

PROVIDING FOR THE CONSIDERATION OF H.R. 831, PERMANENTLY EXTENDING THE HEALTH INSURANCE DEDUCTION FOR THE SELF-EMPLOYED

FEBRUARY 16, 1995.—Referred to the House Calendar and ordered to be printed

Mr. QUILLEN, from the Committee on Rules,  
submitted the following

REPORT

[To accompany H. Res. 88]

The Committee on Rules, having had under consideration House Resolution 88, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 831, permanently extending the health insurance deduction for the self-employed, under a modified closed rule. The rule provides for one hour of general debate equally divided between the chairman and ranking minority member of the Ways and Means Committee. All points of order are waived against consideration of the bill. The Committee is advised that the bill at least needs waivers of section 303(a) of the Budget Act, prohibiting revenue changes prior to the adoption of the budget resolution, and section 311(a) of the Budget Act, prohibiting legislation which breaches the revenue floor in the most recent budget resolution. While the bill breaches this level for fiscal 1995, over five-years the bill is paid for by the offsetting tax provisions and outlay reductions in the bill. The Committee is aware of no other points of order that would lie against the bill, but has included a blanket waiver only as a safeguard.

The amendment recommended by the Ways and Means Committee is considered as adopted in the House and the Committee of the Whole. The amendment simply strikes the introduced section 4, which would have denied persons earning in excess of \$2,500 in taxable interest and dividend income the benefits of the Earned Income Tax Credit (EITC) and replaces it with a new section 4 which

denies EITC to persons earning in excess of \$3,150 in taxable interest and dividend income, and phases-out EITC benefits for those with such income in excess of \$2,500.

No other amendment is in order except an amendment in the nature of a substitute printed in this report if offered only by Rep. Gibbons or a designee. The amendment is not subject to amendment, and is debatable for one-hour. All points of order are waived against the amendment since it contains the same Budget Act violations as the committee bill. Finally, the rule provides one motion to recommit, with or without instructions.

#### COMMITTEE VOTES

Pursuant to clause 2(l)(2)(B) of House rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

##### RULES COMMITTEE ROLL CALL NO. 36

Date: February 16, 1995.

Measure: H.R. 831, Extending the health insurance deduction for the self-employed.

Motion By: Mr. Moakley.

Summary of Motion: Make in order Cardin amendment to increase health insurance deductibility from 25% to 80% for self-employed.

Results: Rejected, 4 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

##### RULES COMMITTEE ROLL CALL NO. 37

Date: February 16, 1995.

Measure: H.R. 831. Extending the health insurance deduction for the self-employed.

Motion By: Mr. Beilenson.

Summary of Motion: Make in order Mfume amendment to increase from 25% to 100% the deductibility of health insurance for the self-employed and offset with reduction in estate and gift tax exemption.

Results: Rejected, 4 to 9.

Vote by Member: Quillin—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

##### RULES COMMITTEE ROLL CALL NO. 38

Date: February 16, 1995.

Measure: H.R. 831. Extending the health insurance deduction for the self-employed.

Motion By: Mr. Frost.

Summary of Motion: Make in order Rangel amendment to strike section 2 from bill and insert provision to ensure continued taxation of individuals who renounce their U.S. citizenship.

Results: Rejected, 5 to 8.

Vote by Member: Quillin—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Yea; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

RULES COMMITTEE ROLL CALL NO. 39

Date: February 16, 1995.

Measure: H.R. 831. Extending the health insurance deduction for the self-employed.

Motion By: Mr. Hall.

Summary of Motion: Make in order Stark amendment to add new title to allow employees to buy health insurance on the plan of their former employers.

Results: Rejected, 4 to 9.

Vote by Member: Quillin—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

AMENDMENT IN THE NATURE OF A SUBSTITUTE

The text of the amendment in the nature of a substitute made in order by the resolution, which may be offered only by Representative Gibbons of Florida or a designee, is printed below:

Strike all after the enacting clause and insert the following:

**TITLE I—PROVISIONS RELATING TO  
HEALTH CARE**

**SEC. 101. RETROACTIVE RESTORATION OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.**

(a) IN GENERAL.—Paragraph (6) of section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking “December 31, 1993” and inserting “December 31, 1995”.

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

**SEC. 102. PERMANENT DEDUCTION FOR HEALTH INSURANCE COSTS OF EMPLOYEES AND SELF-EMPLOYED INDIVIDUALS.**

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

**“SEC. 220. HEALTH INSURANCE COSTS.**

“(a) IN GENERAL.—In the case of an individual, there shall be allowed as a deduction an amount equal to 25 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

“(b) LIMITATION BASED ON EARNED INCOME.—No deduction shall be allowed under subsection (a) to the extent that the amount of such deduction exceeds the sum of—

“(1) the taxpayer’s wages, salaries, tips, and other employee compensation includible in gross income, plus

“(2) the taxpayer’s earned income (as defined in section 401(c)(2)).

“(c) OTHER COVERAGE.—Subsection (a) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer.

“(d) PHASEIN OF DEDUCTION FOR EMPLOYEES.—In the case of taxable years beginning before January 1, 2000, to the extent that the amount paid for insurance referred to in subsection (a) is allocable to coverage for a month for which the individual has no earned income (as defined in section 401(c)(2)), subsection (a) shall be applied with respect to such amount by substituting the percentage determined in accordance with the following table for ‘25 percent’.

<b>“In the case of taxable years beginning in calendar year:</b>	<b>The percentage is:</b>
1996 .....	15 percent
1997 .....	15 percent
1998 .....	20 percent
1999 .....	20 percent.

“(e) SPECIAL RULES.—

“(1) COORDINATION WITH MEDICAL DEDUCTION, ETC.—Any amount paid by a taxpayer for insurance to which subsection (a) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

“(2) TREATMENT OF CERTAIN S CORPORATION SHAREHOLDERS.—This section shall apply in the case of any individual treated as a partner under section 1372(a), except that—

“(A) for purposes of this section, such individual’s wages (as defined in section 3121) from the S corporation shall be treated as such individual’s earned income (within the meaning of section 401(c)(1)), and

“(B) there shall be such adjustments in the application of this section as the Secretary may by regulations prescribe.

“(3) DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX PURPOSES.—The deduction allowable by reason of this section shall not be taken into account in determining an individual’s net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.”

(b) CONFORMING AMENDMENTS.—

(1) Subsection (l) of section 162 of such Code is hereby repealed.

(2) Subsection (a) of section 62 of such Code is amended by inserting after paragraph (15) the following new item:

“(16) HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The deduction allowed by section 220 but only to the extent that the amount of the deduction does not exceed the taxpayer’s earned income (as defined in section 401(c)(2)) for the taxable year.”

(3) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

“Sec. 220. Health insurance costs.  
“Sec. 221. Cross reference.”

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

## **TITLE II—MODIFICATION OF RULES FOR NONRECOGNITION OF GAIN UNDER F.C.C. TAX CERTIFICATE PRO- GRAM AND FOR INVOLUNTARY CON- VERSIONS**

### **SEC. 201. LIMITATIONS ON NONRECOGNITION OF GAIN UNDER F.C.C. TAX CERTIFICATE PROGRAM.**

(a) IN GENERAL.—Section 1071 of the Internal Revenue Code of 1986 (relating to gain from sale or exchange to effectuate policies of F.C.C.) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

“(b) LIMITATIONS.—

“(1) IN GENERAL.—Subsection (a) shall apply only if the sale or exchange is a qualified telecommunications transaction.

“(2) LIMITATION ON AMOUNT OF NONRECOGNITION.—The amount of gain which is not recognized under subsection (a) with respect to a qualified telecommunications transaction (or a series of related transactions) shall not exceed \$50,000,000.

“(3) QUALIFIED TELECOMMUNICATIONS TRANSACTION.—For purposes of this subsection, the term ‘qualified telecommunications transaction’ means any sale or exchange of property if—

“(A) the Commission certifies that the sale or exchange is in furtherance of the Commission’s Minority Ownership Policy, and

“(B)(i) such property is owned by an eligible person at all times during the 3-year period beginning on the date of such sale or exchange, or

“(ii) if the property sold or exchanged was acquired by the taxpayer by reason of a qualified contribution to the capital of an eligible corporation or an eligible partnership, such corporation or partnership was an eligible person at all times during the 3-year period beginning on the date of such contribution.

“(4) ELIGIBLE PERSON.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘eligible person’ means—

“(i) any eligible individual,

“(ii) any eligible corporation, and

“(iii) any eligible partnership.

“(B) ELIGIBLE INDIVIDUAL.—The term ‘eligible individual’ means any individual if an FCC tax certificate could have

been issued under the Commission's Minority Ownership Policy for any sale or exchange of property to such individual.

“(C) ELIGIBLE CORPORATION.—The term ‘eligible corporation’ means any corporation in which eligible individuals directly or indirectly own—

“(i) stock possessing more than 50 percent of the total voting power of the stock of such corporation, and

“(ii) stock having a value equal to more than 20 percent of the total value of the stock of such corporation.

“(D) ELIGIBLE PARTNERSHIP.—The term ‘eligible partnership’ means any partnership in which eligible individuals directly or indirectly—

“(i) have actual control of the partnership, and

“(ii) own partnership interests having a value equal to more than 20 percent of the total value of the partnership interests of such partnership.

“(5) TREATMENT OF BUY-SELL ARRANGEMENTS, ETC.—For purposes of paragraphs (3) and (4)—

“(A) IN GENERAL.—Property held by an eligible person shall be treated as held by an ineligible person if—

“(i) an ineligible person has an option or other right to acquire such property, or

“(ii) the eligible person has an option or other right to require an ineligible person to acquire such property.

“(B) TREATMENT OF WARRANTS, ETC.—If an ineligible person holds a warrant, convertible security, or similar instrument issued by any entity, such person shall be treated as holding the interest in the entity which such person could have acquired on the exercise of his rights under the instrument.

“(C) INELIGIBLE PERSON.—For purposes of this paragraph, the term ‘ineligible person’ means any person who is not an eligible person.

“(6) OTHER DEFINITIONS.—For purposes of this subsection—

“(A) FCC TAX CERTIFICATE.—The term ‘FCC tax certificate’ means any certificate of the Commission for the effectuation of this section for purposes of carrying out the Commission's Minority Ownership Policy.

“(B) MINORITY OWNERSHIP POLICY.—The term ‘Minority Ownership Policy’ means the Commission's policy, as in effect on January 16, 1995, to encourage ownership of telecommunications facilities and licenses by women and members of minority groups.

“(C) QUALIFIED CONTRIBUTION TO CAPITAL.—The term ‘qualified contribution to capital’ means any contribution to the capital of an eligible corporation or an eligible partnership pursuant to the contribution to capital provisions of the Commission's Minority Ownership Policy.

“(D) COMMISSION.—The term ‘Commission’ means the Federal Communications Commission.

“(7) EXTENSION OF STATUTE OF LIMITATION.—

“(A) DEFICIENCIES.—The statutory period for the assessment of any deficiency attributable to any failure to meet the requirements of paragraph (3)(B) shall not expire before the close of the 3-year period beginning on the date that the taxpayer certifies to the Secretary that such requirements have been met, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment.

“(B) OVERPAYMENTS.—A refund or credit of any overpayment of tax attributable to any failure to meet the requirements of paragraph (3)(B) may be allowed or made (notwithstanding the operation of any law or rule of law (including *res judicata*)) if claim therefor is filed before the close of the 3-year period referred to in subparagraph (A).

“(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations aggregating transactions for purposes of paragraph (2).”

(b) EFFECTIVE DATE.—

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

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

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

(2) BINDING CONTRACTS.—

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

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

(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term “FCC tax certificate” has the meaning given to such term by section 1071(b) of the Internal Revenue Code of 1986, as amended by this section.

**SEC. 202. NONRECOGNITION ON INVOLUNTARY CONVERSIONS NOT TO APPLY IF REPLACEMENT PROPERTY ACQUIRED FROM RELATED PERSON.**

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

“(i) NONRECOGNITION NOT TO APPLY IF REPLACEMENT PROPERTY ACQUIRED FROM RELATED PERSON.—Subsection (a) shall not apply if the replacement property or stock acquired is acquired from a related person. For purposes of the preceding sentence, a person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b).”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to replacement property or stock acquired on or after February 6, 1995.

### **TITLE III—REVENUE INCREASES**

#### **Subtitle A—Denial of Earned Income Credit for Individuals Having More Than \$2,500 of Investment Income**

##### **SEC. 301. DENIAL OF EARNED INCOME CREDIT FOR INDIVIDUALS HAVING MORE THAN \$2,500 OF INVESTMENT INCOME.**

(a) IN GENERAL.—Section 32 of the Internal Revenue Code of 1986 is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

“(i) DENIAL OF CREDIT FOR INDIVIDUALS HAVING MORE THAN \$2,500 OF INVESTMENT INCOME.—

“(1) IN GENERAL.—No credit shall be allowed under subsection (a) for the taxable year if the aggregate amount of disqualified income of the taxpayer for such taxable year exceeds \$2,500.

“(2) DISQUALIFIED INCOME.—For purposes of paragraph (1), the term ‘disqualified income’ means—

“(A) interest, dividends, rents, and royalties to the extent includible in gross income for the taxable year, and

“(B) interest which is received or accrued during the taxable year and which is exempt from tax.”

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

#### **Subtitle B—Provisions Relating to International Taxation**

##### **SEC. 311. REVISION OF TAX RULES ON EXPATRIATION.**

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 877 the following new section:

##### **“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

“(a) GENERAL RULES.—For purposes of this subtitle—

“(1) CITIZENS.—If any United States citizen relinquishes his citizenship during a taxable year, all property held by such citizen at the time immediately before such relinquishment shall be treated as sold at such time for its fair market value and

any gain or loss shall be taken into account for such taxable year.

“(2) CERTAIN RESIDENTS.—If any long-term resident of the United States ceases to be subject to tax as a resident of the United States for any portion of any taxable year, all property held by such resident at the time of such cessation shall be treated as sold at such time for its fair market value and any gain or loss shall be taken into account for the taxable year which includes the date of such cessation.

“(b) EXCLUSION FOR CERTAIN GAIN.—The amount which would (but for this subsection) be includible in the gross income of any taxpayer by reason of subsection (a) shall be reduced (but not below zero) by \$600,000.

“(c) PROPERTY TREATED AS HELD.—For purposes of this section, except as otherwise provided by the Secretary, an individual shall be treated as holding—

“(1) all property which would be includible in his gross estate under chapter 11 were such individual to die at the time the property is treated as sold,

“(2) any other interest in a trust which the individual is treated as holding under the rules of section 679(e) (determined by treating such section as applying to foreign and domestic trusts), and

“(3) any other interest in property specified by the Secretary as necessary or appropriate to carry out the purposes of this section.

“(d) EXCEPTIONS.—The following property shall not be treated as sold for purposes of this section:

“(1) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the date the individual relinquishes his citizenship or ceases to be subject to tax as a resident, meet the requirements of section 897(c)(2).

“(2) INTEREST IN CERTAIN RETIREMENT PLANS.—

“(A) IN GENERAL.—Any interest in a qualified retirement plan (as defined in section 4974(d)), other than any interest attributable to contributions which are in excess of any limitation or which violate any condition for tax-favored treatment.

“(B) FOREIGN PENSION PLANS.—

“(i) IN GENERAL.—Under regulations prescribed by the Secretary, interests in foreign pension plans or similar retirement arrangements or programs.

“(ii) LIMITATION.—The value of property which is treated as not sold by reason of this subparagraph shall not exceed \$500,000.

“(e) DEFINITIONS.—For purposes of this section—

“(1) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing his United States citizenship on the date the United States Department of State issues to the individual a certificate of loss of nationality or on the date a court of the United States cancels a naturalized citizen’s certificate of naturalization.

“(2) LONG-TERM RESIDENT.—

“(A) IN GENERAL.—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 and, as a result of such status, has been subject to tax as a resident in at least 10 taxable years during the period of 15 taxable years ending with the taxable year during which the sale under subsection (a) is treated as occurring.

“(B) SPECIAL RULE.—For purposes of subparagraph (A), there shall not be taken into account—

“(i) any taxable year during which any prior sale is treated under subsection (a) as occurring, or

“(ii) any taxable year prior to the taxable year referred to in clause (i).

“(f) TERMINATION OF DEFERRALS, ETC.—On the date any property held by an individual is treated as sold under subsection (a)—

“(1) any period deferring recognition of income or gain shall terminate, and

“(2) any extension of time for payment of tax shall cease to apply and the unpaid portion of such tax shall be due and payable.

“(g) ELECTION BY EXPATRIATING RESIDENTS.—Solely for purposes of determining gain under subsection (a)—

“(1) IN GENERAL.—At the election of a resident not a citizen of the United States, property—

“(A) which was held by such resident on the date the individual first became a resident of the United States during the period of long-term residency to which the treatment under subsection (a) relates, and

“(B) which is treated as sold under subsection (a), shall be treated as having a basis on such date of not less than the fair market value of such property on such date.

“(2) ELECTION.—Such an election shall apply to all property described in paragraph (1), and, once made, shall be irrevocable.

“(h) DEFERRAL OF TAX ON CLOSELY HELD BUSINESS INTERESTS.—The District Director may enter into an agreement with any individual which permits such individual to defer payment for not more than 5 years of any tax imposed by subsection (a) by reason of holding any interest in a closely held business (as defined in section 6166(b)) other than a United States real property interest described in subsection (d)(1).

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

“(j) CROSS REFERENCE.—

“**For termination of United States citizenship for tax purposes, see section 7701(a)(47).**”

(b) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) of such Code is amended by adding at the end the following new paragraph:

“(47) TERMINATION OF UNITED STATES CITIZENSHIP.—An individual shall not cease to be treated as a United States citizen

before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(1)."

(c) CONFORMING AMENDMENTS.—

(1) Section 877 of such Code is amended by adding at the end the following new subsection:

"(f) TERMINATION.—This section shall not apply to any individual who is subject to the provisions of section 877A."

(2) Paragraph (10) of section 7701(b) of such Code is amended by adding at the end the following new sentence: "This paragraph shall not apply to any individual who is subject to the provisions of section 877A."

(d) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 of such Code is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation."

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

(1) United States citizens who relinquish (within the meaning of section 877A(e)(1) of the Internal Revenue Code of 1986, as added by this section) United States citizenship on or after February 6, 1995, and

(2) long-term residents (as defined in such section) who cease to be subject to tax as residents of the United States on or after such date.

**SEC. 312. IMPROVED INFORMATION REPORTING ON FOREIGN TRUSTS.**

(a) IN GENERAL.—Section 6048 of the Internal Revenue Code of 1986 (relating to returns as to certain foreign trusts) is amended to read as follows:

**"SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.**

"(a) NOTICE OF CERTAIN EVENTS.—

"(1) GENERAL RULE.—On or before the 90th day (or such later day as the Secretary may prescribe) after any reportable event, the responsible party shall—

"(A) notify each trustee of the trust of the requirements of subsection (b), and

"(B) provide written notice of such event to the Secretary in accordance with paragraph (2).

"(2) CONTENTS OF NOTICE.—The notice required by paragraph (1)(B) shall contain such information as the Secretary may prescribe, including—

"(A) the amount of money or other property (if any) transferred to the trust in connection with the reportable event,

"(B) the identity of the trust and of each trustee and beneficiary (or class of beneficiaries) of the trust, and

"(C) a statement that each trustee of the trust has been informed of the requirements of subsection (b).

"(3) REPORTABLE EVENT.—For purposes of this subsection, the term 'reportable event' means—

"(A) the creation of any foreign trust by a United States person,

“(B) the transfer of any money or property to a foreign trust by a United States person, including a transfer by reason of death,

“(C) a domestic trust becoming a foreign trust,

“(D) the death of a citizen or resident of the United States who is a grantor of a foreign trust, and

“(E) the residency starting date (within the meaning of section 7701(b)(2)(A)) of a grantor of a foreign trust subject to tax under section 679(a)(3).

Subparagraphs (A) and (B) shall not apply with respect to a trust described in section 404(a)(4) or 404A.

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

“(A) the grantor in the case of a reportable event described in subparagraph (A) or (E) of paragraph (3),

“(B) the transferor in the case of a reportable event described in paragraph (3)(B) other than a transfer by reason of death,

“(C) the trustee of the domestic trust in the case of a reportable event described in paragraph (3)(C), and

“(D) the executor of the decedent’s estate in the case of a transfer by reason of death.

“(b) TRUST REPORTING REQUIREMENTS.—If a foreign trust, at any time during a taxable year of such trust—

“(1) has a grantor who is a United States person and—

“(A) such grantor is treated as the owner of any portion of such trust under the rules of subpart E of part I of subchapter J of chapter 1, or

“(B) any portion of such trust would be included in the gross estate of such grantor if the grantor were to die at such time, or

“(2) directly or indirectly distributes, credits, or allocates money or property to any United States person (whether or not the trust has a grantor described in paragraph (1)),

then such trust shall meet the requirements of subsection (c) (relating to trust information and agent) and subsection (d) (relating to annual return).

“(c) CONTENTS OF SECTION 6048 STATEMENT.—

“(1) IN GENERAL.—The requirements of this subsection are met if the trust files with the Secretary a statement which contains such information as the Secretary may prescribe and which—

“(A) identifies a United States person who is the trust’s limited agent to provide the Secretary with such information that reasonably should be available to the trust for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine trust records or produce testimony related to any transaction by the trust or with respect to any summons by the Secretary for such records or testimony, and

“(B) contains an agreement to comply with the requirements of subsection (d).

“(2) SPECIAL RULE.—A foreign trust which appoints an agent described in paragraph (1)(A) shall not be considered to have

an office or a permanent establishment in the United States solely because of the activities of such agent pursuant to this section. For purposes of this section, the appearance of persons or production of records by reason of the creation of the agency shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of the activities and operations of the trust.

“(d) ANNUAL RETURNS AND STATEMENTS.—The requirements of this subsection are met if—

“(1) the trust makes a return for the taxable year which sets forth a full and complete accounting of all trust activities and operations for the taxable year, and contains such other information as the Secretary may prescribe; and

“(2) the trust furnishes such information as the Secretary may prescribe to each United States person—

“(A) who is treated as the owner of any portion of such trust under the rules of subpart E of part I of subchapter J of chapter 1,

“(B) to whom any item with respect to the taxable year is credited or allocated, or

“(C) who receives a distribution from such trust with respect to the taxable year.

“(e) TIME AND MANNER OF FILING INFORMATION.—Any notice, statement, or return required under this section shall be made at such time and in such manner as the Secretary shall prescribe.

“(f) MODIFICATION OF RETURN REQUIREMENTS.—Secretary is authorized to suspend or modify any requirement of this section if the Secretary determines that the United States has no significant tax interest in obtaining the required information.”

(b) PENALTIES.—Section 6677 of such Code (relating to failure to file information returns with respect to certain foreign trusts) is amended to read as follows:

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

“(a) FAILURE TO REPORT CERTAIN EVENTS.—

“(1) IN GENERAL.—In the case of a reportable event described in any subparagraph of section 6048(a)(3) for which a responsible party does not file a written notice meeting the requirements of section 6048(a)(2) within the time specified in section 6048(a)(1), the responsible party shall pay a penalty of \$10,000. If any failure described in the preceding sentence continues for more than 90 days after the day on which the Secretary mails notice of such failure to the responsible party, such party shall pay a penalty (in addition to the \$10,000 amount) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period.

“(2) 35-PERCENT PENALTY.—In the case of a reportable event described in subparagraph (A), (B), or (C) of section 6048(a)(3) (other than a transfer by reason of death), the aggregate amount of the penalties under paragraph (1) shall not be less than an amount equal to 35 percent of the gross value of the property involved in such event (determined as of the date of the event).

“(3) RESPONSIBLE PARTY.—For purposes of this subsection, the term ‘responsible party’ has the meaning given to such term by section 6048(a)(4).

“(b) FAILURE TO MAKE CERTAIN STATEMENTS AND RETURNS.—

“(1) IN GENERAL.—In the case of any failure to meet the requirements of section 6048(b), the appropriate tax treatment of any trust transactions or operations shall be determined by the Secretary in the Secretary’s sole discretion from the Secretary’s own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

“(2) MONETARY PENALTY.—In the case of any failure to meet the requirements of section 6048(b) with respect to a trust described in such section by reason of paragraph (1) thereof, the grantor described in such paragraph (1) shall pay a penalty of \$10,000 for each taxable year with respect to which the foreign trust fails to meet such requirements. If any failure described in the preceding sentence continues for more than 90 days after the day on which the Secretary mails notice of such failure to such grantor, such grantor shall pay a penalty (in addition to any other penalty) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period.

“(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause.

“(d) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section.”

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by striking the item relating to section 6048 and inserting the following new item:

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

(2) The table of sections for part I of subchapter B of chapter 68 of such Code is amended by striking the item relating to section 6677 and inserting the following new item:

“Sec. 6677. Failure to file information with respect to certain foreign trusts.”

(d) EFFECTIVE DATES.—

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

(A) to reportable events occurring on or after February 6, 1995, and

(B) to the extent such amendments require reporting for any taxable year under section 6048(b) of the Internal Revenue Code of 1986 (as added by this section), to taxable years beginning after the date of the enactment of this Act.

(2) NOTICES.—For purposes of section 6048(a) of such Code, the 90th day referred to therein shall in no event be treated as being earlier than the 90th day after the date of the enactment of this Act.

**SEC. 313. MODIFICATION OF RULES RELATING TO FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES.**

(a) IN GENERAL.—Section 679 of the Internal Revenue Code of 1986 (relating to foreign trusts having one or more United States beneficiaries) is amended to read as follows:

**“SEC. 679. FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES.**

**“(a) TRANSFEROR TREATED AS OWNER.—**

**“(1) IN GENERAL.—**A United States person who directly or indirectly transfers property to a foreign trust (other than a trust described in section 404(a)(4) or section 404A) shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of such trust.

**“(2) EXCEPTION.—**

**“(A) IN GENERAL.—**Paragraph (1) shall not apply to any sale or exchange of property to a trust if—

**“(i) the trust pays fair market value for such property, and**

**“(ii) all of the gain to the transferor is recognized at the time of transfer.**

**“(B) CERTAIN OBLIGATIONS NOT TAKEN INTO ACCOUNT.—**For purposes of subparagraph (A), in determining whether the transferor received fair market value, there shall not be taken into account—

**“(i) any obligation of—**

**“(I) the trust,**

**“(II) any grantor or beneficiary of the trust, or**

**“(III) any person who is related (within the meaning of section 643(i)(3)) to any grantor or beneficiary of the trust, and**

**“(ii) except as provided in regulations, any obligation which is guaranteed by a person described in clause (i).**

**“(C) TREATMENT OF DEEMED SALE ELECTION UNDER SECTION 1057.—**For purposes of subparagraph (A), a transfer with respect to which an election under section 1057 is made shall not be treated as a sale or exchange.

**“(3) SPECIAL RULES APPLICABLE TO FOREIGN GRANTOR WHO LATER BECOMES A UNITED STATES PERSON.—**A nonresident alien individual who becomes a United States resident within 5 years after directly or indirectly transferring property to a foreign trust shall be treated for purposes of this section and section 6048 as having transferred such property, and any undistributed income (including all realized and unrealized gains) attributable thereto, to the foreign trust immediately after becoming a United States resident. For this purpose, a nonresident alien shall be treated as becoming a resident of the United States on the residency starting date (within the meaning of section 7701(b)(2)(A)).

“(b) BENEFICIARIES TREATED AS TRANSFERORS IN CERTAIN CASES.—For purposes of this section and section 6048, if—

“(1) a citizen or resident of the United States who is treated as the owner of any portion of a trust under subsection (a) dies,

“(2) property is transferred to a foreign trust by reason of the death of a citizen or resident of the United States, or

“(3) a domestic trust to which any United States person made a transfer becomes a foreign trust,

then, except as otherwise provided in regulations, the trust beneficiaries shall be treated as having transferred to such trust (as of the date of the applicable event under paragraph (1), (2), or (3)) their respective interests (as determined under subsection (e)) in the property involved.

“(c) TRUSTS ACQUIRING UNITED STATES BENEFICIARIES.—If—

“(1) subsection (a) applies to a trust for the transferor’s taxable year, and

“(2) subsection (a) would have applied to the trust for the transferor’s immediately preceding taxable year but for the fact that for such preceding taxable year there was no United States beneficiary for any portion of the trust,

then, for purposes of this subtitle, the transferor shall be treated as having received as an accumulation distribution taxable under subpart D an amount equal to the undistributed net income (as determined under section 665(a) as of the close of such immediately preceding taxable year) attributable to the portion of the trust referred to in subsection (a).

“(d) TRUSTS TREATED AS HAVING A UNITED STATES BENEFICIARY.—

“(1) IN GENERAL.—For purposes of this section, a trust shall be treated as having a United States beneficiary for the taxable year unless—

“(A) under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a United States person, and

“(B) if the trust were terminated at any time during the taxable year, no part of the income or corpus of such trust could be paid to or for the benefit of a United States person.

To the extent provided by the Secretary, for purposes of this subsection, the term ‘United States person’ includes any person who was a United States person at any time during the existence of the trust.

“(2) ATTRIBUTION OF OWNERSHIP.—For purposes of paragraph (1), an amount shall be treated as paid or accumulated to or for the benefit of a United States person if such amount is paid to or accumulated for a foreign corporation, foreign partnership, or foreign trust or estate, and—

“(A) in the case of a foreign corporation, more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote is owned (within the meaning of section 958(a)) or is considered to be owned

(within the meaning of section 958(b)) by United States shareholders (as defined in section 951(b)),

“(B) in the case of a foreign partnership, a United States person is a partner of such partnership, or

“(C) in the case of a foreign trust or estate, such trust or estate has a United States beneficiary (within the meaning of paragraph (1)).

“(e) DETERMINATION OF BENEFICIARIES’ INTERESTS IN TRUST.—

“(1) GENERAL RULE.—For purposes of this section, a beneficiary’s interest in a foreign trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar advisor.

“(2) SPECIAL RULE.—In the case of beneficiaries whose interests in a trust cannot be determined under paragraph (1)—

“(A) the beneficiary having the closest degree of kinship to the grantor shall be treated as holding the remaining interests in the trust not determined under paragraph (1) to be held by any other beneficiary, and

“(B) if 2 or more beneficiaries have the same degree of kinship to the grantor, such remaining interests shall be treated as held equally by such beneficiaries.

“(3) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a foreign trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

“(4) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

“(A) the methodology used to determine that taxpayer’s trust interest under this section, and

“(B) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary’s trust interest under this section.

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

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending on or after February 6, 1995.

(2) SECTION 679(a).—Paragraphs (2) and (3) of section 679(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply to—

(A) any trust created on or after February 6, 1995, and

(B) the portion of any trust created before such date which is attributable to actual transfers of property to the trust on or after such date.

(3) SECTION 679(b).—

(A) IN GENERAL.—Paragraphs (1) and (2) of section 679(b) of such Code (as so added) shall apply to—

(i) any trust created on or after the date of the enactment of this Act, and

(ii) the portion of any trust created before such date which is attributable to actual transfers of property to the trust on or after such date.

(B) SECTION 679(b)(3).—Section 679(b)(3) of such Code (as so added) shall take effect on February 6, 1995, without regard to when the property was transferred to the trust.

**SEC. 314. FOREIGN PERSONS NOT TO BE TREATED AS OWNERS UNDER GRANTOR TRUST RULES.**

(a) IN GENERAL.—So much of section 672(f) of the Internal Revenue Code of 1986 (relating to special rule where grantor is foreign person) as precedes paragraph (2) is amended to read as follows:

“(f) SUBPART NOT TO RESULT IN FOREIGN OWNERSHIP.—

“(1) IN GENERAL.—Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount being included (directly or through 1 or more entities) in the gross income of a citizen or resident of the United States or a domestic corporation. The preceding sentence shall not apply to any portion of an investment trust if such trust is treated as a trust for purposes of this title and the grantor of such portion is the sole beneficiary of such portion.”

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

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

(1) Section 643 of such Code is amended by adding at the end the following new subsection:

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

(2) Section 665 of such Code is amended by striking subsection (c).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(e) TRANSITIONAL RULE.—If—

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

(2) before January 1, 1996, such trust becomes a foreign trust, or the assets of such trust are transferred to a foreign trust,

no tax shall be imposed by section 1491 of the Internal Revenue Code of 1986 by reason of such trust becoming a foreign trust or the assets of such trust being transferred to a foreign trust.

**SEC. 315. GRATUITOUS TRANSFERS BY PARTNERSHIPS AND FOREIGN CORPORATIONS.**

(a) **IN GENERAL.**—Subchapter C of chapter 80 of the Internal Revenue Code of 1986 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

**“SEC. 7874. PURPORTED GIFTS BY PARTNERSHIPS AND FOREIGN CORPORATIONS.**

“(a) **IN GENERAL.**—Any property (including money) that is purportedly a direct or indirect gift by a partnership or a foreign corporation to a person who is not a partner of the partnership or a shareholder of the corporation, respectively, may be recharacterized by the Secretary to prevent the avoidance of tax. The Secretary may not recharacterize gifts made for bona fide business or charitable purposes.

“(b) **STATEMENTS ON RECIPIENT’S RETURN.**—A taxpayer who receives a purported gift subject to subsection (a) shall attach a statement to his income tax return for the year of receipt that identifies the property received and describes fully the circumstances surrounding the purported gift.

“(c) **EXEMPTION.**—Subsection (a) shall not apply to purported gifts received by any person during any taxable year if the amount thereof is less than \$2,500.

“(d) **REGULATIONS.**—The Secretary may prescribe such rules as may be necessary or appropriate to carry out the purposes of this section.”

(b) **CLERICAL AMENDMENT.**—The table of sections for such subchapter C of such Code is amended by adding at the end the following new item:

“Sec. 7874. Purported gifts by partnerships and foreign corporations.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to amounts received after the date of the enactment of this Act.

**SEC. 316. INFORMATION REPORTING REGARDING LARGE FOREIGN GIFTS.**

(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. NOTICE OF LARGE GIFTS RECEIVED FROM FOREIGN PERSONS.**

“(a) **IN GENERAL.**—If the value of the aggregate foreign gifts received by a United States person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) during any taxable year exceeds \$100,000, such United States person shall furnish (at such time and in such manner as the Secretary shall prescribe) such information as the Secretary may prescribe regarding each foreign gift received during such year.

“(b) **FOREIGN GIFT.**—For purposes of this section, the term ‘foreign gift’ means any amount received from a person other than a

United States person which the recipient treats as a gift or bequest. Such term shall not include any qualified transfer (within the meaning of section 2503(e)(2)).

“(c) PENALTY FOR FAILURE TO FILE INFORMATION.—

“(1) IN GENERAL.—If a United States person fails to furnish the information required by subsection (a) with respect to any foreign gift within the time prescribed therefor (including extensions)—

“(A) the tax consequences of the receipt of such gift shall be determined by the Secretary in the Secretary’s sole discretion from the Secretary’s own knowledge or from such information as the Secretary may obtain through testimony or otherwise, and

“(B) such United States person shall pay (upon notice and demand by the Secretary and in the same manner as tax) an amount equal to 5 percent of the amount of such foreign gift for each month for which the failure continues (not to exceed 25 percent of such amount in the aggregate).

“(2) REASONABLE CAUSE EXCEPTION.—Paragraph (1) shall not apply to any failure to report a foreign gift if the United States person shows that the failure is due to reasonable cause and not due to willful neglect.

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

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

“Sec. 6039F. Notice of large gifts received from foreign persons.”

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

**SEC. 317. MODIFICATION OF RULES RELATING TO FOREIGN TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

(a) MODIFICATION OF INTEREST CHARGE ON ACCUMULATION DISTRIBUTIONS.—Subsection (a) of section 668 of the Internal Revenue Code of 1986 (relating to interest charge on accumulation distributions from foreign trusts) is amended to read as follows:

“(a) GENERAL RULE.—For purposes of the tax determined under section 667(a)—

“(1) SUM OF INTEREST CHARGES FOR EACH THROWBACK YEAR.—The interest charge (determined under paragraph (2)) with respect to any distribution is the sum of the interest charges for each of the throwback years to which such distribution is allocated under section 666(a).

“(2) INTEREST CHARGE FOR YEAR.—Except as provided in paragraph (6), the interest charge for any throwback year on such year’s allocable share of the partial tax computed under section 667(b) with respect to any distribution shall be determined for the period—

“(A) beginning on the due date for the throwback year, and

“(B) ending on the due date for the taxable year of the distribution, by using the rates and method applicable under section 6621 for underpayments of tax for such period. For purposes of the preceding sentence, the term ‘due date’ means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

“(3) ALLOCABLE PARTIAL TAX.—For purposes of paragraph (2), a throwback year’s allocable share of the partial tax is an amount equal to such partial tax multiplied by the fraction—

“(A) the numerator of which is the amount deemed by section 666(a) to be distributed on the last day of such throwback year, and

“(B) the denominator of which is the accumulation distribution taken into account under section 666(a).

“(4) THROWBACK YEAR.—For purposes of this subsection, the term ‘throwback year’ means any taxable year to which a distribution is allocated under section 666(a).

“(5) PERIODS OF NONRESIDENCE.—The period under paragraph (2) shall not include any portion thereof during which the beneficiary was not a citizen or resident of the United States.

“(6) THROWBACK YEARS BEFORE 1996.—In the case of any throwback year beginning before 1996—

“(A) interest for the portion of the period described in paragraph (2) which occurs before the first taxable year beginning after 1995 shall be determined by using an interest rate of 6 percent and no compounding, and

“(B) interest for the remaining portion of such period shall be determined as if the partial tax computed under section 667(b) for the throwback year were increased (as of the beginning of such first taxable year) by the amount of the interest determined under subparagraph (A).”

(b) RULE WHEN INFORMATION NOT AVAILABLE.—Subsection (d) of section 666 of such Code is amended by adding at the end the following: “In the case of a distribution from a foreign trust to which section 6048(b) applies, adequate records shall not be considered to be available for purposes of the preceding sentence unless such trust meets the requirements referred to in such section. If a taxpayer is not able to demonstrate when a trust was created, the Secretary may use any reasonable approximation based on available evidence.”

(c) ABUSIVE TRANSACTIONS.—Section 643(a) of such Code is amended by inserting after paragraph (6) the following new paragraph:

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

(d) TREATMENT OF USE OF TRUST PROPERTY.—Section 643 of such Code (relating to definitions applicable to subparts A, B, C, and D) is amended by adding at the end the following new subsection:

“(i) USE OF FOREIGN TRUST PROPERTY.—

“(1) GENERAL RULE.—For purposes of subparts B, C, and D, if, during a taxable year of a foreign trust a trust participant of such trust directly or indirectly uses any of the trust’s property, the use value for such taxable year shall be treated as an amount paid to such participant (other than from income for the taxable year) within the meaning of sections 661(a)(2) and section 662(a)(2).

“(2) EXEMPTION.—Paragraph (1) shall not apply to any trust participant as to whom the aggregate use value during the taxable year does not exceed \$2,500.

“(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) USE VALUE.—Except as provided in subparagraph (B), the term ‘use value’ means the fair market value of the use of property reduced by any amount paid for such use by the trust participant or by any person who is related to such participant.

“(B) SPECIAL RULE FOR CASH AND CASH EQUIVALENT.—A direct or indirect loan of cash, or cash equivalent, by a foreign trust shall be treated as a use of trust property by the borrower and the full amount of the loan principal shall be the use value.

“(C) USE BY RELATED PARTY.—

“(i) Use by a person who is related to a trust participant shall be treated as use by the participant.

“(ii) If property is used by any person who is a related person with respect to more than one trust participant, then the property shall be treated as used by the trust participant most closely related, by blood or otherwise, to such person.

“(D) PROPERTY INCLUDES CASH AND CASH EQUIVALENTS.—The term ‘property’ includes cash and cash equivalents.

“(E) TRUST PARTICIPANT.—The term ‘trust participant’ means each grantor and beneficiary of the trust.

“(F) RELATED PERSON.—A person is related to a trust participant if the relationship between such persons would result in a disallowance of losses under section 267(b) or 707(b). In applying section 267 for purposes of the preceding sentence—

“(i) section 267(e) shall be applied as if such person or the trust participant were a pass-thru entity,

“(ii) section 267(b) shall be applied by substituting ‘at least 10 percent’ for ‘more than 50 percent’ each place it appears, and

“(iii) in determining the family of an individual under section 267(c)(4), such section shall be treated as including the spouse (and former spouse) of such individual and of each other person who is treated under such section as being a member of the family of such individual or spouse.

“(G) SUBSEQUENT TRANSACTIONS REGARDING LOAN PRINCIPAL.—If any loan described in subparagraph (B) is taken into account under paragraph (1), any subsequent trans-

action between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) shall be disregarded for purposes of this title.”

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) INTEREST CHARGE.—The amendment made by subsection (a) shall apply to interest for throwback years beginning before, on, or after the date of the enactment of this Act.

**SEC. 318. RESIDENCE OF ESTATES AND TRUSTS.**

(a) TREATMENT AS UNITED STATES PERSON.—Paragraph (30) of section 7701(a) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D) and by inserting after subparagraph (C) the following:

“(D) any estate or trust if—

“(i) a court within the United States is able to exercise primary supervision over the administration of the estate or trust, and

“(ii) in the case of a trust, one or more United States fiduciaries have the authority to control all substantial decisions of the trust.”

(b) CONFORMING AMENDMENT.—Paragraph (31) of section 7701(a) of such Code is amended to read as follows:

“(31) FOREIGN ESTATE OR TRUST.—The term ‘foreign estate’ or ‘foreign trust’ means any estate or trust other than an estate or trust described in section 7701(a)(30)(D).”

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

(1) to taxable years beginning after December 31, 1996, and

(2) at the election of the trustee of a trust, to taxable years beginning after the date of the enactment of this Act and on or before December 31, 1996.

Such an election, once made, shall be irrevocable.