Public Law 96-589
96th Congress

An Act

To amend the Internal Revenue Code of 1954 to provide for the tax treatment of bankruptcy, insolvency, and similar proceedings, and for other purposes.

Dec. 24, 1980
[H.R. 5043]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Bankruptcy Tax Act of 1980.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENT OF 1954 CODE.

26 USC 1 note.

(a) SHORT TITLE.—This Act may be cited as the "Bankruptcy Tax Act of 1980".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents; amendment of 1954 Code.
Sec. 2. Tax treatment of discharge of indebtedness.
Sec. 3. Rules relating to title 11 cases for individuals.
Sec. 4. Corporate reorganization provisions.
Sec. 5. Miscellaneous corporate amendments.
Sec. 6. Changes in tax procedures.
Sec. 7. Effective dates.

26 USC 1 *et seq.*

(c) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. TAX TREATMENT OF DISCHARGE OF INDEBTEDNESS.

(a) AMENDMENT OF SECTION 108.—Section 108 (relating to discharge of indebtedness) is amended to read as follows:

"SEC. 108. INCOME FROM DISCHARGE OF INDEBTEDNESS.

26 USC 108.

"(a) EXCLUSION FROM GROSS INCOME.—

"(1) IN GENERAL.—Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

"(A) the discharge occurs in a title 11 case,

11 USC 101 *et seq.*

"(B) the discharge occurs when the taxpayer is insolvent, or

"(C) the indebtedness discharged is qualified business indebtedness.

"(2) COORDINATION OF EXCLUSIONS.—

"(A) TITLE 11 EXCLUSION TAKES PRECEDENCE.—Subparagraphs (B) and (C) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

"(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED BUSINESS EXCLUSION.—Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent that the taxpayer is insolvent.

"(3) INSOLVENCY EXCLUSION LIMITED TO AMOUNT OF INSOLVENCY.—In the case of a discharge to which paragraph (1)(B)

applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

11 USC 101 *et seq.*

"(b) REDUCTION OF TAX ATTRIBUTES IN TITLE 11 CASE OR INSOLVENCY.—

"(1) IN GENERAL.—The amount excluded from gross income under subparagraph (A) or (B) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

"(2) TAX ATTRIBUTES AFFECTED; ORDER OF REDUCTION.—Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

"(A) NOL.—Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

"(B) CERTAIN CREDIT CARRYOVERS.—Any carryover to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under—

"(i) section 38 (relating to investment in certain depreciable property),

"(ii) section 40 (relating to expenses of work incentive programs),

"(iii) section 44B (relating to credit for employment of certain new employees), or

"(iv) section 44E (relating to alcohol used as a fuel).

For purposes of clause (i), there shall not be taken into account any portion of a carryover which is attributable to the employee plan credit (within the meaning of section 48(o)(3)).

"(C) CAPITAL LOSS CARRYOVERS.—Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

"(D) BASIS REDUCTION.—

"(i) IN GENERAL.—The basis of the property of the taxpayer.

"(ii) CROSS REFERENCE.—

"For provisions for making the reduction described in clause (i), see section 1017.

"(E) FOREIGN TAX CREDIT CARRYOVERS.—Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 33.

"(3) AMOUNT OF REDUCTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

"(B) CREDIT CARRYOVER REDUCTION.—The reductions described in subparagraphs (B) and (E) of paragraph (2) shall be 50 cents for each dollar excluded by subsection (a).

"(4) ORDERING RULES.—

"(A) REDUCTIONS MADE AFTER DETERMINATION OF TAX FOR YEAR.—The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

"(B) REDUCTIONS UNDER SUBPARAGRAPH (A) OR (C) OF PARAGRAPH (2).—The reductions described in subparagraph (A) or (C) of paragraph (2) (as the case may be) shall be made first in

the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

"(C) REDUCTIONS UNDER SUBPARAGRAPHS (B) AND (E) OF PARAGRAPH (2).—The reductions described in subparagraphs (B) and (E) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

"(5) ELECTION TO APPLY REDUCTION FIRST AGAINST DEPRECIABLE PROPERTY.—

"(A) IN GENERAL.—The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer. *Post*, p. 3394.

"(B) LIMITATION.—The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

"(C) OTHER TAX ATTRIBUTES NOT REDUCED.—Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

"(c) TAX TREATMENT OF DISCHARGE OF QUALIFIED BUSINESS INDEBTEDNESS.—In the case of a discharge of qualified business indebtedness—

"(1) BASIS REDUCTION.—

"(A) IN GENERAL.—The amount excluded from gross income under subparagraph (C) of subsection (a)(1) shall be applied to reduce the basis of the depreciable property of the taxpayer.

"(B) CROSS REFERENCE.—

"For provisions for making the reduction described in subparagraph (A), see section 1017.

"(2) LIMITATION.—The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs (determined after any reductions under subsection (b)).

"(d) MEANING OF TERMS; SPECIAL RULES RELATING TO SUBSECTIONS (a), (b), AND (c).—

"(1) INDEBTEDNESS OF TAXPAYER.—For purposes of this section, the term 'indebtedness of the taxpayer' means any indebtedness—

"(A) for which the taxpayer is liable, or

"(B) subject to which the taxpayer holds property.

"(2) TITLE 11 CASE.—For purposes of this section, the term 'title 11 case' means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court. 11 USC 101 *et seq.*

"(3) INSOLVENT.—For purposes of this section, the term 'insolvent' means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

"(4) QUALIFIED BUSINESS INDEBTEDNESS.—Indebtedness of the taxpayer shall be treated as qualified business indebtedness if (and only if)—

"(A) the indebtedness was incurred or assumed—

"(i) by a corporation, or

"(ii) by an individual in connection with property used in his trade or business, and

"(B) such taxpayer makes an election under this paragraph with respect to such indebtedness.

"(5) DEPRECIABLE PROPERTY.—The term 'depreciable property' has the same meaning as when used in section 1017.

Post, p. 3394.

"(6) SUBSECTIONS (a), (b), AND (c) TO BE APPLIED AT PARTNER LEVEL.—In the case of a partnership, subsections (a), (b), and (c) shall be applied at the partner level.

"(7) REDUCTIONS OF TAX ATTRIBUTES IN TITLE 11 CASES OF INDIVIDUALS TO BE MADE BY ESTATE.—In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

11 USC 701 *et seq.*, 1101 *et seq.*

Post, p. 3397.

Post, p. 3394.

"(8) TIME FOR MAKING ELECTION, ETC.—

"(A) TIME.—An election under paragraph (4) of this subsection or under paragraph (5) of subsection (b) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

"(B) REVOCATION ONLY WITH CONSENT.—An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

"(C) MANNER.—An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

"(9) CROSS REFERENCE.—

"For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

"(e) GENERAL RULES FOR DISCHARGE OF INDEBTEDNESS (INCLUDING DISCHARGES NOT IN TITLE 11 CASES OR INSOLVENCY).—For purposes of this title—

11 USC 101 *et seq.*

"(1) NO OTHER INSOLVENCY EXCEPTION.—Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

"(2) INCOME NOT REALIZED TO EXTENT OF LOST DEDUCTIONS.—No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

"(3) ADJUSTMENTS FOR UNAMORTIZED PREMIUM AND DISCOUNT.—The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

"(4) ACQUISITION OF INDEBTEDNESS BY PERSON RELATED TO DEBTOR.—

"(A) TREATED AS ACQUISITION BY DEBTOR.—For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness

by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

26 USC 267, 707.

"(B) MEMBERS OF FAMILY.—For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

"(C) ENTITIES UNDER COMMON CONTROL TREATED AS RELATED.—For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

"(5) PURCHASE-MONEY DEBT REDUCTION FOR SOLVENT DEBTOR TREATED AS PRICE REDUCTION.—If—

"(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

"(B) such reduction does not occur—

"(i) in a title 11 case, or

"(ii) when the purchaser is insolvent, and

11 USC 101 *et seq.*

"(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

"(6) INDEBTEDNESS CONTRIBUTED TO CAPITAL.—For purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

"(A) section 118 shall not apply, but

"(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

"(7) RECAPTURE OF GAIN ON SUBSEQUENT SALE OF STOCK.—

"(A) IN GENERAL.—If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

"(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property, and

"(ii) the aggregate amount allowed to the creditor—

"(I) as deductions under subsection (a), (b), or (c) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

"(II) as an ordinary loss on the exchange,

shall be treated as an amount allowed as a deduction for depreciation.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

"(B) TAXPAYERS ON RESERVE METHOD.—In the case of a taxpayer to whom subsection (c) of section 166 (relating to reserve for bad debts) applies, the amount determined under clause (ii) of subparagraph (A) shall be the aggregate charges to the reserve resulting from the worthlessness or partial worthlessness of the indebtedness.

"(C) SPECIAL RULE FOR CASH BASIS TAXPAYERS.—In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

"(D) STOCK OF PARENT CORPORATION.—For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

"(E) TREATMENT OF SUCCESSOR CORPORATION.—For purposes of this paragraph, the term 'debtor corporation' includes a successor corporation.

"Debtor corporation."

"(F) PARTNERSHIP RULE.—Under regulations prescribed by the Secretary, rules similar to the rules of subparagraphs (A), (B), (C), (D), and (E) of this paragraph shall apply with respect to the indebtedness of a partnership.

"(8) STOCK FOR DEBT EXCEPTION NOT TO APPLY IN DE MINIMIS CASES.—For purposes of determining income of the debtor from discharge of indebtedness, the stock for debt exception shall not apply—

"(A) to the issuance of nominal or token shares, or

"(B) with respect to an unsecured creditor, where the ratio of the value of the stock received by such unsecured creditor to the amount of his indebtedness cancelled or exchanged for stock in the workout is less than 50 percent of a similar ratio computed for all unsecured creditors participating in the workout.

"(9) DISCHARGE OF INDEBTEDNESS INCOME NOT TAKEN INTO ACCOUNT IN DETERMINING WHETHER ENTITY MEETS REIT QUALIFICATIONS.—Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c)."

(b) AMENDMENT OF SECTION 1017.—Section 1017 (relating to discharge of indebtedness) is amended to read as follows:

26 USC 1017.

"SEC. 1017. DISCHARGE OF INDEBTEDNESS.

"(a) GENERAL RULE.—If—

"(1) an amount is excluded from gross income under subsection (a) of section 108 (relating to discharge of indebtedness), and

Ante, p. 3389.

"(2) under subsection (b)(2)(D), (b)(5), or (c)(1)(A) of section 108,

any portion of such amount is to be applied to reduce basis, then such portion shall be applied in reduction of the basis of any property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs.

"(b) AMOUNT AND PROPERTIES DETERMINED UNDER REGULATIONS.—

"(1) IN GENERAL.—The amount of reduction to be applied under subsection (a) (not in excess of the portion referred to in subsection (a)), and the particular properties the bases of which are to

be reduced, shall be determined under regulations prescribed by the Secretary.

"(2) LIMITATION IN TITLE 11 CASE OR INSOLVENCY.—In the case of a discharge to which subparagraph (A) or (B) of section 108(a)(1) applies, the reduction in basis under subsection (a) of this section shall not exceed the excess of— 11 USC 101 *et seq.* *Ante*, p. 3389.

"(A) the aggregate of the bases of the property held by the taxpayer immediately after the discharge, over

"(B) the aggregate of the liabilities of the taxpayer immediately after the discharge.

The preceding sentence shall not apply to any reduction in basis by reason of an election under section 108(b)(5).

"(3) CERTAIN REDUCTIONS MAY ONLY BE MADE IN THE BASIS OF DEPRECIABLE PROPERTY.—

"(A) IN GENERAL.—Any amount which under subsection (b)(5) or (c)(1)(A) of section 108 is to be applied to reduce basis shall be applied only to reduce the basis of depreciable property held by the taxpayer.

"(B) DEPRECIABLE PROPERTY.—For purposes of this section, the term 'depreciable property' means any property of a character subject to the allowance for depreciation, but only if a basis reduction under subsection (a) will reduce the amount of depreciation or amortization which otherwise would be allowable for the period immediately following such reduction.

"(C) SPECIAL RULE FOR PARTNERSHIP INTERESTS.—For purposes of this section, any interest of a partner in a partnership shall be treated as depreciable property to the extent of such partner's proportionate interest in the depreciable property held by such partnership. The preceding sentence shall apply only if there is a corresponding reduction in the partnership's basis in depreciable property with respect to such partner.

"(D) SPECIAL RULE IN CASE OF AFFILIATED GROUP.—For purposes of this section, if—

"(i) a corporation holds stock in another corporation (hereinafter in this subparagraph referred to as the 'subsidiary'), and

"(ii) such corporations are members of the same affiliated group which file a consolidated return under section 1501 for the taxable year in which the discharge occurs,

then such stock shall be treated as depreciable property to the extent that such subsidiary consents to a corresponding reduction in the basis of its depreciable property.

"(E) ELECTION TO TREAT CERTAIN INVENTORY AS DEPRECIABLE PROPERTY.—

"(i) IN GENERAL.—At the election of the taxpayer, for purposes of this section, the term 'depreciable property' includes any real property which is described in section 1221(1). "Depreciable property."

"(ii) ELECTION.—An election under clause (i) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary. Such an election, once made, may be revoked only with the consent of the Secretary.

"(c) SPECIAL RULES.—

"(1) REDUCTION NOT TO BE MADE IN EXEMPT PROPERTY.—In the case of an amount excluded from gross income under section 108(a)(1)(A), no reduction in basis shall be made under this section in the basis of property which the debtor treats as exempt property under section 522 of title 11 of the United States Code.

Ante, p. 3389.

"(2) REDUCTIONS IN BASIS NOT TREATED AS DISPOSITIONS.—For purposes of this title, a reduction in basis under this section shall not be treated as a disposition.

"(d) RECAPTURE OF REDUCTIONS.—

"(1) IN GENERAL.—For purposes of sections 1245 and 1250—

"(A) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

"(B) any reduction under this section shall be treated as a deduction allowed for depreciation.

"(2) SPECIAL RULE FOR SECTION 1250.—For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section."

26 USC 111.

(c) AMENDMENT OF SECTION 111.—Section 111 (relating to recovery of bad debts, prior taxes, and delinquency amounts) is amended by adding at the end thereof the following new subsection:

"(d) INCREASE IN CARRYOVER TREATED AS YIELDING TAX BENEFIT.—For purposes of paragraph (4) of subsection (b), an increase in a carryover which has not expired shall be treated as a reduction in tax."

26 USC 382.

(d) AMENDMENT OF SECTION 382(b).—Subsection (b) of section 382 (relating to special limitations on net operating loss carryover), as in effect before its amendment by section 806 of the Tax Reform Act of 1976, is amended by adding at the end thereof the following new paragraph:

90 Stat. 1598.

11 USC 101 *et seq.*

(7) SPECIAL RULE FOR REORGANIZATIONS IN TITLE 11 OR SIMILAR CASES.—For purposes of this subsection, a creditor who receives stock in a reorganization in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) shall be treated as a stockholder immediately before the reorganization."

(e) TECHNICAL AMENDMENTS.—

26 USC 703.

(1) Subsection (b) of section 703 (relating to elections of the partnership) is amended to read as follows:

"(b) ELECTIONS OF THE PARTNERSHIP.—Any election affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that any election under—

"(1) section 57(c) (defining net lease),

Ante, p. 3389.

"(2) subsection (b)(5) or (d)(4) of section 108 (relating to income from discharge of indebtedness),

"(3) section 163(d) (relating to limitation of interest on investment indebtedness),

"(4) section 617 (relating to deduction and recapture of certain mining exploration expenditures), or

"(5) section 901 (relating to taxes of foreign countries and possessions of the United States),

shall be made by each partner separately."

26 USC 118.

(2) Subsection (c) of section 118 (relating to cross reference) is amended to read as follows:

"(c) CROSS REFERENCES.—

"(1) For basis of property acquired by a corporation through a contribution to its capital, see section 362.
"(2) For special rules in the case of contributions of indebtedness, see section 108(e)(6)."

SEC. 3. RULES RELATING TO TITLE 11 CASES FOR INDIVIDUALS. 11 USC 101 *et seq.*

(a) IN GENERAL.—

(1) ADDITION OF RULES.—Chapter 1 (relating to normal taxes and surtaxes) is amended by adding at the end thereof the following new subchapter:

"Subchapter V—Title 11 Cases

"Sec. 1398. Rules relating to individuals' title 11 cases.
"Sec. 1399. No separate taxable entities for partnerships, corporations, etc.

"SEC. 1398. RULES RELATING TO INDIVIDUALS' TITLE 11 CASES. 26 USC 1398.

"(a) CASES TO WHICH SECTION APPLIES.—Except as provided in subsection (b), this section shall apply to any case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code in which the debtor is an individual. 11 USC 701 *et seq.*, 1101 *et seq.*

"(b) EXCEPTIONS WHERE CASE IS DISMISSED, ETC.—

"(1) SECTION DOES NOT APPLY WHERE CASE IS DISMISSED.—This section shall not apply if the case under chapter 7 or 11 of title 11 of the United States Code is dismissed.

"(2) SECTION DOES NOT APPLY AT PARTNERSHIP LEVEL.—For purposes of subsection (a), a partnership shall not be treated as an individual, but the interest in a partnership of a debtor who is an individual shall be taken into account under this section in the same manner as any other interest of the debtor.

"(c) COMPUTATION AND PAYMENT OF TAX; ZERO BRACKET AMOUNT.—

"(1) COMPUTATION AND PAYMENT OF TAX.—Except as otherwise provided in this section, the taxable income of the estate shall be computed in the same manner as for an individual. The tax shall be computed on such taxable income and shall be paid by the trustee.

"(2) TAX RATES.—The tax on the taxable income of the estate shall be determined under subsection (d) of section 1.

"(3) AMOUNT OF ZERO BRACKET AMOUNT.—The amount of the estate's zero bracket amount for the taxable year shall be the same as for a married individual filing a separate return for such year.

"(d) TAXABLE YEAR OF DEBTORS.—

"(1) GENERAL RULE.—Except as provided in paragraph (2), the taxable year of the debtor shall be determined without regard to the case under title 11 of the United States Code to which this section applies. 11 USC 101 *et seq.*

"(2) ELECTION TO TERMINATE DEBTOR'S YEAR WHEN CASE COMMENCES.—

"(A) IN GENERAL.—Notwithstanding section 442, the debtor may (without the approval of the Secretary) elect to treat the debtor's taxable year which includes the commencement date as 2 taxable years—

"(i) the first of which ends on the day before the commencement date, and

"(ii) the second of which begins on the commencement date.

"(B) SPOUSE MAY JOIN IN ELECTION.—In the case of a married individual (within the meaning of section 143), the

spouse may elect to have the debtor's election under subparagraph (A) also apply to the spouse, but only if the debtor and the spouse file a joint return for the taxable year referred to in subparagraph (A)(i).

"(C) NO ELECTION WHERE DEBTOR HAS NO ASSETS.—No election may be made under subparagraph (A) by a debtor who has no assets other than property which the debtor may treat as exempt property under section 522 of title 11 of the United States Code.

"(D) TIME FOR MAKING ELECTION.—An election under subparagraph (A) or (B) may be made only on or before the due date for filing the return for the taxable year referred to in subparagraph (A)(i). Any such election, once made, shall be irrevocable.

"(E) RETURNS.—A return shall be made for each of the taxable years specified in subparagraph (A).

"(F) ANNUALIZATION.—For purposes of subsections (b), (c), and (d) of section 443, a return filed for either of the taxable years referred to in subparagraph (A) shall be treated as a return made under paragraph (1) of subsection (a) of section 443.

"(3) COMMENCEMENT DATE DEFINED.—For purposes of this subsection, the term 'commencement date' means the day on which the case under title 11 of the United States Code to which this section applies commences.

11 USC 101 *et seq.*

"(e) TREATMENT OF INCOME, DEDUCTIONS, AND CREDITS.—

"(1) ESTATE'S SHARE OF DEBTOR'S INCOME.—The gross income of the estate for each taxable year shall include the gross income of the debtor to which the estate is entitled under title 11 of the United States Code. The preceding sentence shall not apply to any amount received or accrued by the debtor before the commencement date (as defined in subsection (d)(3)).

"(2) DEBTOR'S SHARE OF DEBTOR'S INCOME.—The gross income of the debtor for any taxable year shall not include any item to the extent that such item is included in the gross income of the estate by reason of paragraph (1).

"(3) RULE FOR MAKING DETERMINATIONS WITH RESPECT TO DEDUCTIONS, CREDITS, AND EMPLOYMENT TAXES.—Except as otherwise provided in this section, the determination of whether or not any amount paid or incurred by the estate—

"(A) is allowable as a deduction or credit under this chapter, or

"(B) is wages for purposes of subtitle C,

shall be made as if the amount were paid or incurred by the debtor and as if the debtor were still engaged in the trades and businesses, and in the activities, the debtor was engaged in before the commencement of the case.

"(f) TREATMENT OF TRANSFERS BETWEEN DEBTOR AND ESTATE.—

"(1) TRANSFER TO ESTATE NOT TREATED AS DISPOSITION.—A transfer (other than by sale or exchange) of an asset from the debtor to the estate shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the estate shall be treated as the debtor would be treated with respect to such asset.

"(2) TRANSFER FROM ESTATE TO DEBTOR NOT TREATED AS DISPOSITION.—In the case of a termination of the estate, a transfer (other than by sale or exchange) of an asset from the estate to the debtor shall not be treated as a disposition for purposes of any provision

of this title assigning tax consequences to a disposition, and the debtor shall be treated as the estate would be treated with respect to such asset.

"(g) ESTATE SUCCEEDS TO TAX ATTRIBUTES OF DEBTOR.—The estate shall succeed to and take into account the following items (determined as of the first day of the debtor's taxable year in which the case commences) of the debtor—

"(1) NET OPERATING LOSS CARRYOVERS.—The net operating loss carryovers determined under section 172.

"(2) CHARITABLE CONTRIBUTIONS CARRYOVERS.—The carryover of excess charitable contributions determined under section 170(d)(1).

"(3) RECOVERY EXCLUSION.—Any recovery exclusion under section 111 (relating to recovery of bad debts, prior taxes, and delinquency amounts).

"(4) CREDIT CARRYOVERS, ETC.—The carryovers of any credit, and all other items which, but for the commencement of the case, would be required to be taken into account by the debtor with respect to any credit.

"(5) CAPITAL LOSS CARRYOVERS.—The capital loss carryover determined under section 1212.

"(6) BASIS, HOLDING PERIOD, AND CHARACTER OF ASSETS.—In the case of any asset acquired (other than by sale or exchange) by the estate from the debtor, the basis, holding period, and character it had in the hands of the debtor.

"(7) METHOD OF ACCOUNTING.—The method of accounting used by the debtor.

"(8) OTHER ATTRIBUTES.—Other tax attributes of the debtor, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

"(h) ADMINISTRATION, LIQUIDATION, AND REORGANIZATION EXPENSES; CARRYOVERS AND CARRYBACKS OF CERTAIN EXCESS EXPENSES.—

"(1) ADMINISTRATION, LIQUIDATION, AND REORGANIZATION EXPENSES.—Any administrative expense allowed under section 503 of title 11 of the United States Code, and any fee or charge assessed against the estate under chapter 123 of title 28 of the United States Code, to the extent not disallowed under any other provision of this title, shall be allowed as a deduction. 28 USC 1911 *et seq.*

"(2) CARRYBACK AND CARRYOVER OF EXCESS ADMINISTRATIVE COSTS, ETC., TO ESTATE TAXABLE YEARS.—

"(A) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (i) the administrative expense carryovers to such year, plus (ii) the administrative expense carrybacks to such year.

"(B) ADMINISTRATIVE EXPENSE LOSS, ETC.—If a net operating loss would be created or increased for any estate taxable year if section 172(c) were applied without the modification contained in paragraph (4) of section 172(d), then the amount of the net operating loss so created (or the amount of the increase in the net operating loss) shall be an administrative expense loss for such taxable year which shall be an administrative expense carryback to each of the 3 preceding taxable years and an administrative expense carryover to each of the 7 succeeding taxable years.

"(C) DETERMINATION OF AMOUNT CARRIED TO EACH TAXABLE YEAR.—The portion of any administrative expense loss

which may be carried to any other taxable year shall be determined under section 172(b)(2), except that for each taxable year the computation under section 172(b)(2) with respect to the net operating loss shall be made before the computation under this paragraph.

"(D) ADMINISTRATIVE EXPENSE DEDUCTIONS ALLOWED ONLY TO ESTATE.—The deductions allowable under this chapter solely by reason of paragraph (1), and the deduction provided by subparagraph (A) of this paragraph, shall be allowable only to the estate.

"(i) DEBTOR SUCCEEDS TO TAX ATTRIBUTES OF ESTATE.—In the case of a termination of an estate, the debtor shall succeed to and take into account the items referred to in paragraphs (1), (2), (3), (4), (5), and (6) of subsection (g) in a manner similar to that provided in such paragraphs (but taking into account that the transfer is from the estate to the debtor instead of from the debtor to the estate). In addition, the debtor shall succeed to and take into account the other tax attributes of the estate, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

"(j) OTHER SPECIAL RULES.—

"(1) CHANGE OF ACCOUNTING PERIOD WITHOUT APPROVAL.—Notwithstanding section 442, the estate may change its annual accounting period one time without the approval of the Secretary.

"(2) TREATMENT OF CERTAIN CARRYBACKS.—

"(A) CARRYBACKS FROM ESTATE.—If any carryback year of the estate is a taxable year before the estate's first taxable year, the carryback to such carryback year shall be taken into account for the debtor's taxable year corresponding to the carryback year.

"(B) CARRYBACKS FROM DEBTOR'S ACTIVITIES.—The debtor may not carry back to a taxable year before the debtor's taxable year in which the case commences any carryback from a taxable year ending after the case commences.

"(C) CARRYBACK AND CARRYBACK YEAR DEFINED.—For purposes of this paragraph—

"(i) CARRYBACK.—The term 'carryback' means a net operating loss carryback under section 172 or a carryback of any credit provided by part IV of subchapter A. 26 USC 31.

"(ii) CARRYBACK YEAR.—The term 'carryback year' means the taxable year to which a carryback is carried.

26 USC 1399. "SEC. 1399. NO SEPARATE TAXABLE ENTITIES FOR PARTNERSHIPS, CORPORATIONS, ETC.

"Except in any case to which section 1398 applies, no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code." 11 USC 101 *et seq.*

(2) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by adding at the end thereof the following new item:

"SUBCHAPTER V. Title 11 cases."

(b) RETURN REQUIREMENTS.—

26 USC 6012. (1) Subsection (a) of section 6012 (relating to persons required to make returns of income) is amended by adding at the end thereof the following new paragraph:

"(9) Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is $2,700 or more." 11 USC 701 *et seq.*, 1101 *et seq.*

(2) Paragraph (4) of section 6012(b) (relating to returns of estates and trusts) is amended by striking out "an estate or a trust" and inserting in lieu thereof "an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code". 26 USC 6012.

(c) DISCLOSURE OF RETURNS.—

(1) Subsection (e) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by striking out paragraph (4), by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs: 26 USC 6103.

"(4) TITLE 11 CASES AND RECEIVERSHIP PROCEEDINGS.—If—

"(A) there is a trustee in a title 11 case in which the debtor is the person with respect to whom the return is filed, or 11 USC 101 *et seq.*

"(B) substantially all of the property of the person with respect to whom the return is filed is in the hands of a receiver,

such return or returns for prior years of such person shall, upon written request, be open to inspection by or disclosure to such trustee or receiver, but only if the Secretary finds that such trustee or receiver, in his fiduciary capacity, has a material interest which will be affected by information contained therein.

"(5) INDIVIDUAL'S TITLE 11 CASE.—

"(A) IN GENERAL.—In any case to which section 1398 applies (determined without regard to section 1398(b)(1)), any return of the debtor for the taxable year in which the case commenced or any preceding taxable year shall, upon written request, be open to inspection by or disclosure to the trustee in such case. *Ante*, p. 3397.

"(B) RETURN OF ESTATE AVAILABLE TO DEBTOR.—Any return of an estate in a case to which section 1398 applies shall, upon written request, be open to inspection by or disclosure to the debtor in such case.

"(C) SPECIAL RULE FOR INVOLUNTARY CASES.—In an involuntary case, no disclosure shall be made under subparagraph (A) until the order for relief has been entered by the court having jurisdiction of such case unless such court finds that such disclosure is appropriate for purposes of determining whether an order for relief should be entered."

(2) Paragraph (6) of section 6103(e) (as redesignated by paragraph (1)) is amended by striking out "or (4)" and inserting in lieu thereof "(4), or (5)". *Supra.*

(d) TECHNICAL AMENDMENT.—Subsection (e) of section 443 (relating to cross references) is amended by adding at the end thereof the following new sentence: 26 USC 443.

"For returns for a period of less than 12 months in the case of a debtor's election to terminate a taxable year, see section 1398(d)(3)(E)."

SEC. 4. CORPORATE REORGANIZATION PROVISIONS.

(a) CERTAIN TRANSFERS IN TITLE 11 OR SIMILAR CASES TO BE INCLUDED IN DEFINITION OF REORGANIZATION.—Paragraph (1) of section 368(a) (defining reorganization) is amended by adding at the end thereof the following new subparagraph: 11 USC 101 *et seq.* 26 USC 368.

"(G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if,

in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356."

11 USC 101 *et seq.* 26 USC 368.

(b) ADDITIONAL RULES FOR COORDINATING TITLE 11 AND SIMILAR CASES WITH THE GENERAL REORGANIZATION RULES.—Section 368(a) is amended by adding at the end thereof the following new paragraph:

"(3) ADDITIONAL RULES RELATING TO TITLE 11 AND SIMILAR CASES.—

"(A) TITLE 11 OR SIMILAR CASE DEFINED.—For purposes of this part, the term 'title 11 or similar case' means—

"(i) a case under title 11 of the United States Code, or

"(ii) a receivership, foreclosure, or similar proceeding in a Federal or State court.

"(B) TRANSFER OF ASSETS IN A TITLE 11 OR SIMILAR CASE.—In applying paragraph (1)(G), a transfer of the assets of a corporation shall be treated as made in a title 11 or similar case if and only if—

"(i) such corporation is under the jurisdiction of the court in such case, and

"(ii) the transfer is pursuant to a plan of reorganization approved by the court.

"(C) REORGANIZATIONS QUALIFYING UNDER PARAGRAPH (1)(G) AND ANOTHER PROVISION.—If a transaction would (but for this subparagraph) qualify both—

"(i) under subparagraph (G) of paragraph (1), and

"(ii) under any other subparagraph of paragraph (1) or under section 332 or 351,

then, for purposes of this subchapter (other than section 357(c)(1)), such transaction shall be treated as qualifying only under subparagraph (G) of paragraph (1).

"(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution to which section 585 or 593 applies, the agency shall be treated as a court.

"(E) APPLICATION OF PARAGRAPH (2)(E)(ii).—In the case of a title 11 or similar case, the requirement of clause (ii) of paragraph (2)(E) shall be treated as met if—

"(i) no former shareholder of the surviving corporation received any consideration for his stock, and

"(ii) the former creditors of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, debt of the surviving corporation which had a fair market value equal to 80 percent or more of the total fair market value of the debt of the surviving corporation."

(c) TRANSFERS OF ASSETS TO SUBSIDIARIES.—Subparagraph (C) of section 368(a)(2) (relating to transfers of assets or stock to subsidiaries in certain paragraph (1)(A), (1)(B), and (1)(C) cases) is amended to read as follows:

"(C) TRANSFERS OF ASSETS OR STOCK TO SUBSIDIARIES IN CERTAIN PARAGRAPH (1)(A), (1)(B), (1)(C), AND (1)(G) CASES.—A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock. A similar

rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets or stock."

(d) USE OF STOCK OF CONTROLLING CORPORATION.—Subparagraph (D) of section 368(a)(2) (relating to use of stock of controlling corporation in paragraph (1)(A) cases) is amended to read as follows: 26 USC 368.

"(D) USE OF STOCK OF CONTROLLING CORPORATION IN PARAGRAPH (1)(A) AND (1)(G) CASES.—The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as 'controlling corporation') which is in control of the acquiring corporation, of substantially all of the properties of another corporation shall not disqualify a transaction under paragraph (1)(A) or (1)(G) if—

"(i) no stock of the acquiring corporation is used in the transaction, and

"(ii) in the case of a transaction under paragraph (1)(A), such transaction would have qualified under paragraph (1)(A) had the merger been into the controlling corporation."

(e) TREATMENT OF PROPERTY ATTRIBUTABLE TO ACCRUED INTEREST.—

(1) AMENDMENT OF SECTION 354.—Subsection (a) of section 354 (relating to exchanges of stocks and securities in certain reorganizations) is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following: 26 USC 354.

"(2) LIMITATIONS.—

"(A) EXCESS PRINCIPAL AMOUNT.—Paragraph (1) shall not apply if—

"(i) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

"(ii) any such securities are received and no such securities are surrendered.

"(B) PROPERTY ATTRIBUTABLE TO ACCRUED INTEREST.—Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock, securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

"(3) CROSS REFERENCES.—

"(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (2)(B) applies), see section 356.

"(B) For treatment of accrued interest in the case of an exchange described in paragraph (2)(B), see section 61."

(2) AMENDMENT OF SECTION 355.—Subsection (a) of section 355 (relating to distribution of stock and securities of a controlled corporation) is amended by striking out paragraphs (3) and (4) and inserting in lieu thereof the following: 26 USC 355.

"(3) LIMITATIONS.—

"(A) EXCESS PRINCIPAL AMOUNT.—Paragraph (1) shall not apply if—

"(i) the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

"(ii) securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

"(B) STOCK ACQUIRED IN TAXABLE TRANSACTIONS WITHIN 5 YEARS TREATED AS BOOT.—For purposes of this section (other than paragraph (1)(D) of this subsection) and so much of section 356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction—

"(i) which occurs within 5 years of the distribution of such stock, and

"(ii) in which gain or loss was recognized in whole or in part,

shall not be treated as stock of such controlled corporation, but as other property.

"(C) PROPERTY ATTRIBUTABLE TO ACCRUED INTEREST.—Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock, securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

"(4) CROSS REFERENCES.—

"(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (3)(C) applies), see section 356.

"(B) For treatment of accrued interest in the case of an exchange described in paragraph (3)(C), see section 61."

(f) TERMINATION OF EXISTING PROVISIONS RELATING TO INSOLVENCY REORGANIZATIONS.—Part IV of subchapter C of chapter 1 (relating to insolvency reorganizations) is amended by inserting before section 371 the following new section:

26 USC 370.

"SEC. 370. TERMINATION OF PART.

"(a) GENERAL RULE.—Except as provided in subsection (b), this part shall not apply to any proceeding which is begun after September 30, 1979.

"(b) EXCEPTIONS.—Subsection (a) shall not apply to subsections (c) and (e) of section 374."

26 USC 381.
Ante, p. 3401.

(g) CARRYOVER OF SECTION 381 ITEMS IN SECTION 368(a)(1)(G) REORGANIZATIONS.—Subsection (a) of section 381 (relating to carryovers in certain corporate acquisitions) is amended—

(1) by striking out "subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met), or (F) of section 368(a)(1)" in paragraph (2) and inserting in lieu thereof "subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1)", and

(2) by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met."

26 USC 354.

(h) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraphs (1) and (2) of section 354(b) (relating to exception to general rule on exchanges of stock and securities in certain reorganizations) are each amended by striking out "section 368(a)(1)(D)" and inserting in lieu thereof "subparagraph (D) or (G) of section 368(a)(1)".

(2) Paragraph (2) of section 357(c) (relating to liabilities in excess of basis) is amended to read as follows: 26 USC 357.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any exchange—

"(A) to which subsection (b)(1) of this section applies,

"(B) to which section 371 or 374 applies, or

"(C) which is pursuant to a plan of reorganization within the meaning of section 368(a)(1)(G) where no former shareholder of the transferor corporation receives any consideration for his stock."

(3) Paragraph (1) of section 368(a) (defining reorganization) is amended— 26 USC 368.

(A) by striking out "or" at the end of subparagraph (E), and

(B) by striking out the period at the end of subparagraph (F) and inserting in lieu thereof "; or".

(4) Subsection (b) of section 368 (defining party to reorganization) is amended—

(A) by striking out "or (1)(C)" in the third sentence and inserting in lieu thereof "(1)(C), or (1)(G)", and

(B) by striking out "paragraph (1)(A)" in the fourth sentence and inserting in lieu thereof "paragraph (1)(A) or (1)(G)".

(5) The table of sections for part IV of subchapter C of chapter 1 is amended by inserting before the item relating to section 371 the following new item:

"Sec. 370. Termination of part."

SEC. 5. MISCELLANEOUS CORPORATE AMENDMENTS.

(a) EXCEPTION FROM PERSONAL HOLDING COMPANY TAX FOR CORPORATIONS IN TITLE 11 OR SIMILAR CASES.—Subsection (c) of section 542 (relating to exceptions from definition of personal holding company) is amended by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and" and by adding at the end thereof the following new paragraph: 11 USC 101 *et seq.* 26 USC 542.

"(9) a corporation which is subject to the jurisdiction of the court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) unless a major purpose of instituting or continuing such case is the avoidance of the tax imposed by section 541."

(b) REDEMPTION OF STOCK ISSUED IN RAILROAD REORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b) of section 302 (relating to redemptions treated as exchanges) is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4). 26 USC 302.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 302 is amended by striking out "(2), (3), or (4)" and inserting in lieu thereof "(2), or (3)".

(B) Paragraph (4) of section 302(b) (as redesignated by paragraph (1)) is amended—

(i) by striking out "(2), (3), or (4)" and inserting in lieu thereof "(2) or (3)", and

(ii) by striking out "(1), (2), or (4)" and inserting in lieu thereof "(1) or (2)".

(c) SECTION 337 TO APPLY WHERE LIQUIDATING CORPORATION IS INSOLVENT.—Section 337 (relating to gain or loss on sales or exchanges in connection with certain liquidations) is amended by adding at the end thereof the following new subsection: 26 USC 337.

11 USC 101 *et seq.*

Ante, p. 3402.

"(g) TITLE 11 OR SIMILAR CASES.—If a corporation completely liquidates pursuant to a plan of complete liquidation adopted in a title 11 or similar case (within the meaning of section 368(a)(3)(A))—

"(1) for purposes of subsection (a), the term 'property' shall not include any item acquired on or after the date of the adoption of the plan of liquidation if such item is not property within the meaning of subsection (b)(2), and

"(2) subsection (a) shall apply to sales and exchanges by the corporation of property within the period beginning on the date of the adoption of the plan and ending on the date of the termination of the case."

26 USC 1371.

(d) ESTATE OF INDIVIDUAL IN TITLE 11 CASE PERMITTED TO BE SHAREHOLDER OF SUBCHAPTER S CORPORATION.—Section 1371 (defining small business corporation) is amended by adding at the end thereof the following new subsection:

"Estate."

"(f) ESTATE OF INDIVIDUAL IN TITLE 11 CASE MAY BE SHAREHOLDER.—For purposes of subsection (a)(2), the term 'estate' includes the estate of an individual in a case under title 11 of the United States Code."

26 USC 351.

(e) AMENDMENTS OF SECTION 351.—

(1) Section 351 (relating to transfer to corporation controlled by transferor) is amended by redesignating subsection (e) as subsection (f) and by striking out subsection (d) and inserting in lieu thereof the following new subsections:

"(d) SERVICES, CERTAIN INDEBTEDNESS, AND ACCRUED INTEREST NOT TREATED AS PROPERTY.—For purposes of this section, stock or securities issued for—

"(1) services,

"(2) indebtedness of the transferee corporation which is not evidenced by a security, or

"(3) interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt,

shall not be considered as issued in return for property.

"(e) EXCEPTIONS.—This section shall not apply to—

"(1) TRANSFER OF PROPERTY TO AN INVESTMENT COMPANY.—A transfer of property to an investment company.

11 USC 101 *et seq.*

Ante, p. 3402.

"(2) TITLE 11 OR SIMILAR CASE.—A transfer of property of a debtor pursuant to a plan while the debtor is under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), to the extent that the stock or securities received in the exchange are used to satisfy the indebtedness of such debtor."

(2) Subsection (a) of section 351 is amended by striking out the last sentence.

26 USC 312.

(f) EFFECT ON EARNINGS AND PROFITS.—Section 312 (relating to effect on earnings and profits) is amended by adding at the end thereof the following new subsection:

"(l) DISCHARGE OF INDEBTEDNESS INCOME.—

"(1) DOES NOT INCREASE EARNINGS AND PROFITS IF APPLIED TO REDUCE BASIS.—The earnings and profits of a corporation shall not include income from the discharge of indebtedness to the extent of the amount applied to reduce basis under section 1017.

Ante, p. 3394.

"(2) REDUCTION OF DEFICIT IN EARNINGS AND PROFITS IN CERTAIN CASES.—If—

"(A) the interest of any shareholder of a corporation is terminated or extinguished in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and

Ante, p. 3402.

"(B) there is a deficit in the earnings and profits of the corporation,

then such deficit shall be reduced by an amount equal to the paid-in capital which is allocable to the interest of the shareholder which is so terminated or extinguished."

SEC. 6. CHANGES IN TAX PROCEDURES.

(a) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS DURING TITLE 11 CASES.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection: 11 USC 101 *et seq.* 26 USC 6503.

"(i) CASES UNDER TITLE 11 OF THE UNITED STATES CODE.—The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or collection shall, in a case under title 11 of the United States Code, be suspended for the period during which the Secretary is prohibited by reason of such case from making the assessment or from collecting and—

"(1) for assessment, 60 days thereafter, and

"(2) for collection, 6 months thereafter."

(b) COORDINATION OF DEFICIENCY PROCEDURES WITH TITLE 11 CASES.—

(1) IN GENERAL.—Section 6213 (relating to restrictions applicable to deficiencies; petition to Tax Court) is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection: 26 USC 6213.

"(f) COORDINATION WITH TITLE 11.—

"(1) SUSPENSION OF RUNNING OF PERIOD FOR FILING PETITION IN TITLE 11 CASES.—In any case under title 11 of the United States Code, the running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to any deficiency shall be suspended for the period during which the debtor is prohibited by reason of such case from filing a petition in the Tax Court with respect to such deficiency, and for 60 days thereafter.

"(2) CERTAIN ACTION NOT TAKEN INTO ACCOUNT.—For purposes of the second and third sentences of subsection (a), the filing of a proof of claim or request for payment (or the taking of any other action) in a case under title 11 of the United States Code shall not be treated as action prohibited by such second sentence."

(2) CLERICAL AMENDMENT.—Subsection (d) of section 6404 (relating to abatements) is amended by striking out "section 6213(f)(2)(A)" and inserting in lieu thereof "section 6213(g)(2)(A)". 26 USC 6404. *Supra.*

(c) TRUSTEE OF DEBTOR'S ESTATE MAY INTERVENE IN TAX COURT PROCEEDING.—

(1) IN GENERAL.—Part II of subchapter C of chapter 76 (relating to Tax Court procedure) is amended by redesignating section 7464 as section 7465 and by inserting after section 7463 the following new section:

"SEC. 7464. INTERVENTION BY TRUSTEE OF DEBTOR'S ESTATE. 26 USC 7464.

"The trustee of the debtor's estate in any case under title 11 of the United States Code may intervene, on behalf of the debtor's estate, in any proceeding before the Tax Court to which the debtor is a party."

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter C of chapter 76 is amended by striking out the item relating to section 7464 and by inserting in lieu thereof the following:

"Sec. 7464. Intervention by trustee of debtor's estate.
"Sec. 7465. Provisions of special application to transferees."

11 USC 101 *et seq.*
26 USC 7430.

(d) CROSS REFERENCES TO TAX DETERMINATIONS IN TITLE 11 CASES.—
(1) AMENDMENT OF SECTION 7430.—Section 7430 (relating to cross references) is amended by striking out paragraphs (1), (2), (3), and (4) and inserting in lieu thereof the following new paragraph:

"(1) For determination of amount of any tax, additions to tax, etc., in title 11 cases, see section 505 of title 11 of the United States Code."

26 USC 6212.

(2) AMENDMENT OF SECTION 6212.—Paragraph (2) of section 6212(c) (relating to cross references) is amended by adding at the end thereof the following new sentence:

"For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code."

26 USC 6512.

(3) AMENDMENT OF SECTION 6512.—Section 6512 (relating to limitations in case of petition to Tax Court) is amended by adding at the end thereof the following new subsection:
"(c) CROSS REFERENCE.—

"For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code."

26 USC 6532.

(4) AMENDMENT OF SECTION 6532.—Subsection (a) of section 6532 (relating to periods of limitations on suits) is amended by adding at the end thereof the following new paragraph:
"(5) CROSS REFERENCE.—

"For substitution of 120-day period for the 6-month period contained in paragraph (1) in a title 11 case, see section 505(a)(2) of title 11 of the United States Code."

(e) RELIEF FROM CERTAIN PENALTIES IN TITLE 11 CASES.—
(1) IN GENERAL.—Subchapter A of chapter 68 (relating to additions to the tax and additional amounts) is amended by inserting after section 6657 the following new section:

26 USC 6658.

"SEC. 6658. COORDINATION WITH TITLE 11.

"(a) CERTAIN FAILURES TO PAY TAX.—No addition to the tax shall be made under section 6651, 6654, or 6655 for failure to make timely payment of tax with respect to a period during which a case is pending under title 11 of the United States Code—

11 USC 101 *et seq.*

"(1) if such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or
"(2) if—
"(A) such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee, and
"(B)(i) the petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or
"(ii) the date for making the addition to the tax occurs on or after the day on which the petition was filed.

"(b) EXCEPTION FOR COLLECTED TAXES.—Subsection (a) shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States."

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 68 is amended by inserting after the item relating to section 6657 the following:

"Sec. 6658. Coordination with title 11."

(f) CREDIT AGAINST FEDERAL UNEMPLOYMENT TAX NOT REDUCED IN CERTAIN CASES.—Subsection (a) of section 3302 (relating to credits against unemployment tax) is amended by adding at the end thereof the following new paragraph: 26 USC 3302.

"(5) In the case of wages paid by the trustee of an estate under title 11 of the United States Code, if the failure to pay contributions on time was without fault by the trustee, paragraph (3) shall be applied by substituting '100 percent' for '90 percent'." 11 USC 101 *et seq.*

(g) REMOVAL OF PROVISION FOR IMMEDIATE ASSESSMENT IN CERTAIN TITLE 11 CASES.—

(1) IN GENERAL.—Section 6871 (relating to claims for income, estate, and gift taxes in bankruptcy and receivership proceedings) is amended to read as follows: 26 USC 6871.

"SEC. 6871. CLAIMS FOR INCOME, ESTATE, GIFT, AND CERTAIN EXCISE TAXES IN RECEIVERSHIP PROCEEDINGS, ETC.

"(a) IMMEDIATE ASSESSMENT IN RECEIVERSHIP PROCEEDINGS.—On the appointment of a receiver for the taxpayer in any receivership proceeding before any court of the United States or of any State or of the District of Columbia, any deficiency (together with all interest, additional amounts, and additions to the tax provided by law) determined by the Secretary in respect of a tax imposed by subtitle A or B or by chapter 41, 42, 43, 44, or 45 on such taxpayer may, despite the restrictions imposed by section 6213(a) on assessments, be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. 26 USC 1, 2001, 4911, 4940, 4971, 4981 *ante*, p. 230.

"(b) IMMEDIATE ASSESSMENT WITH RESPECT TO CERTAIN TITLE 11 CASES.—Any deficiency (together with all interest, additional amounts, and additions to the tax provided by law) determined by the Secretary in respect of a tax imposed by subtitle A or B or by chapter 41, 42, 43, 44, or 45 on—

"(1) the debtor's estate in a case under title 11 of the United States Code, or

"(2) the debtor, but only if liability for such tax has become res judicata pursuant to a determination in a case under title 11 of the United States Code,

may, despite the restrictions imposed by section 6213(a) on assessments, be immediately assessed if such deficiency has not theretofore been assessed in accordance with law.

"(c) CLAIM FILED DESPITE PENDENCY OF TAX COURT PROCEEDINGS.—In the case of a tax imposed by subtitle A or B or by chapter 41, 42, 43, 44, or 45—

"(1) claims for the deficiency and for interest, additional amounts, and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the receivership proceeding (or the case under title 11 of the United States Code) is pending, despite the pendency of proceedings for the redetermination of the deficiency pursuant to a petition to the Tax Court; but

"(2) in the case of a receivership proceeding, no petition for any such redetermination shall be filed with the Tax Court after the appointment of the receiver."

(2) AMENDMENT OF SECTION 6873.—Subsection (a) of section 6873 (relating to unpaid claims) is amended by striking out "or any proceeding under the Bankruptcy Act". 26 USC 6873.

(3) CLERICAL AMENDMENTS.—

(A) The table of sections for subchapter B of chapter 70 is amended by striking out the item relating to section 6871 and inserting in lieu thereof the following:

"Sec. 6871. Claims for income, estate, gift, and certain excise taxes in receivership proceedings, etc."

(B) The heading of subchapter B of chapter 70 is amended to read as follows:

"Subchapter B—Receiverships, Etc."

(C) The item relating to subchapter B in the table of subchapters for chapter 70 is amended to read as follows:

"SUBCHAPTER B. Receiverships, etc."

(D) The heading of chapter 70 is amended to read as follows:

"CHAPTER 70—JEOPARDY, RECEIVERSHIPS, ETC."

(E) The item relating to chapter 70 in the table of chapters for subtitle F is amended to read as follows:

"CHAPTER 70. Jeopardy, receiverships, etc."

26 USC 1018.

(h) REPEAL OF SECTION 1018.—

(1) IN GENERAL.—Section 1018 (relating to adjustment of capital structure before September 22, 1938) is hereby repealed.

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 is amended by striking out the item relating to section 1018.

(i) TECHNICAL AND CONFORMING AMENDMENTS.—

26 USC 128.

(1) Subsection (a) of section 128 (relating to cross references) is amended by striking out paragraph (1) and by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively.

26 USC 354.

(2) Subsection (c) of section 354 (relating to certain railroad reorganizations) is amended by striking out "approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or" and inserting in lieu thereof "confirmed under section 1173 of title 11 of the United States Code, or approved by the Interstate Commerce Commission".

26 USC 422.

(3) Paragraph (5) of section 422(c) (relating to certain transfers by insolvent individuals) is amended by striking out "under the Bankruptcy Act" and inserting in lieu thereof "under title 11 of the United States Code".

26 USC 1023.

(4) Section 1023 (relating to cross references) is amended by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2).

26 USC 6012.

(5) Paragraph (3) of section 6012(b) (relating to receivers, trustees, and assignees for corporations) is amended by striking out "trustee in bankruptcy" and inserting in lieu thereof "trustee in a case under title 11 of the United States Code".

26 USC 6036.

(6) Section 6036 (relating to notice of qualification as executor or receiver) is amended by striking out "trustee in bankruptcy" and inserting in lieu thereof "trustee in a case under title 11 of the United States Code".

26 USC 6155.

(7) Paragraph (2) of section 6155(b) (relating to cross references) is amended by striking out "bankruptcy or".

26 USC 6161.

(8) Subsection (c) of section 6161 (relating to claims in bankruptcy or receivership proceedings) is amended—

(A) by striking out "in bankruptcy or receivership proceedings" and inserting in lieu thereof "in cases under title 11 of the United States Code or in receivership proceedings", and

(B) by striking out "BANKRUPTCY OR RECEIVERSHIP PROCEEDINGS" in the subsection heading and inserting in lieu thereof "CASES UNDER TITLE 11 OF THE UNITED STATES CODE OR IN RECEIVERSHIP PROCEEDINGS".

11 USC 101 *et seq.*

(9) Paragraph (1) of section 6216 (relating to cross references) is amended to read as follows:

26 USC 6216.

"(1) For procedures relating to receivership proceedings, see subchapter B of chapter 70."

(10)(A) Section 6326 (relating to cross references) is amended by striking out paragraphs (2), (3), (4), and (5) and inserting in lieu thereof the following:

26 USC 6326.

"(2) For exclusion of tax liability from discharge in cases under title 11 of the United States Code, see section 523 of such title 11.

"(3) For recognition of tax liens in cases under title 11 of the United States Code, see sections 545 and 724 of such title 11.

"(4) For collection of taxes in connection with plans for individuals with regular income in cases under title 11 of the United States Code, see section 1328 of such title 11."

(B) Section 6326 is amended by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(11) Paragraph (2) of section 6503(i) (relating to cross references) is amended to read as follows:

26 USC 6503.

"(2) Receiverships, see subchapter B of chapter 70."

(12) Section 6872 (relating to suspension period on assessment) is amended by striking out "any proceeding under the Bankruptcy Act" and by inserting in lieu thereof "any case under title 11 of the United States Code".

26 USC 6872.

(13) Section 7430 (as amended by this Act) is amended by inserting after paragraph (1) the following new paragraphs:

26 USC 7430.

"(2) For exclusion of tax liability from discharge in cases under title 11 of the United States Code, see section 523 of such title 11.

"(3) For recognition of tax liens in cases under title 11 of the United States Code, see sections 545 and 724 of such title 11.

"(4) For collection of taxes in connection with plans for individuals with regular income in cases under title 11 of the United States Code, see section 1328 of such title 11."

(14) Paragraph (1) of section 7508(d) is amended by striking out "BANKRUPTCY AND RECEIVERSHIPS" in the paragraph heading and inserting in lieu thereof "CASES UNDER TITLE 11 OF THE UNITED STATES CODE AND RECEIVERSHIPS".

26 USC 7508.

SEC. 7. EFFECTIVE DATES.

26 USC 108 note.

(a) For section 2 (Relating to Tax Treatment of Discharge of Indebtedness).—

Ante, p. 3389.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 2 shall apply to any transaction which occurs after December 31, 1980, other than a transaction which occurs in a proceeding in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) commencing on or before December 31, 1980.

11 USC note prec. 101.

(2) TRANSITIONAL RULE.—In the case of any discharge of indebtedness to which subparagraph (A) or (B) of section 108(a)(1) of the Internal Revenue Code of 1954 (relating to exclusion from gross income), as amended by section 2, applies and which occurs before January 1, 1982, or which occurs in a proceeding in a

Ante, p. 3389.

bankruptcy case or similar judicial proceedings commencing before January 1, 1982, then—

Ante, p. 3389.

(A) section 108(b)(2) of the such Code (relating to reduction of tax attributes), as so amended, shall be applied without regard to subparagraphs (A), (B), (C), and (E) thereof, and

Ante, p. 3394.

(B) the basis of any property shall not be reduced under section 1017 of such Code (relating to reduction in basis in connection with discharges of indebtedness), as so amended, below the fair market value of such property on the date the debt is discharged.

Ante, p. 3397. 11 USC 101 *et seq.*

(b) FOR SECTION 3 (RELATING TO RULES RELATING TO TITLE 11 CASES FOR INDIVIDUALS).—The amendments made by section 3 shall apply to any bankruptcy case commencing more than 90 days after the date of the enactment of this Act.

Ante, p. 3401.

(c) FOR SECTION 4 (RELATING TO CORPORATE REORGANIZATION PROVISIONS).—

(1) IN GENERAL.—The amendments made by section 4 shall apply to any bankruptcy case or similar judicial proceeding commencing after December 31, 1980.

(2) EXCHANGES OF PROPERTY FOR ACCRUED INTEREST.—The amendments made by subsection (e) of section 4 (relating to treatment of property attributable to accrued interest) shall also apply to any exchange—

(A) which occurs after December 31, 1980, and

(B) which does not occur in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) commenced on or before December 31, 1980.

Ante, p. 3405.

(d) FOR SECTION 5 (RELATING TO MISCELLANEOUS CORPORATE AMENDMENTS).—

(1) FOR SUBSECTION (a) (RELATING TO EXEMPTION FROM PERSONAL HOLDING COMPANY TAX).—The amendments made by subsection (a) of section 5 shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

(2) FOR SUBSECTION (b) (RELATING TO REPEAL OF SPECIAL TREATMENT FOR CERTAIN RAILROAD REDEMPTIONS).—The amendments made by subsection (b) of section 5 shall apply to stock which is issued after December 31, 1980 (other than stock issued pursuant to a plan of reorganization approved on or before that date).

(3) FOR SUBSECTION (c) (RELATING TO APPLICATION OF 12-MONTH LIQUIDATION RULE).—The amendment made by subsection (c) of section 5 shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

(4) FOR SUBSECTION (d) (RELATING TO PERMITTING BANKRUPTCY ESTATE TO BE SUBCHAPTER S SHAREHOLDER).—The amendment made by subsection (d) of section 5 shall apply to any bankruptcy case commenced on or after October 1, 1979.

(5) FOR SUBSECTION (e) (RELATING TO CERTAIN TRANSFERS TO CONTROLLED CORPORATIONS).—The amendments made by subsection (e) of section 5 shall apply as provided in subsection (a) of this section.

(6) FOR SUBSECTION (f) (RELATING TO EFFECT OF DEBT DISCHARGE ON EARNINGS AND PROFITS).—The amendment made by subsection (f) of section 5 shall apply as provided in subsection (a) of this section.

Ante, p. 3407.

(e) FOR SECTION 6 (RELATING TO CHANGES IN TAX PROCEDURES).—The amendments made by section 6 shall take effect on October 1, 1979, but shall not apply to any proceeding under the Bankruptcy Act commenced before October 1, 1979.

(f) ELECTION TO SUBSTITUTE SEPTEMBER 30, 1979, FOR DECEMBER 31, 1980.—

(1) IN GENERAL.—The debtor (or debtors) in a bankruptcy case or similar judicial proceeding may (with the approval of the court) elect to apply subsections (a), (c), and (d) by substituting "September 30, 1979" for "December 31, 1980" each place it appears in such subsections.

(2) EFFECT OF ELECTION.—Any election made under paragraph (1) with respect to any proceeding shall apply to all parties to the proceeding.

(3) REVOCATION ONLY WITH CONSENT.—Any election under this subsection may be revoked only with the consent of the Secretary of the Treasury or his delegate.

(4) TIME AND MANNER OF ELECTION.—Any election under this subsection shall be made at such time, and in such manner, as the Secretary of the Treasury or his delegate may by regulations prescribe.

(g) DEFINITIONS.—For purposes of this section—

(1) BANKRUPTCY CASE.—The term "bankruptcy case" means any case under title 11 of the United States Code (as recodified by Public Law 95-598).

11 USC 101 *et seq.*

(2) SIMILAR JUDICIAL PROCEEDING.—The term "similar judicial proceeding" means a receivership, foreclosure, or similar proceeding in a Federal or State court (as modified by section 368(a)(3)(D) of the Internal Revenue Code of 1954).

Ante, p. 3402.

Approved December 24, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT: No. 96-833 (Comm. on Ways and Means).
SENATE REPORT: No. 96-1035 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 126 (1980):
Mar. 24, considered and passed House.
Dec. 13, considered and passed Senate, amended; House agreed to Senate amendments.