27.10; 54.20; 162.50; 325.00; 650.00; and 1.80, respectively, to be effective with respect to wages paid after Jan. 15, 1972. Pub. L. 92-178, Sec. 208(h)(2), in amending Pub. L. 91-172, Sec. 805(b)(1), extended application of such former withholding rates to wages paid after June 30, 1970, and before Jan. 16, 1972, previously applicable to wages paid before Jan. 1, 1972.

Subsec. (c)(6). Pub. L. 92-178, Sec. 208(g), substituted ''table 7 contained in subsection (a)'' for ''table 7 contained in paragraph (1), (2), (3), (4), or (5) (whichever is applicable) of subsection (a)''.

Subsec. (f)(1)(G). Pub. L. 92-178, Sec. 208(c), added subpar. (G).

Subsec. (f)(7). Pub. L. 92-178, Sec. 208(d), added par. (7).

Subsec. (m)(1)(B). Pub. L. 92-178, Sec. 208(e), substituted ''an amount equal to the lesser of (i) $2,000 or (ii) 15 percent of his estimated wages'' for ''an amount equal to 15 percent of his estimated wages''.

Subsec. (m)(2)(A). Pub. L. 92-178, Sec. 208(f)(1), inserted ''or (if such a return has not been filed for such preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year'' after ''for the taxable year preceding the estimation year''.

Subsec. (m)(2)(D). Pub. L. 92-178, Sec. 208(f)(2), substituted as definition of ''estimation year'' the calendar year in which the wages are paid for prior provision defining term as meaning ''(i) with respect to payments of wages after April 30 and on or before December 31 of any calendar year, such calendar year, and (ii) with respect to payments of wages on or after January 1 and before May 1 of any calendar year, the preceding calendar year (except that with respect to an exemption certificate furnished by an employee after he has filed his return for the preceding calendar year, such term means the current calendar year).''

Subsec. (m)(3)(B) to (E). Pub. L. 92-178, Sec. 208(f)(3), struck out subpars. (B) and (C) providing that only one certificate be in effect and for termination of effectiveness of certificate and redesignated subpars. (D) and (E) as (B) and (C), respectively.

1969 - Subsec. (a)(1). Pub. L. 91-172, Sec. 805(a), (b)(2),

substituted new sets of tables 1 to 8 for application to wages paid after Dec. 31, 1969, and before July 1, 1970, and after June 30, 1970, and before January 1, 1972, for the tables applicable to wages paid before July 13, 1968, and after Dec. 31, 1969.

Pub. L. 91-53, Sec. 6(a)(1), substituted ''December 31, 1969'' for ''July 31, 1969''.

Pub. L. 91-36, Sec. 2(a)(1), substituted ''July 31, 1969'' for ''June 30, 1969''.

Subsec. (a)(2). Pub. L. 91-172, Sec. 805(a), substituted a set of tables 1 to 8 for application to wages paid after June 30, 1970, and before Jan. 1, 1971, for the tables applicable to wages paid after June 30, 1970, and before Jan. 1, 1970.

Pub. L. 91-53, Sec. 6(a)(2), substituted ''January 1, 1970'' for ''August 1, 1969''.

Pub. L. 91-36, Sec. 2(a)(2), substituted ''August 1, 1969'' for ''July 1, 1969''.

Subsec. (a)(3) to (5). Pub. L. 91-172, Sec. 805(a), added sets of tables applicable, respectively, to wages paid after Dec. 31, 1970, and before Jan. 1, 1972, after Dec. 31, 1971, and before Jan. 1, 1973, and after Dec. 31, 1972.

Subsec. (b)(1). Pub. L. 91-172, Sec. 805(b)(1)-(4), revised withholding rates effective with respect to wages paid after Dec. 31, 1969, and before July 1, 1970, for the period after June 30, 1970, and before Jan. 1, 1972, during 1972, and after 1972.

Subsec. (c)(1). Pub. L. 91-172, Sec. 805(c)(1), substituted provisions authorizing employer to deduct and withhold tax determinable according to tables prescribed by the Secretary or his delegate for provisions under which the employer was authorized to deduct and withhold tax only according to tables set out.

Subsec. (c)(6). Pub. L. 91-172, Sec. 805(c)(2), substituted provisions for determination of amount deductible according to tables prescribed by the Secretary or his delegate and for computation of wages and amounts of income tax after Dec. 31, 1969, for provisions for determination of such wages and amounts of income tax after July 13, 1968, and before Jan. 1, 1970.

Pub. L. 91-53, Sec. 6(a)(3), substituted ''January 1, 1970'' for ''August 1, 1969''.

Pub. L. 91-36, Sec. 2(a)(3), substituted ''August 1, 1969'' for ''July 1, 1969''.

Subsec. (h). Pub. L. 91-172, Sec. 805(d), redesignated existing pars. (1) to (3) as subpars. (A) to (C) of par. (1), and added pars. (2) to (4).

Subsec. (m)(1). Pub. L. 91-172, Sec. 805(e)(2), substituted $750 for $700 in the material preceding subpar. (A) and in subpar. (B) substituted 15 per cent for 10 per cent of the first $7,500 and 17 per cent of remainder of the estimated wages.

Subsec. (m)(2)(A). Pub. L. 91-172, Sec. 805(e)(2), inserted amount of standard deduction as an alternative limit in cl. (i), and substituted the determinable additional deductions for provisions referring to an employee who did not show such deductions on his return.

Subsec. (m)(2)(B). Pub. L. 91-172, Sec. 805(e)(2), struck out limit on aggregate amount.

Subsec. (m)(2)(C), (D). Pub. L. 91-172, Sec. 805(e)(1), (2), added subpar. (C). Former subpar. (C) redesignated (D)

Subsec. (n). Pub. L. 91-172, Sec. 805(f)(1), added subsec. (n).

Subsecs. (o), (p). Pub. L. 91-172, Sec. 805(g), added subsecs.

(o) and (p).

1968 - Subsec. (a). Pub. L. 90-364, Sec. 102(c)(1), designated existing Tables 1 to 8 as constituting par. (1), inserted provisions preceding existing Table 1-8 so as to limit their application to the case of wages paid on or before the 15th day after the date of the enactment of the Revenue and Expenditure Control Act of 1968 or after June 30, 1969, and added par. (2).

Subsec. (c)(6). Pub. L. 90-364, Sec. 102(c)(2), added par. (6).

1966 - Subsec. (a). Pub. L. 89-368, Sec. 101(a), struck out reference to subsections (j) and (k) and substituted provisions establishing separate tables for single persons and for married persons in each of eight payroll period categories each containing six graduated withholding rates ranging from 14 to 30 percent for provisions placing the rate at a fixed 14 percent.

Subsec. (b)(1). Pub. L. 89-368, Sec. 101(b), increased amounts set out for one withholding exemption for each of the payroll period categories from ''$13.00'', $26.00'', ''$28.00'', ''$56.00'', ''$167.00'', ''$333.00'', ''$667.00'', and ''$1.80'' to ''$13.50'', ''$26.90'', ''$29.20'', ''$58.30'', ''$175.00'', ''$350.00'', ''$700.00'', and ''$1.90'' respectively.

Subsec. (c)(1). Pub. L. 89-368, Sec. 101(c), replaced existing tables with separate tables for employees who are married and for employees who are not married covering weekly, biweekly, semimonthly, monthly, and daily or miscellaneous pay periods and reflecting increased and graduated withholding rates.

Subsec. (f)(1)(F), (3)(B). Pub. L. 89-368, Sec. 101(e)(1), (3), added par. (1)(F) and, in par. (3)(B), changed definition of ''status determination date'' from January 1 and July 1 of each year to January 1, May 1, July 1, and October 1 of each year.

Subsec. (l). Pub. L. 89-368, Sec. 101(d), added subsec. (l).

Subsec. (m). Pub. L. 89-368, Sec. 101(e)(2), added subsec. (m).

1965 - Subsec. (a). Pub. L. 89-97, Sec. 313(d)(3), substituted ''subsections (j) and (k)'' for ''subsection (j)''.

Subsec. (h)(3). Pub. L. 89-97, Sec. 313(d)(4), inserted ''(and, in the case of tips referred to in subsection (k), within 30 days thereafter)'' after ''quarter'' first place it appears.

Subsec. (k). Pub. L. 89-212 inserted ''or section 3202 (c)(2)'' and ''or section 3202(a)''.

Pub. L. 89-97, Sec. 313(d)(5), added subsec. (k).

1964 - Subsec. (a). Pub. L. 88-272, Sec. 302(a), reduced tax from 18% to 14%.

Subsec. (c)(1). Pub. L. 88-272, Sec. 302(b), substituted new tables reflecting lowered withholding rates.

1961 - Subsec. (f)(6). Pub. L. 87-256 added par. (6).

1955 - Subsec. (a). Act Aug. 9, 1955, Sec. 2(a), inserted ''(except as provided in subsection (j))'' after ''upon such wages''.

Subsec. (j). Act Aug. 9, 1955, Sec. 2(b), added subsec. (j).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 701(b) of Pub. L. 103-465 provided that: ''The amendment made by this section (amending this section) shall apply to payments made after December 31, 1994.''

Amendment by section 702(a) of Pub. L. 103-465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103-465, set out as a note under section 3304 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 1934(b) of Pub. L. 102-486 provided that: ''The amendment

made by this section (amending this section) applies to payments received after December 31, 1992.''

Section 1942(b) of Pub. L. 102-486 provided that: ''The amendments made by subsection (a) (amending this section) shall apply to payments of winnings after December 31, 1992.''

Amendment by Pub. L. 102-318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102-318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10302(b) of Pub. L. 100-203 provided that: ''The amendment made by subsection (a) (amending this section) shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act (Dec. 22, 1987).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(15) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1303(b)(4) of Pub. L. 99-514 effective Oct.

22, 1986, see section 1311(f) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 6(d) of Pub. L. 99-44 provided that: ''The amendment made by section 3 (amending this section) shall take effect on January 1, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 317(b) of Pub. L. 97-248 provided: ''The amendments made by subsection (a) (amending this section) shall apply to payments made after December 31, 1983.''

Amendment by section 334(d) of Pub. L. 97-248 applicable to payments or other distributions made after Dec. 31, 1982, see section 334(e) of Pub. L. 97-248, set out as an Effective Date note under section 3405 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 101(f)(2) of Pub. L. 97-34 provided that: ''The amendments made by subsection (e) (amending this section) shall apply to remuneration paid after September 30, 1981; except that the amendment made by subsection (e)(5) (amending this section) shall apply to remuneration paid after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 4(f) of Pub. L. 96-601 provided that: ''The amendments made by this section (amending this section and section 6051 of

this title) shall apply to payments made on or after the first day of the first calendar month beginning more than 120 days after the date of the enactment of this Act (Dec. 24, 1980).''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(f)(2) of Pub. L. 95-600 provided that: ''The amendments made by subsection (e) (amending this section) shall apply to remuneration paid after December 31, 1978.''

Section 102(d)(2) of Pub. L. 95-600 provided that: ''The amendments made by subsection (c) (amending this section) shall apply with respect to remuneration paid after December 31, 1978.''

Amendment by section 601(b)(2) of Pub. L. 95-600 applicable with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95-600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 106(b) of Pub. L. 95-30 provided that: ''The amendments made by section 105 (amending this section) shall apply to wages paid after April 30, 1977.''

Section 405(b) of Pub. L. 95-30 provided that: ''The amendments made by this section (amending this section) apply to payments made after April 30, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 401(d) of Pub. L. 94-455 applicable to wages paid after Sept. 14, 1976, see section 401(e) of Pub. L. 94-455, set out as a note under section 32 of this title.

Section 1207(f)(3) of Pub. L. 94-455 provided that: ''The amendments made by subsection (d) (amending this section) shall apply to payments of winnings made after the 90th day after the date of the enactment of this Act (Oct. 4, 1976).''

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by section 2(b)(2) of Pub. L. 94-164 applicable to taxable years ending after Dec. 31, 1975 and before Jan. 1, 1977, see section 2(g) of Pub. L. 94-164, set out as an Effective Date of 1975 Amendment note under section 32 of this title.

Section 209(c) of Pub. L. 94-12, as amended by Pub. L. 94-164, Sec. 5(a)(2); Pub. L. 94-331, Sec. 3(a)(2); Pub. L. 94-396, Sec. 2(b); Pub. L. 94-414, Sec. 3(a)(2), provided that: ''The amendments made by sections 202(b) and 205 (amending this section) shall apply to wages paid after April 30, 1975, and before October 1, 1976.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 208(i) of Pub. L. 92-178 provided that:

''(1) The amendments made by this section (amending this section) (other than subsection (h)) shall apply with respect to wages paid after January 15, 1972.

''(2) The amendments made by subsection (h) (amending this section) shall apply with respect to wages paid after December 31, 1971, and before January 16, 1972.''

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 805(h) of Pub. L. 91-172, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a), (b), (c), (d), and (e) (amending this section) shall apply with respect to remuneration paid after December 31, 1969.

''(2) The amendment made by subsection (f) (amending this section and section 6051 of this title) applies to wages paid after April 30, 1970.

''(3) Subsection (o) of section 3402 of the Internal Revenue Code

of 1986 (formerly I.R.C. 1954), added by subsection (g) of this subsection, shall apply to payments made after December 31, 1970. Subsection (p) of such section 3402, added by subsection (g) of this section, shall apply to payments made after June 30, 1970.''

Section 6(b) of Pub. L. 91-53 provided that: ''The amendments made by this section (amending this section) shall apply with respect to wages paid after July 31, 1969, and before January 1, 1970.''

Section 2(b) of Pub. L. 91-36 provided that: ''The amendments made by subsection (a) (amending this section) shall apply with respect to wages paid after June 30, 1969.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 101(e)(6) of Pub. L. 89-368 provided that: ''The amendments made by paragraphs (1) and (2) of this subsection (amending this section) shall apply only with respect to remuneration paid after December 31, 1966, but only with respect to withholding exemptions based on estimation years beginning after such date.''

Section 101(g) of Pub. L. 89-368 provided that: ''The amendments made by this section (other than subsection (e) (amending this section)) shall apply only with respect to remuneration paid after April 30, 1966.''

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by Pub. L. 89-212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

Amendment by Pub. L. 89-97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89-97, set out as an Effective Date note under section 6053 of this

title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 302(d) of Pub. L. 88-272 provided that: ''The amendments made by subsections (a) and (b) of this section (amending this section) shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act (Feb. 26, 1964). The amendment made by subsection (c) of this section (amending section 1441 of this title) shall apply with respect to payments made after the seventh day following the date of the enactment of this Act.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-256 applicable with respect to wages paid after Dec. 31, 1961, see section 110(h)(4) of Pub. L. 87-256, set out as a note under section 3401 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 9, 1955, provided that: ''The amendment made by section 2 (amending this section) shall be applicable only with respect to remuneration paid after the date of enactment of this Act (Aug. 9, 1955).''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B (Sec. 521-523) of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

WITHHOLDING ALLOWANCES TO REFLECT NEW RATE SCHEDULES

Section 1581(a) of Pub. L. 99-514 provided that: ''The Secretary of the Treasury or his delegate shall modify the withholding schedules and withholding exemption certificates under section 3402 of the Internal Revenue Code of 1954 (now 1986) to better approximate actual tax liability under the amendments made by this Act (see Tables for classification).''

EMPLOYER'S RESPONSIBILITY UPON FAILURE OF EMPLOYEE TO FILE REVISED WITHHOLDING ALLOWANCE CERTIFICATE BEFORE OCT. 1, 1987

Section 1581(c) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, Sec. 1015(p), Nov. 10, 1988, 102 Stat. 3572, provided that: ''If an employee has not filed a revised withholding allowance certificate before October 1, 1987, the employer shall withhold income taxes from the employee's wages -

''(1) as if the employee claimed 1 withholding allowance, if the employee checked the 'single' box on the employee's previous withholding allowance certificate, or

''(2) as if the employee claimed 2 withholding allowances, if the employee checked the 'married' box on the employee's previous withholding allowance certificate.

The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee.''

FAILURE TO DEDUCT AND WITHHOLD UNDER A DUTY CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Section 304 of Pub. L. 95-30, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''No person shall be liable in respect of any failure to deduct and withhold under section 3402 of the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (relating to income tax collected at source) on remuneration paid before January 1, 1977, to the extent that the duty to deduct and withhold was created or increased by any provision of the Tax Reform Act of 1976 (Pub. L. 94-455).''

WAGES PAID DURING 1972 AND AFTER 1972

Section 805(b)(3), (4) of Pub. L. 91-172, title VIII, Dec. 30, 1969, 83 Stat. 704, which provided for section 3402(b)(1) withholding rates of 13.50; 26.90; 29.20; 58.30; 175.00; 350.00; 700.00; and 1.90, effective with respect to wages during 1972, and withholding rates of 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10, effective with respect to wages paid after 1972, was repealed by section 208(b)(2) of Pub. L. 92-178.

TRANSITIONAL DETERMINATION STATUS DATE

Section 101(f) of Pub. L. 89-368, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding section 3402(f)(3)(B) of the Internal Revenue Code of 1986 (formerly I.R.C. 1954), a withholding exemption certificate furnished the employer after the date of the enactment of this Act (Mar. 15, 1966) and before May 1, 1966, shall take effect with respect to the first payment of wages made on or after May 1, 1966, or the 10th day after the date on which such certificate is furnished to the employer, whichever is later, and

at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is furnished.''

MEANING OF TERMS

Section 1 of act Aug. 9, 1955, provided that: ''The terms used in this Act (amending subsecs. (a) and (j) of this section) shall have the same meaning as when used in the Internal Revenue Code.''

-CROSS-

CROSS REFERENCES

Adjustment of tax under this section, see section 6205 of this title.

Amount and method of adjustment inapplicable to taxes under this chapter, see section 1314 of this title.

Amount withheld as special trust fund for United States, see section 7501 of this title.

Assessment for underpayment of tax imposed by this section, see section 6205 of this title.

Nondeductibility of tax deducted and withheld under this chapter as deduction from gross income, see section 3502 of this title.

Penalty for fraudulently withholding exemption certificate or failure to supply information, see section 7204 of this title.

Personal exemptions allowable as deductions from gross income, see section 151 et seq. of this title.

Receipts for employees for taxes withheld by employers, see section 6051 of this title.

Tax withheld on wages as credit against income tax, see section 31 of this title.

Time tax withheld deemed paid, see section 6513 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31, 275, 3401, 3405, 3406, 3505, 3507, 3509, 3510, 4999, 6040, 6051, 6205, 6413, 6682, 7205 of this title; title 25 section 2719; title 42 section 659.

-EXPCITE-

Subtitle D - Miscellaneous Excise Taxes

CHAPTER 35 - TAXES ON WAGERING

Subchapter C - Miscellaneous Provisions

-HEAD-

Sec. 4421. Definitions

-STATUTE-

For purposes of this chapter -

(1) Wager

The term ''wager'' means -

(A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

(B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

(C) any wager placed in a lottery conducted for profit.

(2) Lottery

The term ''lottery'' includes the numbers ***game***, policy, and similar types of wagering. The term does not include -

(A) any ***game*** of a type in which usually

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such ***game***, and

(B) any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

-SOURCE-

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4405, 4414 of this title.

-EXPCITE-

CHAPTER 36 - CERTAIN OTHER EXCISE TAXES

Subchapter B - Transportation by Water

.

-HEAD-

Subchapter B - Transportation by Water

-MISC1-

Sec.

4471. Imposition of tax.

4472. Definitions.

PRIOR PROVISIONS

A prior subchapter B, consisted of sections 4461 to 4464 of this title, prior to repeal by Pub. L. 95-600, title V, Sec. 521(b), Nov. 6, 1978, 92 Stat. 2884, applicable with respect to years beginning after June 30, 1980.

Section 4461, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 21, 1959, Pub. L. 86-344, Sec. 6(a), 73 Stat. 620; June 21, 1965, Pub. L. 89-44, title IV, Sec. 403(a), 79 Stat. 148, imposed a special tax on persons who maintained for use or permitted use of coin-operated ***gaming*** devices and provided an exception from such tax.

Section 4462, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 2, 1958, Pub. L. 85-859, title I, Sec. 152(a), 72 Stat. 1304; June 21, 1965, Pub. L. 89-44, title IV, Sec. 403(b), 79 Stat. 149; Oct. 4, 1976, Pub. L. 94-455, title XII, Sec. 1208(b), 90 Stat. 1709, defined coin-operated ***gaming*** devices.

Section 4463, act Aug. 16, 1954, ch. 736, 68A Stat. 531, related to administrative provisions.

Section 4464, added Pub. L. 92-178, title IV, Sec. 402(a), Dec. 10, 1971, 85 Stat. 534, and amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title V, Sec. 521(a), Nov. 6, 1978, 92 Stat. 2884, related to credit for State-imposed taxes.

AMENDMENTS

1996 - Pub. L. 104-188, title I, Sec. 1704(t)(11), Aug. 20, 1996, 110 Stat. 1888, struck out ''and special rules'' after

''Definitions'' in item 4472.

-EXPCITE-

Sec. 4472. Definitions

-STATUTE-

For purposes of this subchapter -

(1) Covered voyage

(A) In general

The term "covered voyage" means a voyage of -

(i) a commercial passenger vessel which extends over 1 or more nights, or

(ii) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States,

during which passengers embark or disembark the vessel in the United States. Such term shall not include any voyage on any vessel owned or operated by the United States, a State, or any agency or subdivision thereof.

(B) Exception for certain voyages on passenger vessels

The term "covered voyage" shall not include a voyage of a passenger vessel of less than 12 hours between 2 ports in the United States.

(2) Passenger vessel

The term "passenger vessel" means any vessel having berth or stateroom accommodations for more than 16 passengers.

-SOURCE-

(Added Pub. L. 101-239, title VII, Sec. 7504(a), Dec. 19, 1989, 103

Stat. 2362.)

-MISC1-

PRIOR PROVISIONS

A prior section 4472 was contained in subchapter C of this chapter prior to repeal by Pub. L. 89-44, title IV, Sec. 404, June 21, 1965, 79 Stat. 149.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1081.

-CITE-

18 USC Sec. 2516 01/26/98

-EXPCITE-

Subtitle F - Procedure and Administration

CHAPTER 75 - CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter C - Forfeitures

PART II - PROVISIONS COMMON TO FORFEITURES

-HEAD-

Sec. 7326. Disposal of forfeited or abandoned property in special cases

-STATUTE-

(a) Coin-operated ***gaming*** devices

Any coin-operated ***gaming*** device as defined in section 4462

(FOOTNOTE 1) upon which a tax is imposed by section 4461 (FOOTNOTE 1) and which has been forfeited under any provision of this title shall be destroyed, or otherwise disposed of, in such manner as may be prescribed by the Secretary.

(FOOTNOTE 1) See References in Text note below.

(b) Firearms

For provisions relating to disposal of forfeited firearms, see section 5872(b).

-SOURCE-

(Aug. 16, 1954, ch. 736, 68A Stat. 871; Sept. 2, 1958, Pub. L. 85-859, title II, Sec. 204(13), 72 Stat. 1429; June 21, 1965, Pub. L. 89-44, title VI, Sec. 601(j), 79 Stat. 155; Oct. 27, 1970, Pub. L. 91-513, title III, Sec. 1102(f), 84 Stat. 1292; Oct. 4, 1976, Pub. L. 94-455, title XIX, Sec. 1906(a)(43), (b)(13)(A), 90 Stat. 1830, 1834.)

-REFTEXT-

REFERENCES IN TEXT

Sections 4461 and 4462, referred to in subsec. (a), were repealed by Pub. L. 95-600, title V, Sec. 521(b), Nov. 6, 1978, 92 Stat. 2884.

-MISC2-

AMENDMENTS

1976 - Subsec. (a). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (b), (c). Pub. L. 94-455, Sec. 1906(a)(43), redesignated subsec. (c) as (b) and in subsec. (b) as so redesignated substituted ''section 5872(b)'' for ''section 5862(b)''. Former

subsec. (b), relating to narcotic drugs, was repealed. See 1970 Amendment note below.

1970 - Subsec. (b). Pub. L. 91-513 struck out subsec. (b) which related to narcotic drugs and which made reference to sections 4714, 4733, and 4745(d) of this title.

1965 - Subsec. (a). Pub. L. 89-44 substituted ''section 4462'' for ''section 4462(a)(2)''.

1958 - Subsec. (a). Pub. L. 85-859 added subsec. (a).

Subsecs. (b), (c). Pub. L. 85-859 redesignated former pars. (1) and (2) as subsecs. (b) and (c), respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 to take effect in a manner consistent with effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89-44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note

under section 5001 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as note under sections 171 to 174 of Title 21, Food and Drugs.

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART VI - PARTICULAR PROCEEDINGS

CHAPTER 178 - PROFESSIONAL AND AMATEUR SPORTS PROTECTION

-HEAD-

Sec. 3702. Unlawful sports gambling

-STATUTE-

It shall be unlawful for -

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of

geographical references or otherwise), on one or more competitive ***games*** in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such ***games***.

-SOURCE-

(Added Pub. L. 102-559, Sec. 2(a), Oct. 28, 1992, 106 Stat. 4228.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3703, 3704 of this title.

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 16 - VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES

GENERAL PROVISIONS

-HEAD-

Sec. 706. Definitions

-STATUTE-

For the purposes of this chapter:

(1) The term "construction" means the construction of new buildings, the acquisition, expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of such buildings, and the term "cost of construction" includes architects' fees and acquisition of land in connection with construction but does not include the cost of offsite improvements.

(2) The term "criminal act" means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government, which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication or otherwise the person engaging in the act, omission, or possession was legally incapable of committing a crime.

(3)(A) The term "designated State agency" means an agency designated under section 721(a)(1)(A) of this title.

(B) The term "designated State unit" means (i) any State agency unit required under section 721(a)(2)(A) of this title, or (ii) in cases in which no such unit is so required, the State agency described in section 721(a)(1)(B)(i) of this title.

(4)(A) The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 801 et seq.). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(5) The term "employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market (including satisfying the vocational outcome of supported employment) or satisfying any other vocational outcome the Secretary may determine, consistent with this chapter.

(6) The term "establishment of a community rehabilitation program" includes the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to community rehabilitation program purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may determine, in accordance with regulations the Secretary shall prescribe, in order to prevent impairment of the objectives of, or duplication of, other Federal laws providing Federal assistance in the construction of facilities for community rehabilitation programs), and may include such additional equipment and staffing as the Commissioner considers appropriate.

(7)(A) Subject to subparagraphs (B) and (C), the term "Federal share" means 78.7 percent.

(B) The term "Federal share" means 90 percent for the purposes of part C of subchapter I of this chapter and as specifically set forth in section 731(a)(3) of this title, except that with respect to payments pursuant to part B of subchapter I of this chapter to any State which are used to meet the costs of construction of those rehabilitation facilities identified in section 723(b)(2) of this title in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 731(a)(3) of this title applicable with respect to the State.

(C) For the purpose of determining the non-Federal share with respect to a State, expenditures by a political subdivision thereof or by a local agency shall be regarded as expenditures by such State, subject to such limitations and conditions as the Secretary shall by regulation prescribe.

(8)(A) Except as otherwise provided in subparagraph (B), the term "individual with a disability" means any individual who (i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and (ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to subchapter I, III, VI, or VIII of this chapter.

(B) Subject to subparagraphs (C), (D), (E), and (F), the term "individual with a disability" means, for purposes of sections 701, 713, and 714 of this title, and subchapters II, IV, V, and VII of this chapter, any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(C)(i) For purposes of subchapter V of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

(ii) Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who -

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under subchapters I, II and III of this chapter, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

(v) For purposes of sections 793 and 794 of this title as such sections relate to employment, the term "individual with a disability" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(D) For the purpose of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(E) For the purposes of sections 791, 793 and 794 of this title -

(i) for purposes of the application of subparagraph (B) to such sections, the term "impairment" does not include homosexuality or bisexuality; and

(ii) therefore the term "individual with a disability" does not include an individual on the basis of homosexuality or bisexuality.

(F) For the purposes of sections 791, 793, and 794 of this title, the term "individual with a disability" does not include an individual on the basis of -

(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) compulsive gambling, kleptomania, or pyromania; or

(iii) psychoactive substance use disorders resulting from current illegal use of drugs.

(9) The term "local agency" means an agency of a unit of general local government or of an Indian tribe (or combination of such units or tribes) which has an agreement with the State agency designated pursuant to section 721(a)(1) of this title to conduct a vocational rehabilitation program under the supervision of such

State agency in accordance with the State plan approved under section 721 of this title. Nothing in the preceding sentence of this paragraph or in section 721 of this title shall be construed to prevent the local agency from utilizing another local public or nonprofit agency to provide vocational rehabilitation services: Provided, That such an arrangement is made part of the agreement specified in this paragraph.

(10) The term "nonprofit", when used with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of title 26.

(11) The term "personal assistance services" means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(12) The term "public safety officer" means a person serving the United States or a State or unit of general local government, with or without compensation, in any activity pertaining to -

(A) the enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces,

(B) a correctional program, facility, or institution where the activity is potentially dangerous because of contact with

criminal suspects, defendants, prisoners, probationers, or parolees,

(C) a court having criminal or juvenile delinquent jurisdiction where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees, or

(D) firefighting, fire prevention, or emergency rescue missions.

(13) The term "rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(14) The term "Secretary", except when the context otherwise requires, means the Secretary of Education.

(15)(A) Except as provided in subparagraph (B) or (C), the term "individual with a severe disability" means an individual with a disability -

(i) who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended

period of time; and

(iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs described in subparagraphs (A) and (C) of paragraph (22) to cause comparable substantial functional limitation.

(B) For purposes of subchapter VII of this chapter, the term "individual with a severe disability" means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively.

(C) For purposes of section 712 of this title and subchapter II of this chapter, the term "individual with a severe disability" includes an individual described in subparagraph (A) or (B).

(16) The term "State" includes, in addition to each of the

several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

(17) The term "vocational rehabilitation services" means those services identified in section 723 of this title which are provided to individuals with disabilities under this chapter.

(18)(A) The term "supported employment" means competitive work in integrated work settings for individuals with the most severe disabilities -

(i)(I) for whom competitive employment has not traditionally occurred; or

(II) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(ii) who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension, described in paragraph (34)(C) and extended services after the transition described in paragraph (27)(C) in order to perform such work.

(B) Such term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness.

(19) The term "public or nonprofit", with respect to an agency or organization, includes an Indian tribe.

(20) The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe.

(21) The term "Indian tribe" means any Federal or State Indian

tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(22) The term "assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case -

(A)(i) a review of existing data -

(I) to determine whether an individual is eligible for vocational rehabilitation services; and

(II) to assign the priority described in section 721(a)(5)(A) of this title in the States that use an order of selection pursuant to section 721(a)(5)(A) of this title; and

(ii) to the extent additional data is necessary to make such determination and assignment, a preliminary assessment of such data (including the provision of goods and services during such assessment);

(B) to the extent additional data is necessary, a comprehensive assessment (including the administration of the assessment) of the unique strengths, resources, priorities, interests, and needs, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services to be included in the individualized written rehabilitation program of the individual, which comprehensive assessment -

(i) is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the

rehabilitation program of the individual;

(ii) uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements -

(I) existing information; and

(II) such information as can be provided by the individual and, where appropriate, by the family of the individual;

(iii) may include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; and

(iv) may include an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(C)(i) referral;

(ii) where appropriate, the provision of rehabilitation technology services to an individual with a disability to assess

and develop the capacities of the individual to perform in a work environment; and

(iii)(I) the provision of vocational rehabilitation services to an individual for a total period not in excess of 18 months for the limited purpose of making determinations regarding whether an individual is eligible for vocational rehabilitation services and regarding the nature and scope of vocational rehabilitation services needed for such individual; and

(II) an assessment at least once in every 90-day period during which such services are provided, of the results of the provision of such services to an individual to ascertain whether any of the determinations described in subclause (I) may be made.

(23) The term "assistive technology device" has the meaning given such term in section 2202(2) of this title, except that the reference in such section to the term "individuals with disabilities" shall be deemed to mean more than one individual with a disability as defined in paragraph (8)(A).

(24) The term "assistive technology service" has the meaning given such term in section 2202(3) of this title, except that the reference in such section -

(A) to the term "individual with a disability" shall be deemed to mean an individual with a disability, as defined in paragraph (8)(A); and

(B) to the term "individuals with disabilities" shall be deemed to mean more than one such individual.

(25) The term "community rehabilitation program" means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with

disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement -

(A) medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(B) testing, fitting, or training in the use of prosthetic and orthotic devices;

(C) recreational therapy;

(D) physical and occupational therapy;

(E) speech, language, and hearing therapy;

(F) psychiatric, psychological, and social services, including positive behavior management;

(G) assessment for determining eligibility and vocational rehabilitation needs;

(H) rehabilitation technology;

(I) job development, placement, and retention services;

(J) evaluation or control of specific disabilities;

(K) orientation and mobility services for individuals who are blind;

(L) extended employment;

(M) psychosocial rehabilitation services;

(N) supported employment services and extended services;

(O) services to family members when necessary to the vocational rehabilitation of the individual;

(P) personal assistance services; or

(Q) services similar to the services described in one of subparagraphs (A) through (P).

(26) The term "disability" means -

(A) except as otherwise provided in subparagraph (B), a physical or mental impairment that constitutes or results in a substantial impediment to employment; or

(B) for purposes of sections 701, 713, and 714 of this title, and subchapters II, IV, V, and VII of this chapter, a physical or mental impairment that substantially limits one or more major life activities.

(27) The term "extended services" means ongoing support services and other appropriate services, needed to support and maintain an individual with the most severe disability in supported employment, that -

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining integrated, competitive employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and

(C) are provided by a State agency, a nonprofit private organization, employer, or any other appropriate resource, after an individual has made the transition from support provided by the designated State unit.

(28)(A) The term "impartial hearing officer" means an individual -

(i) who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(ii) who is not a member of the State Rehabilitation Advisory Council described in section 725 of this title;

(iii) who has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or client;

(iv) who has knowledge of the delivery of vocational rehabilitation services, the State plan under section 721 of this title, and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties; and

(v) who has no personal or financial interest that would be in conflict with the objectivity of the individual.

(B) An individual shall not be considered to be an employee of a public agency for purposes of subparagraph (A)(i) solely because the individual is paid by the agency to serve as a hearing officer.

(29) The term "independent living core services" means -

(A) information and referral services;

(B) independent living skills training;

(C) peer counseling (including cross-disability peer counseling); and

(D) individual and systems advocacy.

(30) The term "independent living services" includes -

(A) independent living core services; and

(B)(i) counseling services, including psychological, psychotherapeutic, and related services;

(ii) services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this chapter and of the subchapters of this chapter, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(iii) rehabilitation technology;

(iv) mobility training;

(v) services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(vi) personal assistance services, including attendant care and the training of personnel providing such services;

(vii) surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(viii) consumer information programs on rehabilitation and independent living services available under this chapter, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this chapter;

(ix) education and training necessary for living in a community and participating in community activities;

(x) supported living;

(xi) transportation, including referral and assistance for such transportation;

(xii) physical rehabilitation;

(xiii) therapeutic treatment;

(xiv) provision of needed prostheses and other appliances and devices;

(xv) individual and group social and recreational services;

(xvi) training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment

skills, and explore career options;

(xvii) services for children;

(xviii) services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance, of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(xix) appropriate preventive services to decrease the need of individuals assisted under this chapter for similar services in the future;

(xx) community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and

(xxi) such other services as may be necessary and not inconsistent with the provisions of this chapter.

(31)(A) The term "individuals with disabilities" means more than one individual with a disability.

(B) The term "individuals with severe disabilities" means more than one individual with a severe disability.

(C) The term "individuals with the most severe disabilities" means more than one individual with the most severe disability.

(32) The term "institution of higher education" has the meaning given the term in section 1141(a) of title 20.

(33) The term "ongoing support services" means services -

(A) provided to individuals with the most severe disabilities;

(B) provided, at a minimum, twice monthly -

(i) to make an assessment, regarding the employment situation, at the worksite of each such individual in supported

employment, or, under special circumstances, especially at the request of the client, off site; and

(ii) based on the assessment, to provide for the coordination or provision of specific intensive services, at or away from the worksite, that are needed to maintain employment stability; and

(C) consisting of -

(i) a particularized assessment supplementary to the comprehensive assessment described in paragraph (22)(B);

(ii) the provision of skilled job trainers who accompany the individual for intensive job skill training at the work site; (FOOTNOTE 1)

(FOOTNOTE 1) So in original. Probably should be "worksite;".

(iii) job development and placement;

(iv) social skills training;

(v) regular observation or supervision of the individual;

(vi) followup services such as regular contact with the employers, the individuals, the parents, family members, guardians, advocates, or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(vii) facilitation of natural supports at the worksite;

(viii) any other service identified in section 723 of this title; or

(ix) a service similar to another service described in this subparagraph.

(34) The term "supported employment services" means ongoing

support services and other appropriate services needed to support and maintain an individual with the most severe disability in supported employment, that -

(A) are provided singly or in combination and are organized and made available in such a way to assist an eligible individual in entering or maintaining integrated, competitive employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and

(C) are provided by the designated State unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized written rehabilitation program.

(35) The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

-SOURCE-

(Pub. L. 93-112, Sec. 7, Sept. 26, 1973, 87 Stat. 359; Pub. L. 93-516, title I, Sec. 111(a), Dec. 7, 1974, 88 Stat. 1619; Pub. L. 93-651, title I, Sec. 111(a), Nov. 21, 1974, 89 Stat. 2-5; Pub. L. 95-602, title I, Sec. 122(a)(4)-(8), Nov. 6, 1978, 92 Stat. 2984, 2985; Pub. L. 98-221, title I, Sec. 101, Feb. 22, 1984, 98 Stat. 17; Pub. L. 99-506, title I, Sec. 103(a), (b), (c)(1), (d)(1), (2)(A), (C), (e)-(h)(1), (i), (j), title X, Sec. 1001(a)(3), 1002(a), Oct. 21, 1986, 100 Stat. 1809-1811, 1841, 1844; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-259, Sec. 9, Mar. 22, 1988, 102 Stat. 31; Pub. L. 100-630, title II, Sec. 201(c), Nov. 7, 1988, 102 Stat. 3303; Pub. L. 101-336, title V, Sec. 512, July 26, 1990, 104 Stat. 376; Pub. L. 102-569, title I, Sec. 102(a)-(n), (p)(3), Oct. 29, 1992, 106 Stat. 4347-4350, 4356; Pub. L. 103-73, title I, Sec. 102(1), 103, Aug. 11, 1993, 107 Stat. 718; Pub. L. 103-218, title IV, Sec. 404, Mar. 9, 1994, 108 Stat. 97.)

-REFTEXT-

REFERENCES IN TEXT

Section 721(a)(B)(i) of this title, referred to in par. (3), was in the original "section 101(a)(B)(i) of this Act". As enacted the citation omitted a paragraph designation but is probably a reference to section 721(a)(1)(B)(i) of this title.

The Controlled Substances Act, referred to in par. (4)(B), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (Sec. 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set

out under section 801 of Title 21 and Tables.

For Oct. 1, 1994, as the date the Compact of Free Association with Palau takes effect, referred to in par. (16), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

The Alaska Native Claims Settlement Act, referred to in par. (21), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (Sec. 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

-COD-

CODIFICATION

For history of Pub. L. 93-651, which enacted amendments identical to Pub. L. 93-516, see note set out under section 701 of this title.

-MISC3-

PRIOR PROVISIONS

Prior similar provisions were contained in former sections 41, 41a, 42-1, and 42a of this title.

AMENDMENTS

1994 - Par. (23). Pub. L. 103-218, Sec. 404(a), substituted "2202(2)" for "2202(1)".

Par. (24). Pub. L. 103-218, Sec. 404(b), substituted "2202(3)" for "2202(2)".

1993 - Par. (3). Pub. L. 103-73, Sec. 102(1), made technical correction to Pub. L. 102-569, Sec. 102(a). See 1992 Amendment note below.

Pub. L. 103-73, Sec. 103(1), designated second sentence of subpar. (A) as subpar. (B), and in cl. (ii) substituted "section 721(a)(1)(B)(i)" for "section 721(a)(B)(i)".

Par. (8)(A). Pub. L. 103-73, Sec. 103(2)(A), substituted "subchapter I, III, VI, or VIII" for "subchapters I, II, III, VI, and VIII".

Par. (8)(B). Pub. L. 103-73, Sec. 103(2)(B), substituted "subchapters II, IV, V, and VII" for "subchapters IV and V".

Subsec. (15)(A). Pub. L. 103-73, Sec. 103(3), which directed amendment of introductory provisions by inserting a comma after "subparagraph (C)", was executed by making the insertion after "subparagraph (B) or (C)", to reflect the probable intent of Congress.

Par. (18)(A)(ii). Pub. L. 103-73, Sec. 103(4), substituted "employment services for the period, and any extension, described in paragraph (34)(C) and extended services after the transition described in paragraph (27)(C)" for "employment services or extended services".

Par. (26)(B). Pub. L. 103-73, Sec. 103(5), substituted "II, IV, V, and VII" for "II, III, IV, V, and VIII".

1992 - Par. (3). Pub. L. 102-569, Sec. 102(a), as amended by Pub. L. 103-73, Sec. 102(1), substituted "(3)(A) The term 'designated State agency' means an agency designated under section 721(a)(1)(A) of this title." for "(3)" and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively.

Par. (4). Pub. L. 102-569, Sec. 102(d)(4), (5), redesignated par. (22) as (4) and inserted it after par. (3). Former par. (4) redesignated (6).

Pub. L. 102-569, Sec. 102(b), substituted "community rehabilitation program" for "rehabilitation facility" in two places, "includes the acquisition" for "means the acquisition", and "facilities for community rehabilitation programs)" for "such facilities)".

Par. (5). Pub. L. 102-569, Sec. 102(d)(1), (2), redesignated par. (6) as (5) and struck out former par. (5) which defined "evaluation of rehabilitation potential".

Par. (6). Pub. L. 102-569, Sec. 102(d)(2), (3), redesignated par. (4) as (6) and inserted it before par. (7). Former par. (6) redesignated (5).

Pub. L. 102-569, Sec. 102(c), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The term 'employability', with respect to an individual, means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, and when appropriate, part-time employment, consistent with the capacities or abilities of the individual in the competitive labor market or any other vocational outcome the Secretary may determine consistent with this chapter."

Par. (7). Pub. L. 102-569, Sec. 102(e), substituted "78.7 percent" for "80 percent" in subpar. (A), redesignated subpar. (C) as (B) and substituted "section 731(a)(3)" for "section 771(b)(3)" in two places, struck out former subpar. (B) which read as follows: "For any fiscal year for which payments to a State under section 731(a) of this title exceed such payments for fiscal year 1988, the Federal share for those payments in excess of the fiscal year 1988 amount shall be 79 percent for fiscal year 1989,

78 percent for fiscal year 1990, 77 percent for fiscal year 1991, 76 percent for fiscal year 1992, and 75 percent for fiscal year 1993.", and redesignated subpar. (D) as (C).

Par. (8)(A). Pub. L. 102-569, Sec. 102(f)(1), in introductory provisions, substituted "a disability" for "handicaps", in cl. (i), substituted "impairment" for "disability" and "impediment" for "handicap", and in cl. (ii), substituted "can benefit" for "can reasonably be expected to benefit", "an employment outcome" for "employability", and "subchapters I, II, III, VI, and VIII" for "subchapters I and III".

Par. (8)(B). Pub. L. 102-569, Sec. 102(f)(2), substituted "(C), (D), (E), and (F)" for "(C) and (D)" and "a disability" for "handicaps", and inserted references to sections 701, 713, and 714 of this title.

Par. (8)(C). Pub. L. 102-569, Sec. 102(f)(3), in cls. (i) and (ii), substituted "a disability" for "handicaps", in cl. (iv), substituted "student who is an individual with a disability and" for "handicapped student" and "students who are not individuals with disabilities" for "nonhandicapped students", and in cl. (v), substituted "a disability" for "handicaps".

Par. (8)(E), (F). Pub. L. 102-569, Sec. 102(f)(4), added subpars. (E) and (F).

Par. (10). Pub. L. 102-569, Sec. 102(g), substituted "with respect to a community rehabilitation program, means a community rehabilitation program carried out by" for "with respect to a rehabilitation facility, means a rehabilitation facility owned and operated by".

Pars. (11), (12). Pub. L. 102-569, Sec. 102(h)(2), (3), added

par. (11) and redesignated former pars. (11) and (12) as (12) and (13), respectively.

Par. (13). Pub. L. 102-569, Sec. 102(h)(1), (2), (i), (p)(3)(A), redesignated par. (12) as (13), substituted "rehabilitation technology" for "rehabilitation engineering" and "disabilities" for "handicaps", inserted at end "The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.", and struck out former par. (13) which defined "rehabilitation facility".

Par. (15)(A). Pub. L. 102-569, Sec. 102(j)(1), (p)(3)(B), in introductory provisions, substituted "subparagraph (B) or (C)" for "subparagraph (B)", "a severe disability" for "severe handicaps", and "a disability" for "handicaps (as defined in paragraph (8))", in cl. (i), substituted "impairment" for "disability" and "an employment outcome" for "employability", and in cl. (iii), substituted "assessment for determining eligibility and vocational rehabilitation needs described in subparagraphs (A) and (C) of paragraph (22)" for "evaluation of rehabilitation potential".

Par. (15)(B), (C). Pub. L. 102-569, Sec. 102(j)(2), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: "For purposes of subchapter VII of this chapter the term 'individual with severe handicaps' means an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or

community or engaging or continuing in employment."

Par. (16). Pub. L. 102-569, Sec. 102(k), amended par. (16) generally. Prior to amendment, par. (16) read as follows: "The term 'State' includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands, and for the purposes of American Samoa and the Trust Territory of the Pacific Islands, the appropriate State agency designated as provided in section 721(a)(1) of this title shall be the Governor of American Samoa or the High Commissioner of the Trust Territory of the Pacific Islands, as the case may be."

Par. (17). Pub. L. 102-569, Sec. 102(p)(3)(C), substituted "disabilities" for "handicaps".

Par. (18). Pub. L. 102-569, Sec. 102(l), amended par. (18) generally. Prior to amendment, par. (18) read as follows: "The term 'supported employment' means competitive work in integrated work settings -

"(A) for individuals with severe handicaps for whom competitive employment has not traditionally occurred, or

"(B) for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and

who, because of their handicap, need on-going support services to perform such work. Such term includes transitional employment for individuals with chronic mental illness. For the purpose of this chapter, supported employment as defined in this paragraph may be considered an acceptable outcome for employability."

Par. (19). Pub. L. 102-569, Sec. 102(m), amended par. (19) generally. Prior to amendment, par. (19) read as follows: "The

term 'public or nonprofit agency or organization' shall include an Indian tribe."

Pars. (22) to (35). Pub. L. 102-569, Sec. 102(n), added pars. (22) to (35). Former par. (22) redesignated (4).

1990 - Par. (8)(B). Pub. L. 101-336, Sec. 512(c), substituted "Subject to subparagraphs (C) and (D)" for "Subject to the second sentence of this subparagraph" in first sentence and struck out at end "For purposes of sections 793 and 794 of this title as such sections relate to employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others."

Par. (8)(C), (D). Pub. L. 101-336, Sec. 512(a), added subpar. (C) and redesignated former subpar. (C) as (D).

Par. (22). Pub. L. 101-336, Sec. 512(b), added par. (22).

1988 - Par. (2). Pub. L. 100-630, Sec. 201(c)(1), inserted comma after "local government".

Par. (5)(B). Pub. L. 100-630, Sec. 201(c)(2), inserted comma after "employability".

Par. (5)(C). Pub. L. 100-630, Sec. 201(c)(3), substituted "skills" for "skill".

Par. (5)(G)(i). Pub. L. 100-630, Sec. 201(c)(4), substituted "neither" for "neither such individual".

Par. (8)(C). Pub. L. 100-259 added subpar. (C).

Par. (13)(B). Pub. L. 100-630, Sec. 201(c)(5), reenacted cl. (B). See 1986 Amendment note below.

Par. (13)(F). Pub. L. 100-630, Sec. 201(c)(6), amended cl. (F) generally, inserting a comma after "psychological". See 1986 Amendment note below.

Par. (13)(L). Pub. L. 100-630, Sec. 201(c)(7), which directed the substitution of "provision" for "provisions", could not be executed because the word "provisions" did not appear.

Par. (15)(A). Pub. L. 100-630, Sec. 201(c)(8), struck out ", for purposes of this chapter" before "the term" in introductory provisions.

1986 - Par. (3). Pub. L. 99-506, Sec. 1002(a)(1), substituted "designated State unit" for "designated State units".

Par. (4). Pub. L. 99-506, Sec. 1001(a)(3), substituted "the Secretary shall prescribe" for "he shall prescribe".

Par. (5)(B). Pub. L. 99-506, Sec. 103(a)(1), (2), inserted "recreational," after "cultural, social," and "employability" after "an evaluation of the individual's".

Par. (5)(G). Pub. L. 99-506, Sec. 103(d)(2)(A), substituted "an individual with handicaps" for "a handicapped individual" in two places.

Par. (5)(H). Pub. L. 99-506, Sec. 103(a)(3)-(5), added subpar. (H).

Par. (6). Pub. L. 99-506, Sec. 103(b), added par. (6) and redesignated former par. (6) as (7).

Par. (7). Pub. L. 99-506, Sec. 103(c)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "The term 'Federal share' means 80 per centum, except that it shall mean 90 per centum for the purposes of part C of subchapter I of this chapter and as specifically set forth in section 771(b)(3) of this

title: Provided, That with respect to payments pursuant to part B of subchapter I of this chapter to any State which are used to meet the costs of construction of those rehabilitation facilities identified in section 723(b)(2) of this title in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 771(b)(3) of this title applicable with respect to that State and that, for the purpose of determining the non-Federal share with respect to any State, expenditures by a political subdivision thereof or by a local agency shall, subject to such limitations and conditions as the Secretary shall by regulation prescribe, be regarded as expenditures by such State."

Pub. L. 99-506, Sec. 103(b), redesignated former par. (6) as (7). Former par. (7) redesignated (8).

Par. (8). Pub. L. 99-506, Sec. 103(b), (d)(1), redesignated former par. (7) as (8) and substituted "individual with handicaps" for "handicapped individual" in subpars. (A) and (B). Former par. (8) redesignated (9).

Par. (9). Pub. L. 99-506, Sec. 103(b), (e), redesignated former par. (8) as (9) and substituted "Indian tribe (or combination of such units or tribes)" for "Indian tribal organization (or combination of such units or organizations)". Former par. (9) redesignated (10).

Par. (10). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99-506, Sec. 103(b), redesignated former par. (9) as (10). Former par. (10) redesignated (11).

Par. (11). Pub. L. 99-506, Sec. 103(b), redesignated former par. (10) as (11). Former par. (11) redesignated (13).

Par. (12). Pub. L. 99-506, Sec. 103(f), added par. (12). Former par. (12) redesignated (14).

Par. (13). Pub. L. 99-506, Sec. 1002(a)(2), which provided for the reenactment of cl. (B) of par. (11), and the amendment of cl. (F) of par. (11) by inserting "psychiatric," before "psychological", to correct amendment made by section 122(a)(7)(B) of Pub. L. 95-602 (see 1978 Amendment note below), was executed to cls. (B) and (F) of par. (13) to reflect the probable intent of Congress and the intervening redesignation of par. (11) as par. (13) by section 103(f) of Pub. L. 99-506. See note below.

Pub. L. 99-506, Sec. 103(d)(2)(C), (f), (g), redesignated former par. (11) as (13) and substituted "individuals with handicaps" for "handicapped individuals" in three places and added cl. (M). Former par. (13) redesignated (15).

Par. (14). Pub. L. 99-506, Sec. 103(f), redesignated former par. (12) as (14). Former par. (14) redesignated (16).

Par. (15). Pub. L. 99-506, Sec. 103(f), (h)(1), redesignated former par. (13) as (15) and amended it generally, substituting definition of term "individual with severe handicaps" for definition of term "severe handicap". Former par. (15) redesignated (17).

Par. (16). Pub. L. 99-506, Sec. 103(i)(1), redesignated former par. (14) as (16).

Par. (17). Pub. L. 99-506, Sec. 103(d)(2)(C), (i)(1), redesignated former par. (15) as (17) and substituted "individuals with handicaps" for "handicapped individuals".

Pars. (18) to (21). Pub. L. 99-506, Sec. 103(i)(2), (j), added pars. (18) to (21).

1984 - Par. (12). Pub. L. 98-221 substituted "Secretary of Education" for "Secretary of Health, Education, and Welfare".

1978 - Par. (3). Pub. L. 95-602, Sec. 122(a)(8), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 95-602, Sec. 122(a)(4), (8), redesignated former par. (3) as (4) and substituted "and may include such additional equipment and staffing as the Commissioner considers appropriate" for "and the initial equipment for such buildings, and may include the initial staffing thereof". Former par. (4) redesignated (5).

Par. (5). Pub. L. 95-602, Sec. 122(a)(5), (8), redesignated former par. (4) as (5) and inserted in subpar. (B), "psychiatric" after "medical". Former par. (5) redesignated (6).

Par. (6). Pub. L. 95-602, Sec. 122(a)(8), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Par. (7). Pub. L. 95-602, Sec. 122(a)(6), (8), redesignated former par. (6) as (7), substituted "(A) Except as otherwise provided in subparagraph (B), the term" for "The term", redesignated cls. (A) and (B) as cls. (i) and (ii), respectively, struck out provision defining "handicapped individual" for purposes of subchapters IV and V of this chapter as any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment, and added subpar. (B). Former par. (7) redesignated (8).

Pars. (8) to (10). Pub. L. 95-602, Sec. 122(a)(8), redesignated

former pars. (7) to (9) as (8) to (10), respectively.

Par. (11). Pub. L. 95-602, Sec. 122(a)(7), (8), redesignated former par. (10) as (11) and inserted in cl. (A), ", psychiatric" after "medical" and in cl. (F), "psychiatric" before "psychological". Notwithstanding directory language that amendment be made to cl. (B) of par. (11), amendment was executed to cl. (F) of par. (11) to reflect the probable intent of Congress. Former par. (11) redesignated (12).

Pars. (12) to (15). Pub. L. 95-602, Sec. 122(a)(8), redesignated former pars. (11) to (14) as (12) to (15), respectively.

1974 - Par. (6). Pub. L. 93-516 expanded definition of handicapped individual to include for the purposes of subchapters IV and V of this chapter any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such as impairment, or is regarded as having such an impairment.

Pub. L. 93-651 made identical amendment as made by Pub. L. 93-516.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 103(c)(1) of Pub. L. 99-506 provided that the amendment made by that section is effective Oct. 1, 1988.

EXCLUSION FROM COVERAGE

Amendment by Pub. L. 100-259 not to be construed to extend application of this chapter to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100-259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

Amendment by Pub. L. 100-259 not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100-259, set out as a note under section 1688 of Title 20, Education.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 722, 725, 794, 795, 795g, 796b, 796d, 796f-4, 796k, 797a, 1503, 1583, 2211 of this title; title 42 sections 1769h, 5061, 6862, 12511.

-CITE-

26 USC Sec. 147 01/26/98

-EXPCITE-

CHAPTER 20 - MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

SUBCHAPTER I - FARM LABOR CONTRACTORS

-HEAD-

Sec. 1813. Registration determinations

-STATUTE-

(a) Grounds for refusal to issue or renew, suspension, or revocation of certificate

In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration

(including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder -

(1) has knowingly made any misrepresentation in the application for such certificate;

(2) is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify under this section for a certificate;

(3) has failed to comply with this chapter or any regulation under this chapter;

(4) has failed -

(A) to pay any court judgment obtained by the Secretary or any other person under this chapter or any regulation under this chapter or under the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2041 et seq.) or any regulation under such Act, or

(B) to comply with any final order issued by the Secretary as a result of a violation of this chapter or any regulation under this chapter or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act;

(5) has been convicted within the preceding five years -

(A) of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(B) of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny,

burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally; or

(6) has been found to have violated paragraph (1) or (2) of section 1324a(a) of title 8.

(b) Administrative review procedures applicable

(1) The person who is refused the issuance or renewal of a certificate or whose certificate is suspended or revoked under subsection (a) of this section shall be afforded an opportunity for agency hearing, upon request made within thirty days after the date of issuance of the notice of the refusal, suspension, or revocation. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5. If no hearing is requested as herein provided, the refusal, suspension, or revocation shall constitute a final and unappealable order.

(2) If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within thirty days after the decision of the administrative law judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (c) of this section.

(c) Judicial review procedures applicable

Any person against whom an order has been entered after an agency hearing under this section may obtain review by the United States

district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the order was based. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5. Any final decision, order, or judgment of such District Court concerning such review shall be subject to appeal as provided in chapter 83 of title 28.

-SOURCE-

(Pub. L. 97-470, title I, Sec. 103, Jan. 14, 1983, 96 Stat. 2588; Pub. L. 99-603, title I, Sec. 101(b)(1)(B), Nov. 6, 1986, 100 Stat. 3372.)

-REFTEXT-

REFERENCES IN TEXT

The Farm Labor Contractor Registration Act of 1963, referred to in subsec. (a)(4), is Pub. L. 88-582, Sept. 7, 1964, 78 Stat. 920, as amended, which was classified generally to chapter 52 (Sec. 2041 et seq.) of Title 7, Agriculture, and was repealed by Pub. L. 97-470, title V, Sec. 523, Jan. 14, 1983, 96 Stat. 2600. See section 1801 et seq. of this title.

-MISC2-

AMENDMENTS

1986 - Subsec. (a)(6). Pub. L. 99-603 added par. (6).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-603 applicable to employment,

recruitment, referral, or utilization of services of an individual occurring on or after first day of seventh month beginning after Nov. 6, 1986, see section 101(b)(2) of Pub. L. 99-603, as amended, set out as a note under section 1802 of this title.

-CITE-

29 USC Sec. 706 01/26/98

-EXPCITE-

TITLE 31 - MONEY AND FINANCE

SUBTITLE IV - MONEY

CHAPTER 53 - MONETARY TRANSACTIONS

SUBCHAPTER II - RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

-HEAD-

Sec. 5312. Definitions and application

-STATUTE-

(a) In this subchapter -

(1) ''financial agency'' means a person acting for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee,

or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(2) ''financial institution'' means -

(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(B) a commercial bank or trust company;

(C) a private banker;

(D) an agency or branch of a foreign bank in the United States;

(E) an insured institution (as defined in section 401(a) (FOOTNOTE 1) of the National Housing Act (12 U.S.C. 1724(a)));

(FOOTNOTE 1) See References in Text note below.

(F) a thrift institution;

(G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(H) a broker or dealer in securities or commodities;

(I) an investment banker or investment company;

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

(L) an operator of a credit card system;

(M) an insurance company;

(N) a dealer in precious metals, stones, or jewels;

(O) a pawnbroker;

(P) a loan or finance company;

(Q) a travel agency;

(R) a licensed sender of money;

(S) a telegraph company;

(T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;

(U) persons involved in real estate closings and settlements;

(V) the United States Postal Service;

(W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph;

(X) a casino, gambling casino, or ***gaming*** establishment with an annual ***gaming*** revenue of more than $1,000,000 which -

(i) is licensed as a casino, gambling casino, or ***gaming*** establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian ***gaming*** operation conducted under or pursuant to the Indian ***Gaming*** Regulatory Act other than an operation which is limited to class I ***gaming*** (as defined in section 4(6) of such Act);

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(3) ''monetary instruments'' means -

(A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and

currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material; and

(C) as the Secretary of the Treasury shall provide by regulation for purposes of section 5316, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

(4) ''person'', in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

(5) ''United States'' means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

(b) In this subchapter -

(1) ''domestic financial agency'' and ''domestic financial institution'' apply to an action in the United States of a financial agency or institution.

(2) ''foreign financial agency'' and ''foreign financial institution'' apply to an action outside the United States of a financial agency or institution.

-SOURCE-

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 995; Pub. L. 99-570, title I, Sec. 1362, Oct. 27, 1986, 100 Stat. 3207-33; Pub. L.

100-690, title VI, Sec. 6185(a), (g)(1), Nov. 18, 1988, 102 Stat. 4354, 4357; Pub. L. 103-325, title IV, Sec. 405, 409, Sept. 23, 1994, 108 Stat. 2247, 2252.)

-MISC1-

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5312(a)(1)	31:1052(a), (b), (g), (i).	Oct. 26, 1970, Pub. L. 91-508, Sec. 203(a)-(i), (l), 84 Stat. 1118.
5312(a)(2)	31:1052(e).	
5312(a)(3)	31:1052(l).	
5312(a)(4)	31:1052(c).	
5312(a)(5)	31:1052(d).	
5312(b)	31:1052(f), (h).	

In subsection (a)(1), the text of 31:1052(a) is omitted as unnecessary. The text of 31:1052(b) is omitted because of the restatement. The text of 31:1052(i) is omitted as unnecessary because the source provision is restated where necessary in the revised subchapter.

In subsection (a)(2), (3), (4), and (5), the words ''the Secretary . . . prescribes'' are substituted for ''specified by the Secretary by regulation'', ''as the Secretary may by regulation specify'', ''specified by the Secretary'', and ''the Secretary

shall by regulation specify'' for consistency.

In subsection (a)(2) and (3), the words ''for the purposes of the provision of this chapter to which the regulation relates'' are omitted as surplus.

In subsection (a)(2), before subclause (A), the words ''any person which does business in any one or more of the following capacities'' are omitted as surplus. In subclause (F), the words ''savings bank, building and loan association, credit union, industrial bank, or other'' are omitted as surplus. In subclause (T), the words ''agency of the United States Government or of a State or local government'' are substituted for ''Federal, State, or local government institution'' for consistency. In subclause (U), the words ''type of'' are omitted as surplus. The word ''agency'' is substituted for ''institution'' for consistency.

In subsection (a)(3)(B)-(5), the word ''prescribe'' is substituted for ''specify'' for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(3)(B), the words ''in addition'', and ''and such types of'' are omitted as surplus. The words ''similar material'' are substituted for ''the equivalent thereof'' for clarity.

In subsection (a)(4), the words ''in addition to its meaning under section 1 of title 1'' are substituted for ''natural persons, partnerships, . . . associations, corporations, and all entities cognizable as legal personalities'' for consistency because 1:1 is applicable to all laws unless otherwise provided. The words ''a trustee, a representative of an estate'' are substituted for ''trusts, estates'', and the word ''entity'' is substituted for

''department or agency'', for consistency. The words ''either for the purpose of this chapter generally or any particular requirement thereunder'' are omitted as surplus.

In subsection (a)(5), the words ''used in a geographic sense'' are omitted because of the restatement. The words ''either for the purposes of this chapter generally or any particular requirement thereunder'' are omitted as surplus. The words ''territory or'' are added for consistency.

Subsection (b) is substituted for 31:1052(f) and (h) to eliminate unnecessary words and for consistency.

-REFTEXT-

REFERENCES IN TEXT

Section 401 of the National Housing Act, referred to in subsec. (a)(2)(E), which was classified to section 1724 of Title 12, Banks and Banking, was repealed by Pub. L. 101-73, title IV, Sec. 407, Aug. 9, 1989, 103 Stat. 363.

The Securities Exchange Act of 1934, referred to in subsec. (a)(2)(G), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (Sec. 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Indian ***Gaming*** Regulatory Act, referred to in subsec. (a)(2)(X)(ii), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (Sec. 2701 et seq.) of Title 25, Indians. Section 4(6) of the Act is classified to section 2703(6) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

-MISC2-

AMENDMENTS

1994 - Subsec. (a)(2)(X) to (Z). Pub. L. 103-325, Sec. 409, added subpar. (X) and redesignated former subpars. (X) and (Y) as (Y) and (Z), respectively.

Subsec. (a)(3)(C). Pub. L. 103-325, Sec. 405, added subpar. (C).

1988 - Subsec. (a)(2)(T) to (Y). Pub. L. 100-690, Sec. 6185(a), added subpars. (T) to (Y) and struck out former subpars. (T) and (U) which read as follows:

''(T) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this clause (2), including the United States Postal Service; or

''(U) another business or agency carrying out a similar, related, or substitute duty or power the Secretary of the Treasury prescribes.''

Subsec. (a)(5). Pub. L. 100-690, Sec. 6185(g)(1), inserted a comma after ''Puerto Rico'' and struck out second comma after ''Pacific Islands''.

1986 - Subsec. (a)(2)(T). Pub. L. 99-570, Sec. 1362(a), which directed that the Postal Service be included within United States agencies by amending subsec. (a)(2)(U) of this section by inserting before the semicolon at the end thereof the following '', including the United States Postal Service'', was executed to subsec. (a)(2)(T) of this section as the probable intent of Congress, because subsec. (a)(2)(U) does not contain a semicolon and subsec. (a)(2)(T) relates to United States agencies.

Subsec. (a)(5). Pub. L. 99-570, Sec. 1362(b), inserted ''the

Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands,'' after ''Puerto Rico''.

-TRANS-

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 46 - JUSTICE SYSTEM IMPROVEMENT

SUBCHAPTER XII-K - FAMILY SUPPORT

-HEAD-

Sec. 3796jj-2. Uses of funds

-STATUTE-

(a) In general

A State or local law enforcement agency or organization that receives a grant under this subchapter (FOOTNOTE 1) shall use amounts provided under the grant to establish or improve training and support programs for law enforcement personnel.

(FOOTNOTE 1) See References in Text note below.

(b) Required activities

A law enforcement agency or organization that receives funds

under this subchapter shall provide at least one of the following services:

(1) Counseling for law enforcement family members.

(2) Child care on a 24-hour basis.

(3) Marital and adolescent support groups.

(4) Stress reduction programs.

(5) Stress education for law enforcement recruits and families.

(6) Technical assistance and training programs to support any or all of the services described in paragraphs (1), (2), (3), (4), and (5).

(c) Optional activities

A law enforcement agency or organization that receives funds under this subchapter may provide the following services:

(1) Post-shooting debriefing for officers and their spouses.

(2) Group therapy.

(3) Hypertension clinics.

(4) Critical incident response on a 24-hour basis.

(5) Law enforcement family crisis telephone services on a 24-hour basis.

(6) Counseling for law enforcement personnel exposed to the human immunodeficiency virus.

(7) Counseling for peers.

(8) Counseling for families of personnel killed in the line of duty.

(9) Seminars regarding alcohol, drug use, gambling, and overeating.

(10) Technical assistance and training to support any or all of the services described in paragraphs (1), (2), (3), (4), (5),

(6), (7), (8), and (9).

-SOURCE-

(Pub. L. 90-351, title I, Sec. 2303, as added Pub. L. 103-322, title XXI, Sec. 210201(a)(3), Sept. 13, 1994, 108 Stat. 2062.)

-REFTEXT-

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this Act", and was translated as reading "this part", meaning part W of title I of Pub. L. 90-351, to reflect the probable intent of Congress.

-CITE-

11 USC Sec. 1104 01/26/98

-EXPCITE-

CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

-HEAD-

Sec. 12211. Definitions

-STATUTE-

(a) Homosexuality and bisexuality

For purposes of the definition of "disability" in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions

Under this chapter, the term "disability" shall not include -

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

-SOURCE-

(Pub. L. 101-336, title V, Sec. 511, July 26, 1990, 104 Stat. 376.)

-CITE-

25 USC Sec. 1747 01/26/98

-EXPCITE-

TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5 - WIRE OR RADIO COMMUNICATION

SUBCHAPTER II - COMMON CARRIERS

Part I - Common Carrier Regulation

-HEAD-

Sec. 228. Regulation of carrier offering of pay-per-call services

-STATUTE-

(a) Purpose

It is the purpose of this section -

(1) to put into effect a system of national regulation and

review that will oversee interstate pay-per-call services; and

(2) to recognize the Commission's authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers of pay-per-call services and to assure that violations of Federal law do not occur.

(b) General authority for regulations

The Commission by regulation shall, within 270 days after October 28, 1992, establish a system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this chapter and other applicable Federal statutes and regulations. The Commission's final rules shall -

(1) include measures that provide a consumer of pay-per-call services with adequate and clear descriptions of the rights of the caller;

(2) define the obligations of common carriers with respect to the provision of pay-per-call services;

(3) include requirements on such carriers to protect against abusive practices by providers of pay-per-call services;

(4) identify procedures by which common carriers and providers of pay-per-call services may take affirmative steps to protect against nonpayment of legitimate charges; and

(5) require that any service described in subparagraphs (A) and (B) of subsection (i)(1) of this section be offered only through the use of certain telephone number prefixes and area codes.

(c) Common carrier obligations

Within 270 days after October 28, 1992, the Commission shall, by

regulation, establish the following requirements for common carriers:

(1) Contractual obligations to comply

Any common carrier assigning to a provider of pay-per-call services a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section shall require by contract or tariff that such provider comply with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5711 et seq.; 5721 et seq.) and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

(2) Information availability

A common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of a pay-per-call service shall make readily available on request to Federal and State agencies and other interested persons -

(A) a list of the telephone numbers for each of the pay-per-call services it carries;

(B) a short description of each such service;

(C) a statement of the total cost or the cost per minute and any other fees for each such service;

(D) a statement of the pay-per-call service's name, business address, and business telephone; and

(E) such other information as the Commission considers necessary for the enforcement of this section and other applicable Federal statutes and regulations.

(3) Compliance procedures

A common carrier that by contract or tariff assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of pay-per-call services shall terminate, in accordance with procedures specified in such regulations, the offering of a pay-per-call service of a provider if the carrier knows or reasonably should know that such service is not provided in compliance with title II or III of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5711 et seq.; 5721 et seq.) or the regulations prescribed by the Federal Trade Commission pursuant to such titles.

(4) Subscriber disconnection prohibited

A common carrier shall not disconnect or interrupt a subscriber's local exchange telephone service or long distance telephone service because of nonpayment of charges for any pay-per-call service.

(5) Blocking and presubscription

A common carrier that provides local exchange service shall -

(A) offer telephone subscribers (where technically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services, which option -

(i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the regulations under subsection (b) of this section, and (II) to any subscriber who subscribes to a new telephone number until 60 days after the time the new telephone number is effective; and

(ii) shall otherwise be offered at a reasonable fee; and

(B) offer telephone subscribers (where the Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge.

The regulations prescribed under subparagraph (A)(i) of this paragraph may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long-distance ratepayers. Nothing in this subsection precludes a common carrier from filing its rates and regulations regarding blocking and presubscription in its interstate tariffs.

(6) Verification of charitable status

A common carrier that assigns by contract or tariff a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain from such provider proof of the tax exempt status of any person or organization for which contributions are solicited.

(7) Billing for 800 calls

A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in -

(A) the calling party being assessed, by virtue of completing the call, a charge for the call;

(B) the calling party being connected to a pay-per-call service;

(C) the calling party being charged for information conveyed during the call unless -

(i) the calling party has a written agreement (including an agreement transmitted through electronic medium) that meets the requirements of paragraph (8); or

(ii) the calling party is charged for the information in accordance with paragraph (9);

(D) the calling party being called back collect for the provision of audio information services or simultaneous voice conversation services; or

(E) the calling party being assessed, by virtue of being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call.

(8) Subscription agreements for billing for information provided via toll-free calls

(A) In general

For purposes of paragraph (7)(C)(i), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes -

(i) the rate at which charges are assessed for the information;

(ii) the information provider's name;

(iii) the information provider's business address;

(iv) the information provider's regular business telephone number;

(v) the information provider's agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information; and

(vi) the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card.

(B) Billing arrangements

If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill -

(i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

(ii) the phone bill shall include, in prominent type, the following disclaimer:

"Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services."; and

(iii) the phone bill shall clearly list the 800 number dialed.

(C) Use of PINs to prevent unauthorized use

A written agreement does not meet the requirements of this paragraph unless it -

(i) includes a unique personal identification number or other subscriber-specific identifier and requires a subscriber to use this number or identifier to obtain access to the information provided and includes instructions on its use; and

(ii) assures that any charges for services accessed by use

of the subscriber's personal identification number or subscriber-specific identifier be assessed to subscriber's source of payment elected pursuant to subparagraph (A)(vi).

(D) Exceptions

Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required -

(i) for calls utilizing telecommunications devices for the deaf;

(ii) for directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

(iii) for any purchase of goods or of services that are not information services.

(E) Termination of service

On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall -

(i) promptly investigate the complaint; and

(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

(F) Treatment of remedies

The remedies provided in this paragraph are in addition to any other remedies that are available under subchapter V of this chapter.

(9) Charges by credit, prepaid, debit, charge, or calling card in

absence of agreement

For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph unless the calling party is charged by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory disclosure message that -

(A) clearly states that there is a charge for the call;

(B) clearly states the service's total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

(C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

(D) asks the caller for the card number;

(E) clearly states that charges for the call begin at the end of the introductory message; and

(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

(10) Bypass of introductory disclosure message

The requirements of paragraph (9) shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message: Provided, That information providers shall disable such a bypass mechanism after the institution of any price increase and for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

(11) "Calling card" defined

As used in this subsection, the term "calling card" means an

identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.

(d) Billing and collection practices

The regulations required by this section shall require that any common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of a pay-per-call service and that offers billing and collection services to such provider -

(1) ensure that a subscriber is not billed -

(A) for pay-per-call services that such carrier knows or reasonably should know was provided in violation of the regulations issued pursuant to title II of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5711 et seq.); or

(B) under such other circumstances as the Commission determines necessary in order to protect subscribers from abusive practices;

(2) establish a local or a toll-free telephone number to answer questions and provide information on subscribers' rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by the common carrier;

(3) within 60 days after the issuance of final regulations pursuant to subsection (b) of this section, provide, either directly or through contract with any local exchange carrier that

provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that sets forth all rights and obligations of the subscriber and the carrier with respect to the use and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option; and

(4) in any billing to telephone subscribers that includes charges for any pay-per-call service -

(A) display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges;

(B) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call; and

(C) identify the toll-free number established pursuant to paragraph (2).

(e) Liability

(1) Common carriers not liable for transmission or billing

No common carrier shall be liable for a criminal or civil sanction or penalty solely because the carrier provided transmission or billing and collection for a pay-per-call service unless the carrier knew or reasonably should have known that such service was provided in violation of a provision of, or regulation prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5711 et seq.; 5721 et seq.) or any other Federal law. This paragraph

shall not prevent the Commission from imposing a sanction or penalty on a common carrier for a violation by that carrier of a regulation prescribed under this section.

(2) Civil liability

No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate to terminate any pay-per-call service in order to comply with the regulations prescribed under this section, title II or III of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5711 et seq.; 5721 et seq.), or any other Federal law unless the complainant demonstrates that the carrier or affiliate did not act in good faith.

(f) Special provisions

(1) Consumer refund requirements

The regulations required by subsection (d) of this section shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5711 et seq.; 5721 et seq.), to ensure that carriers and other parties providing billing and collection services with respect to pay-per-call services provide appropriate refunds to subscribers who have been billed for pay-per-call services pursuant to programs that have been found to have violated this section or such regulations, any provision of, or regulations prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law.

(2) Recovery of costs

The regulations prescribed by the Commission under this section shall permit a common carrier to recover its cost of complying with such regulations from providers of pay-per-call services, but shall not permit such costs to be recovered from local or long distance ratepayers.

(3) Recommendations on data pay-per-call

The Commission, within one year after October 28, 1992, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to persons that provide, for a per-call charge, data services that are not pay-per-call services.

(g) Effect on other law

(1) No preemption of election law

Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election statutes and regulations.

(2) Consumer protection laws

Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with any Federal, State, or local statute or regulation relating to consumer protection or unfair trade.

(3) Gambling laws

Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

(4) State authority

Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes.

(5) Enforcement of existing regulations

Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to October 28, 1992, in fulfilling the requirements of this section to the extent that such regulations are consistent with the provisions of this section.

(h) Effect on dial-a-porn prohibitions

Nothing in this section shall affect the provisions of section 223 of this title.

(i) "Pay-per-call services" defined

For purposes of this section -

(1) The term "pay-per-call services" means any service -

(A) in which any person provides or purports to provide -

(i) audio information or audio entertainment produced or packaged by such person;

(ii) access to simultaneous voice conversation services; or

(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section.

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

-SOURCE-

(June 19, 1934, ch. 652, title II, Sec. 228, as added Pub. L. 102-556, title I, Sec. 101, Oct. 28, 1992, 106 Stat. 4182; amended Pub. L. 103-414, title III, Sec. 303(a)(13), (14), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 104-104, title VII, Sec. 701(a)(1), (b)(2), Feb. 8, 1996, 110 Stat. 145, 148.)

-REFTEXT-

REFERENCES IN TEXT

The Telephone Disclosure and Dispute Resolution Act, referred to in subsecs. (c)(1), (3), (d)(1)(A), (e), and (f)(1), is Pub. L. 102-556, Oct. 28, 1992, 106 Stat. 4181. Titles II and III of the Act are classified generally to subchapters I (Sec. 5711 et seq.) and II (Sec. 5721 et seq.), respectively, of chapter 83 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 5701(a) of Title 15 and Tables.

-MISC2-

AMENDMENTS

1996 - Subsec. (c)(7)(C). Pub. L. 104-104, Sec. 701(a)(1)(A), added subpar. (C) and struck out former subpar. (C) which read as follows: "the calling party being charged for information conveyed

during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; or".

Subsec. (c)(7)(E). Pub. L. 104-104, Sec. 701(a)(1)(B), added subpar. (E).

Subsec. (c)(8) to (11). Pub. L. 104-104, Sec. 701(a)(1)(C), added pars. (8) to (11).

Subsec. (i)(2). Pub. L. 104-104, Sec. 701(b)(2), struck out "or any service the charge for which is tariffed," after "local exchange carrier or its affiliate,".

1994 - Subsec. (c)(2) to (7). Pub. L. 103-414, Sec. 303(a)(13), redesignated par. (2), relating to compliance procedures, as (3) and pars. (3) to (6) as (4) to (7), respectively.

Subsec. (c)(7)(D). Pub. L. 103-414, Sec. 303(a)(14), which directed substitution of "conversation" for "conservation" in par. (6)(D), was executed by making the substitution in par. (7)(D) to reflect the probable intent of Congress and the redesignation of par. (6) as (7) by Pub. L. 103-414, Sec. 303(a)(13). See above.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 701(a)(3) of Pub. L. 104-104 provided that: "The amendments made by paragraph (1) (amending this section) shall take effect on the date of enactment of this Act (Feb. 8, 1996)."

REGULATIONS

Section 701(a)(2) of Pub. L. 104-104 provided that: "The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) (amending this section) not later than 180 days after the date of enactment of this Act (Feb. 8, 1996)."

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 5714.

-CITE-

49 USC Sec. 41311 01/26/98

-EXPCITE-

TITLE 49 - TRANSPORTATION

SUBTITLE VII - AVIATION PROGRAMS

PART A - AIR COMMERCE AND SAFETY

subpart ii - economic regulation

CHAPTER 413 - FOREIGN AIR TRANSPORTATION

-HEAD-

Sec. 41311. Gambling restrictions

-STATUTE-

(a) In General. - An air carrier or foreign air carrier may not install, transport, or operate, or permit the use of, any gambling device on board an aircraft in foreign air transportation.

(b) Definition. - In this section, the term "gambling device" means any machine or mechanical device (including gambling applications on electronic interactive video systems installed on board aircraft for passenger use) -

(1) which when operated may deliver, as the result of the application of an element of chance, any money or property; or

(2) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property.

-SOURCE-

(Added Pub. L. 103-305, title II, Sec. 205(a)(1), Aug. 23, 1994, 108 Stat. 1583.)

-MISC1-

STUDY OF GAMBLING ON COMMERCIAL AIRCRAFT

Section 205(b) of Pub. L. 103-305 provided that: "Not later than 1 year after the date of the enactment of this Act (Aug. 23, 1994), the Secretary shall complete a study of -

"(1) the aviation safety effects of gambling applications on electronic interactive video systems installed on board aircraft for passenger use, including an evaluation of the effect of such systems on the navigational and other electronic equipment of the aircraft, on the passengers and crew of the aircraft, and on issues relating to the method of payment;

"(2) the competitive implications of permitting foreign air carriers only, but not United States air carriers, to install, transport, and operate gambling applications on electronic interactive video systems on board aircraft in the foreign commerce of the United States on flights over international waters, or in fifth freedom city-pair markets; and

"(3) whether gambling should be allowed on international flights, including proposed legislation to effectuate any recommended changes in existing law.

The Secretary shall, within 5 days after the completion of the study, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation (now Committee on Transportation and Infrastructure) of the House of Representatives on the results of the study."

-CITE-

7 USC Sec. 12a 01/26/98

-EXPCITE-

-MISC1-

Sec.
41301. Requirement for a permit.

41302. Permits of foreign air carriers.

41303. Transfers of permits.

41304. Effective periods and amendments, modifications, suspensions, and revocations of permits.

41305. Applications for permits.

41306. Simplified procedure to apply for, amend, modify, and suspend permits.

41307. Presidential review of actions about foreign air transportation.

41308. Exemption from the antitrust laws.

41309. Cooperative agreements and requests.

41310. Discriminatory practices.

41311. Gambling restrictions.

41312. Ending or suspending foreign air transportation.

41313. Plans to address needs of families of passengers involved in foreign air carrier accidents.

AMENDMENTS

1997 - Pub. L. 105-148, Sec. 1(b), Dec. 16, 1997, 111 Stat. 2683,

added item 41313.

1994 - Pub. L. 103-429, Sec. 6(51)(B), Oct. 31, 1994, 108 Stat. 4385, added item 41312.

Pub. L. 103-305, title II, Sec. 205(a)(2), Aug. 23, 1994, 108 Stat. 1583, added item 41311.

-SECREF-

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 40109, 46301 of this title; title 39 section 5402.