

LEGISLATIVE HISTORY

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the committee states that the changes made to existing law by the bill involve no new budget authority.

*Tax expenditures*

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee states that the

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changes made to existing law by the provisions relating to tax treatment of Indian tribal governments involve tax expenditures of less than \$10 million annually.

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HOUSE CONFERENCE REPORT NO. 97-984

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 5470) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of periodic payments for damages received on account of personal injury or sickness, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House amendment to the Senate amendment struck out all of the Senate amendment and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the House amendment and the Senate amendment. The differences between the House amendment, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

## Periodic Payment Settlement Act of 1982

### 1. Exclusion for Periodic Damage Payments

#### *Present law*

Present law generally excludes from gross income damages received by an individual on account of personal injuries or sickness. Furthermore, the IRS has ruled that damages for personal injuries are excludible from gross income whether paid as a lump sum, or paid in periodic payments out of a fund invested and owned by the tortfeasor or an insurer.

#### *House bill*

The House bill excludes from gross income damage payments for injuries or sickness whether paid as lump sums or as periodic payments.

Furthermore, under certain circumstances, an amount received for agreeing to undertake an assignment of a liability to make periodic payments of personal injury damages is not included in gross income. Specifically, any amount so received will not be included in gross income to the extent it is used to purchase an annuity contract issued by a company licensed to do business as an insurance company under the laws of any State or an obligation of the United States. It is intended that the definition of a "qualified funding asset," meaning an annuity contract designed to satisfy a "qualified assignment," encompass an annuity policy the payments from which end upon the death of a measuring life, i.e., an annuity with a life contingency.

The provision is effective for taxable years ending after 1982.

#### *Senate amendment*

The Senate amendment is similar to the House bill except that if an annuity contract is used to fund periodic payments, it must be issued by a life insurance company.

#### *Conference agreement*

The conference agreement follows the House bill.

The conferees wish to emphasize that, as a result of this legislation, no negative inference should be drawn as to the appropriate tax treatment of such transactions under present law and administrative rulings.

### 2. Exclusion From Gross Income For Certain Foster Care Payments

#### *Present law*

Except as otherwise provided by law, gross income means all income from whatever source derived.

The IRS has set forth guidelines regarding the tax treatment of amounts received and amounts expended by individuals providing foster care to children. If foster parents are rendering gratuitous

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### 3. Taxation of Indian Tribal Governments

#### *Present law*

States (including the District of Columbia) and their political subdivisions generally are exempt from Federal tax. In addition, numerous transactions by private parties with State governments and their political subdivisions result in favorable Federal tax treatment (e.g., exclusion from income, tax deductions, or tax credits) for the private parties involved.

Under present law, Indian tribal governments are not treated as State governments. The Internal Revenue Service has ruled that tribal government income is tax exempt until the income is received, or constructively received, by tribe members (Rev. Rul. 67-284, 1967-2 C.B. 55).

#### *House bill*

No provision.

#### *Senate amendment*

#### *Overview*

The Senate amendment provides that, for a series of specified purposes under the Internal Revenue Code, Indian tribal governments are to be treated the same as States or similar to States. The term Indian tribal government is defined to include in Alaska only the Metlakatla Indian Community. The provisions will not apply to any Indian tribal government unless it is recognized by the Treasury Department (after consultation with the Interior Department) as exercising sovereign powers. Sovereign powers include the power to tax, the power of eminent domain, and police powers (such as control over zoning, police protection, and fire protection).

Present law generally provides that political subdivisions of States are to be treated essentially the same as the States themselves. Therefore, a subdivision of an Indian tribal government will be treated as a political subdivision of a State for the purposes specified in the amendment if the Treasury Department determines (after consultation with the Interior Department) that the subdivision of the Indian tribal government has been delegated the right to exercise one or more of the sovereign powers of the Indian tribal government.

#### *Taxation of Indian tribal governments*

Under the amendment, most Federal excise taxes will not apply to articles sold for the exclusive use of Indian tribal governments. Specifically, exemption will be provided from the following taxes:

Diesel and special motor fuels;

Gasoline;

Tires, innertubes, and tread rubber;

Lubricating oil;

Highway use tax;

Bows and arrows;

Firearms; and

Telephones.

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The amendment does not change the present income tax treatment of Indian tribal governments specified in Rev. Rul. 67-284, *supra*.

### *Special treatment of certain transactions involving Indian tribal governments*

*General rule.*—Indian tribal governments will be treated as States in the following transactions involving private parties—

(1) The exclusion from income of interest on certain obligations of State governments (except as set forth below);

(2) The income tax deduction for taxes paid to State and local governments;

(3) The income, estate, and gift tax deductions for charitable contributions;

(4) The tax on unrelated business income of certain types of organizations;

(5) The taxes imposed on certain prohibited transactions by public charities and private foundations;

(6) The income tax credit for individuals who receive retirement income from public retirement systems;

(7) Eligibility for certain tax-deferred annuities;

(8) The income tax credit for political campaign contributions; and

(9) The exclusion of certain scholarships and fellowships awarded to students who are not candidates for a degree.

*Special rules for tax-exempt bonds.*—The amendment permits Indian tribal governments to issue tax-exempt industrial development bonds only where the primary activities of the businesses benefitting from the bonds take place on the reservation and where substantially all of the off-reservation activities are purchasing, marketing, and similar related activities. Additionally, interest on bonds other than IDBs is exempt from tax only if substantially all of the proceeds of the obligations are used in the exercise of essentially governmental functions or for a public utility. These requirements are in addition to any other requirements imposed under the Code for tax-exempt bonds.

In general, the amendment applies to taxable years beginning after 1982.

The provisions related to tax-exempt bonds will apply to obligations of Indian tribal governments issued after the date of enactment in taxable years ending after that date.

The provisions amending the estate or gift taxes will apply to estates of individuals dying, or gifts made, after 1982.

The excise tax provisions are effective on January 1, 1983.

### *Conference agreement*

The conference agreement follows the Senate amendment, with modifications and clarifications. First, Indian tribal governments are permitted only to issue public activity bonds, the proceeds of

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which are used in an essential governmental function (such as schools, streets, and sewers). Therefore, tribal governments are not permitted to issue private activity bonds (i.e., industrial development bonds, scholarship bonds, and mortgage subsidy bonds).

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Second, all of the provisions will terminate after December 31, 1984. Third, the provision permitting issuance of tax-exempt bonds is effective for obligations issued after December 31, 1982, and before January 1, 1985.

Finally, the conferees wish to clarify two points. The present-law requirement that an excise tax exempt article be sold for the exclusive use of a State or local government will apply in the case of articles sold to Indian tribal governments. The tax-exempt articles must be for the Indian tribal government's exclusive use in carrying out an essential governmental function. Additionally, the requirement of consultation between the Secretary of the Treasury and the Secretary of the Interior is not to be construed as requiring the consent of the Secretary of the Interior before adoption of any regulation, ruling, or other determination made by the Secretary of the Treasury.

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### 4. Waiver of Preemption in Case of Hawaiian Prepaid Health Care Act

#### *Present law*

The Employee Retirement Income Security Act of 1974 (ERISA) provides comprehensive rules relating to employee benefit plans, including plans providing health benefits to employees. The Act (sec. 514(a)) generally supersedes State laws insofar as they relate to employee benefit plans.

The Hawaii Act (Haw. Rev. Stat. 393-1 through 51), provides for a program of health insurance for employees. As a result of litigation, it was determined that the Hawaiian Act was preempted by ERISA (*Standard Oil Company of California v. Agsalud*, 633 F. 2d 760 (9th Cir. 1980), aff'd, 454 U.S. 801 (1981)).

#### *House bill*

The provision generally exempts the Hawaii Prepaid Health Care Act from preemption by ERISA. Under the provision, however, preemption is continued with respect to (1) any State tax law relating to employee benefit plans, or (2) any amendment of the Hawaii Act enacted after September 2, 1974, to the extent the amendment provides for more than the effective administration of that Act as in effect on September 2, 1974. The provision continues Federal preemption of State law with respect to matters governed by the reporting and disclosure and the fiduciary responsibility provisions of ERISA, as well as certain of the provisions of the administration and enforcement rules of ERISA (Title I, part 1, part 4, and secs. 501 through sec. 514(b)). The provision also permits the Secretary of Labor to enter into cooperative arrangements with the officials of the State of Hawaii to assist them in effectuating the policies of the provisions of the Hawaii Act that are superseded by ERISA.

The provision states that it is not to be considered a precedent for extending non-preemption to any other State law.

The provision is effective on the date of enactment.