104TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 104–145

EXPATRIATION TAX ACT OF 1995

JUNE 16, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 1812]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1812) to amend the Internal Revenue Code of 1986 to revise the income, estate, and gift tax rules applicable to individuals who lose United States citizenship, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Expatriation Tax Act of 1995".

SEC. 2. REVISION OF INCOME, ESTATE, AND GIFT TAXES ON INDIVIDUALS WHO LOSE UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Subsection (a) of section 877 of the Internal Revenue Code of 1986 is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—

"(1) IN GENERAL.—Every nonresident alien individual who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

"(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if—

"(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $100,000, or

"(B) the net worth of the individual as of such date is $500,000 or more.

In the case of the loss of United States citizenship in any calendar year after 1996, such $100,000 and $500,000 amounts shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '1994' for '1992' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000."

(b) EXCEPTIONS.—

(1) IN GENERAL.—Section 877 of such Code is amended by striking subsection (d), by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

"(c) TAX AVOIDANCE NOT PRESUMED IN CERTAIN CASES.—

"(1) IN GENERAL.—Subsection (a)(2) shall not apply to an individual if—

"(A) such individual is described in a subparagraph of paragraph (2) of this subsection, and

"(B) within the 1-year period beginning on the date of the loss of United States citizenship, such individual submits a ruling request for the Secretary's determination as to whether such loss has for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B.

"(2) INDIVIDUALS DESCRIBED.—

"(A) DUAL CITIZENSHIP, ETC.—An individual is described in this subparagraph if—

"(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, or

"(ii) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship) a citizen of the country in which—

"(I) such individual was born,

"(II) if such individual is married, such individual's spouse was born, or

"(III) either of such individual's parents were born.

"(B) LONG-TERM FOREIGN RESIDENTS.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship, the individual was present in the United

States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.

"(C) RENUNCIATION UPON REACHING AGE OF MAJORITY.—An individual is described in this subparagraph if the individual's loss of United States citizenship occurs before such individual attains age 18½.

"(D) INDIVIDUALS SPECIFIED IN REGULATIONS.—An individual is described in this subparagraph if the individual is described in a category of individuals prescribed by regulation by the Secretary."

(2) TECHNICAL AMENDMENT.—Paragraph (1) of section 877(b) of such Code is amended by striking "subsection (c)" and inserting "subsection (d)".

(c) TREATMENT OF PROPERTY DISPOSED OF IN NONRECOGNITION TRANSACTIONS; TREATMENT OF DISTRIBUTIONS FROM CERTAIN CONTROLLED FOREIGN CORPORATIONS.—Subsection (d) of section 877 of such Code, as redesignated by subsection (b), is amended to read as follows:

"(d) SPECIAL RULES FOR SOURCE, ETC.—For purposes of subsection (b)—

"(1) SOURCE RULES.—The following items of gross income shall be treated as income from sources within the United States:

"(A) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

"(B) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

"(C) INCOME OR GAIN DERIVED FROM CONTROLLED FOREIGN CORPORATION.—Any income or gain derived from stock in a foreign corporation but only—

"(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

"(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(II) the total value of the stock of such corporation, and

"(ii) to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

"(2) GAIN RECOGNITION ON CERTAIN EXCHANGES.—

"(A) IN GENERAL.—In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange, and any gain shall be recognized for the taxable year which includes such date.

"(B) EXCHANGES TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any exchange during the 10-year period described in subsection (a) if—

"(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

"(ii) income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and

"(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

"(C) EXCEPTION.—Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

"(D) SECRETARY MAY EXTEND PERIOD.—To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein.

"(E) SECRETARY MAY REQUIRE RECOGNITION OF GAIN IN CERTAIN CASES.—To the extent provided in regulations prescribed by the Secretary—

"(i) the removal of appreciated tangible personal property from the United States, and

"(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States, shall be treated as an exchange to which this paragraph applies.

"(3) SUBSTANTIAL DIMINISHING OF RISKS OF OWNERSHIP.—For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

"(A) the holding of a put with respect to such property (or similar property),

"(B) the holding by another person of a right to acquire the property, or

"(C) a short sale or any other transaction."

(d) CREDIT FOR FOREIGN TAXES IMPOSED ON UNITED STATES SOURCE INCOME.—

(1) Subsection (b) of section 877 of such Code is amended by adding at the end the following new sentence: "The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section."

(2) Subsection (a) of section 877 of such Code, as amended by subsection (a), is amended by inserting "(after any reduction in such tax under the last sentence of such subsection)" after "such subsection".

(e) COMPARABLE ESTATE AND GIFT TAX TREATMENT.—

(1) ESTATE TAX.—

(A) IN GENERAL.—Subsection (a) of section 2107 of such Code is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—

"(1) RATE OF TAX.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

"(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—

"(A) IN GENERAL.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a decedent meeting the requirements of section 877(c)(1)."

(B) CREDIT FOR FOREIGN DEATH TAXES.—Subsection (c) of section 2107 of such Code is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) CREDIT FOR FOREIGN DEATH TAXES.—

"(A) IN GENERAL.—The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property which is included in the gross estate solely by reason of subsection (b).

"(B) LIMITATION ON CREDIT.—The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

"(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country in respect of property included in the gross estate as the value of the property included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

"(ii) such property's proportionate share of the excess of—

"(I) the tax imposed by subsection (a), over

"(II) the tax which would be imposed by section 2101 but for this section.

"(C) PROPORTIONATE SHARE.—For purposes of subparagraph (B), a property's proportionate share is the percentage which the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate."

(C) EXPANSION OF INCLUSION IN GROSS ESTATE OF STOCK OF FOREIGN CORPORATIONS.—Paragraph (2) of section 2107(b) of such Code is amended by striking "more than 50 percent of" and all that follows and inserting "more than 50 percent of—

"(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(B) the total value of the stock of such corporation,".

(2) GIFT TAX.—

(A) IN GENERAL.—Paragraph (3) of section 2501(a) of such Code is amended to read as follows:

"(3) EXCEPTION.—

"(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor who, within the 10-year period ending with the date of transfer, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

"(B) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of subparagraph (A), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

"(C) EXCEPTION FOR CERTAIN INDIVIDUALS.—Subparagraph (B) shall not apply to a decedent meeting the requirements of section 877(c)(1).

"(D) CREDIT FOR FOREIGN GIFT TAXES.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph."

(f) COMPARABLE TREATMENT OF LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—

(1) IN GENERAL.—Section 877 of such Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) COMPARABLE TREATMENT OF LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—

"(1) IN GENERAL.—Any long-term resident of the United States who—

"(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

"(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039F in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

"(2) LONG-TERM RESIDENT.—For purposes of this subsection, the term 'long-term resident' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in subparagraph (A) or (B) of paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

"(3) SPECIAL RULES.—

"(A) EXCEPTIONS NOT TO APPLY.—Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

"(B) STEP-UP IN BASIS.—Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

"(4) AUTHORITY TO EXEMPT INDIVIDUALS.—This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resi-

dent of the United States during the 10-year period after being treated as provided in paragraph (1)."

(2) CONFORMING AMENDMENTS.—

(A) Section 2107 of such Code is amended by striking subsection (d), by redesignating subsection (e) as subsection (d), and by inserting after subsection (d) (as so redesignated) the following new subsection:

"(e) CROSS REFERENCE.—

"For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e)."

(B) Paragraph (3) of section 2501(a) of such Code (as amended by subsection (e)) is amended by adding at the end the following new subparagraph:

"(E) CROSS REFERENCE.—

"For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e)."

(g) EFFECTIVE DATE.—

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

(A) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

(B) long-term residents of the United States with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after June 13, 1995.

(2) SPECIAL RULE.—

(A) IN GENERAL.—In the case of an individual who performed an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)) before February 6, 1995, but who did not, on or before such date, furnish to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of such act, the amendments made by this section shall apply to such individual except that—

(i) the 10-year period described in section 877(a) of such Code shall not expire before the end of the 10-year period beginning on the date such statement is so furnished, and

(ii) the 1-year period referred to in section 877(c) of such Code, as amended by this section, shall not expire before the date which is 1 year after the date of the enactment of this Act.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the individual establishes to the satisfaction of the Secretary of the Treasury that such loss of United States citizenship occurred before February 6, 1994.

SEC. 3. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by inserting after section 6039E the following new section:

"SEC. 6039F. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.

"(a) IN GENERAL.—Notwithstanding any other provision of law, any individual who loses United States citizenship (within the meaning of section 877(a)) shall provide a statement which includes the information described in subsection (b). Such statement shall be—

"(1) provided not later than the earliest date of any act referred to in subsection (c), and

"(2) provided to the person or court referred to in subsection (c) with respect to such act.

"(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

"(1) the taxpayer's TIN,

"(2) the mailing address of such individual's principal foreign residence,

"(3) the foreign country in which such individual is residing,

"(4) the foreign country of which such individual is a citizen,

"(5) in the case of an individual having a net worth of at least the dollar amount applicable under section 877(a)(2)(B), information detailing the assets and liabilities of such individual, and

"(6) such other information as the Secretary may prescribe.

"(c) ACTS DESCRIBED.—For purposes of this section, the acts referred to in this subsection are—

"(1) the individual's renunciation of his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(2) the individual's furnishing to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

"(3) the issuance by the United States Department of State of a certificate of loss of nationality to the individual, or

"(4) the cancellation by a court of the United States of a naturalized citizen's certificate of naturalization.

"(d) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty for each year (of the 10-year period beginning on the date of loss of United States citizenship) during any portion of which such failure continues in an amount equal to the greater of—

"(1) 5 percent of the tax required to be paid under section 877 for the taxable year ending during such year, or

"(2) $1,000,

unless it is shown that such failure is due to reasonable cause and not to willful neglect.

"(e) INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law—

"(1) any Federal agency or court which collects (or is required to collect) the statement under subsection (a) shall provide to the Secretary—

"(A) a copy of any such statement, and

"(B) the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a),

"(2) the Secretary of State shall provide to the Secretary a copy of each certificate as to the loss of American nationality under section 358 of the Immigration and Nationality Act which is approved by the Secretary of State, and

"(3) the Federal agency primarily responsible for administering the immigration laws shall provide to the Secretary the name of each lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) whose status as such has been revoked or has been administratively or judicially determined to have been abandoned.

Notwithstanding any other provision of law, not later than 30 days after the close of each calendar quarter, the Secretary shall publish in the Federal Register the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary receives information under the preceding sentence during such quarter.

"(f) REPORTING BY LONG-TERM LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—In lieu of applying the last sentence of subsection (a), any individual who is required to provide a statement under this section by reason of section 877(e)(1) shall provide such statement with the return of tax imposed by chapter 1 for the taxable year during which the event described in such section occurs.

"(g) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section."

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

"Sec. 6039F. Information on individuals losing United States citizenship."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) after the date of the enactment of this Act, and

(2) long-term residents of the United States with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) of such Code occurs after such date.

SEC. 4. REPORT ON TAX COMPLIANCE BY UNITED STATES CITIZENS AND RESIDENTS LIVING ABROAD.

Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall prepare and submit to the Committee on Ways and Means of

the House of Representatives and the Committee on Finance of the Senate a report—

(1) describing the compliance with subtitle A of the Internal Revenue Code of 1986 by citizens and lawful permanent residents of the United States (within the meaning of section 7701(b)(6) of such Code) residing outside the United States, and

(2) recommending measures to improve such compliance (including improved coordination between executive branch agencies).

I. INTRODUCTION

A. Purpose and Summary

Revision of income, estate and gift taxes on individuals expatriating

For purposes of the present-law income, estate, and gift tax expatriation provisions (Code secs. 877, 2501(a)(3), and 2107), H.R. 1812 provides that any U.S. citizen who loses his or her citizenship would be deemed to have expatriated with a principal purpose of avoiding taxes if: (1) the individual's average annual U.S. Federal income tax liability for the 5 years preceding the year of expatriation was greater than $100,000, or (2) the individual's net worth was $500,000 or more on the date of expatriation. These dollar amounts are indexed for inflation beginning after 1996. The bill also subjects "long-term residents" whose U.S. residence is terminated to these expatriation rules. A long-term resident is an individual who has been a lawful permanent resident of the United States (i.e., a green-card holder) for at least 8 of the 15 taxable years ending with the year of termination of residency.

A U.S. citizen who loses his or her citizenship is not subject to the expatriation tax provisions if such loss did not have a principal purpose of tax avoidance and the individual is within one of the following categories: (1) the individual was born with dual citizenship and retains only the non-U.S. citizenship; (2) the individual becomes a citizen of the country in which the individual, the individual's spouse, or one of the individual's parents, was born; (3) the individual was present in the United States for no more than 30 days during any year in the 10-year period ending on the date of expatriation; (4) the individual relinquishes his or citizenship before reaching the age of 18½; or (5) any other category of individuals as prescribed by Treasury regulations. These exceptions are not available to long-term residents whose U.S. residence is terminated; however, Treasury regulations may provide exemptions applicable to long-term residents.

The bill substantially expands the scope of items subject to section 877 to include property obtained in certain transactions on which gain or loss is not recognized. Also, the bill expands section 877 to include certain income and gains derived from a foreign corporation that is more than 50 percent owned, directly or indirectly, by the expatriate on the date of expatriation or within 2years prior to the expatriation date.

In order to avoid double taxation, the bill provides a credit against the U.S. expatriation tax for any foreign income, estate, give, or similar taxes paid with respect to the items subject to such taxation. This credit cannot be used to offset any other U.S. tax liability.

The expatriation tax provisions generally apply to individuals losing U.S. citizenship on or after February 6, 1995. A special transition rule applies to individuals who had expatriated within one year prior to February 6, 1995, but had not applied for a certificate of loss of nationality ("CLN") as of that date. Such individuals would be subject to the new expatriation tax provisions as of the date of application for the CLN, but would not be retroactively liable for U.S. income taxes on their worldwide income. The provision relating to long-term residents applies to residency terminations on or after June 13, 1995.

Required information reporting and sharing

The bill requires that U.S. citizens who lose their citizenship furnish the State Department with a statement providing the individual's taxpayer identification number, the mailing address at the principal foreign residence, the new country of residence and citizenship, and in the case of an individual having a net worth of at least $500,000, a balance sheet detailing the individual's assets and liabilities. The State Department is required to provide such information to the Treasury Department, as well as the names of individuals who refuse to provide such information. Long-term residents whose U.S. residency is terminated are required to attach a statement containing similar information to their income tax returns. An expatriate's failure to provide such information will be penalized for each year of the failure (for the 10-year period after the loss of U.S. citizenship or termination of residency) equal to the greater of (1) 5 percent of the individual's expatriation tax liability for the year, or (2) $1,000.

In addition, the bill requires that the Secretary of the Treasury publish in the Federal Register the names of U.S. citizens who have lost their citizenship. The names are to be published within 30 days after the close of each calendar quarter.

These information provisions apply to individuals losing U.S. citizenship or residency after the date of enactment.

Treasury report on tax compliance by U.S. citizens and residents living abroad

The bill directs the Treasury Department to conduct a study on the tax compliance of U.S. citizens and green-card holders residing outside the United States. The Secretary of the Treasury is to submit the study, with recommendations to improve such compliance and to improve coordination between executive agencies, not later than 90 days after the date of enactment to the House Committee on Ways and Means and the Senate Committee on Finance.

B. Background and Need for Legislation

The President included a proposal in the fiscal year 1996 budget, submitted to the Congress on February 6, 1995, which would impose Federal income tax on certain unrealized gains of U.S. citizens who relinquish their U.S. citizenship and of certain long-term residents of the United States who terminate their U.S. residency. The Administration proposal was included in H.R. 981 (introduced by Representatives Gephardt and Gibbons, by request, on February 16, 1995) and in an identical Senate bill (S. 453).

H.R. 831, as passed by the Senate on March 24, 1995, included a Finance Committee amendment ("Senate amendment") to impose Federal income tax on unrealized gains of individuals who relinquish their U.S. citizenship.[1] On March 27, 1995, the Ways and Means Subcommittee on Oversight held a public hearing on the tax treatment of individuals who relinquish their U.S. citizenship and resident aliens who relinquish their U.S. residency. The conference agreement to H.R. 831 did not include the Senate amendment; instead, the conference agreement[2] and the Act (sec. 6 of P.L. 104–7) included a requirement for the staff of the Joint Committee on Taxation ("Joint Committee staff") to conduct a study of the tax treatment and issues relating to expatriation and to submit a report to the Chairman of the House Committee on Ways and Means and the Chairman of the Senate Committee on Finance by June 1, 1995. The Joint Committee staff submitted its report on June 1, 1995,[3] which includes an analysis of present-law tax rules and the legislative proposals[4] to modify the treatment of expatriation. The report found that expatriation for tax avoidance purposes is not a large or expanding problem, but that the present-law expatriation tax provisions contain some flaws which allow circumvention of the provisions through careful tax planning. The Joint Committee staff report also discusses possible alternatives to the existing expatriation proposals, and provides information on other countries' taxation of expatriation and immigration and other countries' taxation of estates, inheritances, and gifts. In addition, the Joint Committee staff report includes data on the number of individuals who have expatriated and estimated revenue effects of the proposed legislation to impose tax on expatriation.

The Committee agrees that U.S. tax laws should not encourage U.S. citizens and long-term resident aliens to expatriate for tax avoidance purposes. Moreover, the Committee agrees that U.S. citizens and long-term resident aliens who expatriate for tax avoidance purposes should be subject to tax on their U.S. source income for an appropriate time period. The provisions of H.R. 1812 are intended to accomplish these objectives and to improve the administration of the expatriation-related tax provisions. For example, the bill eliminates the opportunities that exist under present law to circumvent the expatriation tax provisions. (See also Part II. B. of the report for further discussion of the reasons for the specific changes in the bill.

C. Legislative History

Committee bill

H.R. 1812 was introduced on June 9, 1995, by Chairman Archer and Mrs. Johnson of Connecticut. The bill as introduced revises the income, estate, and gift tax rules applicable to individuals who lose

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[1] See S. Rept. 104–16, March 20, 1995.

[2] See H. Rept. 104–92, March 29, 1995.

[3] See Joint Committee on Taxation, "Issues Presented by Proposals to Modify the Tax Treatment of Expatriation" (JCS–17–95), June 1, 1995.

[4] The legislative proposals described and analyzed in the Joint Committee staff report include the Administration proposal (H.R. 981 and S. 453), the Senate amendment to H.R. 831, the Gephardt motion to recommit H.R. 1215 to include the Administration proposal with a different effective date, and the modified bills introduced by Representative Gibbons (H.R. 1535, introduced on May 2, 1995) and Senator Moynihan (S. 700, introduced on April 6, 1995).

U.S. citizenship (Code secs. 877, 2107, and 2501(a)(3)), requires such taxpayers to provide certain information to the U.S. Government, and requires the Secretary of the Treasury to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance within 90 days after the bill's enactment on tax compliance by taxpayers residing outside the United States, with recommendations to improve such compliance.

The Committee on Ways and Means marked up the bill on June 13, 1995, and approved two amendments (each by voice vote), which have been incorporated into the Committee's amendment: (1) to subject "long-term residents" who terminate their U.S. residency to the bill's expatriation tax provisions if they have been lawful permanent residents of the United States (i.e., green-card holders) for at least 8 of the prior 15 taxable years, effective for residency terminations on or after June 13, 1995; and (2) to require the Secretary of the Treasury to publish on a quarterly basis the names of U.S. citizens who expatriate.

The bill, as amended, was ordered favorably reported on June 13, 1995, by a roll call vote of 20 yeas and 13 nays.

Legislative hearings

The Subcommittee on Oversight held a public hearing on March 27, 1995, on issues relating to taxation of U.S. citizens who relinquish their citizenship and long-term resident aliens who terminate their U.S. residency.

II. EXPLANATION OF THE BILL

A. Present Law

1. Taxation of U.S. Citizens, Residents, and Nonresidents

a. Individual income taxation

Income taxation of U.S. citizens and residents

In general

A U.S. citizen generally is subject to the U.S. individual income tax on his or her worldwide taxable income.[5] All income earned by a U.S. citizen, whether from sources inside or outside the United States, is taxable, whether or not the individual lives within the United States. A non-U.S. citizen who resides in the United States generally is taxed in the same manner as a U.S. citizen if the individual meets the definition of a "resident alien," described below.

The taxable income of a U.S. citizen or resident is equal to the taxpayer's total income less certain exclusions, exemptions, and deductions. The appropriate tax rates are then applied to a taxpayer's taxable income to determine his or her individual income tax liability. A taxpayer may reduce his or her income tax liability by any applicable tax credits. When an individual disposes of property, any gain or loss on the disposition is determined by reference to the taxpayer's cost basis in the property, regardless of whether the property was acquired during the period in which the taxpayer was a citizen or resident of the United States.

If a U.S. citizen or resident earns income from sources outside the United States, and that income is subject to foreign income taxes, the individual generally is permitted a foreign tax credit against his or her U.S. income tax liability to the extent of foreign income taxes paid on that income.[6] In addition, a U.S. citizen who lives and works in a foreign country generally is permitted to exclude up to $70,000 of annual compensation from being subject to U.S. income taxes, and is permitted an exclusion or deduction for certain housing expenses.[7]

Resident aliens

In general, a non-U.S. citizen is considered a resident of the United States if the individual (1) has entered the United States as a lawful permanent U.S. resident (the "green card test"); or (2) is present in the United States for 31 or more days during the current calendar year and has been present in the United States for

[5] The determination of who is a U.S. citizen for tax purposes, and when such citizenship is lost, is governed by the provisions of the Immigration and Nationality Act, 8 U.S.C. section 1401, et seq. See Treas. Reg. section 1.1–1(c).

[6] See Code sections 901–907.

[7] Section 911.

a substantial period of time—183 or more days during a 3-year period weighted toward the present year (the "substantial presence test").[8]

If an individual is present in the United States for fewer than 183 days during the calendar year, and if the individual establishes that he or she has a closer connection with a foreign country than with the United States and has a tax home in that country for the year, the individual generally is not subject to U.S. tax as a resident on account of the substantial presence test. If an individual is present for as many as 183 days during a calendar year, this closer connections/tax home exception is not available. An alien who has an application pending to change his or her status to permanent resident or who has taken other steps to apply for status as a lawful permanent U.S. resident is not eligible for the closer connections/tax home exception.

For purposes of applying the substantial presence test, any days that an individual is present as an "exempt individual" are not counted. Exempt individuals include certain foreign government-related individuals, teachers, trainees, students, and professional athletes temporarily in the United States to compete in charitable sports events. In addition, the substantial presence test does not count days of presence of an individual who is physically unable to leave the United States because of a medical condition that arose while he or she was present in the United States, if the individual can establish to the satisfaction of the Secretary of the Treasury that he or she qualifies for this special medical exception.

In some circumstances, an individual who meets the definition of a U.S. resident (as described above) could also be defined as a resident of another country under the internal laws of that country. In order to avoid the double taxation of such individuals, most income tax treaties include a set of "tie-breaker" rules to determine the individual's country of residence for income tax purposes. In general, a dual resident is deemed to be a resident of the country in which such person has a permanent home. If the individual has a permanent home available in both countries, the individual's residence is deemed to be the country with which his or her personal and economic relations are closer, i.e., the "center of vital interests." If the country in which such individual has his or her center of vital interests cannot be determined, or if such individual does not have a permanent home available in either country, he or she is deemed to be a resident of the country in which he or she has an habitual abode. If the individual has an habitual abode in both countries or in neither of them, he or she is deemed to be a resident of the country of which he or she is a citizen. If each country considers the person to be its citizen or if he or she is a citizen of neither of them, the competent authorities of the countries are to settle the question of residence by mutual agreement.

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[8] The definitions of resident and nonresident aliens are set forth in Code section 7701(b). The substantial presence test will compare 183 days to the sum of (1) the days present during the current calendar year, (2) one-third of the days present during the preceding calendar year, and (3) one-sixth of the days present during the second preceding calendar year. Presence for an average of 122 days (or more) per year over the 3-year period would be sufficient to trigger the test.

Income taxation of nonresident aliens

Non-U.S. citizens who do not meet the definition of "resident aliens" are considered to be nonresident aliens for tax purposes. Nonresident aliens are subject to U.S. tax only to the extent their income is from U.S. sources or is effectively connected with the conduct of a trade or business within the United States. Bilateral income tax treaties may modify the U.S. taxation of a nonresident alien.

A nonresident alien is taxed at regular graduated rates on net profits derived from a U.S. business.[9] Nonresident aliens also are taxed at a flat rate of 30 percent on certain types of passive income derived from U.S. sources, although a lower treaty rate may be provided (e.g., dividends are frequently taxed at a reduced rate of 15 percent). Such passive income includes interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits and income. There is no U.S. tax imposed, however, on interest earned by nonresident aliens with respect to deposits with U.S. banks and certain types of portfolio debt investments.[10] Gains on the sale of stocks or securities issued by U.S. persons generally are not taxable to a nonresident alien because they are considered to be foreign source income.[11]

Nonresident aliens are subject to U.S. income taxation on any gain recognized on the disposition of an interest in U.S. real property.[12] Such gains generally are subject to tax at the same rates that apply to similar income received by U.S. persons. If a U.S. real property interest is acquired from a foreign person, the purchaser generally is required to withhold 10 percent of the amount realized (gross sales price). Alternatively, either party may request that the Internal Revenue Service ("IRS") determine the transferor's maximum tax liability and issue a certificate prescribing a reduced amount of withholding (not to exceed the transferor's maximum tax liability).[13]

b. Estate and gift taxation

The United States imposes a gift tax on any transfer of property by gift made by a U.S. citizen or resident,[14] whether made directly or indirectly and whether made in trust or otherwise. Nonresident aliens are subject to the gift tax with respect to transfers of tangible real or personal property where the property is located in the United States at the time of the gift. No gift tax is imposed how-

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[9] Section 871.

[10] See sections 871(h) and 871(i)(3).

[11] Section 865(a).

[12] Sections 897, 1445, 6039C, and 6652(f), known as the Foreign Investment in Real Property Tax Act ("FIRPTA"). Under FIRPTA provisions, tax is imposed on gains from the disposition of an interest (other than an interest solely as a creditor) in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the U.S. Virgin Islands. Also included in the definition of a U.S. real property interest is any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes that the corporation was not a U.S. real property holding corporation ("USRPHC") at any time during the five-year period ending on the date of the disposition of the interest (sec. 897(c)(1)(A)(ii)). A USRPHC is any corporation, the fair market value of whose U.S. real property interests equals or exceeds 50 percent of the sum of the fair market values of (1) its U.S. real property interests, (2) its interests in foreign real property, plus (3) any other of its assets which are used or held for use in a trade or business (sec. 897(c)(2)).

[13] Section 1445.

[14] Section 2501.

ever on gifts made by nonresident aliens of intangible property having a situs within the United States (e.g., stocks and bonds).[15]

The United States also imposes an estate tax on the worldwide "gross estate" of any person who was a citizen or resident of the United States at the time of death, and on certain property belonging to a nonresident of the United States that is located in the United States at the time of death.[16]

Since 1976, the gift tax and the estate tax have been unified so that a single graduated rate schedule applies to cumulative taxable transfers made by a U.S. citizen or resident during his or her lifetime and at death. Under this rate schedule, the unified estate and gift tax rates begin at 18 percent on the first $10,000 in cumulative taxable transfers and reach 55 percent on cumulative taxable transfers over $3 million.[17] A unified credit of $192,800 is available with respect to taxable transfers by gift and at death. The unified credit effectively exempts a total of $600,000 in cumulative taxable transfers from the estate and gift tax.

Residency for purposes of estate and gift taxation is determined under different rules than those applicable for income tax purposes. In general, an individual is considered to be a resident of the United States for estate and gift tax purposes if the individual is "domiciled" in the United States. An individual is domiciled in the United States if the individual (a) is living in the United States and has the intention to remain in the United States indefinitely; or (b) has lived in the United States with such an intention and has not formed the intention to remain indefinitely in another country. In the case of a U.S. citizen who resided in a U.S. possession at the time of death, if the individual acquired U.S. citizenship solely on account of his birth or residence in a U.S. possession, that individual is not treated as a U.S. citizen or resident for estate tax purposes.[18]

In addition to the estate and gift taxes, a separate transfer tax is imposed on certain "generation-skipping" transfers.

c. Special tax rules with respect to the movement of persons and property into or out of the United States

Individuals who relinquish U.S. citizenship with a principal purpose of avoiding U.S. tax

An individual who relinquishes her or U.S. citizenship with a principal purpose of avoiding U.S. taxes is subject to an alternative method of income taxation for 10 years after expatriation under section 877 of the code.[19] Under this provision, if the Treasury Department establishes that it is reasonable to believe that the expatriate's loss of U.S. citizenship would, but for the application of this provision, result in a substantial reduction in U.S. tax based on the

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[15] Section 2501(a)(2).

[16] Sections 2001, 2031, 2101, and 2103.

[17] Section 2001(c).

[18] Section 2209.

[19] Treasury regulations provide that an individual's citizenship status is governed by the provisions of the Immigration and Nationality Act, specifically referring to the "rules governing loss of citizenship [set forth in] section 349 to 357, inclusive, of such Act (8 U.S.C. 1481–1489)." Treas. Reg. section 1.1–1(c). Under the Immigration and Nationality Act, an individual is generally considered to lose U.S. citizenship on the date that an expatriating act is committed. The present-law rules governing the loss of citizenship, and a description of the types of expatriating acts that lead to a loss of citizenship, are discussed more fully in Part II.A.2.a., below.

expatriate's probable income for the taxable year, then the expatriate has the burden of proving that the loss of citizenship did not have as one of its principal purposes the avoidance of U.S. income, estate or gift taxes Section 877 does not apply to resident aliens who terminate their U.S. residency.

The alternative method modifies the rules generally applicable to the taxation of nonresident aliens in two ways. First, the expatriate is subject to tax on his or her U.S. source income at the rates applicable to U.S. citizens rather than the rates applicable to other nonresident aliens. (Unlike U.S. citizens, however, individuals subject to section 877 are not taxed on any foreign source income.) Second, the scope of items treated as U.S. source income for section 877 purposes is broader than those items generally considered to be U.S. source income under the Code. For example, gains on the sale of personal property located in the United States, and gains on the sale or exchange of stocks and securities issued by U.S. persons, generally are not considered to be U.S. source income under the Code. However, if an individual is subject to the alternative taxing method of section 877, such gains are treated as U.S. source income with respect to that individual. The alternative method applies only if it results in a higher U.S. tax liability than would otherwise be determined if the individual were taxed as a nonresident alien.

Because section 877 alters the sourcing rules generally used to determine the country having primary taxing jurisdiction over certain items of income, there is an increased potential for such items to be subject to double taxation, For example, a former U.S. citizen subject to the section 877 rules may have capital gains derived from stock in a U.S. corporation. Under section 877, such gains are treated as U.S. source income, and are, therefore, subject to U.S. tax. Under the internal laws of the individual's new country of residence, however, that country may provide that all capital gains realized by a resident of that country are subject to taxation in that country, and thus the individual's gain from the sale of U.S. stock also would be taxable in his or her country of residence. If the individual's new country of residence has an income tax treaty with the United States, the treaty may provide for the amelioration of this potential double tax.

Similar rules apply in the context of estate and gift taxation if the transferor relinquished U.S. citizenship with a principal purpose of avoiding U.S. taxes within the 10-year period ending on the date of the transfer. A special rule is applied to the estate tax treatment of any decedent who relinquished his or her U.S. citizenship within 10 years of death, if the decedent's loss of U.S. citizenship had as one of its principal purposes a tax avoidance motive.[20] Once the Secretary of the Treasury establishes a reasonable belief that the expatriate's loss of U.S. citizenship would result in a substantial reduction in estate, inheritance, legacy and succession taxes, the burden of proving that one of the principal purposes of the loss of U.S. citizenship was not avoidance of U.S. income or estate tax is on the executor of the decedent's estate.

[20] Section 2107.

In general, the estates of such individuals are taxed in accordance with the rules generally applicable to the estates of nonresident aliens (i.e., the gross estate includes all U.S.-situs property held by the decedent at death, is subject to U.S. estate tax at the rates generally applicable to the estates of U.S. citizens, and is allowed a unified credit of $13,000, as well as credits for State death taxes, gift taxes, and prior transfers). However, a special rule provides that the individual's gross estate also includes his or her prorata share of any U.S.-situs property held through a foreign corporation in which the decedent had a 10-percent or greater voting interest, provided that the decedent and related parties together owned more than 50 percent of the voting power of the corporation. Similarly, gifts of intangible property having a situs within the United States (e.g., stocks and bonds) made by a nonresident alien who relinquished his or her U.S. citizenship within the 10-year period ending on the date of transfer are subject to U.S. gift tax, if the loss of U.S. citizenship had as one of its principal purposes a tax avoidance motive.[21]

Aliens having a break in residency status

A special rule applies in the case of an individual who has been treated as a resident of the United States for at least three consecutive years, if the individual becomes a nonresident but regains residency status within a three-year period.[22] In such cases, the individual is subject to U.S. tax for all intermediate years under the section 877 rules described above (i.e., the individual is taxed in the same manner as a U.S. citizen who renounced U.S. citizenship with a principal purpose of avoiding U.S. taxes). The special rule for a break in residency status applies regardless of the subjective intent of the individual.

Transfers to foreign corporations

Certain transfers of property by shareholders to a controlled corporation are generally tax-free if the persons transferring the property own at least 80 percent of the corporation after the transfer.[23] Also, in certain corporate reorganizations, including qualifying acquisitions and dispositions, shareholders of one corporation may exchange their stock or securities for stock or securities of another corporation that is a party to the reorganization without a taxable event except to the extent they receive cash or other property that is not permitted stock or securities. In these cases, a corporation may also transfer property to another corporation that is a party to the reorganization, without a taxable event except to the extent of certain nonpermitted consideration.[24] A liquidation of an 80-percent owned corporate subsidiary into its parent corporation is also generally tax-free.[25]

Under the rules applicable to these types of transfers, property transferred to a corporation retains its basis, to the extent the transfer was tax-free, so that any appreciation (i.e., built-in gain)

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[21] Section 2501(a)(3).
[22] Section 7701(b)(10).
[23] Section 351.
[24] Sections 354, 356, 361 and 368. (See also sec. 355.)
[25] Section 332.

will be subject to tax if the property is subsequently sold by the recipient corporation. Similarly, a shareholder who exchanges stock of one corporation for stock of another retains his or her original basis so that a subsequent sale of the acquired stock can produce a taxable gain.

Section 367 applies special rules, however, if property is transferred by a U.S. person to a foreign corporation in a transaction that would otherwise be tax-free under these provisions. These special rules are generally directed at situations where property is transferred to a foreign corporation, outside of the U.S. taxing jurisdiction, so that a subsequent sale by that corporation could escape U.S. tax notwithstanding the carryover basis of the asset. In some instances, such a transfer causes an immediate taxable event so that the generally applicable tax-free rules are overridden. In other instances, the taxpayer may escape immediate tax by entering a gain recognition agreement ("GRA") obligating the taxpayer to pay tax if the property is disposed of within a specified time period after the transfer. The GRA rules generally require the taxpayer to agree to file an amended return for the year of the original transfer if the property is disposed of by the transferee (including payment of interest from the due date of the return for the year of the original transfer to the time the additional tax under the agreement is actually paid following the disposition).

Section 367 also imposes rules directed at situations where a U.S. person has an interest in a foreign corporation, such as a controlled foreign corporation ("CFC") meeting specific U.S. shareholder ownership requirements, that could result in the U.S. person being taxed on its share of certain foreign corporate earnings. These rules are designed to prevent the avoidance of tax in circumstances where a reorganization or other nonrecognition transaction restructures the stock or asset ownership of the foreign corporation so that the technical requirements for imposition of U.S. tax on foreign earnings under the CFC or other rules are no longer met, so that there is potential for removing the earnings of the original CFC from current or future U.S. tax, or changing the character of the earnings for U.S. tax purposes (e.g., from dividend to capital gain).

The rules of section 367 do not generally apply unless there is a transfer by a U.S. person to a foreign corporation, or unless a foreign corporation of which a U.S. person is a shareholder engages in certain transactions. Because an individual who expatriates is no longer a U.S. person, section 367 has no effect on actions taken by such individuals after expatriation. The Treasury Department has considerable regulatory authority under section 367 to address situations that may result in U.S. tax avoidance. For example, section 367(b) provides that any of certain tax-free corporate transactions that do not involve a transfer of property from a U.S. person (described in section 367(a)(1)) can be recharacterized as taxable "to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes." The legislative history of this provision suggests that it was directed principally at situations involving

avoidance of U.S. tax on foreign earnings and profits;[26] however, the statutory language is quite broad and was provided in conjunction with the general rules taxing certain transfers by U.S. persons. Under the existing section 367 regulations and the relevant expatriation sections of the Code, a U.S. person who expatriates, even for a principal purpose of avoiding U.S. tax, may subsequently engage in transactions that involve the transfer of property to a foreign corporation without any adverse consequences under section 367, since expatriation (even for a principal purpose of tax avoidance) is not an event covered by section 367 or the current regulations under that section. Similarly, a U.S. person who has expatriated would not be considered a U.S. shareholder for purposes of applying the rules that address restructurings of foreign corporations with U.S. shareholders. By engaging in such a transaction, a taxpayer that has expatriated could transfer assets that would otherwise generate income which would be subject to tax under section 877 into a foreign corporation, thus transforming the income into non-U.S. source income not subject to tax under section 877. For example, under section 877, if a principal purpose of tax avoidance existed, an expatriate would be taxed for 10 years on any sale of U.S. corporate stock. However, after expatriation, the person would no longer be a U.S. person for purposes of section 367, and thus could transfer U.S. corporate stock to a foreign corporation controlled by the expatriate under section 351 without any section 367 effect. The foreign corporation could then sell the U.S. corporate stock within the 10-year period, but the gain would not be subject to U.S. tax.

In addition, the IRS or Treasury might encounter difficulties enforcing a gain recognition agreement if a U.S. person who has entered into such an agreement to pay tax on a later disposition of an asset subject to the agreement and then expatriates. The GRA regulations contain provisions requiring security arrangements if a U.S. natural person who has entered an agreement dies (or if a U.S. entity goes out of existence) but these provisions do not apply if a U.S. natural person expatriates.[27]

Even if an individual is subject to the alternative taxing method of section 877 (because the person expatriated with a principal purpose of avoiding U.S. tax), section 877 does not impose a tax on foreign source income. Thus, such an individual could expatriate and subsequently transfer appreciated property to a foreign corporation or other entity beyond the U.S. taxing jurisdiction, without any U.S. tax being imposed on the appreciation under section 877.

Similar issues exist under section 1491 of the Code. Section 1491 imposes a 35-percent tax on otherwise untaxed appreciation when appreciated property is transferred by a U.S. citizen or resident, or by a domestic corporation, partnership, estate or trust, to certain foreign entities in a transaction not covered by section 367. In some cases, taxpayers may elect to enter into a gain recognition agreement (rather than pay immediate tax) pursuant to section 1492.[28]

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[26] See, e.g., H. Rept. No. 94–658, pp. 239–248 (94th Cong., 1st Sess., 1975); S. Rept. No. 94–938, pp. 261–271 (94th Cong., 2d Sess., 1976); H. Rept. No. 94–1515, p. 463 (94th Cong., 2d Sess., 1976).

[27] See, e.g., Temp. Reg. section 1367(a)-3T(g)(9) and (10), Notice 87-85, 1987-2 C.B. 395.

[28] See, e.g., PLR 9103033.

As in the case of section 367, an individual who has expatriated is no longer a U.S. citizen and may also no longer be a U.S. resident, thus a transfer by such a person would be unaffected by section 1491.

2. Requirements for United States Citizenship, Immigration, and Visas

a. United States citizenship

An individual may acquire U.S. citizenship in one of three ways: (1) being born within the geographical boundaries of the United States; (2) being born outside the United States to at least one U.S. citizen parent (as long as that parent and previously been resident in the United States for a requisite period of time); or (3) through the naturalization process. All U.S. citizens are required to pay U.S. income taxes on their worldwide income. The State Department estimates that there are approximately 3 million U.S. citizens living abroad, although thousands of these individuals may not even know that they are U.S. citizens.

A U.S. citizen may voluntarily give up his or her U.S. citizenship at any time by performing one of the following acts ("expatriating acts") with the intention of relinquishing U.S. nationality: (1) becoming naturalized in another country; (2) formally declaring allegiance to another country; (3) serving in a foreign army; (4) serving in certain types of foreign government employment; (5) making a formal renunciation of nationality before a U.S. diplomatic or consular officer in a foreign country; (6) making a formal renunciation of nationality in the United States during a time of war; or, (7) committing an act of treason.[29] An individual who wishes to formally renounce citizenship (item (5), above), must execute an Oath of Renunciation before a consular officer, and the individual's loss of citizenship is effective on the date the oath is executed. In all other cases, the loss of citizenship is effective on the date that the expatriating act is committed, even though the loss may not be documented until a later date. The State Department generally documents loss in such cases when the individual acknowledges to a consular officer that the act was taken with the requisite intent. In all cases, the consular officer abroad submits a certificate of loss of nationality ("CLN") to the State Department in Washington, D.C. for approval.[30] Upon approval, a copy of the CLN is issued to the affected individual. The date upon which the CLN is approved is not the effective date for loss of citizenship.

Before a CLN is issued, the State Department reviews the individual's files to confirm that: (1) the individual was a U.S. citizen; (2) an expatriating act has been committed; (3) the act was undertaken voluntarily; and (4) the individual had the intent of relinquishing citizenship when the expatriating act was committed. If the expatriating act involved and action of a foreign government (for example, if the individual was naturalized in a foreign country or joined a foreign army), the State Department will not issue a CLN until it has obtained an official statement from the foreign government confirming the expatriating act. If a CLN is not issued

[29] 8 U.S.C. section 1481.
[30] 8 U.S.C. section 1501.

because the State Department does not believe that an expatriating act has occurred (for example, if the requisite intent appears to be lacking), the issue is likely to be resolved through litigation. Whenever the loss of U.S. nationality is put in issue, the burden of proof is on the person or party claiming that a loss of citizenship has occurred to establish, by a preponderance of the evidence, that the loss occurred.[31] Similarly, if a CLN has been issued, but the State Department later discovers that such issuance was improper (for example, because fraudulent documentation was submitted, or the requisite intent appears to be lacking), the State Department could initiate proceedings to revoke the CLN. If the recipient is unable to establish beyond a preponderance of the evidence that citizenship was lost on the date claimed, the CLN would be revoked. To the extent that the IRS believes a CLN was improperly issued, the IRS could present such evidence to the State Department and request that revocation proceedings be commenced. If it is determined that the individual has indeed committed an expatriating act, the date for loss of citizenship will be the date of the expatriating act.

A child under the age of 18 cannot lose U.S. citizenship by naturalizing in a foreign state or by taking an oath of allegiance to a foreign state. A child under 18 can, however, lose U.S. citizenship by serving in a foreign military or by formally renouncing citizenship, but such individuals may regain their citizenship by asserting a claim of citizenship before reaching the age of eighteen years and six months.

A naturalized U.S. citizen can have his or her citizenship involuntarily revoked if a U.S. court determines that the certificate of naturalization was illegally procured, or was procured by concealment of a material fact or by willful misrepresentation (for example, if the individual concealed the fact that he served as a concentration camp guard during World War II).[32] In such cases, the individual's certificate of naturalization is cancelled, effective as of the original date of the certificate; in other words, it is as if the individual were never a U.S. citizen at all.

b. United States immigration and visas

In general, a non-U.S. citizen who enters the United States is required to obtain a visa.[33] An immigrant visa (also known as a "green card") is issued to an individual who intends to relocate to the United States permanently. Various types of nonimmigrant visas are issued to individuals who come to the United States on a temporary basis and intend to return home after a certain period of time. The type of nonimmigrant visa issued to such individuals is dependent upon the purpose of the visit and its duration. An individual holding a nonimmigrant visa is prohibited from engaging in activities that are inconsistent with the purpose of the visa (for

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[31] U.S.C. sec. 1481(b).

[32] See section 340(a) of the Immigration and Nationality Act, 8 U.S.C. section 1451(a). See also, *U.S.* v. *Demjanjuk*, 680 F.2d 32, cert. denied, 459 U.S. 1036 (1982).

[33] Under the Visa Waiver Pilot Program, nationals of most European countries are not required to obtain a visa to enter the United States if they are coming as tourists and staying a maximum of 90 days. Also, citizens of Canada, Mexico, and certain islands in close proximity to the United States do not need visas to enter the United States, although other types of travel documents may be required.

example, an individual holding a tourist visa is not permitted to obtain employment in the United States).

Foreign business people and investors often obtain "E" visas to come into the United States. Generally, an "E" visa is initially granted for a one-year period, but it can be routinely extended for additional two-year periods. There is no overall limit on the amount of time an individual may retain a "E" visa. There are two types of "E" visas: an "E–1" visa, for "treaty traders" and an "E–2" visa, for "treaty investors". To qualify for an "E–1" visa, an individual must be a national of a country that has a treaty of trade with the United States, and must be coming to the United States solely to engage in substantial trade principally between a U.S. entity and that company. Trade includes the import and export of goods or services. At least 50 percent of the foreign-based company must be owned by nationals of that country, and at least 50 percent of the shareholders must either live abroad, or have an "E–1" visa and live in the United States (thus, an individual holding a "green card" would not be counted). Over 50 percent of the individual's business must be between the United States and the foreign country. To qualify for an "E–2" visa, an individual (or a company of which he is an executive, manager, or essential employee) must be a national of a country that has a treaty investor agreement with the United States, and must be coming to the United States solely to develop and direct the operations of an enterprise in which he has invested, or is actively in the process of investing, a substantial amount of capital.

c. Relinquishment of green cards

There are several ways in which a green card can be relinquished. First, an individual who wishes to terminate his or her permanent residency may simply mail his or her green card back to the INS. Second, an individual may be involuntarily deported from the United States (through a judicial or administrative proceeding), and the green card must be relinquished at that time. Third, a green card holder who leaves the United States and attempts to re-enter more than a year later may have his or her green card taken away by the INS border examiner, although the individual may appeal to an immigration judge to have the green card reinstated. A green-card holder may permanently leave the United States without relinquishing his or her green card, although such individuals would continue to be taxed as U.S. residents.[34]

B. Reasons for Change

The Committee has been informed that a small number of very wealthy individuals each year relinquish their U.S. citizenship for the purpose of avoiding U.S. income, estate, and gift tax. By so doing, such individuals may reduce their annual U.S. income tax liability and their eventual U.S. estate tax liability.

The Committee recognizes that citizens of the United States clearly have a basic right under both U.S. and international law

[34] Code section 7701(b)(6)(B) provides that an individual who has obtained the status of residing permanently in the United States as an immigrant (i.e., an individual who has obtained a green card) will continue to be taxed as a lawful permanent resident of the United States until such status is revoked, or is administratively or judicially determined to have been abandoned.

not only to leave the United States to live elsewhere, but also to relinquish their U.S. citizenship. The Committee does not believe that the Internal Revenue Code should be used to stop U.S. citizens or residents from expatriating; however, the Committee also does not believe that the Code should provide a tax incentive for expatriating.

The Committee is concerned that present law, which bases the application of the alternative method of taxation under sections 877, 2107 and 2501(a)(3) ("expatriation tax provisions") to former citizens on proof of a tax-avoidance purpose, may be difficult to administer. Thus, the bill generally subjects certain former citizens to the expatriation tax provisions without inquiry as to their motive for losing their U.S. citizenship, but allows certain individuals to request a ruling from the Secretary of Treasury as to whether the loss of citizenship had a principal purpose of tax avoidance. The Committee believes that long-term permanent residents of the United States (i.e., green-card holders) should similarly be taxed under the expatriation tax provisions for 10 years after their U.S. residency is terminated.

The Committee is aware that taxpayers may circumvent present-law section 877 by converting U.S. source income to foreign source income. To eliminate taxpayers' ability to escape U.S. tax by such conversions, the bill substantially expands the scope of section 877 to apply to foreign property acquired in nonrecognition transactions. In addition, for purposes of determining the tax liability under section 877, the 10-year period is suspended with respect to any property during the period in which the individual's risk of loss with respect to such property is substantially diminished.

The Committee further believes that it is appropriate to tax amounts earned by former U.S. citizens and residents through certain controlled foreign corporations where the taxation of such amounts has been deferred during the period of U.S. citizenship or residency. Therefore, income or gains derived from stock in a foreign corporation that is more than 50-percent owned by a former citizen or resident is taxable under the bill to the extent of the earnings and profits attributable to such stock if the income or gains are realized within the 10-year period after the relinquishment of U.S. citizenship or termination of U.S. residency. This rule applies to earnings and profits attributable to such stock but only to the extent earned during the pre-expatriation period.

The Committee understands that amounts taxed under the expatriation tax provisions could be subject to double taxation (e.g., taxed by both the United States and the country of residence of the expatriate). Therefore, the bill provides relief from double taxation in circumstances where another country also taxes the same item that is subject to tax under the expatriation tax provisions.

The Committee is also aware that certain existing U.S. income tax treaties may not permit the United States to assert its taxing jurisdiction on former citizens or long-term residents who are residents of such countries. The Committee believes that the modified expatriation tax provisions are generally consistent with the underlying principles of income tax treaties to the extent the bill provides a foreign tax credit for items that are taxed by another country, thus ceding primary taxing jurisdiction to the foreign country.

To the extent that the modified expatriation provisions do conflict with the provisions of tax treaties, the Committee expects that the Treasury Department will renegotiate those treaties to eliminate any such conflicts. In the interim, the new provisions take precedence over the treaties for a period of 10 years.

In order to enhance compliance with the expatriation tax provisions, and to assist the IRS in identifying former U.S. citizens and residents who are subject to the expatriation tax provisions, the bill imposes an information reporting obligation on former citizens and long-term residents at the time of expatriation and requires the State Department and other government entities to share certain information with the IRS with respect to such individuals.

C. Explanation of Provisions

Overview

The bill expands and substantially strengthens in several ways the present-law provisions that subject U.S. citizens who lose their citizenship for tax avoidance purposes to special tax rules for 10 years after such loss of citizenship (secs. 877, 2107, and 2501(a)(3)). First, the bill extends the expatriation tax provisions to apply not only to U.S. citizens who lose their citizenship but also to certain long-term residents of the United States whose U.S. residency is terminated. Second, the bill subjects certain individuals to the expatriation tax provisions without inquiry as to their motive for losing their U.S. citizenship or residency, but allows certain categories of citizens to show an absence of tax-avoidance motives if they request a ruling from the Secretary of the Treasury as to whether the loss of citizenship had a principal purpose of tax avoidance. Third, the bill expands the categories of income and gains that are treated as U.S. source (and therefore subject to U.S. income tax under section 877) if earned by an individual who is subject to the expatriation tax provisions and includes provisions designed to eliminate the ability to engage in certain transactions that under current law partially or completely circumvent the 10-year reach of section 877. Further, the bill provides relief from double taxation in circumstances where another country imposes tax on items that would be subject to U.S. tax under the expatriation tax provisions.

The bill also contains provisions to enhance compliance with the expatriation tax provisions. The bill imposes information reporting obligations on U.S. citizens who lose their citizenship and long-term residents whose U.S. residency is terminated at the time of expatriation. In addition, the bill directs the Treasury Department to undertake a study regarding compliance by individuals living abroad with their U.S. tax reporting obligations and to make recommendations with respect to improving such compliance.

Individuals covered

The present-law expatriation tax provisions apply only to certain U.S. citizens who lose their citizenship. The bill extends these expatriation tax provisions to apply also to long-term residents of the United States whose U.S. residency is terminated. For this purpose, a long-term resident is any individual who was a lawful permanent resident of the United States for at least 8 out of the 15

taxable years ending with the year in which such termination occurs. In applying this 8-year test, an individual is not considered to be a lawful permanent resident for any year in which the individual is taxed as a resident of another country under a treaty tie-breaker rule. An individual's U.S. residency is considered to be terminated when either the individual ceases to be a lawful permanent resident pursuant to section 7701(b)(6)(i.e., the individual loses his or her green-card status) or the individual is treated as a resident of another country under a tie-breaker provision of a tax treaty (and the individual does not elect to waive the benefits of such treaty). Furthermore, a long-term resident may elect to use the fair market value basis of property on the date the individual became a U.S. resident (rather than the property's historical basis) to determine the amount of gain subject to the expatriation tax provisions if the asset is sold within the 10-year period.

Under present law, the expatriation tax provisions are applicable to a U.S. citizen who loses his or her citizenship unless such loss did not have as a principal purpose the avoidance of taxes. Under the bill, U.S. citizens who lose their citizenship and long-term residents whose U.S. residency is terminated are generally treated as having lost such citizenship or terminated such residency with a principal purpose of the avoidance of taxes if either: (1) the individual's average annual U.S. Federal income tax liability for the 5 taxable years ending before the date of such loss or termination is greater than $100,000 (the "tax liability test"), or (2) the individual's net worth as of the date of such loss or termination is $500,000 or more (the "net worth test"). The dollar amount thresholds contained in the tax liability test and the net worth test are indexed for inflation in the case of a loss of citizenship or termination of residency occurring in any calendar year after 1996. An individual who falls below the thresholds specified in both the tax liability test and the net worth test is subject to the expatriation tax provisions unless the individual's loss of citizenship or termination of residency did not have as a principal purpose the avoidance of tax (as under present law in the case of U.S. citizens).

A U.S. citizen, who loses his or her citizenship and who satisfies either the tax liability test or the net worth test, is not subject to the expatriation tax provisions if such individual can demonstrate that he or she did not have a principal purpose of tax avoidance and the individual is within one of the following categories: (1) the individual was born with dual citizenship and retains only the non-U.S. citizenship; (2) the individual becomes a citizen of the country in which the individual, the individual's spouse, or one of the individual's parents, was born; (3) the individual was present in the United States for no more than 30 days during any year in the 10-year period immediately preceding the date of his or her loss of citizenship; (4) the individual relinquishes his or her citizenship before reaching age 18½; or (5) any other category of individuals prescribed by Treasury regulations. In all of these situations, the individual would have been subject to tax on his or her worldwide income (as are all U.S. citizens) until the time of expatriation. In order to qualify for one of these exceptions, the former U.S. citizen must, within one year from the date of loss of citizenship, submit a ruling request for a determination by the Secretary of the Treas-

ury as to whether such loss had as one of its principal purposes the avoidance of taxes. A former U.S. citizen who submits such a ruling request would be entitled to challenge an adverse determination by the Secretary of the Treasury. However, a former U.S. citizen who fails to submit a timely ruling request would not be eligible for these exceptions. It is expected that in making a determination as to the presence of a principal purpose of tax avoidance, the Secretary of the Treasury will take into account factors such as the substantiality of the former citizen's ties to the United States (including ownership of U.S. assets) prior to expatriation, the retention of U.S. citizenship by the former citizen's spouse, and the extent to which the former citizen resides in a country that imposes little or not tax.

The foregoing exceptions are not available to long-term residents whose U.S. residency is terminated. However, the bill authorizes the Secretary of the Treasury to prescribe regulations to exempt certain categories of long-term residents from the bill's provisions.

Items subject to section 877

Under section 877, an individual covered by the expatriation tax provisions is subject to tax on U.S. source income and gains for a 10-year period after expatriation at the graduated rates applicable to U.S. citizens.[35] The tax under section 877 applies to U.S. source income and gains of the individual for the 10-year period, without regard to whether the property giving rise to such income or gains was acquired before or after the date the individual became subject to the expatriation tax provisions. For example, a U.S. citizen who inherits an appreciated asset immediately before losing citizenship and disposes of the asset immediately after such loss would not recognize any taxable gain on such disposition (because of the date of death fair market value basis accorded to inherited assets), but the individual would continue to be subject to tax under section 877 on the income or gain derived from any U.S. property acquired with the proceeds from such disposition.

In addition, section 877 currently recharacterizes as U.S. source income certain gains of individuals who are subject to the expatriation tax provisions, thereby subjecting such individuals to U.S. income tax on such gains. Under this rule, gain on the sale or exchange of stock of a U.S. corporation or debt of a U.S. person is treated as U.S. source income. In this regard, under current law, the substitution of a foreign obligor for a U.S. obligor is generally treated as a taxable exchange of the debt instrument, and therefore any gain on such exchange would be subject to tax under section 877. The bill extends this recharacterization to income and gains derived from property obtained in certain transactions on which gain or loss is not recognized under present law. An individual covered by section 877 who exchanges property that would produce

[35] Under present law, all nonresident aliens (including expatriates) are subject to U.S. income tax at graduated rates on certain types of income. Such income includes income effectively connected with a U.S. trade or business and gains from the disposition of interests in U.S. real property. For example, compensation (including deferred compensation) paid with respect to services performed in the United States is subject to such tax. Thus, under current law, a U.S. citizen who earns a stock option while employed in the United States and delays the exercise of such option until after such individual loses his or her citizenship would be subject to U.S. tax on the compensation income recognized upon exercise of the stock option (even if the stock received upon the exercise is stock in a foreign corporation).

U.S. source income for property that would produce foreign source income is required to recognize immediately as U.S. source income any gain on such exchange (determined as if the property had been sold for its market value on such date). To the extent gain is recognized under this provision, the property would be accorded the step-up in basis provided under current law. This rule requiring immediate gain recognition does not apply if the individual enters into an agreement with the Secretary of the Treasury specifying that any income or gains derived from the property received in the exchange during the 10-year period after the loss of citizenship (or termination of U.S. residency, as applicable) would be treated as U.S. source income. Such a gain recognition agreement terminates if the property transferred in the exchange is disposed of by the acquiror, and any gain that had not been recognized by reason of such agreement is recognized as U.S. source as of such date. It is expected that a gain recognition agreement would be entered into not later than the due date for the tax return for the year of the exchange. In this regard, the Secretary of the Treasury is authorized to issue regulations providing similar treatment for nonrecognition transactions that occur within 5 yeas immediately prior to the date of loss of citizenship (or termination of U.S. residency, as applicable).

The Secretary of the Treasury is authorized to issue regulations to treat removal of tangible personal property from the United States, and other circumstances that result in a conversion of U.S. source income to foreign source income without recognition of any unrealized gain, as exchanges for purposes of computing gain subject to section 877. The taxpayer may defer the recognition of the gain if he or she enters into a gain recognition agreement as described above. For example, a former citizen who removes appreciated artwork that he or she owns from the United States could be subject to immediate tax on the appreciation under this provision unless the individual enters into a gain recognition agreement.

The foregoing rules regarding the treatment under section 877 of nonrecognition transactions are illustrated by the following examples: Ms. A loses her U.S. citizenship on January 1, 1996, and is subject to section 877. On June 30, 1997, Ms. A transfers the stock she owns in a U.S. corporation, USCo, to a wholly-owned foreign corporation, FCo, in a transaction that qualifies for tax-free treatment under section 351. At the time of such transfer, A's basis in the stock of USCo is $100,000 and the fair market value of the stock is $150,000. Under present law, Ms. A. would not be subject to U.S. tax on the $50,000 of gain realized on the exchange. Moreover, Ms. A would not be subject to U.S. tax on any distribution of the proceeds from a subsequent disposition of the USCo stock by FCo. Under the bill, if Ms. A does not enter into a gain recognition agreement with the Secretary of the Treasury, Ms. A would be deemed to have sold the USCo stock for $150,000 on the date of the transfer, and would be subject to U.S. tax in 1997 on the $50,000 of gain realized. Alternatively, if Ms. A enters into a gain recognition agreement, she would not be required to recognize for U.S. tax purposes in 1997 the $50,000 of gain realized upon the transfer of the USCo stock to FCo. However, under the gain recognition agreement, for the 10-year period ending on December 31,

2005, any income (e.g., dividends) or gain with respect to the FCo stock would be treated as U.S. source, and therefore Ms. A would be subject to tax on such income or gain under section 877. If FCo disposes of the USCo stock on January 1, 2002, Ms. A's gain recognition agreement would terminate on such date, and Ms. A would be required to recognize a U.S. source income at that time the $50,000 of gain that she previously deferred under the gain recognition agreement. (The amount of gain required to be recognized by Ms. A in this situation would not be affected by any changes in the value of the USCo stock since her June 30, 1997 transfer of such stock to FCo.)

The bill also extends the recharacterization rules of section 877 to treat as U.S. source any income and gains derived from stock in a foreign corporation if the individual losing citizenship or terminating residency owns, directly or indirectly, more than 50 percent of the vote or value of the stock of the corporation on the date of such loss or termination or at any time during the 2 years preceding such date. Such income and gains are recharacterized as U.S. source only to the extent of the amount of earnings and profits attributable to such stock earned or accumulated prior to the date of loss of citizenship (or termination of residency, as applicable) and while such ownership requirement is satisfied.

The following example illustrates this rule: Mr. B loses his U.S. citizenship on July 1, 1996 and is subject to section 877. Mr. B has owned all of the stock of a foreign corporation, FCo, since its incorporation in 1991. As of FCo's December 31, 1995 year-end, FCo has accumulated earnings and profits of $500,000. FCo has earnings and profits of $100,000 for 1996 and does not have any subpart F income (as defined in sec. 952). FCo make a $100,000 distribution to Mr. B in each of 1997 and 1998. On January 1, 1999, Mr. B disposes of all his stock of FCo and realizes $400,000 of gain. Under present law, neither the distributions from FCo nor the gain on the disposition of the FCo stock would be subject to U.S. tax. Under the bill, the distributions from FCo and the gain on the sale of the stock of FCo would be treated as U.S. source income and would be taxed to Mr. B under section 877, subject to the earnings and profits limitation. For this purpose, the amount of FCo's earnings and profits for 1996 is prorated based on the number of days during 1996 that Mr. B is a U.S. citizen. Thus, the amount of FCo's earnings and profits earned or accumulated before Mr. B's loss of citizenship is $550,000. Accordingly, the $100,000 distributions from FCo in 1997 and 1998 would be treated as U.S. source income taxable to Mr. B under section 877 in such years. In addition, $350,000 of the gain realized from the sale of the stock of FCo in 1999 would be treated as U.S. source income taxable to Mr. B under section 877 in that year.

Special rule for shift in risks of ownership

Section 877 applies to income and gains for the 10-year period following the loss of citizenship (or termination of residency, as applicable). For purposes of applying section 877, the bill suspends this 10-year period for gains derived from a particular property during any period in which the individual's risk of loss with respect to such property is substantially diminished. For example, Ms. C

loses her citizenship on January 1, 1996 and is subject to section 877. On that date Ms. C owns 10,000 shares of stock of a U.S. corporation, USCo, with a value of $1 million. On the same date Ms. C enters into an equity swap with respect to such USCo stock with a 5-year term. Under the transaction, Ms. C will transfer to the counter-party an amount equal to the dividends on the USCo stock and any increase in the value of the USCo stock for the 5-year period. The counter-party will transfer to Ms. C an amount equal to a market rate of interest on $1 million and any decrease in the value of the USCo stock for the same period. Ms. C's risk of loss with respect to the USCo stock is substantially diminished during the 5-year period in which the equity swap is in effect, and therefore, under the bill, the 10-year period under section 877 is suspended during such period. Accordingly, under the bill, if Ms. C sells her USCo stock for a gain on January 1, 2010, such gain would be treated as U.S. source income taxable to Ms. C under section 877. Such gain would not be subject to U.S. tax under present law.

Double tax relief

In order to avoid the double taxation of individuals subject to the expatriation tax provisions, the bill provides a credit against the U.S. tax imposed under such provisions for any foreign income, gift, estate or similar taxes paid with respect to the items subject to such taxation. This credit would be available only against the tax imposed solely as a result of the expatriation tax provisions, and would not be available to be used to offset any other U.S. tax liability. For example, Mr. D loses his citizenship on January 1, 1996 and is subject to section 877. Mr. D becomes a resident of Country X. During 1996, Mr. D recognizes a $100,000 gain upon the sale of stock of a U.S. corporation, USCo. Country X imposes $20,000 tax on this capital gain. But for the double tax relief provision, Mr. D would be subject to tax of $28,000 on this gain under section 877. However, Mr. D's U.S. tax under section 877 would be reduced by the $20,000 of foreign tax paid, and Mr. D's resulting U.S. tax on this gain would be $8,000.

Effect on tax treaties

While the Committee believes that the expatriation tax provisions, as amended by this bill, are generally consistent with the underlying principles of income tax treaties to the extent the bill provides a foreign tax credit for items taxed by another country, it is intended that the purpose of the expatriation tax provisions, as amended, not be defeated by any treaty provision. The Treasury Department is expected to review all outstanding treaties to determine whether the expatriation tax provisions, as revised, potentially conflict with treaty provisions and to eliminate any such potential conflicts through renegotiation of the affected treaties as necessary. Beginning on the tenth anniversary of the enactment of the bill, any conflicting treaty provisions that remain in force would take precedence over the expatriation tax provisions as revised.

Required information reporting and sharing

Under the bill, a U.S. citizen who loses his or her citizenship is required to provide a statement to the State Department (or other designated government entity) which includes the individual's social security number, forwarding foreign address, new country of residence and citizenship and, in the case of individuals with a net worth of at least $500,000, a balance sheet. The entity to which such statement is to be provided is required to provide to the Secretary of the Treasury copies of all statements received and the names of individuals who refuse to provide such statements. A long-term resident whose U.S. residency is terminated would be required to attach a similar statement to his or her U.S. income tax return for the year of such termination. An individual's failure to provide the required statement would result in the imposition of a penalty for each year the failure continues equal to the greater of (1) 5 percent of the individual's expatriation tax liability for such year, or (2) $1,000.

The bill requires the State Department to provide the Secretary of the Treasury with a copy of each CLN approved by the State Department. Similarly, the bill requires the agency administering the immigration laws to provide the Secretary of the Treasury with the name of each individual whose status as a lawful permanent resident has been revoked or has been determined to have been abandoned.

Further, the bill requires the Secretary of the Treasury to publish in the Federal Register the names of all former U.S. citizens from whom it receives the required statements or whose names it receives under the foregoing information-sharing provisions.

Treasury report on tax compliance by U.S. citizens and residents living abroad

In order to address the compliance issues raised during the course of the Joint Committee staff study on the taxation of expatriates, the Treasury Department is directed to undertake a study on the tax compliance of U.S. citizens and green-card holders residing outside the United States and to make recommendations regarding the improvement of such compliance. The findings of such study and such recommendations are required to be reported to the House Committee on Ways and Means and the Senate Committee on Finance within 90 days of the date of enactment.

During the course of the Joint Committee staff study, a specific issue was identified regarding the difficulty in determining when a U.S. citizen has committed an expatriating act with the requisite intent, and thus no longer has the obligation to continue to pay U.S. taxes on his or her worldwide income due to the fact that the individual is no longer a U.S. citizen. Neither the Immigration and Nationality Act nor any other Federal law requires an individual to request a CLN within a specified amount of time after an expatriating act has been committed, even though the expatriating act terminates the status of the individual as a U.S. citizen for all purposes, including the status of being subject to U.S. tax on worldwide income. Accordingly, it is anticipated that the Treasury report, in evaluating whether improved coordination between executive branch agencies could improve compliance with the require-

ments of the Internal Revenue Code, will review the process through which the State Department determines when citizenship has been lost, and make recommendations regarding changes to such process to recognize the importance of such date for tax purposes. In particular, it is anticipated that the Treasury Department will explore ways of working with the State Department to insure that the State Department will not issue a CLN confirming the commission of an expatriating act with the requisite intent necessary to terminate citizenship in the absence of adequate evidence of both the occurrence of the expatriating act (e.g., the joining of a foreign army) and the existence of the requisite intent.

D. Effective Date

The expatriation tax provisions as modified by the bill generally apply to any individual who loses U.S. citizenship on or after February 6, 1995, and any long-term residents whose U.S. residency is terminated on or after June 13, 1995. For citizens, the determination of the date of loss of citizenship remains the same as under present law (i.e., the date of loss of citizenship is the date of the expatriating act). However, a special transition rule applies to individuals who committed an expatriating act within one year prior to February 6, 1995, but had not applied for a CLN as of such date. Such an individual is subject to the expatriation tax provisions as amended by the bill as of the date of application for the CLN, but is *not* retroactively liable for U.S. income taxes on his or her worldwide income. In order to qualify for the exceptions provided for individuals who fall within one of the specified categories, such individual is required to submit a ruling request within 1 year after the date of enactment of the bill.

The special transition rule is illustrated by the following example. Mr. E joined a foreign army on October 1, 1994 with the intent to relinquish his U.S. citizenship, but Mr. E does not apply for a CLN until October 1, 1995. Mr. E would be subject to the expatriation tax provisions (as amended) for the 10-year period beginning on October 1, 1995. Moreover, if Mr. E falls within one of the specified categories (i.e., Mr. E is age 18 when he joins the foreign army), in order to qualify for the exception provided for such individuals, Mr. E would be required to submit his ruling request within 1 year after the date of enactment of the bill. Mr. E would not, however, be liable for U.S. income taxes on his worldwide income for any period after October 1, 1994.

The information reporting provisions under the bill apply to U.S. citizens who lose their citizenship and long-term residents whose U.S. residency is terminated after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee in its consideration of the bill, H.R. 1812.

Motion to report the bill.—The bill, H.R. 1812, as amended, was ordered favorably reported by a roll call vote of 20 yeas and 13 nays on June 13, 1995.

YEAS	NAYS
Mr. Archer	Mr. Gibbons
Mr. Crane	Mr. Rangel
Mr. Thomas	Mr. Stark
Mr. Shaw	Mr. Jacobs
Mrs. Johnson	Mr. Ford
Mr. Bunning	Mr. Matsui
Mr. Houghton	Mrs. Kennelly
Mr. McCrery	Mr. Coyne
Mr. Hancock	Mr. Levin
Mr. Camp	Mr. Cardin
Mr. Ramstad	Mr. McDermott
Mr. Zimmer	Mr. Lewis
Mr. Nussle	Mr. Neal
Mr. Johnson	
Ms. Dunn	
Mr. Collins	
Mr. Portman	
Mr. English	
Mr. Ensign	
Mr. Christensen	

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimates of Budgetary Effects

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 1812, as reported.

The bill, as amended, is estimated to have the following effects on budget receipts for fiscal years 1995–2000:

FISCAL YEARS

[In billions of dollars]

1995	1996	1997	1998	1999	2000	1995–2000
([1])	0.1	0.1	0.2	0.2	0.3	0.8

[1] Gain of less than $50 million.

B. Statement Regarding New Budget Authority and Tax Expenditures

Budget Authority

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that bill involves no new or increased budget authority.

Tax Expenditures

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the bill has no effect on tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with subdivision (C) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the Committee advises that the Congressional Budget Office submitted the following statement with respect to H.R. 1812 as reported.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 16, 1995.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1812, a bill to revise the income, estate, and gift tax rules applicable to individuals who lose United States citizenship, as ordered reported by the House Committee on Ways and Means

on June 13, 1995. The Joint Committee on Taxation (JCT) estimates that the bill would increase receipts by $13 million in fiscal year 1995 and by $782 million over fiscal years 1995 through 2000. CBO concurs with the estimate. The budget effects of the bill are summarized below.

BUDGET EFFECTS OF H.R. 1812

[By fiscal year, in billions of dollars]

	1995	1996	1997	1998	1999	2000
Projected revenues under current law [1]	1354.965	1417.619	1475.210	1546.076	1617.969	1697.155
Proposed changes	.013	.053	.100	.150	.205	.261
Projected revenues under H.R. 1812	1354.978	1417.672	1475.310	1546.226	1618.174	1697.416

[1] Includes revenue effects of P.L. 104–7 (H.R. 831).

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because this bill would affect receipts, pay-as-you-go procedures would apply. These effects are summarized in the following table.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998
Changes in outlays	(1)	(1)	(1)	(1)
Changes in receipts	13	53	100	150

[1] Not applicable.

If you wish further details, we will be pleased to provide them. The staff contact is Melissa Sampson.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's oversight activities concerning the income and estate and gift taxation of individuals who relinquish their U.S. citizenship and long-term resident aliens who relinquish their U.S. residency that the Committee concluded it is appropriate to enact the provisions contained in the bill as reported. (See also Parts I.B and I.C of this report for a discussion of the background and purpose of the bill and the legislative history and hearings held on the provisions included in the bill.)

B. Findings and Recommendations of the Committee on Government Reform and Oversight

With respect to subdivision (D) of clause (2)(l)(3) of rule XI of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in this bill.

C. Inflationary Impact Statement

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement concerning the possible inflationary impact of the bill.

The tax and compliance provisions of this bill are projected to reduce the overall Federal deficit, and will not have any inflationary impact on prices in the operation of the nation's economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

* * * * * * *

Subpart A—Nonresident Alien Individuals

* * * * * * *

SEC. 877. EXPATRIATION TO AVOID TAX.

[(a) IN GENERAL.—Every nonresident alien individual who at any time after March 8, 1965, and within the 10-year period immediately preceding the close of the taxable year lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.]

(a) TREATMENT OF EXPATRIATES.—

(1) IN GENERAL.—Every nonresident alien individual who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax im-

posed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if—

(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $100,000, or

(B) the net worth of the individual as of such date is $500,000 or more.

In the case of the loss of United States citizenship in any calendar year after 1996, such $100,000 and $500,000 amounts shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "1994" for "1992" in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(b) ALTERNATIVE TAX.—A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1, 55, or 402(d)(1), except that—

(1) the gross income shall include only the gross income described in section 872(a) (as modified by subsection [(c)] *(d)* of this section), and

(2) the deductions shall be allowed if and to the extent that they are connected with the gross income included under this section, except that the capital loss carryover provided by section 1212(b) shall not be allowed; and the proper allocation and apportionment of the deductions for this purpose shall be determined as provided under regulations prescribed by the Secretary.

For purposes of paragraph (2), the deductions allowed by section 873(b) shall be allowed; and the deduction (for losses not connected with the trade or business if incurred in transactions entered into for profit) allowed by section 165(c)(2) shall be allowed, but only if the profit, if such transaction had resulted in a profit, would be included in gross income under this section. *The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income on which tax is imposed solely by reason of this section.*

(c) TAX AVOIDANCE NOT PRESUMED IN CERTAIN CASES.—

(1) IN GENERAL.—Subsection (a)(2) shall not apply to an individual if—

(A) such individual is described in a subparagraph of paragraph (2) of this subsection, and

(B) within the 1-year period beginning on the date of the loss of United States citizenship, such individual submits a ruling request for the Secretary's determination as to

whether such loss has for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle B.

(2) INDIVIDUALS DESCRIBED.—

(A) DUAL CITIZENSHIP, ETC.—An individual is described in this subparagraph if—

(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, or

(ii) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship) a citizen of the country in which—

(I) such individual was born,

(II) if such individual is married, such individual's spouse was born, or

(III) either of such individual's parents were born.

(B) LONG-TERM FOREIGN RESIDENTS.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship, the individual was present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.

(C) RENUNCIATION UPON REACHING AGE OF MAJORITY.—An individual is described in this subparagraph if the individual's loss of United States citizenship occurs before such individual attains age 18½.

(D) INDIVIDUALS SPECIFIED IN REGULATIONS.—An individual is described in this subparagraph if the individual is described in a category of individuals prescribed by regulation by the Secretary.

[(c) SPECIAL RULES OF SOURCE.—For purposes of subsection (b), the following items of gross income shall be treated as income from sources within the United States:

[(1) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

[(2) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2).

[(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to a nonresident alien individual whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).]

(d) SPECIAL RULES FOR SOURCE, ETC.—For purposes of subsection (b)—

(1) SOURCE RULES.—The following items of gross income shall be treated as income from sources within the United States:

(A) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

(B) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

(C) INCOME OR GAIN DERIVED FROM CONTROLLED FOREIGN CORPORATION.—Any income or gain derived from stock in a foreign corporation but only—

(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation, and

(ii) to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

(2) GAIN RECOGNITION ON CERTAIN EXCHANGES.—

(A) IN GENERAL.—In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange, and any gain shall be recognized for the taxable year which includes such date.

(B) EXCHANGES TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any exchange during the 10-year period described in subsection (a) if—

(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

(ii) income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and

(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

(C) EXCEPTION.—Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and

any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

(D) SECRETARY MAY EXTEND PERIOD.—To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein.

(E) SECRETARY MAY REQUIRE RECOGNITION OF GAIN IN CERTAIN CASES.—To the extent provided in regulations prescribed by the Secretary—

(i) the removal of appreciated tangible personal property from the United States, and

(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

(3) SUBSTANTIAL DIMINISHING OF RISKS OF OWNERSHIP.—For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property (or similar property),

(B) the holding by another person of a right to acquire the property, or

(C) a short sale or any other transaction.

(e) COMPARABLE TREATMENT OF LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—

(1) IN GENERAL.—Any long-term resident of the United States who—

(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039F in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

(2) LONG-TERM RESIDENT.—For purposes of this subsection, the term "long-term resident" means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in subparagraph (A) or (B) of paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of

a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

(3) SPECIAL RULES.—

(A) EXCEPTIONS NOT TO APPLY.—Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

(B) STEP-UP IN BASIS.—Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(4) AUTHORITY TO EXEMPT INDIVIDUALS.—This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1).

[(e)] *(f)* BURDEN OF PROOF.—If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction for the taxable year in the taxes on his probable income for such year, the burden of proving for such taxable year that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B shall be on such individual.

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Subtitle B—Estate and Gift Taxes

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CHAPTER 11—ESTATE TAXES

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Subchapter B—Estates of Nonresidents Not Citizens

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SEC. 2107. EXPATRIATION TO AVOID TAX.

[(a) RATE OF TAX.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States dying after

November 13, 1966, if after March 8, 1965, and within the 10-year period ending with the date of death such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.]

(a) TREATMENT OF EXPATRIATES.—

(1) RATE OF TAX.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

(2) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—

(A) IN GENERAL.—For purposes of paragraph (1), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

(B) EXCEPTION.—Subparagraph (A) shall not apply to a decedent meeting the requirements of section 877(c)(1).

(b) GROSS ESTATE.—For purposes of the tax imposed by subsection (a), the value of the gross estate of every decedent to whom subsection (a) applies shall be determined as provided in section 2103, except that—

(1) * * *

(2) if such decedent owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of his death, [more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation,] *more than 50 percent of—*

(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(B) the total value of the stock of such corporation,

then that proportion of the fair market value of the stock of such foreign corporation owned (within the meaning of section 958(a)) by such decedent at the time of his death, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of his death, bears to the total fair market value of all assets owned by such foreign corporation at the time of his death, shall be included in the gross estate of such decedent. For purposes of the preceding sentence, a decedent shall be treated as owning stock of a foreign corporation at the time of his death if, at the time of a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.

(c) CREDITS.—

(1) * * *

(2) CREDIT FOR FOREIGN DEATH TAXES.—

(A) IN GENERAL.—The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country

in respect of any property which is included in the gross estate solely by reason of subsection (b).

(B) LIMITATION ON CREDIT.—The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country in respect of property included in the gross estate as the value of the property included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

(ii) such property's proportionate share of the excess of—

(I) the tax imposed by subsection (a), over

(II) the tax which would be imposed by section 2101 but for this section.

(C) PROPORTIONATE SHARE.—For purposes of subparagraph (B), a property's proportionate share is the percentage which the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate.

[(2)] *(3)* OTHER CREDITS.—The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with subsections (a) and (b) of section 2102. For purposes of subsection (a) of section 2102, sections 2011 to 2013, inclusive, shall be applied as if the credit allowed under paragraph (1) were allowed under section 2010.

[(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to the transfer of the estate of a decedent whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).

[(e)] *(d)* BURDEN OF PROOF.—If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction in the estate, inheritance, legacy, and succession taxes in respect of the transfer of his estate, the burden of proving that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A shall be on the executor of such individual's estate.

(e) CROSS REFERENCE.—

For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e).

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CHAPTER 12—GIFT TAX

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Subchapter A—Determination of Tax Liability

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SEC. 2501. IMPOSITION OF TAX.

(a) TAXABLE TRANSFERS.—

(1) * * *

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[(3) EXCEPTIONS.—Paragraph (2) shall not apply in the case of a donor who at any time after March 8, 1965, and within the 10-year period ending with the date of transfer lost United States citizenship unless—

[(A) such donor's loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487), or

[(B) such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.]

(3) EXCEPTION.—

(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor who, within the 10-year period ending with the date of transfer, lost United States citizenship, unless such loss did not have for 1 of its principal purposes the avoidance of taxes under this subtitle or subtitle A.

(B) CERTAIN INDIVIDUALS TREATED AS HAVING TAX AVOIDANCE PURPOSE.—For purposes of subparagraph (A), an individual shall be treated as having a principal purpose to avoid such taxes if such individual is so treated under section 877(a)(2).

(C) EXCEPTION FOR CERTAIN INDIVIDUALS.—Subparagraph (B) shall not apply to a decedent meeting the requirements of section 877(c)(1).

(D) CREDIT FOR FOREIGN GIFT TAXES.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.

(E) CROSS REFERENCE.—

For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e).

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart A—Information Concerning Persons Subject to Special Provisions

Sec. 6031. Return of partnership income.

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Sec. 6039F. Information on individuals losing United States citizenship.

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SEC. 6039F. INFORMATION ON INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Notwithstanding any other provision of law, any individual who loses United States citizenship (within the meaning of section 877(a)) shall provide a statement which includes the information described in subsection (b). Such statement shall be—

(1) provided not later than the earliest date of any act referred to in subsection (c), and

(2) provided to the person or court referred to in subsection (c) with respect to such act.

(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

(1) the taxpayer's TIN,

(2) the mailing address of such individual's principal foreign residence,

(3) the foreign country in which such individual is residing,

(4) the foreign country of which such individual is a citizen,

(5) in the case of an individual having a net worth of at least the dollar amount applicable under section 877(a)(2)(B), information detailing the assets and liabilities of such individual, and

(6) such other information as the Secretary may prescribe.

(c) ACTS DESCRIBED.—For purposes of this section, the acts referred to in this subsection are—

(1) the individual's renunciation of his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

(2) the individual's furnishing to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

(3) the issuance by the United States Department of State of a certificate of loss of nationality to the individual, or

(4) the cancellation by a court of the United States of a naturalized citizen's certificate of naturalization.

(d) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty for each year (of the 10-year period beginning on the date of loss of United States citizenship) during any portion of which such failure continues in an amount equal to the greater of—

(1) 5 percent of the tax required to be paid under section 877 for the taxable year ending during such year, or

(2) $1,000,

unless it is shown that such failure is due to reasonable cause and not to willful neglect.

(e) INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law—

(1) any Federal agency or court which collects (or is required to collect) the statement under subsection (a) shall provide to the Secretary—

(A) a copy of any such statement, and

(B) the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a),

(2) the Secretary of State shall provide to the Secretary a copy of each certificate as to the loss of American nationality under section 358 of the Immigration and Nationality Act which is approved by the Secretary of State, and

(3) the Federal agency primarily responsible for administering the immigration laws shall provide to the Secretary the name of each lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) whose status as such has been revoked or has been administratively or judicially determined to have been abandoned.

Notwithstanding any other provision of law, not later than 30 days after the close of each calendar quarter, the Secretary shall publish in the Federal Register the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary receives information under the preceding sentence during such quarter.

(f) REPORTING BY LONG-TERM LAWFUL PERMANENT RESIDENTS WHO CEASE TO BE TAXED AS RESIDENTS.—In lieu of applying the last sentence of subsection (a), any individual who is required to provide a statement under this section by reason of section 877(e)(1) shall provide such statement with the return of tax imposed by chapter 1 for the taxable year during which the event described in such section occurs.

(g) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section.

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VII. DISSENTING VIEWS ON H.R. 1812

It is with reluctance that we have concluded that we must oppose H.R. 1812 as approved by the Committee. We would have preferred to participate in a bipartisan effort to eliminate the loophole under which extremely wealthy individuals can avoid their obligations under our tax system through the act of renouncing their citizenship in this country.

Our requirements for a bipartisan solution to this problem are quite simple and were set forth in a letter sent by Mr. Gibbons to Chairman Archer in which Mr. Gibbons encouraged efforts to craft bipartisan legislation. For our support, legislation must provide an effective and administrable end to the abuse about which we are all concerned. The bill approved by the Committee fails to satisfy that simple standard, and therefore we are unable to support it.

There should be no question about why we demand effective reform in this area. Being a citizen of this country confers extraordinary benefits and entails certain responsibilities. Our citizens are able to enjoy the full range of political and economic freedoms that our form of government ensures. We were shocked by the Joint Committee on Taxation staff report, "Issues Presented by Proposals to Modify the Tax Treatment of Expatriation," which suggested that the benefits of being a citizen of this country are limited to the ability to travel on a U.S. passport or enjoy the benefits of services such as health care or modern public works. It is difficult to express a more limited vision of the benefits of being a citizen of this country than that contained in the Joint Committee staff report.

This country depends on the voluntary compliance of its citizens to collect its taxes. In that respect, we are unique in the world. The willingness of our citizens to continue to voluntarily comply with our tax laws is threatened when very wealthy individuals can avoid their responsibilities as citizens by simply turning their backs on this country and walking away with enormous wealth.

The reasons for our opposition to H.R. 1812 can be stated quite simply:

It does not prevent tax avoidance by expatriates who have patience.

It does not prevent tax avoidance by expatriates who plan ahead.

It does not prevent tax avoidance by expatriates who have foreign assets.

It does not prevent tax avoidance by expatriates who have U.S. assets if they have sufficient wealth to avail themselves of the many current-law loopholes that remain under the Committee bill.

It does little to prevent avoidance of estate and gift taxes even though the desire to avoid these taxes is often a major reason for tax-motivated expatriations.

It is not administrable and depends on voluntary compliance by individuals who, by their own acts, have put themselves outside the jurisdiction of our laws.

It retains the current-law requirement that a tax-avoidance motive be established in the case of an expatriate with some prior connection to a foreign country, even though it does not require that expatriate to reside in that country.

We offered in the Committee a substitute that would have effectively repealed the loophole under which wealthy expatriates are avoiding their financial responsibilities to this country. Our substitute was based on the recommendations contained in the President's budget for fiscal year 1996. Throughout this process, we have responded to legitimate concerns that have been raised. The bill, H.R. 1535, introduced by Mr. Gibbons contains several very important modifications to the Administration's proposal, designed to address arguments concerning human rights, liquidity, and double taxation. In developing our substitute for Committee consideration, we incorporated several provisions contained in H.R. 1812, including its effective date. We have been willing to compromise on many aspects of this legislation, but we are unwilling to support anything that is not an effective end to this loophole. The fact that our substitute was not seriously considered by the Republican majority on the Committee is an indication of their lack of interest in a bipartisan and effective solution.

I. Expatriates Who Have Patience

An expatriate who has patience can simply avoid taxation under the Committee bill by deferring income and gains beyond the 10-year window after expatriation as provided in the Committee bill. No other American taxpayer is provided the opportunity given to wealthy expatriates by the Committee bill.

There are ample opportunities for individuals with extensive wealth to utilize their assets without engaging in transactions resulting in recognition of gain. A wealthy expatriate who needs money during the 10-year window can simply borrow money using his assets as security. There is nothing in the Committee bill to prevent this.

The financial markets have been extraordinarily ingenious in their development of derivative instruments, such as equity swaps. Many of these instruments enable individuals to, in effect, cash out of a particular investment without recognition of gain for tax purposes. H.R. 1812, as introduced, did not effectively prevent the use of these derivative instruments to defer recognition of gain beyond the 10-year window. The staff has recognized this and made an attempt to close this loophole in the drafting of the Committee bill. We doubt that they were successful given the complexity of these instruments.

II. Expatriates Who Plan Ahead and Have Foreign Assets

The Committee bill only taxes expatriates on their U.S.-source income. This is inconsistent with a fundamental principle of our

tax system, which requires other U.S. citizens to pay tax on their worldwide income. Like most other countries in the world, this country has always believed that the benefits of our system are sufficient to justify taxation of all income of our taxpayers. The Republican majority on this Committee seems to disagree. However, they are willing only to provide wealthy expatriates the opportunity to avoid tax on foreign-source income. Every other U.S. taxpayer would be required to pay tax on his worldwide income. If the Republican majority on this Committee believes that our system of taxation is incorrect, they should change it for everyone, not merely expatriates.

When one looks at the publicized cases of wealthy expatriates, one can clearly understand the extraordinary benefit to these individuals of the exclusion of foreign-source income. As identified in the press, the Dart family expatriates, heirs to a styrofoam-cup empire, whose wealth is estimated to exceed $3 billion, have a substantial portion of their assets invested in foreign property. Public reports have identified Joseph Bogdanovich, a Star-Kist Tuna heir, as actively lobbying against the expatriation provisions. From published reports, it appears that he has substantial investments in foreign assets. In addition, Ted Arison, the founder of Carnival Cruise Lines, would be exempt from taxation on profits earned by Carnival Cruise after his expatriation because Carnival Cruise Lines is organized as a Panamanian corporation.

Foreign assets of these and other wealthy expatriates were acquired with wealth accumulated while these individuals enjoyed the privilege of participating in our economic system. Had these individuals invested their wealth in our domestic economy and contributed to our economic growth, they would have been subject to tax under the Committee bill after their expatriation. However, they chose to invest their wealth overseas, and H.R. 1812 will reward them for making this choice by exempting them from the same tax that the rest of our citizens are required to pay.

When one looks at the case of Ted Arison, the founder of Carnival Cruise Lines, as described in the press, it is apparent why the exclusion of foreign assets is unwarranted. Carnival Cruise Lines, although organized as a Panamanian corporation derives most of its business from U.S. citizens. The mere fact that it was organized as a Panamanian corporation to avoid other restrictions of Federal law will also result in an unwarranted windfall exemption from our tax system.

The Committee bill treats an executive in a U.S. subsidiary of a domestic parent far more harshly than an executive of a U.S. subsidiary of a foreign parent. Many companies encourage, and some require, their executives to purchase stock in the company. If the executive of the subsidiary of the foreign parent purchased stock in the foreign parent by reason of the exercise of a nonqualified stock option or in the market, he would be exempt from all tax on the sale of that stock after expatriation even though all of his services as an executive were performed in the United States. An executive working for a subsidiary of a domestic parent would not be treated so generously.

III. Expatriates Who Have U.S. Assets

By retaining the exclusion for foreign assets, the Committee bill will continue to permit wealthy expatriates to use tax-planning techniques to avoid U.S. tax on gains from domestic assets by hedging or resourcing income from those assets. The executive summary of the Joint Committee staff report on expatriation clearly states that proper tax-planning techniques can be used to avoid some or all taxation under current law. H.R. 1812 prevents only one method of engaging in such tax planning. The bill does not even eliminate totally the easy loophole of transferring U.S. assets to a foreign corporation. Under the Committee bill, income-producing property can be transferred to a foreign corporation without recognition of gain. As long as that corporation does not sell the property or make any distribution of income to the expatriate within the 10-year window, there will be no U.S. tax imposed by reason of the Committee bill on the income from the property. After that 10-year window, the expatriate is off the hook.

Marshall Langer, a lawyer who consulted with the Joint Committee staff on the expatriation report, has written a 300-page book on how to avoid current-law restrictions on tax-motivated expatriation. Only one avoidance technique is restricted, but not eliminated, by the Committee bill.

Even if the Committee bill was successful in closing all known loopholes to section 877 (which it was not), it does nothing to prevent new techniques to avoid that section. Practitioners regularly market new techniques to avoid section 877. A recent seminar brochure stated that Marshall Langer will "be revealing many unpublishable facts about second citizenships and clever 'how-to' points on legal tax avoidance. He will be exposing many loopholes which if widely known would soon be closed." One recent seminar required all attendees to be sworn to secrecy and did not permit any journalists or government employees to be admitted.

The Committee bill is nothing more than a challenge to the ingenuity of tax lawyers to devise new devices to avoid meaningful taxation on expatriates. For those who did not plan ahead, the Committee bill grants expatriates a 10-year-window period during which they and their tax advisors can invent new techniques to avoid effective taxation. The Committee bill may increase the legal expenses of expatriates, but it is not a significant restriction on tax-motivated expatriation.

Ironically, the only expatriates who may be affected in any meaningful fashion by the Committee bill may be those of moderate wealth who cannot afford the expensive legal services required to avoid taxation totally. It should be pointed out that the Committee bill affects all expatriates, not having some prior connection with a foreign country, who have net worth in excess of $500,000. The Democratic substitute, because of its generous exemptions, probably would have affected only individuals with millions of dollars in wealth. While the wealthiest of the expatriates are protected under the Committee bill, the moderately wealthy expatriates are substantially disadvantaged by reason of the failure to adopt the Democratic substitute.

IV. Administrability

The Committee bill, like current law, is simply not administrable. Such nonadministrability is clear on the face of the bill. If the Republican majority had missed this problem and had been serious about wanting to enact meaningful legislation, all they had to do was to ask the Treasury Department or IRS whether the bill could work. They chose not to bother. We wonder if they did not care. H.R. 1812 will require the Internal Revenue Service to monitor the transactions of expatriates for up to 10 years after they cease to be subject to the jurisdiction of our laws. We have developed an elaborate reporting system to ensure compliance with our tax laws. These reporting requirements would not be applicable to the overseas transactions of these wealthy expatriates.

The Committee bill is administrable only to the extent there is voluntary compliance by expatriates, unmonitored by any effective reporting or enforcement system. When concerns have been raised about whether there will be compliance with the Committee bill, assurances have been made that these individuals will comply. It is our belief that these individuals have already demonstrated their lack of willingness to contribute to the common good of this country be their renunciation of citizenship in this country. It is inconceivable to us that they will be punctilious in complying with tax provisions not enforced by any effective reporting or enforcement system.

The fact that the bill is not administrable is evidenced by a change made after the bill was ordered reported pursuant to the technical authority granted the staff. The staff discovered several new loopholes and appropriately attempted to close them. Under the modifications, removal of tangible personal property from the United States may be a taxable event. The question of how the Internal Revenue Service is supposed to enforce this is not answered. Recognizing that many other avoidance devices remain, the bill now authorizes the Internal Revenue Service to stop unspecified avoidance transactions, a task the staff now seems to recognize that they cannot accomplish under the approach contained in H.R. 1812.

We all know that the only answer to tax avoidance by expatriates is to impose a tax before they leave rather than some day in the future.

V. Retention of Tax-Avoidance-Motive Requirement

Under the Committee bill, the current-law requirement that a tax-avoidance motive must be established is retained for certain categories of expatriates.

One category consists of individuals with some prior connection to a foreign country. Therefore, under the Committee bill, an individual who became a citizen of a foreign country at birth or was born in a foreign country or had parents who were born in a foreign country would not be taxed unless a tax-avoidance motive was established. There is nothing in the Committee bill requiring the individual to actually go back to the country where born or the country of his parent's birth. It is possible under the Committee bill for the expatriate to claim citizenship in the other country but

to be totally exempt from its tax laws because he is a resident of a third-country tax haven.

Another category of individuals for whom the tax-avoidance-motive requirement is retained is U.S. citizens who are long-term residents of another country. This exclusion is inconsistent with the provisions contained in our tax system since 1916 that require U.S. citizens to pay U.S. tax regardless of where they reside. Our country has always taken the position that the benefits of U.S. citizenship are enjoyed by our citizens no matter where they reside. It is not accidental that public information has indicated that a Getty Oil heir will be the beneficiary of this exclusion contained in the Committee bill.

VI. Estate and Gift Taxes

The Committee bill does little to prevent the use of expatriation to avoid estate and gift taxes. The amount of potential revenue loss is enormous.

Under the Committee bill, one can transfer all of his assets to a foreign corporation and then give all of the stock of that foreign corporation away without any gift-tax liability.

VII. Revenue Estimates

One of the troubling aspects about the Committee consideration of H.R. 1812 is the wide disparity in the revenue estimates of the Joint Committee on Taxation and those of the Treasury Department. The Joint Committee estimates that the Committee bill will raise approximately $800 million over the first 5 years, while the Democratic substitute would raise approximately $200 million during that period of time. The Treasury Department, however, estimates that H.R. 1812 will raise approximately $100 million over the first 5 years, but that the Democratic substitute would raise approximately $1.7 billion. (The Treasury Department's estimate of H.R. 1812 would increase if the temporary treaty override described in the Committee report is found to be fully effective.)

The obvious question is how H.R. 1812, which limits its applicability to 10 years, exempts foreign assets, only slightly restricts current-law avoidance techniques, and relies on voluntary compliance, can raise four times more money than the Democratic substitute that covers all assets and imposes a tax that is fixed and determinable before the expatriate flees the jurisdiction of our laws.

When asked about the revenue-estimate disparities, the Joint Committee staff has responded that the Democratic substitute raises less revenue because it encourages expatriation by individuals with recently inherited wealth. The argument is that the Democratic substitute taxes only unrealized appreciation and, therefore, encourages expatriation by individuals with little unrealized appreciation. The argument is absurd since all concede that existing law is completely ineffective in preventing tax-motivated expatriation. How can a bill that results in no taxation in certain limited situations create an incentive for expatriation when the law it replaces results in no tax in virtually all cases of expatriation?

We strenuously disagree with the Joint Committee staff argument that this is a major flaw in the Democratic substitute. How-

ever, we suggest that they should analyze the Committee bill, which contains the same purported flaw. Under the Committee bill, an expatriate may transfer all of his assets to a foreign corporation. The Committee bill provides that, if gain is recognized on that transfer, all subsequent income from those assets would be exempt from taxation by reason of the bill. Therefore, under the Committee bill, it is possible for an expatriate with no unrealized appreciation on his assets to escape with no taxation. This is the same result that has been condemned as a major loophole in the Democratic substitute.

VIII. Treaties

The Committee report for H.R. 1812 states that the bill is intended to override contrary provisions of tax treaties with other countries. Tax treaties are agreements with other counties and should not be breached unless domestic policy concerns overwhelmingly require it. The Democratic substitute is consistent with the treaty obligations of this country and therefore would not require the United States to breach its obligations with other countries. For this reason alone, the Democratic substitute should be the appropriate answer to the problem of tax avoidance by expatriates.

The treaty override provisions of the Committee report are unusual. The report, but not the statutory language, provides that the bill will override treaty obligations only during the first 10 years after enactment, not accidentally the period of time for which the revenue gain is being estimated. We have seen legislative history in the past being used to clarify the fact that a bill's effect is to override treaty obligations. Legislative history can only interpret the bill's language. We have never seen legislative history indicate that the interpretation of a bill's language changes after 10 years.

The Joint Committee staff report indicates that as many as 41 out of 45 of our existing tax treaties may be required to be renegotiated to accommodate H.R. 1812. The Joint Committee staff report also indicates that our treaty partners may object to our renegotiation and that it might be necessary for the United States to forego certain other benefits in such a renegotiation. None of these renegotiations would be required for the Democratic substitute to be effective.

IX. Conclusion

In conclusion, we again want to emphasize our commitment to meaningful reform in this area. It is our belief that the worst response to the publicized cases of tax avoidance by expatriates would be to enact legislation riddled with loopholes and tax avoidance potential. It is our conclusion that H.R. 1812 is such legislation.

We are perplexed by the overwhelming nature of the Republican opposition to meaningful reform in this area. It seems out of proportion to the small number of wealthy individuals who would be affected. The House of Representatives was quite willing to pass welfare reform legislation affecting millions of poor American citizens without the benefit of a study as extensive as that prepared by the Joint Committee staff on expatriation. Clearly, wealthy individuals are a constituency that the Republican Party will vigor-

ously defend. We believe that it is unfortunate that that defense has been successful in the Committee consideration of the expatriation issue.

We had hoped that a real bipartisan solution could be crafted closing this loophole for wealthy expatriates. Introduction and Committee markup of this loophole-laden legislation brought those hopes to an abrupt end. We stand ready to enact meaningful reform. H.R. 1812 fails to meet that standard.

CHARLES B. RANGEL.
ROBERT T. MATSUI.
RICHARD E. NEAL.
BENJAMIN L. CARDIN.
L.F. PAYNE.
BARBARA B. KENNELLY.
ANDREW JACOBS, JR.
GERALD D. KLECZKA.
SAM GIBBONS.
JIM MCDERMOTT.
JOHN LEWIS.
WILLIAM J. COYNE.
SANDER LEVIN.
PETE STARK.
HAROLD E. FORD.

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