

104TH CONGRESS
2^D SESSION

H. R. 3286

To help families defray adoption costs, and to promote the adoption of
minority children.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 1996

Ms. MOLINARI (for herself, Mr. ARCHER, Mr. BUNNING of Kentucky, Ms. PRYCE, Mr. SOLOMON, Mr. TIAHRT, and Mr. SHAW) introduced the following bill; which was referred to the Committee on Ways and Means for a period ending not later than May 3, 1996, and in addition to the Committees on Resources and Economic and Educational Opportunities for a period ending not later than April 30, 1996, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To help families defray adoption costs, and to promote the
adoption of minority children.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Adoption Promotion
5 and Stability Act of 1996”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—CREDIT FOR ADOPTION EXPENSES

- Sec. 101. Credit for adoption expenses.

TITLE II—INTERETHNIC ADOPTION

- Sec. 201. Removal of barriers to interethnic adoption.

TITLE III—CHILD CUSTODY PROCEEDINGS AFFECTED BY THE INDIAN CHILD WELFARE ACT OF 1978

- Sec. 301. Inapplicability of the Indian Child Welfare Act of 1978 to child custody proceedings involving a child whose parents do not maintain affiliation with their Indian tribe.
- Sec. 302. Membership and child custody proceedings.
- Sec. 303. Effective date.

TITLE IV—REVENUE OFFSETS

- Sec. 400. Amendment of 1986 Code.

Subtitle A—Exclusion for Energy Conservation Subsidies Limited to Subsidies With Respect to Dwelling Units

- Sec. 401. Exclusion for energy conservation subsidies limited to subsidies with respect to dwelling units.

Subtitle B—Foreign Trust Tax Compliance

- Sec. 411. Improved information reporting on foreign trusts.
- Sec. 412. Modifications of rules relating to foreign trusts having one or more United States beneficiaries.
- Sec. 413. Foreign persons not to be treated as owners under grantor trust rules.
- Sec. 414. Information reporting regarding foreign gifts.
- Sec. 415. Modification of rules relating to foreign trusts which are not grantor trusts.
- Sec. 416. Residence of estates and trusts, etc.

1 **TITLE I—CREDIT FOR ADOPTION**
 2 **EXPENSES**

3 **SEC. 101. CREDIT FOR ADOPTION EXPENSES.**

4 (a) IN GENERAL.—Subpart A of part IV of sub-
 5 chapter A of chapter 1 of the Internal Revenue Code of
 6 1986 (relating to nonrefundable personal credits) is
 7 amended by inserting after section 22 the following new
 8 section:

1 **“SEC. 23. ADOPTION EXPENSES.**

2 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
3 dividual, there shall be allowed as a credit against the tax
4 imposed by this chapter for the taxable year the amount
5 of the qualified adoption expenses paid or incurred by the
6 taxpayer during such taxable year.

7 “(b) LIMITATIONS.—

8 “(1) DOLLAR LIMITATION.—The aggregate
9 amount of qualified adoption expenses which may be
10 taken into account under subsection (a) with respect
11 to the adoption of a child shall not exceed \$5,000.

12 “(2) INCOME LIMITATION.—The amount allow-
13 able as a credit under subsection (a) for any taxable
14 year shall be reduced (but not below zero) by an
15 amount which bears the same ratio to the amount
16 so allowable (determined without regard to this
17 paragraph but with regard to paragraph (1)) as—

18 “(A) the amount (if any) by which the tax-
19 payer’s adjusted gross income (determined
20 without regard to sections 911, 931, and 933)
21 exceeds \$75,000, bears to

22 “(B) \$40,000.

23 “(3) DENIAL OF DOUBLE BENEFIT.—

24 “(A) IN GENERAL.—No credit shall be al-
25 lowed under subsection (a) for any expense for

1 which a deduction or credit is allowable under
2 any other provision of this chapter.

3 “(B) GRANTS.—No credit shall be allowed
4 under subsection (a) for any expense to the ex-
5 tent that funds for such expense are received
6 under any Federal, State, or local program.
7 The preceding sentence shall not apply to ex-
8 penses for the adoption of a child with special
9 needs.

10 “(C) REIMBURSEMENT.—No credit shall
11 be allowed under subsection (a) for any expense
12 to the extent that such expense is reimbursed
13 and the reimbursement is excluded from gross
14 income under section 137.

15 “(c) CARRYFORWARDS OF UNUSED CREDIT.—If the
16 credit allowable under subsection (a) for any taxable year
17 exceeds the limitation imposed by section 26(a) for such
18 taxable year reduced by the sum of the credits allowable
19 under this subpart (other than this section), such excess
20 shall be carried to the succeeding taxable year and added
21 to the credit allowable under subsection (a) for such tax-
22 able year. No credit may be carried forward under this
23 subsection to any taxable year following the fifth taxable
24 year after the taxable year in which the credit arose. For

1 purposes of the preceding sentence, credits shall be treated
2 as used on a first-in first-out basis.

3 “(d) DEFINITIONS.—For purposes of this section—

4 “(1) QUALIFIED ADOPTION EXPENSES.—The
5 term ‘qualified adoption expenses’ means reasonable
6 and necessary adoption fees, court costs, attorney
7 fees, and other expenses—

8 “(A) which are directly related to, and the
9 principal purpose of which is for, the legal
10 adoption of an eligible child by the taxpayer,
11 and

12 “(B) which are not incurred in violation of
13 State or Federal law or in carrying out any sur-
14rogate parenting arrangement.

15 Such term shall include expenses for a foreign adop-
16tion only if the child is actually adopted.

17 “(2) EXPENSES FOR ADOPTION OF SPOUSE’S
18 CHILD NOT ELIGIBLE.—The term ‘qualified adoption
19 expenses’ shall not include any expenses in connec-
20tion with the adoption by an individual of a child
21 who is the child of such individual’s spouse.

22 “(3) ELIGIBLE CHILD.—The term ‘eligible
23 child’ means any individual—

24 “(A) who has not attained age 18 as of the
25 time of the adoption, or

1 “(B) who is physically or mentally incapa-
2 ble of caring for himself.

3 “(4) CHILD WITH SPECIAL NEEDS.—The term
4 ‘child with special needs’ means any child if—

5 “(A) a State has determined that the child
6 cannot or should not be returned to the home
7 of his parents, and

8 “(B) such State has determined that there
9 exists with respect to the child a specific factor
10 or condition (such as his ethnic background,
11 age, or membership in a minority or sibling
12 group, or the presence of factors such as medi-
13 cal conditions or physical, mental, or emotional
14 handicaps) because of which it is reasonable to
15 conclude that such child cannot be placed with
16 adoptive parents without providing adoption as-
17 sistance.

18 “(e) MARRIED COUPLES MUST FILE JOINT RE-
19 TURNS.—Rules similar to the rules of paragraphs (2), (3),
20 and (4) of section 21(e) shall apply for purposes of this
21 section.”.

22 (b) EXCLUSION OF AMOUNTS RECEIVED UNDER EM-
23 PLOYER’S ADOPTION ASSISTANCE PROGRAMS.—Part III
24 of subchapter B of chapter 1 of such Code (relating to
25 items specifically excluded from gross income) is amended

1 by redesignating section 137 as section 138 and by insert-
2 ing after section 136 the following new section:

3 **“SEC. 137. ADOPTION ASSISTANCE PROGRAMS.**

4 “(a) IN GENERAL.—Gross income of an employee
5 does not include amounts paid or expenses incurred by the
6 employer for qualified adoption expenses in connection
7 with the adoption of a child by an employee if such
8 amounts are furnished pursuant to an adoption assistance
9 program.

10 “(b) LIMITATIONS.—

11 “(1) DOLLAR LIMITATION.—The aggregate
12 amount excludable from gross income under sub-
13 section (a) for all taxable years with respect to the
14 adoption of any single child by the taxpayer shall
15 not exceed \$5,000.

16 “(2) INCOME LIMITATION.—The amount ex-
17 cludable from gross income under subsection (a) for
18 any taxable year shall be reduced (but not below
19 zero) by an amount which bears the same ratio to
20 the amount so excludable (determined without re-
21 gard to this paragraph but with regard to paragraph
22 (1)) as—

23 “(A) the amount (if any) by which the tax-
24 payer’s adjusted gross income (determined

1 without regard to this section and sections 911,
2 931, and 933) exceeds \$75,000, bears to

3 “(B) \$40,000.

4 “(c) ADOPTION ASSISTANCE PROGRAM.—For pur-
5 poses of this section, an adoption assistance program is
6 a plan of an employer—

7 “(1) under which the employer provides employ-
8 ees with adoption assistance, and

9 “(2) which meets requirements similar to the
10 requirements of paragraphs (2), (3), and (5) of sec-
11 tion 127(b).

12 An adoption reimbursement program operated under sec-
13 tion 1052 of title 10, United States Code (relating to
14 armed forces) or section 514 of title 14, United States
15 Code (relating to members of the Coast Guard) shall be
16 treated as an adoption assistance program for purposes
17 of this section.

18 “(d) QUALIFIED ADOPTION EXPENSES.—For pur-
19 poses of this section, the term ‘qualified adoption ex-
20 penses’ has the meaning given such term by section
21 23(d).”.

22 (c) CONFORMING AMENDMENTS.—

23 (1) The table of sections for subpart A of part
24 IV of subchapter A of chapter 1 of such Code is

1 amended by inserting after the item relating to sec-
2 tion 22 the following new item:

“Sec. 23. Adoption expenses.”.

3 (2) The table of sections for part III of sub-
4 chapter B of chapter 1 of such Code is amended by
5 striking the item relating to section 137 and insert-
6 ing the following:

“Sec. 137. Adoption assistance programs.

“Sec. 138. Cross reference to other Acts.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 1996.

10 **TITLE II—INTERETHNIC** 11 **ADOPTION**

12 **SEC. 201. REMOVAL OF BARRIERS TO INTERETHNIC ADOP-** 13 **TION.**

14 (a) STATE PLAN REQUIREMENTS.—Section 471(a)
15 of the Social Security Act (42 U.S.C 671(a)) is amend-
16 ed—

17 (1) by striking “and” at the end of paragraph
18 (16);

19 (2) by striking the period at the end of para-
20 graph (17) and inserting “; and”; and

21 (3) by adding at the end the following:

22 “(18) not later than January 1, 1997, provides
23 that neither the State nor any other entity in the

1 State that receives funds from the Federal Govern-
2 ment and is involved in adoption or foster care
3 placements may—

4 “(A) deny to any person the opportunity to
5 become an adoptive or a foster parent, on the
6 basis of the race, color, or national origin of the
7 person, or of the child, involved; or

8 “(B) delay or deny the placement of a
9 child for adoption or into foster care, or other-
10 wise discriminate in making a placement deci-
11 sion, on the basis of the race, color, or national
12 origin of the adoptive or foster parent, or the
13 child, involved.”.

14 (b) ENFORCEMENT.—Section 474 of such Act (42
15 U.S.C. 674) is amended by adding at the end the follow-
16 ing:

17 “(d)(1) If a State’s program operated under this part
18 is found, as a result of a review conducted under section
19 1123, to have violated section 471(a)(18) during a quarter
20 with respect to any person, then, notwithstanding sub-
21 section (a) of this section and any regulations promulgated
22 under section 1123(b)(3), the Secretary shall reduce the
23 amount otherwise payable to the State under this part,
24 for the quarter and for each subsequent quarter before
25 the 1st quarter for which the State program is found, as

1 a result of such a review, not to have violated section
2 471(a)(18) with respect to any person, by—

3 “(A) 2 percent of such otherwise payable
4 amount, in the case of the 1st such finding with re-
5 spect to the State;

6 “(B) 5 percent of such otherwise payable
7 amount, in the case of the 2nd such finding with re-
8 spect to the State; or

9 “(C) 10 percent of such otherwise payable
10 amount, in the case of the 3rd or subsequent such
11 finding with respect to the State.

12 “(2) Any other entity which is in a State that receives
13 funds under this part and which violates section
14 471(a)(18) during a quarter with respect to any person
15 shall remit to the Secretary all funds that were paid by
16 the State to the entity during the quarter from such funds.

17 “(3)(A) Any individual who is aggrieved by a viola-
18 tion of section 471(a)(18) by a State or other entity may
19 bring an action seeking relief from the State or other en-
20 tity in any United States district court.

21 “(B) An action under this paragraph may not be
22 brought more than 2 years after the date the alleged viola-
23 tion occurred.

24 “(4) This subsection shall not be construed to affect
25 the application of the Indian Child Welfare Act of 1978.”.

1 (c) CIVIL RIGHTS.—

2 (1) PROHIBITED CONDUCT.—A person or gov-
3 ernment that is involved in adoption or foster care
4 placements may not—

5 (A) deny to any individual the opportunity
6 to become an adoptive or a foster parent, on the
7 basis of the race, color, or national origin of the
8 individual, or of the child, involved; or

9 (B) delay or deny the placement of a child
10 for adoption or into foster care, or otherwise
11 discriminate in making a placement decision, on
12 the basis of the race, color, or national origin
13 of the adoptive or foster parent, or the child, in-
14 volved.

15 (2) ENFORCEMENT.—Noncompliance with para-
16 graph (1) is deemed a violation of title VI of the
17 Civil Rights Act of 1964.

18 (3) NO EFFECT ON THE INDIAN CHILD WEL-
19 FARE ACT OF 1978.—This subsection shall not be
20 construed to affect the application of the Indian
21 Child Welfare Act of 1978.

22 (d) CONFORMING REPEAL.—Section 553 of the How-
23 ard M. Metzenbaum Multiethnic Placement Act of 1994
24 (42 U.S.C. 5115a) is repealed.

1 **TITLE III—CHILD CUSTODY PRO-**
2 **CEEDINGS AFFECTED BY THE**
3 **INDIAN CHILD WELFARE ACT**
4 **OF 1978**

5 **SEC. 301. INAPPLICABILITY OF THE INDIAN CHILD WEL-**
6 **FARE ACT OF 1978 TO CHILD CUSTODY PRO-**
7 **CEEDINGS INVOLVING A CHILD WHOSE PAR-**
8 **ENTS DO NOT MAINTAIN AFFILIATION WITH**
9 **THEIR INDIAN TRIBE.**

10 Title I of the Indian Child Welfare Act (25 U.S.C.
11 1911 et seq.) is amended by adding at the end the follow-
12 ing:

13 “SEC. 114. (a) This title does not apply to any child
14 custody proceeding involving a child who does not reside
15 or is not domiciled within a reservation unless—

16 “(1) at least one of the child’s biological par-
17 ents is of Indian descent; and

18 “(2) at least one of the child’s biological par-
19 ents maintains significant social, cultural, or politi-
20 cal affiliation with the Indian tribe of which either
21 parent is a member.

22 “(b) The factual determination as to whether a bio-
23 logical parent maintains significant social, cultural, or po-
24 litical affiliation with the Indian tribe of which either par-

1 ent is a member shall be based on such affiliation as of
2 the time of the child custody proceeding.

3 “(c) The determination that this title does not apply
4 pursuant to subsection (a) is final, and, thereafter, this
5 title shall not be the basis for determining jurisdiction over
6 any child custody proceeding involving the child.”.

7 **SEC. 302. MEMBERSHIP AND CHILD CUSTODY PROCEED-**
8 **INGS.**

9 Title I of the Indian Child Welfare Act (25 U.S.C.
10 1911 et seq.), as amended by section 301 of this title, is
11 further amended by adding at the end the following:

12 “SEC. 115. (a) A person who attains the age of 18
13 years before becoming a member of an Indian tribe may
14 become a member of an Indian tribe only upon the per-
15 son’s written consent.

16 “(b) For the purposes of any child custody proceeding
17 involving an Indian child, membership in an Indian tribe
18 shall be effective from the actual date of admission to
19 membership in the Indian tribe and shall not be given ret-
20 roactive effect.”.

21 **SEC. 303. EFFECTIVE DATE.**

22 The amendments made by this title shall take effect
23 on the date of the enactment of this Act and shall apply
24 with respect to any child custody proceeding in which a
25 final decree has not been entered as of such date.

1 **TITLE IV—REVENUE OFFSETS**

2 **SEC. 400. AMENDMENT OF 1986 CODE.**

3 Except as otherwise expressly provided, whenever in
4 this title an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Internal Revenue Code
8 of 1986.

9 **Subtitle A—Exclusion for Energy**
10 **Conservation Subsidies Limited**
11 **to Subsidies With Respect to**
12 **Dwelling Units**

13 **SEC. 401. EXCLUSION FOR ENERGY CONSERVATION SUB-**
14 **SIDIES LIMITED TO SUBSIDIES WITH RE-**
15 **SPECT TO DWELLING UNITS.**

16 (a) IN GENERAL.—Paragraph (1) of section 136(c)
17 (defining energy conservation measure) is amended by
18 striking “energy demand—” and all that follows and in-
19 serting “energy demand with respect to a dwelling unit.”

20 (b) CONFORMING AMENDMENTS.—

21 (1) Subsection (a) of section 136 is amended to
22 read as follows:

23 “(a) EXCLUSION.—Gross income shall not include
24 the value of any subsidy provided (directly or indirectly)

1 by a public utility to a customer for the purchase or instal-
2 lation of any energy conservation measure.”

3 (2) Paragraph (2) of section 136(c) is amend-
4 ed—

5 (A) by striking subparagraph (A) and by
6 redesignating subparagraphs (B) and (C) as
7 subparagraphs (A) and (B), respectively, and

8 (B) by striking “AND SPECIAL RULES” in
9 the paragraph heading.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to amounts received after Decem-
12 ber 31, 1996, unless received pursuant to a written bind-
13 ing contract in effect on September 13, 1995, and at all
14 times thereafter.

15 **Subtitle B—Foreign Trust Tax** 16 **Compliance**

17 **SEC. 411. IMPROVED INFORMATION REPORTING ON FOR-**
18 **EIGN TRUSTS.**

19 (a) IN GENERAL.—Section 6048 (relating to returns
20 as to certain foreign trusts) is amended to read as follows:

21 **“SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN**
22 **FOREIGN TRUSTS.**

23 **“(a) NOTICE OF CERTAIN EVENTS.—**

24 **“(1) GENERAL RULE.—On or before the 90th**
25 **day (or such later day as the Secretary may pre-**

1 scribe) after any reportable event, the responsible
2 party shall provide written notice of such event to
3 the Secretary in accordance with paragraph (2).

4 “(2) CONTENTS OF NOTICE.—The notice re-
5 quired by paragraph (1) shall contain such informa-
6 tion as the Secretary may prescribe, including—

7 “(A) the amount of money or other prop-
8 erty (if any) transferred to the trust in connec-
9 tion with the reportable event, and

10 “(B) the identity of the trust and of each
11 trustee and beneficiary (or class of bene-
12 ficiaries) of the trust.

13 “(3) REPORTABLE EVENT.—For purposes of
14 this subsection—

15 “(A) IN GENERAL.—The term ‘reportable
16 event’ means—

17 “(i) the creation of any foreign trust
18 by a United States person,

19 “(ii) the transfer of any money or
20 property (directly or indirectly) to a for-
21 eign trust by a United States person, in-
22 cluding a transfer by reason of death, and

23 “(iii) the death of a citizen or resident
24 of the United States if—

1 “(I) the decedent was treated as
2 the owner of any portion of a foreign
3 trust under the rules of subpart E of
4 part I of subchapter J of chapter 1,
5 or

6 “(II) any portion of a foreign
7 trust was included in the gross estate
8 of the decedent.

9 “(B) EXCEPTIONS.—

10 “(i) FAIR MARKET VALUE SALES.—
11 Subparagraph (A)(ii) shall not apply to
12 any transfer of property to a trust in ex-
13 change for consideration of at least the fair
14 market value of the transferred property.
15 For purposes of the preceding sentence,
16 consideration other than cash shall be
17 taken into account at its fair market value
18 and the rules of section 679(a)(3) shall
19 apply.

20 “(ii) DEFERRED COMPENSATION AND
21 CHARITABLE TRUSTS.—Subparagraph (A)
22 shall not apply with respect to a trust
23 which is—

24 “(I) described in section 402(b),
25 404(a)(4), or 404A, or

1 “(II) determined by the Sec-
2 retary to be described in section
3 501(c)(3).

4 “(4) RESPONSIBLE PARTY.—For purposes of
5 this subsection, the term ‘responsible party’
6 means—

7 “(A) the grantor in the case of the cre-
8 ation of an inter vivos trust,

9 “(B) the transferor in the case of a report-
10 able event described in paragraph (3)(A)(ii)
11 other than a transfer by reason of death, and

12 “(C) the executor of the decedent’s estate
13 in any other case.

14 “(b) UNITED STATES GRANTOR OF FOREIGN
15 TRUST.—

16 “(1) IN GENERAL.—If, at any time during any
17 taxable year of a United States person, such person
18 is treated as the owner of any portion of a foreign
19 trust under the rules of subpart E of part I of sub-
20 chapter J of chapter 1, such person shall be respon-
21 sible to ensure that—

22 “(A) such trust makes a return for such
23 year which sets forth a full and complete ac-
24 counting of all trust activities and operations
25 for the year, the name of the United States

1 agent for such trust, and such other informa-
2 tion as the Secretary may prescribe, and

3 “(B) such trust furnishes such information
4 as the Secretary may prescribe to each United
5 States person (i) who is treated as the owner of
6 any portion of such trust or (ii) who receives
7 (directly or indirectly) any distribution from the
8 trust.

9 “(2) TRUSTS NOT HAVING UNITED STATES
10 AGENT.—

11 “(A) IN GENERAL.—If the rules of this
12 paragraph apply to any foreign trust, the deter-
13 mination of amounts required to be taken into
14 account with respect to such trust by a United
15 States person under the rules of subpart E of
16 part I of subchapter J of chapter 1 shall be de-
17 termined by the Secretary.

18 “(B) UNITED STATES AGENT REQUIRED.—
19 The rules of this paragraph shall apply to any
20 foreign trust to which paragraph (1) applies un-
21 less such trust agrees (in such manner, subject
22 to such conditions, and at such time as the Sec-
23 retary shall prescribe) to authorize a United
24 States person to act as such trust’s limited

1 agent solely for purposes of applying sections
2 7602, 7603, and 7604 with respect to—

3 “(i) any request by the Secretary to
4 examine records or produce testimony re-
5 lated to the proper treatment of amounts
6 required to be taken into account under
7 the rules referred to in subparagraph (A),
8 or

9 “(ii) any summons by the Secretary
10 for such records or testimony.

11 The appearance of persons or production of
12 records by reason of a United States person
13 being such an agent shall not subject such per-
14 sons or records to legal process for any purpose
15 other than determining the correct treatment
16 under this title of the amounts required to be
17 taken into account under the rules referred to
18 in subparagraph (A). A foreign trust which ap-
19 points an agent described in this subparagraph
20 shall not be considered to have an office or a
21 permanent establishment in the United States,
22 or to be engaged in a trade or business in the
23 United States, solely because of the activities of
24 such agent pursuant to this subsection.

1 “(C) OTHER RULES TO APPLY.—Rules
2 similar to the rules of paragraphs (2) and (4)
3 of section 6038A(e) shall apply for purposes of
4 this paragraph.

5 “(c) REPORTING BY UNITED STATES BENEFICIARIES
6 OF FOREIGN TRUSTS.—

7 “(1) IN GENERAL.—If any United States per-
8 son receives (directly or indirectly) during any tax-
9 able year of such person any distribution from a for-
10 eign trust, such person shall make a return with re-
11 spect to such trust for such year which includes—

12 “(A) the name of such trust,

13 “(B) the aggregate amount of the distribu-
14 tions so received from such trust during such
15 taxable year, and

16 “(C) such other information as the Sec-
17 retary may prescribe.

18 “(2) INCLUSION IN INCOME IF RECORDS NOT
19 PROVIDED.—

20 “(A) IN GENERAL.—If adequate records
21 are not provided to the Secretary to determine
22 the proper treatment of any distribution from a
23 foreign trust, such distribution shall be treated
24 as an accumulation distribution includible in
25 the gross income of the distributee under chap-

1 ter 1. To the extent provided in regulations, the
2 preceding sentence shall not apply if the foreign
3 trust elects to be subject to rules similar to the
4 rules of subsection (b)(2)(B).

5 “(B) APPLICATION OF ACCUMULATION
6 DISTRIBUTION RULES.—For purposes of apply-
7 ing section 668 in a case to which subpara-
8 graph (A) applies, the applicable number of
9 years for purposes of section 668(a) shall be $\frac{1}{2}$
10 of the number of years the trust has been in ex-
11 istence.

12 “(d) SPECIAL RULES.—

13 “(1) DETERMINATION OF WHETHER UNITED
14 STATES PERSON RECEIVES DISTRIBUTION.—For
15 purposes of this section, in determining whether a
16 United States person receives a distribution from a
17 foreign trust, the fact that a portion of such trust
18 is treated as owned by another person under the
19 rules of subpart E of part I of subchapter J of chap-
20 ter 1 shall be disregarded.

21 “(2) DOMESTIC TRUSTS WITH FOREIGN ACTIVI-
22 TIES.—To the extent provided in regulations, a trust
23 which is a United States person shall be treated as
24 a foreign trust for purposes of this section and sec-
25 tion 6677 if such trust has substantial activities, or

1 holds substantial property, outside the United
2 States.

3 “(3) TIME AND MANNER OF FILING INFORMA-
4 TION.—Any notice or return required under this sec-
5 tion shall be made at such time and in such manner
6 as the Secretary shall prescribe.

7 “(4) MODIFICATION OF RETURN REQUIRE-
8 MENTS.—The Secretary is authorized to suspend or
9 modify any requirement of this section if the Sec-
10 retary determines that the United States has no sig-
11 nificant tax interest in obtaining the required infor-
12 mation.”.

13 (b) INCREASED PENALTIES.—Section 6677 (relating
14 to failure to file information returns with respect to cer-
15 tain foreign trusts) is amended to read as follows:

16 **“SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT**
17 **TO CERTAIN FOREIGN TRUSTS.**

18 “(a) CIVIL PENALTY.—In addition to any criminal
19 penalty provided by law, if any notice or return required
20 to be filed by section 6048—

21 “(1) is not filed on or before the time provided
22 in such section, or

23 “(2) does not include all the information re-
24 quired pursuant to such section or includes incorrect
25 information,

1 the person required to file such notice or return shall pay
2 a penalty equal to 35 percent of the gross reportable
3 amount. If any failure described in the preceding sentence
4 continues for more than 90 days after the day on which
5 the Secretary mails notice of such failure to the person
6 required to pay such penalty, such person shall pay a pen-
7 alty (in addition to the amount determined under the pre-
8 ceding sentence) of \$10,000 for each 30-day period (or
9 fraction thereof) during which such failure continues after
10 the expiration of such 90-day period. In no event shall the
11 penalty under this subsection with respect to any failure
12 exceed the gross reportable amount.

13 “(b) SPECIAL RULES FOR RETURNS UNDER SEC-
14 TION 6048(b).—In the case of a return required under
15 section 6048(b)—

16 “(1) the United States person referred to in
17 such section shall be liable for the penalty imposed
18 by subsection (a), and

19 “(2) subsection (a) shall be applied by sub-
20 stituting ‘5 percent’ for ‘35 percent’.

21 “(c) GROSS REPORTABLE AMOUNT.—For purposes
22 of subsection (a), the term ‘gross reportable amount’
23 means—

1 “(1) the gross value of the property involved in
2 the event (determined as of the date of the event)
3 in the case of a failure relating to section 6048(a),

4 “(2) the gross value of the portion of the trust’s
5 assets at the close of the year treated as owned by
6 the United States person in the case of a failure re-
7 lating to section 6048(b)(1), and

8 “(3) the gross amount of the distributions in
9 the case of a failure relating to section 6048(c).

10 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
11 shall be imposed by this section on any failure which is
12 shown to be due to reasonable cause and not due to willful
13 neglect. The fact that a foreign jurisdiction would impose
14 a civil or criminal penalty on the taxpayer (or any other
15 person) for disclosing the required information is not rea-
16 sonable cause.

17 “(e) DEFICIENCY PROCEDURES NOT TO APPLY.—
18 Subchapter B of chapter 63 (relating to deficiency proce-
19 dures for income, estate, gift, and certain excise taxes)
20 shall not apply in respect of the assessment or collection
21 of any penalty imposed by subsection (a).”.

22 (c) CONFORMING AMENDMENTS.—

23 (1) Paragraph (2) of section 6724(d) is amend-
24 ed by striking “or” at the end of subparagraph (S),
25 by striking the period at the end of subparagraph

1 (T) and inserting “, or”, and by inserting after sub-
2 paragraph (T) the following new subparagraph:

3 “(U) section 6048(b)(1)(B) (relating to
4 foreign trust reporting requirements).”.

5 (2) The table of sections for subpart B of part
6 III of subchapter A of chapter 61 is amended by
7 striking the item relating to section 6048 and insert-
8 ing the following new item:

“Sec. 6048. Information with respect to certain foreign trusts.”.

9 (3) The table of sections for part I of sub-
10 chapter B of chapter 68 is amended by striking the
11 item relating to section 6677 and inserting the fol-
12 lowing new item:

“Sec. 6677. Failure to file information with respect to certain for-
eign trusts.”.

13 (d) EFFECTIVE DATES.—

14 (1) REPORTABLE EVENTS.—To the extent re-
15 lated to subsection (a) of section 6048 of the Inter-
16 nal Revenue Code of 1986, as amended by this sec-
17 tion, the amendments made by this section shall
18 apply to reportable events (as defined in such section
19 6048) occurring after the date of the enactment of
20 this Act.

21 (2) GRANTOR TRUST REPORTING.—To the ex-
22 tent related to subsection (b) of such section 6048,
23 the amendments made by this section shall apply to

1 taxable years of United States persons beginning
2 after the date of the enactment of this Act.

3 (3) REPORTING BY UNITED STATES BENE-
4 FICIARIES.—To the extent related to subsection (c)
5 of such section 6048, the amendments made by this
6 section shall apply to distributions received after the
7 date of the enactment of this Act.

8 **SEC. 412. MODIFICATIONS OF RULES RELATING TO FOR-**
9 **EIGN TRUSTS HAVING ONE OR MORE UNITED**
10 **STATES BENEFICIARIES.**

11 (a) TREATMENT OF TRUST OBLIGATIONS, ETC.—

12 (1) Paragraph (2) of section 679(a) is amended
13 by striking subparagraph (B) and inserting the fol-
14 lowing:

15 “(B) TRANSFERS AT FAIR MARKET
16 VALUE.—To any transfer of property to a trust
17 in exchange for consideration of at least the fair
18 market value of the transferred property. For
19 purposes of the preceding sentence, consider-
20 ation other than cash shall be taken into ac-
21 count at its fair market value.”.

22 (2) Subsection (a) of section 679 (relating to
23 foreign trusts having one or more United States
24 beneficiaries) is amended by adding at the end the
25 following new paragraph:

1 “(3) CERTAIN OBLIGATIONS NOT TAKEN INTO
2 ACCOUNT UNDER FAIR MARKET VALUE EXCEP-
3 TION.—

4 “(A) IN GENERAL.—In determining wheth-
5 er paragraph (2)(B) applies to any transfer by
6 a person described in clause (ii) or (iii) of sub-
7 paragraph (C), there shall not be taken into ac-
8 count—

9 “(i) except as provided in regulations,
10 any obligation of a person described in
11 subparagraph (C), and

12 “(ii) to the extent provided in regula-
13 tions, any obligation which is guaranteed
14 by a person described in subparagraph (C).

15 “(B) TREATMENT OF PRINCIPAL PAY-
16 MENTS ON OBLIGATION.—Principal payments
17 by the trust on any obligation referred to in
18 subparagraph (A) shall be taken into account
19 on and after the date of the payment in deter-
20 mining the portion of the trust attributable to
21 the property transferred.

22 “(C) PERSONS DESCRIBED.—The persons
23 described in this subparagraph are—

24 “(i) the trust,

1 “(ii) any grantor or beneficiary of the
2 trust, and

3 “(iii) any person who is related (with-
4 in the meaning of section 643(i)(2)(B)) to
5 any grantor or beneficiary of the trust.”.

6 (b) EXEMPTION OF TRANSFERS TO CHARITABLE
7 TRUSTS.—Subsection (a) of section 679 is amended by
8 striking “section 404(a)(4) or 404A” and inserting “sec-
9 tion 6048(a)(3)(B)(ii)”.

10 (c) OTHER MODIFICATIONS.—Subsection (a) of sec-
11 tion 679 is amended by adding at the end the following
12 new paragraphs:

13 “(4) SPECIAL RULES APPLICABLE TO FOREIGN
14 GRANTOR WHO LATER BECOMES A UNITED STATES
15 PERSON.—

16 “(A) IN GENERAL.—If a nonresident alien
17 individual has a residency starting date within
18 5 years after directly or indirectly transferring
19 property to a foreign trust, this section and sec-
20 tion 6048 shall be applied as if such individual
21 transferred to such trust on the residency start-
22 ing date an amount equal to the portion of such
23 trust attributable to the property transferred by
24 such individual to such trust in such transfer.

1 “(B) TREATMENT OF UNDISTRIBUTED IN-
2 COME.—For purposes of this section, undistrib-
3 uted net income for periods before such individ-
4 ual’s residency starting date shall be taken into
5 account in determining the portion of the trust
6 which is attributable to property transferred by
7 such individual to such trust but shall not oth-
8 erwise be taken into account.

9 “(C) RESIDENCY STARTING DATE.—For
10 purposes of this paragraph, an individual’s resi-
11 dency starting date is the residency starting
12 date determined under section 7701(b)(2)(A).

13 “(5) OUTBOUND TRUST MIGRATIONS.—If—

14 “(A) an individual who is a citizen or resi-
15 dent of the United States transferred property
16 to a trust which was not a foreign trust, and

17 “(B) such trust becomes a foreign trust
18 while such individual is alive,

19 then this section and section 6048 shall be applied
20 as if such individual transferred to such trust on the
21 date such trust becomes a foreign trust an amount
22 equal to the portion of such trust attributable to the
23 property previously transferred by such individual to
24 such trust. A rule similar to the rule of paragraph
25 (4)(B) shall apply for purposes of this paragraph.”.

1 (d) MODIFICATIONS RELATING TO WHETHER TRUST
2 HAS UNITED STATES BENEFICIARIES.—Subsection (c) of
3 section 679 is amended by adding at the end the following
4 new paragraph:

5 “(3) CERTAIN UNITED STATES BENEFICIARIES
6 DISREGARDED.—A beneficiary shall not be treated
7 as a United States person in applying this section
8 with respect to any transfer of property to foreign
9 trust if such beneficiary first became a United
10 States person more than 5 years after the date of
11 such transfer.”.

12 (e) TECHNICAL AMENDMENT.—Subparagraph (A) of
13 section 679(c)(2) is amended to read as follows:

14 “(A) in the case of a foreign corporation,
15 such corporation is a controlled foreign corpora-
16 tion (as defined in section 957(a)),”.

17 (f) REGULATIONS.—Section 679 is amended by add-
18 ing at the end the following new subsection:

19 “(d) REGULATIONS.—The Secretary shall prescribe
20 such regulations as may be necessary or appropriate to
21 carry out the purposes of this section.”.

22 (g) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to transfers of property after Feb-
24 ruary 6, 1995.

1 **SEC. 413. FOREIGN PERSONS NOT TO BE TREATED AS OWN-**
2 **ERS UNDER GRANTOR TRUST RULES.**

3 (a) GENERAL RULE.—

4 (1) Subsection (f) of section 672 (relating to
5 special rule where grantor is foreign person) is
6 amended to read as follows:

7 “(f) SUBPART NOT TO RESULT IN FOREIGN OWNER-
8 SHIP.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of this subpart, this subpart shall apply
11 only to the extent such application results in an
12 amount being currently taken into account (directly
13 or through 1 or more entities) under this chapter in
14 computing the income of a citizen or resident of the
15 United States or a domestic corporation.

16 “(2) EXCEPTIONS.—

17 “(A) CERTAIN REVOCABLE AND IRREV-
18 OCABLE TRUSTS.—Paragraph (1) shall not
19 apply to any trust if—

20 “(i) the power to revest absolutely in
21 the grantor title to the trust property is
22 exercisable solely by the grantor without
23 the approval or consent of any other per-
24 son or with the consent of a related or sub-
25 ordinate party who is subservient to the
26 grantor, or

1 “(ii) the only amounts distributable
2 from such trust (whether income or cor-
3 pus) during the lifetime of the grantor are
4 amounts distributable to the grantor or the
5 spouse of the grantor.

6 “(B) COMPENSATORY TRUSTS.—Except as
7 provided in regulations, paragraph (1) shall not
8 apply to any portion of a trust distributions
9 from which are taxable as compensation for
10 services rendered.

11 “(3) SPECIAL RULES.—Except as otherwise
12 provided in regulations prescribed by the Sec-
13 retary—

14 “(A) a controlled foreign corporation (as
15 defined in section 957) shall be treated as a do-
16 mestic corporation for purposes of paragraph
17 (1), and

18 “(B) paragraph (1) shall not apply for
19 purposes of applying section 1296.

20 “(4) RECHARACTERIZATION OF PURPORTED
21 GIFTS.—In the case of any transfer directly or indi-
22 rectly from a partnership or foreign corporation
23 which the transferee treats as a gift or bequest, the
24 Secretary may recharacterize such transfer in such
25 circumstances as the Secretary determines to be ap-

1 appropriate to prevent the avoidance of the purposes of
2 this subsection.

3 “(5) SPECIAL RULE WHERE GRANTOR IS FOR-
4 EIGN PERSON.—If—

5 “(A) but for this subsection, a foreign per-
6 son would be treated as the owner of any por-
7 tion of a trust, and

8 “(B) such trust has a beneficiary who is a
9 United States person,

10 such beneficiary shall be treated as the grantor of
11 such portion to the extent such beneficiary has made
12 transfers of property by gift (directly or indirectly)
13 to such foreign person. For purposes of the preced-
14 ing sentence, any gift shall not be taken into account
15 to the extent such gift would be excluded from tax-
16 able gifts under section 2503(b).

17 “(6) REGULATIONS.—The Secretary shall pre-
18 scribe such regulations as may be necessary or ap-
19 propriate to carry out the purposes of this sub-
20 section, including regulations providing that para-
21 graph (1) shall not apply in appropriate cases.”.

22 (2) The last sentence of subsection (c) of sec-
23 tion 672 of such Code is amended by inserting “sub-
24 section (f) and” before “sections 674”.

1 (b) CREDIT FOR CERTAIN TAXES.—Paragraph (2) of
2 section 665(d) is amended by adding at the end the follow-
3 ing new sentence: “Under rules or regulations prescribed
4 by the Secretary, in the case of any foreign trust of which
5 the settlor or another person would be treated as owner
6 of any portion of the trust under subpart E but for section
7 672(f), the term ‘taxes imposed on the trust’ includes the
8 allocable amount of any income, war profits, and excess
9 profits taxes imposed by any foreign country or possession
10 of the United States on the settlor or such other person
11 in respect of trust gross income.”.

12 (c) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
13 THROUGH NOMINEES.—

14 (1) Section 643 is amended by adding at the
15 end the following new subsection:

16 “(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
17 THROUGH NOMINEES.—For purposes of this part, any
18 amount paid to a United States person which is derived
19 directly or indirectly from a foreign trust of which the
20 payor is not the grantor shall be deemed in the year of
21 payment to have been directly paid by the foreign trust
22 to such United States person.”.

23 (2) Section 665 is amended by striking sub-
24 section (c).

25 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided by para-
2 graph (2), the amendments made by this section
3 shall take effect on the date of the enactment of this
4 Act.

5 (2) EXCEPTION FOR CERTAIN TRUSTS.—The
6 amendments made by this section shall not apply to
7 any trust—

8 (A) which is treated as owned by the
9 grantor or another person under section 676 or
10 677 (other than subsection (a)(3) thereof) of
11 the Internal Revenue Code of 1986, and

12 (B) which is in existence on September 19,
13 1995.

14 The preceding sentence shall not apply to the por-
15 tion of any such trust attributable to any transfer to
16 such trust after September 19, 1995.

17 (e) TRANSITIONAL RULE.—If—

18 (1) by reason of the amendments made by this
19 section, any person other than a United States per-
20 son ceases to be treated as the owner of a portion
21 of a domestic trust, and

22 (2) before January 1, 1997, such trust becomes
23 a foreign trust, or the assets of such trust are trans-
24 ferred to a foreign trust,

1 no tax shall be imposed by section 1491 of the Internal
2 Revenue Code of 1986 by reason of such trust becoming
3 a foreign trust or the assets of such trust being trans-
4 ferred to a foreign trust.

5 **SEC. 414. INFORMATION REPORTING REGARDING FOREIGN**
6 **GIFTS.**

7 (a) IN GENERAL.—Subpart A of part III of sub-
8 chapter A of chapter 61 is amended by inserting after sec-
9 tion 6039E the following new section:

10 **“SEC. 6039F. NOTICE OF LARGE GIFTS RECEIVED FROM**
11 **FOREIGN PERSONS.**

12 “(a) IN GENERAL.—If the value of the aggregate for-
13 eign gifts received by a United States person (other than
14 an organization described in section 501(c) and exempt
15 from tax under section 501(a)) during any taxable year
16 exceeds \$10,000, such United States person shall furnish
17 (at such time and in such manner as the Secretary shall
18 prescribe) such information as the Secretary may pre-
19 scribe regarding each foreign gift received during such
20 year.

21 “(b) FOREIGN GIFT.—For purposes of this section,
22 the term ‘foreign gift’ means any amount received from
23 a person other than a United States person which the re-
24 cipient treats as a gift or bequest. Such term shall not

1 include any qualified transfer (within the meaning of sec-
2 tion 2503(e)(2)).

3 “(c) PENALTY FOR FAILURE TO FILE INFORMA-
4 TION.—

5 “(1) IN GENERAL.—If a United States person
6 fails to furnish the information required by sub-
7 section (a) with respect to any foreign gift within
8 the time prescribed therefor (including extensions)—

9 “(A) the tax consequences of the receipt of
10 such gift shall be determined by the Secretary
11 in the Secretary’s sole discretion from the Sec-
12 retary’s own knowledge or from such informa-
13 tion as the Secretary may obtain through testi-
14 mony or otherwise, and

15 “(B) such United States person shall pay
16 (upon notice and demand by the Secretary and
17 in the same manner as tax) an amount equal to
18 5 percent of the amount of such foreign gift for
19 each month for which the failure continues (not
20 to exceed 25 percent of such amount in the ag-
21 gregate).

22 “(2) REASONABLE CAUSE EXCEPTION.—Para-
23 graph (1) shall not apply to any failure to report a
24 foreign gift if the United States person shows that

1 the failure is due to reasonable cause and not due
2 to willful neglect.

3 “(d) COST-OF-LIVING ADJUSTMENT.—In the case of
4 any taxable year beginning after December 31, 1996, the
5 \$10,000 amount under subsection (a) shall be increased
6 by an amount equal to the product of such amount and
7 the cost-of-living adjustment for such taxable year under
8 section 1(f)(3), except that subparagraph (B) thereof shall
9 be applied by substituting ‘1995’ for ‘1992’.

10 “(e) REGULATIONS.—The Secretary shall prescribe
11 such regulations as may be necessary or appropriate to
12 carry out the purposes of this section.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for such subpart is amended by inserting after the item
15 relating to section 6039E the following new item:

“Sec. 6039F. Notice of large gifts received from foreign per-
sons.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to amounts received after the date
18 of the enactment of this Act in taxable years ending after
19 such date.

20 **SEC. 415. MODIFICATION OF RULES RELATING TO FOREIGN**
21 **TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

22 (a) MODIFICATION OF INTEREST CHARGE ON ACCU-
23 MULATION DISTRIBUTIONS.—Subsection (a) of section

1 668 (relating to interest charge on accumulation distribu-
2 tions from foreign trusts) is amended to read as follows:

3 “(a) GENERAL RULE.—For purposes of the tax de-
4 termined under section 667(a)—

5 “(1) INTEREST DETERMINED USING UNDER-
6 PAYMENT RATES.—The interest charge determined
7 under this section with respect to any distribution is
8 the amount of interest which would be determined
9 on the partial tax computed under section 667(b) for
10 the period described in paragraph (2) using the
11 rates and the method under section 6621 applicable
12 to underpayments of tax.

13 “(2) PERIOD.—For purposes of paragraph (1),
14 the period described in this paragraph is the period
15 which begins on the date which is the applicable
16 number of years before the date of the distribution
17 and which ends on the date of the distribution.

18 “(3) APPLICABLE NUMBER OF YEARS.—For
19 purposes of paragraph (2)—

20 “(A) IN GENERAL.—The applicable num-
21 ber of years with respect to a distribution is the
22 number determined by dividing—

23 “(i) the sum of the products described
24 in subparagraph (B) with respect to each
25 undistributed income year, by

1 “(ii) the aggregate undistributed net
2 income.

3 The quotient determined under the preceding
4 sentence shall be rounded under procedures
5 prescribed by the Secretary.

6 “(B) PRODUCT DESCRIBED.—For pur-
7 poses of subparagraph (A), the product de-
8 scribed in this subparagraph with respect to
9 any undistributed income year is the product
10 of—

11 “(i) the undistributed net income for
12 such year, and

13 “(ii) the sum of the number of taxable
14 years between such year and the taxable
15 year of the distribution (counting in each
16 case the undistributed income year but not
17 counting the taxable year of the distribu-
18 tion).

19 “(4) UNDISTRIBUTED INCOME YEAR.—For pur-
20 poses of this subsection, the term ‘undistributed in-
21 come year’ means any prior taxable year of the trust
22 for which there is undistributed net income, other
23 than a taxable year during all of which the bene-
24 ficiary receiving the distribution was not a citizen or
25 resident of the United States.

1 “(5) DETERMINATION OF UNDISTRIBUTED NET
2 INCOME.—Notwithstanding section 666, for pur-
3 poses of this subsection, an accumulation distribu-
4 tion from the trust shall be treated as reducing pro-
5 portionately the undistributed net income for undis-
6 tributed income years.

7 “(6) PERIODS BEFORE 1996.—Interest for the
8 portion of the period described in paragraph (2)
9 which occurs before January 1, 1996, shall be deter-
10 mined—

11 “(A) by using an interest rate of 6 percent,
12 and

13 “(B) without compounding until January
14 1, 1996.”.

15 (b) ABUSIVE TRANSACTIONS.—Section 643(a) is
16 amended by inserting after paragraph (6) the following
17 new paragraph:

18 “(7) ABUSIVE TRANSACTIONS.—The Secretary
19 shall prescribe such regulations as may be necessary
20 or appropriate to carry out the purposes of this part,
21 including regulations to prevent avoidance of such
22 purposes.”.

23 (c) TREATMENT OF LOANS FROM TRUSTS.—

24 (1) IN GENERAL.—Section 643 (relating to
25 definitions applicable to subparts A, B, C, and D)

1 is amended by adding at the end the following new
2 subsection:

3 “(i) LOANS FROM FOREIGN TRUSTS.—For purposes
4 of subparts B, C, and D—

5 “(1) GENERAL RULE.—Except as provided in
6 regulations, if a foreign trust makes a loan of cash
7 or marketable securities directly or indirectly to—

8 “(A) any grantor or beneficiary of such
9 trust who is a United States person, or

10 “(B) any United States person not de-
11 scribed in subparagraph (A) who is related to
12 such grantor or beneficiary,

13 the amount of such loan shall be treated as a dis-
14 tribution by such trust to such grantor or bene-
15 ficiary (as the case may be).

16 “(2) DEFINITIONS AND SPECIAL RULES.—For
17 purposes of this subsection—

18 “(A) CASH.—The term ‘cash’ includes for-
19 eign currencies and cash equivalents.

20 “(B) RELATED PERSON.—

21 “(i) IN GENERAL.—A person is relat-
22 ed to another person if the relationship be-
23 tween such persons would result in a dis-
24 allowance of losses under section 267 or
25 707(b). In applying section 267 for pur-

1 poses of the preceding sentence, section
2 267(c)(4) shall be applied as if the family
3 of an individual includes the spouses of the
4 members of the family.

5 “(ii) ALLOCATION.—If any person de-
6 scribed in paragraph (1)(B) is related to
7 more than one person, the grantor or bene-
8 ficiary to whom the treatment under this
9 subsection applies shall be determined
10 under regulations prescribed by the Sec-
11 retary.

12 “(C) EXCLUSION OF TAX-EXEMPTS.—The
13 term ‘United States person’ does not include
14 any entity exempt from tax under this chapter.

15 “(D) TRUST NOT TREATED AS SIMPLE
16 TRUST.—Any trust which is treated under this
17 subsection as making a distribution shall be
18 treated as not described in section 651.

19 “(3) SUBSEQUENT TRANSACTIONS REGARDING
20 LOAN PRINCIPAL.—If any loan is taken into account
21 under paragraph (1), any subsequent transaction be-
22 tween the trust and the original borrower regarding
23 the principal of the loan (by way of complete or par-
24 tial repayment, satisfaction, cancellation, discharge,

1 or otherwise) shall be disregarded for purposes of
2 this title.”.

3 (2) TECHNICAL AMENDMENT.—Paragraph (8)
4 of section 7872(f) is amended by inserting “,
5 643(i),” before “or 1274” each place it appears.

6 (d) EFFECTIVE DATES.—

7 (1) INTEREST CHARGE.—The amendment made
8 by subsection (a) shall apply to distributions after
9 the date of the enactment of this Act.

10 (2) ABUSIVE TRANSACTIONS.—The amendment
11 made by subsection (b) shall take effect on the date
12 of the enactment of this Act.

13 (3) LOANS FROM TRUSTS.—The amendment
14 made by subsection (c) shall apply to loans of cash
15 or marketable securities after September 19, 1995.

16 **SEC. 416. RESIDENCE OF ESTATES AND TRUSTS, ETC.**

17 (a) TREATMENT AS UNITED STATES PERSON.—

18 (1) IN GENERAL.—Paragraph (30) of section
19 7701(a) is amended by striking subparagraph (D)
20 and by inserting after subparagraph (C) the follow-
21 ing:

22 “(D) any estate or trust if—

23 “(i) a court within the United States
24 is able to exercise primary supervision over

1 the administration of the estate or trust,
2 and

3 “(ii) in the case of a trust, one or
4 more United States fiduciaries have the
5 authority to control all substantial deci-
6 sions of the trust.”.

7 (2) CONFORMING AMENDMENT.—Paragraph
8 (31) of section 7701(a) is amended to read as fol-
9 lows:

10 “(31) FOREIGN ESTATE OR TRUST.—The term
11 ‘foreign estate’ or ‘foreign trust’ means any estate or
12 trust other than an estate or trust described in sec-
13 tion 7701(a)(30)(D).”.

14 (3) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply—

16 (A) to taxable years beginning after De-
17 cember 31, 1996, or

18 (B) at the election of the trustee of a
19 trust, to taxable years ending after the date of
20 the enactment of this Act.

21 Such an election, once made, shall be irrevocable.

22 (b) DOMESTIC TRUSTS WHICH BECOME FOREIGN
23 TRUSTS.—

24 (1) IN GENERAL.—Section 1491 (relating to
25 imposition of tax on transfers to avoid income tax)

1 is amended by adding at the end the following new
2 flush sentence:

3 “If a trust which is not a foreign trust becomes a foreign
4 trust, such trust shall be treated for purposes of this sec-
5 tion as having transferred, immediately before becoming
6 a foreign trust, all of its assets to a foreign trust.”.

7 (2) PENALTY.—Section 1494 is amended by
8 adding at the end the following new subsection:

9 “(c) PENALTY.—In the case of any failure to file a
10 return required by the Secretary with respect to any trans-
11 fer described in section 1491 with respect to a trust, the
12 person required to file such return shall be liable for the
13 penalties provided in section 6677 in the same manner as
14 if such failure were a failure to file a return under section
15 6048(a).”.

16 (3) EFFECTIVE DATE.—The amendments made
17 by this subsection shall take effect on the date of the
18 enactment of this Act.

○