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REVENUE ACT OF 1992
(Proposed)
SUMMARY OF SELECTED PROVISIONS
— by Neil E. Harl

1. The legislation would extend on a permanent basis the targeted jobs credit and would restore individuals aged 23 and 24 to the category of economically disadvantaged youth. The provision would be effective for individuals who begin work for an employer after June 30, 1992. Act Sec. 1202, amending I.R.C. § 51.

2. Authority would be permanently extended to issue qualified small issue bonds used to finance, inter alia, agricultural land and equipment. The provision would be effective for bonds issued after June 30, 1992. Act Sec. 1204, amending I.R.C. § 144.


4. The legislation would treat a taxpayer's rental real estate activities in which the taxpayer materially participates as not subject to the limitations under the passive loss rules if the taxpayer meets eligibility requirements relating to real property trades or businesses in which the taxpayer performs services. Personal services performed as an employee would not be treated as performed in a real estate trade or business unless the person performing services had more than five per cent ownership interest in the employer. Act Sec. 2101, amending I.R.C. § 469.

5. Under the bill all charitable contributions of appreciated property (both real and personal, tangible and intangible), made during 1992 and 1993 would not be treated as a tax preference item for alternative minimum tax (AMT) purposes. Act Sec. 2201, amending I.R.C. § 57(a)(6).

6. The legislation would eliminate the depreciation component of adjusted current earnings (ACE) for corporate AMT purposes. The depreciation methods and lives used by a corporation in computing AMTI would apply for purposes of ACE computations. Act Sec. 2202, amending I.R.C. § 56(g).


8. The proposed legislation would defer for five years the federal estate and gift tax rate reductions scheduled to take effect after 1992 (postponed until after 1997). The tax on generation skipping transfers would remain at 55 per cent until after 1997, also. Act Sec. 3006, amend I.R.C. § 2001.

9. Four changes would be made in the deduction for moving expenses — (a) the $1500 limit ($4500 for foreign moves) on pre-move house hunting and temporary living expenses would be repealed while the $3,000 limit on the sum of pre-move house hunting expenses, temporary living expenses and qualified expenses for the sale and purchase of a residence or settlement of a lease would be retained (reduced to $5,000 for foreign moves); (b) an overall $5,000 cap would be imposed on allowable moving expenses for each qualified move; (c) an above-the-line deduction would be permitted in computing adjusted gross income to the extent moving expenses are reimbursed and included in the taxpayer's gross income; and (d) the deductions would be subject to the two percent floor on miscellaneous deductions to the extent moving expenses are unreimbursed. The revisions would be effective for taxable years beginning after December 31, 1992.

10. The legislation would deny the use of the safe harbor for purposes of estimated tax payment involving 100 per cent of the last year's liability for taxable years beginning after 1992 with a modification of the 100 per cent safe harbor to be 115 per cent of the last year's liability. Thus, beginning after 1992, an individual would not have an underpayment of estimated tax if estimated tax payments were made equal to 115 per cent of the tax liability for the prior year or 90 per cent of the tax liability for the current year. The 115 per cent safe harbor could be elected in 1992. Act Sec. 3101, amending I.R.C. § 6654.

11. For corporations, the proposed legislation specifies that a corporation that does not use the 100 per cent of last year's liability safe harbor for estimated tax would be required after 1996 to base its estimated tax payment on 95 per cent rather than 90 per cent of its current year tax liability, whether determined on an actual or annualized basis. The legislation would not change the availability of the safe harbor based on 100 per cent of last year's liability for large or small corporations. Some changes would be made also in the annualization calculations. Act Sec. 3102, amending I.R.C. § 6654.

12. The bill would repeal the supplemental young child credit and the supplemental health insurance credit and would increase the basic EITC rate for taxpayers with two or more qualifying children. Act Sec. 4101, amending I.R.C. § 32.

13. The legislation would permit gain to be rolled over from one residence to another in the order the residences are purchased and used, regardless of the taxpayer's reasons for sale of the old residence, and would permit gain to be rolled over more than once in a two tax year period. The prior rules on relocation for employment purposes would apply in all cases. The provision would be effective after the date of enactment. Act Sec. 4102, amending I.R.C. § 1034.

14. The proposed law would create a $200 de minimis exception for the rule disallowing net passive activity losses. Act Sec. 4103, amending I.R.C. § 469.


16. The bill would repeal the special rural mail carrier mileage rate of 150 per cent of the standard mileage rate. The rate of reimbursement provided by the Postal Service to rural letter carriers would be considered equivalent to their expenses. The rate of reimbursement contained in the 1991 collective bargaining agreement would be considered equivalent to their expenses. Act Sec. 4110, amending I.R.C. § 162.

17. Under the legislation, the exception as to application of the unified audit rules enacted in TEFRA for small
partnerships would be expanded to permit a small partnership to have a C corporation as a partner or to specially allocate items without jeopardizing the exception. *Act Sec. 4314, amending I.R.C. § 6231.*

18. Several changes would be made in S corporation treatment —
- A corporation would be treated as having only one class of stock if all outstanding shares of stock of the corporation conferred identical rights to distribution and liquidation proceeds.
- The authority to waive the effect of an invalid election would be broadened.
- The adjustments for distributions made by an S corporation during a taxable year would be taken into account before applying the loss limitation for the year.
- The rule treating an S corporation in its capacity as a shareholder of another corporation as an individual would be repealed.
- Pre-1983 earnings and profits of S corporations would be eliminated for S corporations after 1991.
- A person acquiring stock in an S corporation from a decedent would treat as IRD the pro rata share of any item of the corporation that would have been IRD had the item been acquired directly from the decedent. *Act Secs. 4601-4604, amending I.R.C. §§ 1361-1367.*

19. Under the proposed legislation, the taxable year of a partnership would close with respect to a partner whose entire interest in the partnership terminated, whether by death, liquidation or otherwise, effective for tax years after December 31, 1991. *Act Sec. 4651, amending I.R.C. § 706(c).*

20. The legislation would repeal the ACE rule relating to the treatment of built-in losses after a change of ownership. *Act Sec. 4652, amending I.R.C. § 56(g).*

22. The proposed legislation would specify that a transfer from a trust over which the grantor held the power to revoke would be treated as if made directly by the grantor and gifts tax annual exclusion amounts would not be included in the gross estate, effective for deaths after the date of enactment. *Act Sec. 4702, amending I.R.C. §§ 2035, 2038.*

23. Under the bill, an income interest would not fail to be a qualified income interest for life solely because the accumulated income is not required to be distributed to the surviving spouse. The provision would codify Prop. Treas. Reg. §§ 20.2056(b)-7(c)(1), 25.2523(f)-1(b) and legislatively overrule Estate of Howard, 91 T.C. 329 (1988), rev'd 910 F.2d 633 (9th Cir. 1990). The provision would be effective for deaths and gifts after the date of enactment. *Act Sec. 4703 amending I.R.C. §§ 2044, 2056(b)(7), 2523(f).*

24. The bill would codify the position taken in regulations in providing that, for purposes of the marital deduction, a "specific portion" only includes a portion determined on a fractional or percentage basis. The required income interest and general power of appointment must be expressed as a fraction or a percentage of the property. The provision would be effective for gifts made and deaths occurring after the date of enactment with a grandfather provision. *Act Sec. 4704, amending I.R.C. §§ 2056(b), 2523.*

25. Under the proposed legislation, a trust created before the enactment of OBRA 1990 would be treated as satisfying the "withholding" requirement (regarding federal estate tax) if its governing instrument requires that all trustees be U.S. citizens or domestic corporations. *Act Sec. 4705 amending I.R.C. § 2056A.*

26. The legislation would extend the procedures allowing subsequent submission of information to any executor who makes the special use valuation election and submits the recapture agreement. Special use valuation is available to an executor who supplies the required information within a reasonable period of time, not exceeding 90 days after IRS notification. The provision is effective for decedents dying after the date of enactment. *Act Sec. 4706 amending I.R.C. § 2032A.*

27. The bill would eliminate the waiver requirement for fuel tax refunds for crop dusters and other fertilizer applicators, effective for fuels purchased after January 1, 1993. *Act Sec. 4802(c), amending I.R.C. § 6420.*

28. The legislation would change the threshold for withholding and paying social security taxes with respect to domestic service employment from $50 per quarter to $300 per year, effective for remuneration paid in calendar years beginning after December 31, 1992.

29. Under the bill, a "small" corporation with no tax liability in the preceding year could avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of its tax liability for the second preceding taxable year provided — (a) neither the preceding taxable year nor the second preceding taxable year was a short tax year and (b) the corporation filed tax returns for both years. Thus, a corporation with no tax liability for either of the two preceding years and meeting the above requirements would not be required to make estimated tax payments for the current year.

The provision would be effective for taxable years beginning after the date of enactment. *Act Sec. 4902, amending I.R.C. § 6655.*

30. The unified audit procedures for S corporations would be repealed effective for taxable years after the date of enactment. *Act Sec. 4906 amending various I.R.C. sections.*

31. The legislation would specify that the return that starts the statute of limitations running for a taxpayer is the return of the taxpayer and not the return of another person from whom the taxpayer has received an item of income, gain, loss, deduction or credit. The provision would overturn legislatively the line of cases following *Fehlhaber v. Comm'r, 94 T.C. 863 (1990), aff'd, 92-1 U.S. Tax Cas. (CCH) ¶ 50,131 (11th Cir. 1992).* *Act Sec. 4907 amending I.R.C. § 6501(a).*

32. The personal holding company tax rate would rise from 28 to 31 percent effective for taxable years beginning after December 31, 1990. *Act Sec. 6101(a)(4) amending I.R.C. § 541.*

33. The legislation would make several changes in the estate freeze rules. *Act Sec. 6101(f) amending I.R.C. §§ 2701-2704.*