

Title VII REVENUE PROVISIONS

Section 7001 AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title 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 1986. Title VII, Subtitle A

Subtitle A Financing Provisions

Part 1 INCREASE IN TAX ON TOBACCO PRODUCTS

Section 7111 INCREASE IN EXCISE TAXES ON TOBACCO PRODUCTS.

(a) Cigarettes. Subsection (b) of section 5701 is amended

(1) by striking "\$12 per thousand (\$10 per thousand on cigarettes removed during 1991 or 1992)" in paragraph (1) and inserting "\$49.50 per thousand", and

(2) by striking "\$25.20 per thousand (\$21 per thousand on cigarettes removed during 1991 or 1992)" in paragraph (2) and inserting "\$103.95 per thousand".

(b) Cigars. Subsection (a) of section 5701 is amended

(1) by striking "\$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)" in paragraph (1) and inserting "\$38.62\1/2\ per thousand", and

(2) by striking "equal to" and all that follows in paragraph (2) and inserting "equal to 52.594 percent of the price for which sold but not more than \$123.75 per thousand."

(c) Cigarette Papers. Subsection (c) of section 5701 is amended by striking "0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)" and inserting "3.09 cents".

(d) Cigarette Tubes. Subsection (d) of section 5701 is amended by striking "1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)" and inserting "6.19 cents".

(e) Smokeless Tobacco. Subsection (e) of section 5701 is amended

(1) by striking "36 cents (30 cents on snuff removed during 1991 or 1992)" in paragraph (1) and inserting "\$12.86", and

(2) by striking "12 cents (10 cents on chewing tobacco removed during 1991 or 1992)" in paragraph (2) and inserting "\$12.62".

(f) Pipe Tobacco. Subsection (f) of section 5701 is amended by striking "67.5 cents (56.25 cents on pipe tobacco removed during 1991 or 1992)" and inserting "\$13.17\1/2\".

(g) Effective Date. The amendments made by this section shall apply to articles removed (as defined in section 5702(k) of the Internal Revenue Code of 1986, as amended by this Act) after September 30, 1994.

(h) Floor Stocks Taxes.

(1) Imposition of tax. On tobacco products and cigarette papers and tubes manufactured in or imported into the United States which are removed before October 1, 1994, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of

(A) the tax which would be imposed under section 5701 of the Internal Revenue Code of 1986 on the article if the article had been removed on such date, over

(B) the prior tax (if any) imposed under section 5701 or 7652 of such Code on such article.

(2) Authority to exempt cigarettes held in vending machines. To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on October 1, 1994, by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the \$500 amount in paragraph (3) with respect to such person.

(3) Credit against tax. Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to \$500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which such person is liable.

(4) Liability for tax and method of payment.

(A) Liability for tax. A person holding cigarettes on October 1, 1994, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) Method of payment. The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) Time for payment. The tax imposed by paragraph (1) shall be paid on or before December 31, 1994.

(5) Articles in foreign trade zones. Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) and any other provision of law, any article which is located in a foreign trade zone on October 1, 1994, shall be subject to the tax imposed by paragraph (1) if

(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

(B) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

(6) Definitions. For purposes of this subsection

(A) In general. Terms used in this subsection which are also used in section 5702 of the Internal Revenue Code of 1986 shall have the respective meanings such terms have in such section, and such term shall include articles first subject to the tax imposed by section 5701 of such Code by reason of the amendments made by this Act.

(B) Secretary. The term "Secretary" means the Secretary of the Treasury or his delegate.

(7) Controlled groups. Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

(8) Other laws applicable. All provisions of law, including penalties, applicable with respect to the taxes imposed

by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.

Section 7112 MODIFICATIONS OF CERTAIN TOBACCO TAX PROVISIONS.

(a) Exemption for Exported Tobacco Products and Cigarette Papers and Tubes To Apply Only to Articles Marked for Export.

(1) Subsection (b) of section 5704 is amended by adding at the end thereof the following new sentence: "Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe."

(2) Section 5761 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Sale of Tobacco Products and Cigarette Papers and Tubes for Export. Except as provided in subsections (b) and (d) of section 5704

"(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

"(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

"(3) every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United

States."

(3) Subsection (a) of section 5761 is amended by striking "subsection (b)" and inserting "subsection (b) or (c)".

(4) Subsection (d) of section 5761, as redesignated by paragraph (2), is amended by striking "The penalty imposed by subsection (b)" and inserting "The penalties imposed by subsections (b) and (c)".

(5) (A) Subpart F of chapter 52 is amended by adding at the end thereof the following new section:

"SEC. 5754. RESTRICTION ON IMPORTATION OF PREVIOUSLY EXPORTED TOBACCO PRODUCTS.

"(a) In General. Tobacco products and cigarette papers and tubes previously exported from the United States may be imported or brought into the United States only as provided in section 5704(d).

"(b) Cross Reference. "For penalty for the sale of cigarettes in the United States which are labeled for export, see section 5761(d)."

(B) The table of sections for subpart F of chapter 52 is amended by adding at the end thereof the following new item:

"Sec. 5754. Restriction on importation of previously exported tobacco products."

(b) Importers Required To Be Qualified.

(1) Sections 5712, 5713(a), 5721, 5722, 5762(a)(1), and 5763(b) and (c) are each amended by inserting "or importer" after "manufacturer".

(2) The heading of subsection (b) of section 5763 is amended by inserting "Qualified Importers," after "Manufacturers,".

(3) The heading for subchapter B of chapter 52 is amended by inserting "and Importers" after "Manufacturers".

(4) The item relating to subchapter B in the table of subchapters for chapter 52 is amended by inserting "and

importers" after "manufacturers".

(c) Repeal of Tax-Exempt Sales to Employees of Cigarette Manufacturers.

(1) Subsection (a) of section 5704 is amended

(A) by striking "Employee Use or" in the heading, and

(B) by striking "for use or consumption by employees or" in the text.

(2) Subsection (e) of section 5723 is amended by striking "for use or consumption by their employees, or for experimental purposes" and inserting "for experimental purposes".

(d) Repeal of Tax-Exempt Sales to United States. Subsection (b) of section 5704 is amended by striking "and manufacturers may similarly remove such articles for use of the United States;".

(e) Books of 25 or Fewer Cigarette Papers Subject to Tax. Subsection (c) of section 5701 is amended by striking "On each book or set of cigarette papers containing more than 25 papers," and inserting "On cigarette papers,".

(f) Storage of Tobacco Products. Subsection (k) of section 5702 is amended by inserting "under section 5704" after "internal revenue bond".

(g) Authority To Prescribe Minimum Manufacturing Activity Requirements. Section 5712 is amended by striking "or" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe, or".

(h) Limitation on Cover Over of Tax on Tobacco Products. Section 7652 is amended by adding at the end thereof the following new subsection:

"(h) Limitation on Cover Over of Tax on Tobacco Products. For purposes of this section, with respect to taxes imposed under section 5701 or this section on any tobacco product or cigarette

paper or tube, the amount covered into the treasuries of Puerto Rico and the Virgin Islands shall not exceed the rate of tax under section 5701 in effect on the article on the day before the date of the enactment of the Health Security Act."

(i) Effective Date. The amendments made by this section shall apply to articles removed (as defined in section 5702(k) of the Internal Revenue Code of 1986, as amended by this Act) after September 30, 1994.

Section 7113 IMPOSITION OF EXCISE TAX ON MANUFACTURE OR IMPORTATION OF ROLL-YOUR-OWN TOBACCO.

(a) In General. Section 5701 (relating to rate of tax) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Roll-Your-Own Tobacco. On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$12.50 per pound (and a proportionate tax at the like rate on all fractional parts of a pound)."

(b) Roll-Your-Own Tobacco. Section 5702 (relating to definitions) is amended by adding at the end thereof the following new subsection :

"(p) Roll-Your-Own Tobacco. The term `roll-your-own tobacco' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes."

(c) Technical Amendments.

(1) Subsection (c) of section 5702 is amended by striking "and pipe tobacco" and inserting "pipe tobacco, and roll-your-own tobacco".

(2) Subsection (d) of section 5702 is amended

(A) in the material preceding paragraph (1), by striking "or pipe tobacco" and inserting "pipe tobacco, or roll-your-own tobacco", and

(B) by striking paragraph (1) and inserting the following new paragraph:

"(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for his own personal consumption or use, and".

(3) The chapter heading for chapter 52 is amended to read as follows:

"CHAPTER 52--TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES".

(4) The table of chapters for subtitle E is amended by striking the item relating to chapter 52 and inserting the following new item:

"Chapter 52. Tobacco products and cigarette papers and tubes."

(d) Effective Date.

(1) In general. The amendments made by this section shall apply to roll-your-own tobacco removed (as defined in section 5702(k) of the Internal Revenue Code of 1986, as amended by this Act) after September 30, 1994.

(2) Transitional rule. Any person who (A) on the date of the enactment of this Act is engaged in business as a manufacturer of roll-your-own tobacco or as an importer of tobacco products or cigarette papers and tubes, and

(B) before October 1, 1994, submits an application under subchapter B of chapter 52 of such Code to engage in such business, may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of such chapter 52 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit under such chapter 52 to engage in such business.

## Part 2 HEALTH RELATED ASSESSMENTS

### Section 7121 HEALTH RELATED ASSESSMENTS.

(a) In General. Subtitle C (relating to employment taxes) is amended by inserting after chapter 24 the following new chapter:

"CHAPTER 24A--HEALTH RELATED ASSESSMENTS



"Subchapter A. Assessment on corporate alliance employers.

"Subchapter B. Temporary assessment on employers with retiree health benefit costs.

"Subchapter C. Definitions and administrative provisions.

"Subchapter A--Assessment on Corporate Alliance Employers

"Sec. 3461. Assessment on corporate alliance employers.

"SEC. 3461. ASSESSMENT ON CORPORATE ALLIANCE EMPLOYERS.

"(a) Imposition of Assessment. Every corporate alliance employer shall pay (in addition to any other amount imposed by this subtitle) for each calendar year an assessment equal to 1 percent of the payroll of such employer.

"(b) Definitions. For purposes of this section

"(1) Corporate alliance employer. The term `corporate alliance employer' means any employer if any individual, by reason of being an employee of such employer, is provided with health coverage through any corporate alliance described in section 1311 of the Health Security Act.

"(2) Payroll. The term `payroll' means the sum of

"(A) the wages (as defined in section 3121(a) without regard to paragraph (1) thereof) paid by the employer during the calendar year, plus

"(B) (i) in the case of a sole proprietorship, the net earnings from self-employment of the proprietor from such trade or business for the taxable year ending with or within the calendar year,

"(ii) in the case of a partnership, the aggregate of the net earnings from self-employment of each partner which is attributable to such partnership for the taxable year of such partnership ending with or within the calendar year, and

"(ii) in the case of an S corporation, the aggregate of the net earnings from self-employment of each shareholder which is attributable to such corporation for the taxable year of such corporation ending with or within the calendar year.

"(3) Net earnings from self-employment. The term 'net earnings from self-employment' has the meaning given such term by section 1402; except that the amount thereof

"(A) may never be less than zero, and

"(B) shall be determined without regard to any deduction for an assessment under this section to the extent attributable to payroll described in paragraph (2) (B).

"(c) Special Rules. For purposes of this section

"(1) Treatment of certain employers in multiemployer corporate alliances. An employer who is a corporate alliance employer solely by reason of employees who are provided with health coverage through a corporate alliance the eligible sponsor of which is a multiemployer plan described in section 1311(b)(1)(B) of the Health Security Act is not subject to the assessment under this section. In the case of an employer who is a corporate alliance employer in part (but not solely) by reason of such employees, the payroll of such employer shall be determined without taking into account such employees.

"(2) Controlled group rules. All persons treated as a single employer under section 1901 of the Health Security Act (relating to employer premiums for comprehensive health care) shall be treated as a single employer.

"(3) Application of assessment beginning in 1996.

"(A) In general. Every employer eligible to elect to be an eligible sponsor under section 1311 of the Health Security Act shall be treated as a corporate alliance employer as of January 1, 1996, unless the employer waives such employer's rights ever to be treated as such a sponsor. The waiver under this subparagraph shall be irrevocable.

"(B) Exception. Subparagraph (A) shall not apply to any employer referred to in the first sentence of paragraph (1).

"SEC. 3462. TEMPORARY ASSESSMENT ON EMPLOYERS WITH RETIREE HEALTH BENEFIT COSTS.

"(a) Imposition of Assessment. Every employer with base period retiree health costs shall pay (in addition to any other amount

imposed by this subtitle) for each calendar year to which this section applies an assessment equal to the amount determined under subsection (b).

"(b) Amount of Assessment. For purposes of subsection (a), the amount determined under this subsection with respect to any employer for any calendar year is 50 percent of the greater of

"(1) the adjusted base period retiree health costs of such employer for such calendar year, or

"(2) the amount (determined in the manner prescribed by the Secretary) by which such employer's applicable retiree health costs for such calendar year were reduced by reason of the enactment of the Health Security Act.

"(c) Definitions. For purposes of this section

"(1) Base period retiree health costs. The term 'base period retiree health costs' means the average of the applicable retiree health costs of the employer for calendar years 1991, 1992, and 1993.

"(2) Adjusted base period retiree health costs.

"(A) In general. The term 'adjusted base period retiree health costs' means, with respect to any employer for any calendar year, the base period retiree health costs of the employer adjusted in the manner prescribed by the Secretary to reflect increases in the medical care component of the Consumer Price Index during the period after 1992 and before such calendar year.

"(B) Adjustments for acquisitions and dispositions. Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply to acquisitions and dispositions after December 31, 1993.

"(3) Applicable retiree health costs.

"(A) In general. The term 'applicable retiree health costs' means, with respect to any employer for any calendar year, the aggregate cost (including administrative costs) of the health benefits or coverage provided during such calendar year (whether directly by the employer or through a plan described in section 401(h) or a welfare benefit fund as defined in section 419(e)) to individuals who are entitled to receive such benefits or coverage

by reason of being retired employees of such employer (or by reason of being a spouse or other beneficiary of such an employee).

"(B) Only benefits and coverage after age 55 and before age 65 taken into account. In applying subparagraph (A), there shall be taken into account only health benefits and coverage provided after the date the retired employee attained age 55 and before the date such employee attained (or, but for the death of such employee, would have attained) age 65.

"(d) Years to Which Assessment Applies. This section shall apply to calendar years 1998, 1999, and 2000.

"Subchapter Definitions and Administrative Provisions"

"SEC. 3463. DEFINITIONS AND ADMINISTRATIVE PROVISIONS

"(a) Employer. For purposes of this chapter

"(1) In general. The term 'employer' means any person or governmental entity for whom an individual performs services, of whatever nature, as an employee (as defined in section 3401(c)).

"(2) Special rules.

"(A) An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer.

"(B) A partnership shall be treated as the employer of each partner who is an employee within the meaning of section 401(c)(1).

"(C) An S corporation shall be treated as the employer of each shareholder who is an employee within the meaning of section 401(c)(1).

"(b) Assessments to Apply to Governmental and Other Tax-Exempt Entities. Notwithstanding any other provision of law or rule of law, none of the following shall be exempt from the assessments imposed by this chapter:

"(1) The United States, any State or political subdivision thereof, the District of Columbia, and any agency or instrumentality of any of the foregoing.

"(2) Any other entity otherwise exempt from tax under chapter 1.

"(c) Administrative Provisions.

"(1) Payment.

"(A) Section 3461. Any assessment under section 3461 shall be paid at the same time and in the same manner as the tax imposed by chapter 21.

"(B) Section 3462. Any assessment under section 3462 for any calendar year shall be paid on or before March 15 of the following calendar year; except that the Secretary may require quarterly estimated payments of such assessment in a manner similar to the requirements of section 6655.

"(2) Collection, etc. For purposes of subtitle F, any assessment under this subchapter shall be treated as if it were a tax imposed by this subtitle."

(b) Clerical Amendment. The table of chapters for subtitle C is amended by inserting after the item relating to chapter 24 the following new item:

"Chapter 24A. Health-related assessments."

(c) Effective Date. The amendments made by this section shall take effect on January 1, 1996.

### Part 3 RECAPTURE OF CERTAIN HEALTH CARE SUBSIDIES

#### Section 7131 RECAPTURE OF CERTAIN HEALTH CARE SUBSIDIES RECEIVED BY HIGH-INCOME INDIVIDUALS.

(a) In General. Subchapter A of chapter 1 is amended by adding at the end thereof the following new part:

"PART VIII--CERTAIN HEALTH CARE SUBSIDIES RECEIVED BY HIGH-INCOME INDIVIDUALS

"Sec. 59B. Recapture of certain health care subsidies.

"SEC. 59B. RECAPTURE OF CERTAIN HEALTH CARE SUBSIDIES.

"(a) Imposition of Recapture Amount. In the case of an individual, if the modified adjusted gross income of the taxpayer for the taxable year exceeds the threshold amount, such taxpayer shall pay (in addition to any other amount imposed by this subtitle) a recapture amount for such taxable year equal to the sum of

"(1) the aggregate of the Medicare part B recapture amounts (if any) for months during such year that a premium is paid under part B of title XVIII of the Social Security Act for the coverage of the individual under such part, and

"(2) the aggregate reductions (if any) in the individual's liability for periods after December 31, 1997, under section 6111 of the Health Security Act (relating to repayment of alliance credit by certain families) pursuant to section 6114 of such Act (relating to special treatment of certain retirees and qualified spouses and children) for months during such year.

"(b) Medicare Part B Premium Recapture Amount for Month. For purposes of this section, the Medicare part B premium recapture amount for any month is the amount equal to the excess of

"(1) 150 percent of the monthly actuarial rate for enrollees age 65 and over determined for that calendar year under section 1839(b) of the Social Security Act, over

"(2) the total monthly premium under section 1839 of the Social Security Act (determined without regard to subsections (b) and (f) of section 1839 of such Act).

"(c) Phasein of Recapture Amount.

"(1) In general. If the modified adjusted gross income of the taxpayer for any taxable year exceeds the threshold amount by less than \$15,000, the recapture amount imposed by this section for such taxable year shall be an amount which bears the same ratio to the recapture amount which would (but for this subsection) be imposed by this section for such taxable year as such excess bears to \$15,000.

"(2) Joint returns. If a recapture amount is determined separately for each spouse filing a joint return, paragraph (1) shall be applied by substituting '\$30,000' for '\$15,000' each place it appears.

"(d) Other Definitions and Special Rules. For purposes of this section

"(1) Threshold amount. The term `threshold amount' means

"(A) except as otherwise provided in this paragraph, \$90,000,

"(B) \$115,000 in the case of a joint return, and

"(C) zero in the case of a taxpayer who

"(i) is married (as determined under section 7703) but does not file a joint return for such year, and

"(ii) does not live apart from his spouse at all times during the taxable year.

"(2) Modified adjusted gross income. The term `modified adjusted gross income' means adjusted gross income

"(A) determined without regard to sections 135, 911, 931, and 933, and

"(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

"(3) Joint returns. In the case of a joint return

"(A) the recapture amount under subsection (a) shall be the sum of the recapture amounts determined separately for each spouse, and

"(B) subsections (a) and (c) shall be applied by taking into account the combined modified adjusted gross income of the spouses.

"(4) Coordination with other provisions.

"(A) Treated as tax for subtitle f. For purposes of subtitle F, the recapture amount imposed by this section shall be treated as if it were a tax imposed by section 1.

"(B) Not treated as tax for certain purposes. The recapture amount imposed by this section shall not be treated as a tax imposed by this chapter for purposes of determining

"(i) the amount of any credit allowable under this chapter, or

"(ii) the amount of the minimum tax under section 55.

"(C) Treated as payment for medical insurance. The recapture amount imposed by this section shall be treated as an amount paid for insurance covering medical care, within the meaning of section 213(d)."

(b) Transfers to Supplemental Medical Insurance Trust Fund.

(1) In general. There are hereby appropriated to the Supplemental Medical Insurance Trust Fund amounts equivalent to the aggregate increase in liabilities under chapter 1 of the Internal Revenue Code of 1986 which is attributable to the application of section 59B(a)(1) of such Code, as added by this section.

(2) Transfers. The amounts appropriated by paragraph (1) to the Supplemental Medical Insurance Trust Fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1). Any quarterly payment shall be made on the first day of such quarter and shall take into account the recapture amounts referred to in such section 59B(a)(1) for such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c) Reporting Requirements.

(1) (A) Paragraph (1) of section 6050F(a) (relating to returns relating to social security benefits) is amended by striking "and" at the end of subparagraph (B) and by inserting after subparagraph (C) the following new subparagraph:

"(D) the number of months during the calendar year for which a premium was paid under part B of title XVIII of the Social Security Act for the coverage of such individual under such part, and".

(B) Paragraph (2) of section 6050F(b) is amended to read as follows:

"(2) the information required to be shown on such return with



respect to such individual."

(C) Subparagraph (A) of section 6050F(c)(1) is amended by before the comma "and in the case of the information specified in subsection (a)(1)(D)".

(D) The heading for section 6050F is amended by inserting "and medicare part b coverage" before the period.

(E) The item relating to section 6050F in the table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting "and Medicare part B coverage" before the period.

(2) (A) Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

"SEC. 6050Q. RETURNS RELATING TO CERTAIN RETIREE HEALTH CARE SUBSIDIES.

"(a) In General. Every alliance (as defined in section 1301 of the Health Security Act) that reduces an individual's liability under section 6111 of such Act (relating to repayment of alliance credit by certain families) pursuant to section 6114 of such Act (relating to special treatment of certain retirees and qualified spouses and children) shall make a return (according to the forms and regulations prescribed by the Secretary) setting forth

"(1) the aggregate amount of such reductions by such alliance with respect to any individual during such calendar year, and

"(2) the name and address of such individual.

"(b) Statements To Be Furnished to Individuals With Respect to Whom Information Is Required To Be Reported. Every alliance required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing

"(1) the name and address of such alliance, and

"(2) the information required to be shown on the return with respect to such individual.

"(c) Due Date for Returns and Statements. The written return required under subsection (a) shall be made, and the statement required under subsection (b) shall be furnished to the individual, on or before January 31 of the second year following the calendar year for which the return under subsection (a) is required to be made."

(B) Subparagraph (B) of section 6724(d)(1) is amended by inserting after clause (viii) the following new clause (and by redesignating the following clauses accordingly):

"(ix) section 6050Q(a) (relating to returns relating to certain retiree health care subsidies),".

(C) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (Q) through (T) as subparagraphs (R) through (U), respectively, and by inserting after subparagraph (P) the following new subparagraph:

"(Q) section 6050Q(b) (relating to statements relating to certain retiree health care subsidies),".

(D) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050Q. Returns relating to certain retiree health care subsidies."

(d) Waiver of Certain Estimated Tax Penalties. No addition to tax shall be imposed under section 6654 of the Internal Revenue Code of 1986 (relating to failure to pay estimated income tax) for any period before

(1) April 16, 1997, with respect to any underpayment to the extent that such underpayment resulted from section 59B(a)(1) of the Internal Revenue Code of 1986, as added by this section, and

(2) April 16, 1999, with respect to any underpayment to the extent that such underpayment resulted from section 59B(a)(2) of such Code, as added by this section.

(e) Clerical Amendment. The table of parts for subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Part VIII. Certain health care subsidies received by high-income individuals."

(f) Effective Date. The amendments made by this section shall apply to periods after December 31, 1995, in taxable years ending after such date.

Part 4 OTHER PROVISIONS

Section 7141 MODIFICATION TO SELF-EMPLOYMENT TAX  
TREATMENT OF CERTAIN S CORPORATION SHAREHOLDERS AND PARTNERS.

(a) Treatment of Certain S Corporation Shareholders.

(1) Amendment to internal revenue code. Section 1402 (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(k) Treatment of Certain S Corporation Shareholders.

"(1) In general. In the case of any individual

"(A) who is a 2-percent shareholder (as defined in section 1372(b)) of an S corporation for any taxable year of such corporation, and

"(B) who materially participates in the activities of such S corporation during such taxable year, such shareholder's net earnings from self-employment for such shareholder's taxable year in which the taxable year of the S corporation ends shall include such shareholder's pro rata share (as determined under section 1366(a)) of the taxable income or loss of such corporation from service-related businesses carried on by such corporation.

"(2) Certain exceptions to apply. In determining the amount to be taken into account under paragraph (1), the exceptions provided in subsection (a) shall apply, except that, in the case of the exceptions provided in subsection (a)(5), the rules of subparagraph (B) thereof shall apply to shareholders in S corporations.

"(3) Service-related business. For purposes of this subsection, the term 'service-related business' means any trade or business described in subparagraph (A) of section 1202(e)(3)."

(2) Amendment to social security act. Section 211 of the Social Security Act is amended by adding at the end the following new subsection:

"Treatment of Certain S Corporation Shareholders

"(k)(1) In the case of any individual

"(A) who is a 2-percent shareholder (as defined in section 1372(b) of the Internal Revenue Code of 1986) of an S corporation for any taxable year of such corporation, and

"(B) who materially participates in the activities of such S corporation during such taxable year, such shareholder's net earnings from self-employment for such shareholder's taxable year in which the taxable year of the S corporation ends shall include such shareholder's pro rata share (as determined under section 1366(a) of such Code) of the taxable income or loss of such corporation from service-related businesses (as defined in section 1402(k)(3) of such Code) carried on by such corporation.

"(2) In determining the amount to be taken into account under paragraph (1), the exceptions provided in subsection (a) shall apply, except that, in the case of the exceptions provided in subsection (a)(5), the rules of subparagraph (B) thereof shall apply to shareholders in S corporations."

(b) Treatment of Certain Limited Partners.

(1) Amendment of internal revenue code. Paragraph (13) of section 1402(a) is amended by striking "limited partner, as such" and inserting "limited partner who does not materially participate in the activities of the partnership".

(2) Amendment of social security act. Paragraph (12) of section 211(a) of the Social Security Act is amended by striking "limited partner, as such" and inserting "limited partner who does not materially participate in the activities of the partnership".

(c) Effective Date. The amendments made by this section shall apply to taxable years of individuals beginning after December 31, 1995, and to taxable years of S corporations and partnerships ending with or within such taxable years of individuals.

APPLICATION OF HOSPITAL INSURANCE TAX TO, ALL STATE AND LOCAL GOVERNMENT EMPLOYEES.

(a) In General.

(1) Application of hospital insurance tax. Section 3121(u)(2) is amended by striking subparagraphs (C) and (D).

(2) Coverage under medicare. Section 210(p) of the Social Security Act (42 U.S.C. 410(p)) is amended by striking paragraphs (3) and (4).

(3) Effective date. The amendments made by this subsection shall apply to services performed after September 30, 1995.

(b) Transition in Benefits for State and Local Government Employees and Former Employees.

(1) In general.

(A) Employees newly subject to tax. For purposes of sections 226, 226A, and 1811 of the Social Security Act, in the case of any individual who performs services during the calendar quarter beginning October 1, 1995, the wages for which are subject to the tax imposed by section 3101(b) of the Internal Revenue Code of 1986 only because of the amendment made by subsection (a), the individual's medicare qualified State or local government employment (as defined in subparagraph (B)) performed before October 1, 1995, shall be considered to be "employment" (as defined for purposes of title II of such Act), but only for purposes of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act for months beginning with October 1995.

(B) Medicare qualified state or local government employment defined. In this paragraph, the term "medicare qualified State or local government employment" means medicare qualified government employment described in section 210(p)(1)(B) of the Social Security Act (determined without regard to section 210(p)(3) of such Act, as in effect before its repeal under subsection (a)(2)).

(2) Authorization of appropriations. There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund

from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year on account of

(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act solely by reason of paragraph (1),

(B) the additional administrative expenses resulting or expected to result therefrom, and

(C) any loss in interest to such Trust Fund resulting from the payment of those amounts, in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.

(3) Information to individuals who are prospective medicare beneficiaries based on state and local government employment. Section 226(g) of the Social Security Act (42 U.S.C. 426(g)) is amended

(A) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively,

(B) by inserting "(1)" after "(g)", and

(C) by adding at the end the following new paragraph:

"(2) The Secretary, in consultation with State and local governments, shall provide procedures designed to assure that individuals who perform medicare qualified government employment by virtue of service described in section 210(a)(7) are fully informed with respect to (A) their eligibility or potential eligibility for hospital insurance benefits (based on such employment) under part A of title XVIII, (B) the requirements for, and conditions of, such eligibility, and (C) the necessity of timely application as a condition of becoming entitled under subsection (b)(2)(C), giving particular attention to individuals who apply for an annuity or retirement benefit and whose eligibility for such annuity or retirement benefit is based on a disability."

(c) Technical Amendments.

(1) Subparagraph (A) of section 3121(u)(2) is amended by striking "subparagraphs (B) and (C)," and inserting "subparagraph

(B),".

(2) Subparagraph (B) of section 210(p)(1) of the Social Security Act (42 U.S.C. 410(p)(1)) is amended by striking "paragraphs (2) and (3)." and inserting "paragraph (2)."

(3) Section 218 of the Social Security Act (42 U.S.C. 418) is amended by striking subsection (n).

(4) The amendments made by this subsection shall apply after September 30, 1995.

Title VII, Subtitle B

Subtitle B Tax Treatment of Employer-Provided Health Care

Section 7201 LIMITATION ON EXCLUSION FOR EMPLOYER-PROVIDED HEALTH BENEFITS.

(a) General Rule. Section 106 (relating to contributions by employer to accident and health plans) is amended to read as follows:

"SEC. 106. CONTRIBUTIONS BY EMPLOYER TO ACCIDENT AND HEALTH PLANS.

"(a) General Rule. Except as otherwise provided in this section, gross income of an employee does not include employer-provided coverage under an accident or health plan.

"(b) Inclusion of Certain Benefits Not Part of Comprehensive Benefit Package.

"(1) In general. Effective on and after January 1, 2004, gross income of an employee shall include employer-provided coverage under any accident or health plan except to the extent that

"(A) such coverage consists of comprehensive health coverage described in section 1101 of the Health Security Act,

"(B) such coverage consists of coverage of cost sharing amounts under the comprehensive benefit package described in such section (including such coverage under a cost sharing policy under section 1421(b)(2) of such Act), or

"(C) such coverage consists of permitted coverage.

"(2) Permitted coverage. For purposes of this subsection, the term `permitted coverage' means

"(A) any coverage providing wages or payments in lieu of wages for any period during which the employee is absent from work on account of sickness or injury,

"(B) any coverage providing for payments referred to in section 105(c),

"(C) any coverage provided to an employee or former employee after such employee has attained age 65, unless such coverage is provided by reason of the current employment of the individual (within the meaning of section 1862(b)(1)(A)(i)(I) of the Social Security Act) with the employer providing the coverage,

"(D) any coverage under a qualified long-term care insurance policy (as defined in section 7702B),

"(E) any coverage provided under Federal law to any individual (or spouse or dependent thereof) by reason of such individual being

"(i) a member of the Armed Forces of the United States, or

"(ii) a veteran, and

"(F) any other coverage to the extent that the Secretary determines that the continuation of an exclusion for such coverage is not inconsistent with the purposes of this subsection.

"(3) Special rules for flexible spending arrangements.

"(A) In general. To the extent that any employer-provided coverage is provided through a flexible spending or similar arrangement, paragraph (1) shall be applied by substituting `January 1, 1997,' for `January 1, 2004'.

"(B) Flexible spending arrangement. For purposes of this paragraph, a flexible spending arrangement is a benefit program which provides employees with coverage under which

"(i) specified incurred expenses may be reimbursed (subject to



reimbursement maximums and other reasonable conditions), and

"(ii) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 200 percent of the value of such coverage. In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.

"(c) Special Rules for Determining Amount of Inclusion.

"(1) In general. For purposes of this section, the value of any coverage shall be determined on the basis of the average cost of providing such coverage the beneficiaries receiving such coverage.

"(2) Special rule. To the extent provided by the Secretary, cost determinations under paragraph (1) may be made on the basis of reasonable estimates.

"(d) Potential Cash Payment Not To Affect Exclusion. No amount shall be included in the gross income of an employee solely because the employee may select coverage under an accident or health plan which results in a cash payment referred to in section 1607 of the Health Security Act."

(b) Employment Tax Treatment.

(1) Social security tax.

(A) Subsection (a) of section 3121 is amended by inserting after paragraph (21) the following new sentence:

"Nothing in paragraph (2) shall exclude from the term 'wages' any amount which is required to be included in gross income under section 106(b)."

(B) Subsection (a) of section 209 of the Social Security Act is amended by inserting after paragraph (21) the following new sentence:

"Nothing in paragraph (2) shall exclude from the term 'wages' any amount which is required to be included in gross income under section 106(b) of the Internal Revenue Code of 1986."

(2) Railroad retirement tax. Paragraph (1) of section 3231(e) is amended by adding at the end thereof the following new

sentence:

"Nothing in clause (i) of the second sentence of this paragraph shall exclude from the term `compensation' any amount which is required to be included in gross income under section 106(b)."

(3) Unemployment tax. Subsection (b) of section 3306 is amended by inserting after paragraph (16) the following new sentence:

"Nothing in paragraph (2) shall exclude from the term `wages' any amount which is required to be included in gross income under section 106(b)."

(4) Wage withholding. Subsection (a) of section 3401 is amended by adding at the end thereof the following new sentence:

"Nothing in the preceding provisions of this subsection shall exclude from the term `wages' any amount which is required to be included in gross income under section 106(b)."

(c) Effective Date. The amendments made by this section shall take effect on January 1, 1997.

Section 7202 HEALTH BENEFITS MAY NOT BE PROVIDED UNDER CAFETERIA PLANS.

(a) General Rule. Subsection (f) of section 125 (defining qualified benefits) is amended by adding at the end thereof the following new sentence: "Such term shall not include any benefits or coverage (other than coverage described in section 106(b)(2)(A)) under an accident or health plan."

(b) Conforming Amendment. Subsection (g) of section 125 is amended by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(c) Effective Date. The amendments made by this section shall take effect on January 1, 1997.

Section 7203 INCREASE IN DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) Provision Made Permanent.

(1) In general. Subsection (1) of section 162 (relating

to special rules for health insurance costs of self-employed individuals) is amended by striking paragraph (6).

(2) Effective date. The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1993.

(b) Deduction Limited to Basic Coverage Purchased From Health Alliance.

(1) In general. Paragraphs (1) and (2) of section 162(l) are amended to read as follows:

"(1) In general. In the case of an individual who is an employee within the meaning of section 401(c), there shall be allowed as a deduction under this section an amount equal to 100 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents; but only to the extent such insurance is comprehensive health coverage described in section 1101 of the Health Security Act purchased from a qualified alliance described in section 1311 of such Act.

"(2) Limitations.

"(A) Lower percentage in certain cases. If

"(i) the taxpayer has 1 or more employees in a trade or business with respect to which such taxpayer is treated as an employee within the meaning of section 401(c), and

"(ii) the taxpayer does not pay at least 100 percent of the weighted average premium applicable under the Health Security Act for each of such employees, paragraph (1) shall be applied by substituting for '100 percent' the lowest percentage of such weighted average premium paid by the taxpayer for any of such employees.

"(B) Deduction limited to earned income. No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)).

"(C) Other coverage. Paragraph (1) shall not apply to amounts paid for coverage for any individual for any calendar month if such individual is employed on a full-time basis (within the meaning of section 1901 of the Health Security Act) by an

employer during such month."

(2) Conforming amendment. Subparagraph (A) of section 162(1)(5) is amended by striking "shall be treated as such individual's earned income" and inserting "shall be included in such individual's earned income".

(3) Effective date. The amendments made by this subsection shall take effect on the earlier of

(A) January 1, 1997, or

(B) the first day on which the taxpayer could purchase comprehensive health coverage from a qualified alliance.

Section 7204 LIMITATION ON PREPAYMENT OF MEDICAL INSURANCE PREMIUMS.

(a) General Rule. Subsection (d) of section 213 is amended by adding at the end thereof the following new paragraph:

"(10) Limitation on prepayments. If the taxpayer pays a premium or other amount which constitutes medical care under paragraph (1), to the extent such premium or other amount is properly allocable to insurance coverage or care to be provided during periods more than 12 months after the month in which such payment is made, such premium shall be treated as paid ratably over the period during which such insurance coverage or care is to be provided. The preceding sentence shall not apply to any premium to which paragraph (7) applies nor to any premium paid under a qualified long-term care insurance policy."

(b) Effective Date. The amendment made by subsection (a) shall apply to amounts paid after December 31, 1996.

Title VII, Subtitle C

Subtitle C Employment Status Provisions

Section 7301 ANTI-ABUSE REGULATIONS RELATING TO EMPLOYMENT STATUS.

(a) General Rule. In order to prevent misclassification of workers so as to minimize payments under this Act, chapter 25 (relating to general provisions applicable to employment taxes) is amended by adding at the end thereof the following new

section:

"SEC. 3510. DEFINITION OF EMPLOYEE.

"(a) Regulations. The Secretary shall prescribe regulations setting forth rules for determining whether an individual is an employee for purposes of

"(1) the employment taxes imposed under this subtitle, and

"(2) to the extent provided in such regulations, subtitle A.

"(b) Scope of Regulations. Such regulations may modify the rules otherwise applicable for the determinations referred to in paragraphs (1) and (2) of subsection (a); except that

"(1) such regulations shall give significant weight to the common law applicable in determining the employer-employee relationship, and

"(2) nothing in such regulations shall modify the provisions of paragraph (1), (3), or (4) of section 3121(d), section 3506, section 3508, or section 3511."

(b) Clerical Amendment. The table of sections for chapter 25 is amended by adding at the end thereof the following new item:

"Sec. 3510. Definition of employee."

(c) Effective Date. The regulations described in section 3510 of the Internal Revenue Code of 1986 (as added by this section) shall be effective for periods beginning no earlier than the date which is 6 months after the date such regulations are promulgated as final regulations.

(d) Report to Congress. Upon issuance of the regulations described in section 3510 of the Internal Revenue Code of 1986 (as added by this section) as final regulations, the Secretary of the Treasury shall submit a report to Congress relating to such regulations, including an explanation of their purposes and the issues they are designed to address.

Section 7302 INCREASE IN SERVICES REPORTING PENALTIES.

(a) Increase in Penalty .Section 6721(a) (relating to

imposition of penalty) is amended by adding at the end the following new paragraph:

"(3) Increased penalty for returns involving payments for services.

"(A) In general. Subject to the overall limitation of paragraph (1), the amount of the penalty under paragraph (1) for any failure with respect to any applicable return shall be equal to the greater of \$50 or 5 percent of the amount required to be reported correctly but not so reported.

"(B) Exception where substantial compliance. Subparagraph (A) shall not apply to failures with respect to applicable returns required to be filed by a person during any calendar year if the aggregate amount which is timely and correctly reported on applicable returns filed by the person for the calendar year is at least 97 percent of the aggregate amount which is required to be reported on applicable returns by the person for the calendar year.

"(C) Applicable return. For purposes of this paragraph, the term 'applicable return' means any information return required to be filed under

"(i) section 6041(a) which relates to payments to any person for services performed by such person (other than as an employee), or

"(ii) section 6041A(a)."

(b) Conforming Amendment. Section 6721(a)(1) is amended by striking "In" and inserting "Except as provided in paragraph (3), in".

(c) Effective Date. The amendments made by this section shall apply to returns the due date for which (without regard to extensions) is more than 30 days after the date of the enactment of this Act.

Section 7303 REVISION OF SECTION 530 SAFE HARBOR RULES.

(a) General Rule. Chapter 25 (relating to general provisions applicable to employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3511. PROTECTION AGAINST RETROACTIVE EMPLOYMENT TAX RECLASSIFICATIONS.

"(a) General Rule.If

"(1) for purposes of employment taxes, the taxpayer treats an individual as not being an employee for any period,

"(2) for such period, the taxpayer meets

"(A) the consistency requirements of subsection (b),

"(B) the return filing requirements of subsection (c), and

"(C) the safe harbor requirement of subsection (d), and

"(3) the Secretary has not notified the taxpayer in writing before the beginning of such period that the Secretary has determined that the taxpayer should treat such individual (or any individual holding a substantially similar position) as an employee, then, for purposes of applying this subtitle for such period, the individual shall be deemed not to be an employee of the taxpayer.

"(b) Consistency Requirements. A taxpayer meets the consistency requirements of this subsection with respect to any individual for any period if the taxpayer treats such individual (and all other individuals holding substantially similar positions) as not being an employee for purposes of the employment taxes for such period and all prior periods.

"(c) Return Filing Requirements.

"(1) In general. The taxpayer meets the return filing requirements of this subsection with respect to any individual for any period if all Federal tax returns (including information returns) required to be filed by the taxpayer for such period with respect to such individual (and all other individuals holding substantially similar positions) are timely filed on a basis consistent with the taxpayer's treatment of such individuals as not being employees.

"(2) Special rules. For purposes of paragraph (1)

"(A) any return filed for which the penalty under section

6721(a) is reduced or waived pursuant to subsection (b) or (c) of section 6721 shall be considered timely filed, and

"(B) a taxpayer shall not be considered as failing to meet the requirements of paragraph (1) solely because the taxpayer failed to timely file accurate information returns in respect of payments to individuals holding substantially similar positions if the taxpayer satisfies the requirements of section 6721(a)(3)(B) for such period.

"(d) Safe Harbors.

"(1) In general. The taxpayer meets the safe harbor requirement of this subsection with respect to any individual for any period if the taxpayer's treatment of such individual as not being an employee for such period was

"(A) in reasonable reliance on a written determination (as defined in section 6110(b)(1)) issued to or in respect of the taxpayer that addressed the employment status of the individual or an individual holding a substantially similar position;

"(B) in reasonable reliance on a concluded Internal Revenue Service audit of the taxpayer

"(i) which was for a period in which the rules for determining employment status were the same as for the period in question, and

"(ii) in which the employment status of the individual or any individual holding a substantially similar position was examined without change to any such individual's status;

"(C) in reasonable reliance on a longstanding recognized practice of a significant segment of the industry in which the individual is engaged; or

"(D) supported by substantial authority. For purposes of subparagraph (D), the term `substantial authority' has the same meaning as when used in section 6662(d)(2)(B)(i); except that such term shall not include any private letter ruling issued to a person other than the taxpayer.

"(2) Special rules.

"(A) Subsequent authority. The taxpayer shall not be



considered to meet the safe harbor requirement of paragraph (1) (B) with respect to any individual for any period if the treatment of such individual as not being an employee is inconsistent with any regulation, Revenue Ruling, Revenue Procedure, or other authority published by the Secretary before the beginning of such period and after the conclusion of the audit referred to in paragraph (1) (B).

"(B) Termination of industry practice safe harbor. The taxpayer shall not be considered to meet the safe harbor requirement of paragraph (1) (C) with respect to any individual for

"(i) any period beginning after the date on which the Secretary prescribes regulations pursuant to section 3510, or

"(ii) any period if the treatment of such individual as not being an employee is inconsistent with any regulation, Revenue Ruling, Revenue Procedure, or other authority published by the Secretary before the beginning of such period.

"(e) Definitions and Special Rules. For purposes of this section

"(1) Employment tax. The term `employment tax' means any tax imposed by this subtitle.

"(2) Taxpayer. The term `taxpayer' includes any person or entity (including a governmental entity) which is (or would be but for this section) liable for any employment tax. Such term includes any predecessor or successor to the taxpayer.

"(f) Regulations. The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section."

(b) Rules to Apply for Income Tax Purposes. Part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new section:

"SEC. 69. DETERMINATION OF EMPLOYMENT STATUS.

"For purposes of this subtitle, an individual shall be treated as a self-employed individual with respect to any services performed by such individual for another person if, under the rules of section 3511, such individual is treated as not being an

employee of such other person with respect to such services."

(c) Conforming Amendment. Section 530 of the Revenue Act of 1978 is hereby repealed.

(d) Clerical Amendments.

(1) The table of sections for chapter 25 is amended by adding at the end thereof the following new item:

"Sec. 3511. Protection against retroactive employment tax reclassifications."

(2) The table of sections for part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 69. Determination of employment status."

(e) Effective Date.

(1) In general. Except as provided in paragraph (2), the amendments made by this section shall apply to all periods beginning after December 31, 1995.

(2) Repeal of limitations on regulations and rulings. The repeal made by subsection (c), insofar as it relates to section 530(b) of the Revenue Act of 1978, shall take effect on the date of the enactment of this Act.

Title VII, Subtitle D

Subtitle D Tax Treatment of Funding of Retiree Health Benefits

Section 7401 POST-RETIREMENT MEDICAL AND LIFE INSURANCE RESERVES.

(a) Minimum Period for Working Lives. Section 419A(c)(2) (relating to additional reserves for post-retirement medical and life insurance benefits) is amended by inserting "(but not less than 10 years)" after "working lives of the covered employees".

(b) Separate Accounting.

(1) Requirement. Section 419A(c)(2) is amended by adding at the end the following new flush sentence:

"Such reserve shall be maintained as a separate account."

(2) Use of reserve for other purposes. Paragraph (1) of section 4976(b) (defining disqualified benefit) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding after subparagraph (C) the following new subparagraph:

"(D) any payment to which subparagraph (C) does not apply which is out of an account described in section 419A(c)(2) and which is not used to provide a post-retirement medical benefit or life insurance benefit."

(c) Special Limitations. Section 419A(e) (relating to special limitations on reserves) is amended by adding at the end the following new paragraph:

"(3) Benefits must be excludable. Post-retirement medical benefits and life insurance benefits shall not be taken into account under subsection (c)(2) to the extent it may be reasonably anticipated that such benefits will be required to be included in gross income when provided."

(d) Effective Dates.

(1) In general. Except as provided in paragraph (2), the amendments made by this section shall apply to contributions paid or accrued after December 31, 1994, in taxable years ending after such date.

(2) Separate accounting. The amendments made by subsection (b) shall apply to contributions paid or accrued after the date of the enactment of this Act, in taxable years ending after such date.

Section 7402 HEALTH BENEFITS ACCOUNTS MAINTAINED BY PENSION PLANS.

(a) Termination of Accounts.

(1) In general. Section 401(h) (relating to medical, etc., benefits for retired employees and their spouses and dependents) is amended by adding at the end the following new paragraph:

"(2) Termination.

"(A) In general. In the case of a pension or annuity plan to which paragraph (1) applies

"(i) no contributions may be made to the separate account described in paragraph (1)(C) other than allowable contributions, and

"(ii) such plan may pay benefits described in paragraph (1) only from funds attributable to allowable contributions and earnings allocable to such contributions.

"(B) Allowable contribution. For purposes of subparagraph (A), the term `allowable contribution' means

"(i) any contribution made before January 1, 1995,

"(ii) in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employees ratified on or before October 29, 1993, any contribution under such plan made before the earlier of

"(I) the date on which the last of such agreements terminates (determined without regard to any extension after October 29, 1993), or, if later, January 1, 1995, or

"(II) January 1, 1998, or

"(iii) any qualified transfer under section 420."

(2) Conforming amendments. Section 401(h) is amended

(A) by striking "Under" and inserting:

"(1) In general. Under",

(B) by redesignating paragraphs (1) through (6) as subparagraphs (A) through (F), respectively,

(C) by striking "paragraph (6)" and inserting "subparagraph (F)", and

(D) by striking "paragraph (1)" and inserting "subparagraph (A)".

(b) Minimum Cost Requirements of Employer. Paragraph (3) of section 420(c) (relating to minimum cost requirements) is amended by adding at the end the following new subparagraph:

"(E) Adjustment for cost savings under health security act. To the extent provided by the Secretary, a plan shall not be treated as failing to meet the requirements of this section to the extent such failure is attributable to a reduction in qualified current retiree health liabilities by reason of the enactment of the Health Security Act."

Title VII, Subtitle E

Subtitle E Coordination With COBRA Continuing Care Provisions

Section 7501 COORDINATION WITH COBRA CONTINUING CARE PROVISIONS.

(a) Period of Coverage. Clause (iv) of section 4980B(f)(2)(B) (defining period of coverage) is amended

(1) by striking "or" at the end of subclause (I), by striking the period at the end of subclause (II) and inserting ", or", and by adding at the end the following new subclause:

"(III) eligible for comprehensive health coverage described in section 1101 of the Health Security Act.", and

(2) by striking "or medicare entitlement" in the heading and inserting ", medicare entitlement, or health security act eligibility".

(b) Qualified Beneficiary. Section 4980B(g)(1) (defining qualified beneficiary) is amended by adding at the end the following new subparagraph:

"(E) Special rule for individuals covered by health security act. The term 'qualified beneficiary' shall not include any individual who, upon termination of coverage under a group health plan, is eligible for comprehensive health coverage described in section 1101 of the Health Security Act."

(c) Repeal Upon Implementation of Health Security Act.

(1) In general. Section 4980B (relating to failure to satisfy continuation coverage requirements of group health care

plans) is hereby repealed.

(2) Conforming amendments.

(A) Section 414(n)(3)(C) is amended by striking "505, and 4980B" and inserting "and 505".

(B) Section 414(t)(2) is amended by striking "505, or 4980B" and inserting "or 505".

(C) The table of sections for chapter 43 is amended by striking the item relating to section 4980B.

(3) Effective date. The amendments made by this subsection shall take effect on the earlier of

(A) January 1, 1998, or

(B) the first day of the first calendar year following the calendar year in which all States have in effect plans under which individuals are eligible for comprehensive health coverage described in section 1101 of this Act. Such amendments shall not apply in determining the amount of any tax under section 4980B of the Internal Revenue Code of 1986 with respect to any failure occurring before the date determined under the preceding sentence.

Title VII, Subtitle F

Subtitle F Tax Treatment of Organizations Providing Health Care Services and Related Organizations

Section 7601 TREATMENT OF NONPROFIT HEALTH CARE ORGANIZATIONS.

(a) Treatment of Hospitals and Other Entities Providing Health Care Services. Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) Qualification of Organizations Providing Health Care Services as Charitable Organizations. For purposes of subsection (c)(3), the provision of health care services shall not be treated as an activity that accomplishes a charitable purpose unless the organization providing such services, on a periodic

basis (no less frequently than annually), and with the participation of community representatives

"(1) assesses the health care needs of its community, and

"(2) develops a plan to meet those needs. In the case of a health maintenance organization, the provision of health care services shall not be treated as an activity that accomplishes a charitable purpose for purposes of subsection (c)(3) unless, in addition to meeting the requirement of the preceding sentence, such services are provided as described in subsection (m)(6)(B)(i)."

(b) Treatment of Health Maintenance Organizations. Section 501(m) is amended by adding at the end thereof the following new paragraph:

"(6) Insurance provided by health maintenance organizations.

"(A) Certain insurance treated as commercial-type insurance. Health insurance provided by a health maintenance organization shall be treated as commercial-type insurance if such insurance relates to care provided other than pursuant to a pre-existing arrangement with such organization. In applying the preceding sentence, care described in subparagraph (B)(iv) shall not be taken into account.

"(B) Certain insurance not treated as commercial-type insurance. Health insurance provided by a health maintenance organization shall not be treated as commercial-type insurance if it relates to

"(i) care provided by such organization to its members at its own facilities through health care professionals who do not provide substantial health care services other than on behalf of such organization,

"(ii) primary care provided by a health care professional to a member of such organization on a basis under which the amount paid to such professional does not vary with the amount of care provided to such member,

"(iii) services other than primary care provided pursuant to a pre-existing arrangement with such organization, or

"(iv) emergency care provided to a member of such organization

at a location outside such member's area of residence."

(c) Treatment of Parent Organizations of Health Care Providers. Section 509(a) (defining private foundation) is amended by striking "and" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) an organization which is organized and operated for the benefit of, and which directly or indirectly controls, an organization described in section 170(b)(1)(A)(iii), and".

(d) Effective Dates.

(1) In general. Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 1995.

(2) Subsections (b) and (c). The amendments made by subsections (b) and (c) shall take effect on the date of the enactment of this Act.

Section 7602 TAX TREATMENT OF TAXABLE ORGANIZATIONS PROVIDING HEALTH INSURANCE AND OTHER PREPAID HEALTH CARE SERVICES.

(a) General Rule. Section 833 is amended to read as follows:

"SEC. 833. TREATMENT OF ORGANIZATIONS PROVIDING HEALTH INSURANCE AND OTHER PREPAID HEALTH CARE SERVICES.

"(a) General Rule. Any organization to which this section applies shall be taxable under this part in the same manner as if it were an insurance company other than a life insurance company.

"(b) Organizations To Which Section Applies. This section shall apply to any organization

"(1) which is not exempt from taxation under this subtitle,

"(2) which is not taxable as a life insurance company under part I of this subchapter, and

"(3) the primary and predominant business activity of which during the taxable year consists of 1 or more of the following:



"(A) Issuing accident and health insurance contracts or the reinsuring of risks undertaken by other insurance companies under such contracts.

"(B) Operating as a health maintenance organization.

"(C) Entering into arrangements under which

"(i) fixed payments or premiums are received as consideration for the organization's agreement to provide or arrange for the provision of health care services, regardless of how the health care services are provided or arranged to be provided, and

"(ii) such fixed payments or premiums do not vary depending on the amount of health care services provided. In the case of an organization which has as a material business activity the issuing of accident and health insurance contracts or the reinsuring of risks undertaken by other insurance companies under such contracts, the administering of accident and health insurance contracts by such organization shall be treated as part of such business activity for purposes of paragraph (3) (A)."

(b) Conforming Amendments.

(1) Subsection (c) of section 56 is amended by striking paragraph (3).

(2) The table of sections for part II of subchapter L of chapter 1 is amended by striking the item relating to section 833 and inserting the following:

"Sec. 833. Treatment of organizations providing health insurance and other prepaid health care services."

(c) Effective Dates.

(1) In general. Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1996.

(2) Transition rules for blue cross and blue shield organizations.

(A) Prior fresh start preserved. The adjusted basis of any asset determined under section 1012(c) (3) (A) (ii) of the Tax Reform Act of 1986 shall not be affected by the amendments

made by this section nor by reason of any failure to qualify in taxable years beginning after December 31, 1996, as an existing Blue Cross or Blue Shield organization (as defined in section 833(c)(2) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act).

(B) Recoupment of prior reserve benefit. In the case of any organization entitled to the benefits of section 833(a)(3) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) for such organization's last taxable year beginning before January 1, 1997, the amount determined under paragraph (4) of section 832(b) of such Code for each of such organization's first 6 taxable years beginning after December 31, 1996, shall be increased by an amount equal to  $3 \frac{1}{3}$  percent of its unearned premiums on outstanding business as of the close of such organization's last taxable year beginning before January 1, 1997.

(C) Phase-out of special deduction for certain organizations.

(i) In general. In the case of an organization which meets the requirements of clause (ii)

(I) such organization shall continue to be entitled to the deduction provided under section 833(b) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) for its first 2 taxable years beginning after December 31, 1996, except that

(II) the amount of such deduction for such organization's taxable year beginning in 1997 shall be 67 percent of the amount which would have been determined under such section 833(b) as so in effect, and the amount of such deduction for organization's taxable year beginning in 1998 shall be 33 percent of the amount which would have been so determined. Notwithstanding the amendment made by subsection (b)(1), any deduction under the preceding sentence shall not be allowable in computing alternative minimum taxable income.

(ii) Requirements. An organization meets the requirements of this clause if, for each of its taxable years beginning in 1995 and 1996, such organization

(I) was an organization to which section 833 of such Code (as so in effect) applied, and

(II) met the requirements of subparagraph (A) of section 833(c)(3) of such Code (as so in effect).

(3) Transitional rules for other companies.

(A) Organizations to which paragraph applies. This paragraph shall apply to any organization to which section 833 of the Internal Revenue Code of 1986 (as amended by subsection (a)) applies for such organization's first taxable year beginning after December 31, 1996; except that this paragraph shall not apply if such organization treated itself as an insurance company taxable under part II of subchapter L of chapter 1 of such Code on its original Federal income tax return for its taxable year beginning in 1992 and for all of its taxable years thereafter beginning before January 1, 1997.

(B) Treatment of currently taxable companies. Except as provided in subparagraph (C), in the case of any organization to which this paragraph applies

(i) the amendments made by this section shall be treated as a change in the method of accounting, and

(ii) all adjustments required to be taken into account under section 481 of the Internal Revenue Code of 1986, shall be taken into account for such company's first taxable year beginning after December 31, 1996.

(C) Treatment of currently tax exempt companies. In the case of any organization to which this paragraph applies and which was exempt from tax under chapter 1 of the Internal Revenue Code of 1986 for such organization's last taxable year beginning before January 1, 1997

(i) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting required by this section for its first taxable year beginning after December 31, 1996, and

(ii) for purposes of determining gain or loss, the adjusted basis of any asset held by such organization on the first day of such taxable year shall be treated as equal to its fair market value as of such day.

ALLIANCES.

(a) In General. Subsection (c) of section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by adding at the end thereof the following new paragraph:

"(26) Any regional alliance described in section 1301 of the Health Security Act. Such an alliance shall be treated as not described in any other paragraph of this subsection."

(b) Effective Date. The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

Title VII, Subtitle G

Subtitle G Tax Treatment of Long-term Care Insurance and Services

Section 7701 QUALIFIED LONG-TERM CARE SERVICES TREATED AS MEDICAL CARE.

(a) General Rule. Paragraph (1) of section 213(d) (defining medical care) is amended by striking "or" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified long-term care services (as defined in subsection (g)), or".

(b) Qualified Long-Term Care Services Defined. Section 213 (relating to the deduction for medical, dental, etc., expenses) is amended by adding at the end thereof the following new subsection:

"(g) Qualified Long-Term Care Services. For purposes of this section

"(1) In general. The term 'qualified long-term care services' means necessary diagnostic, curing, mitigating, treating, preventive, therapeutic, and rehabilitative services, and maintenance and personal care services (whether performed in a residential or nonresidential setting) which

"(A) are required by an individual during any period the individual is an incapacitated individual (as defined in paragraph (2)),

"(B) have as their primary purpose

"(i) the provision of needed assistance with 1 or more activities of daily living (as defined in paragraph (3)), or

"(ii) protection from threats to health and safety due to severe cognitive impairment, and

"(C) are provided pursuant to a continuing plan of care prescribed by a licensed professional (as defined in paragraph (4)).

"(2) Incapacitated individual. The term 'incapacitated individual' means any individual who

"(A) is unable to perform, without substantial assistance from another individual (including assistance involving cueing or substantial supervision), at least 2 activities of daily living as defined in paragraph (3), or

"(B) has severe cognitive impairment as defined by the Secretary in consultation with the Secretary of Health and Human Services. Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless a licensed professional within the preceding 12-month period has certified that such individual meets such requirements.

"(3) Activities of daily living. Each of the following is an activity of daily living:

"(A) Eating.

"(B) Toileting.

"(C) Transferring.

"(D) Bathing.

"(E) Dressing.

"(4) Licensed professional. The term 'licensed professional' means

"(A) a physician or registered professional nurse, or

"(B) any other individual who meets such requirements as may be prescribed by the Secretary after consultation with the Secretary of Health and Human Services.

"(5) Certain services not included. The term 'qualified long-term care services' shall not include any services provided to an individual

"(A) by a relative (directly or through a partnership, corporation, or other entity) unless the relative is a licensed professional with respect to such services, or

"(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual. For purposes of this paragraph, the term 'relative' means an individual bearing a relationship to the individual which is described in paragraphs (1) through (8) of section 152(a)."

(c) Technical Amendments.

(1) Subparagraph (D) of section 213(d)(1) (as redesignated by subsection (a)) is amended to read as follows:

"(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in

"(i) subparagraphs (A) and (B), or

"(ii) subparagraph (C), but only if such insurance is provided under a qualified long-term care insurance policy (as defined in section 7702B(b)) and the amount paid for such insurance is not disallowed under section 7702B(d)(4)."

(2) Paragraph (6) of section 213(d) is amended

(A) by striking "subparagraphs (A) and (B)" and inserting "subparagraph (A), (B), and (C)", and

(B) by striking "paragraph (1)(C)" in subparagraph (A) and inserting "paragraph (1)(D)".

(d) Effective Date. The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Section 7702 TREATMENT OF LONG-TERM CARE INSURANCE.

(a) General Rule. Chapter 79 (relating to definitions) is amended by inserting after section 7702A the following new section:

"SEC. 7702B. TREATMENT OF LONG-TERM CARE INSURANCE.

"(a) In General. For purposes of this title

"(1) a qualified long-term care insurance policy (as defined in subsection (b)) shall be treated as an accident and health insurance contract,

"(2) amounts (other than policyholder dividends (as defined in section 808) or premium refunds) received under a qualified long-term care insurance policy shall be treated as amounts received for personal injuries and sickness and shall be treated as reimbursement for expenses actually incurred for medical care (as defined in section 213(d)),

"(3) any plan of an employer providing coverage under a qualified long-term care insurance policy shall be treated as an accident and health plan with respect to such coverage,

"(4) amounts paid for a qualified long-term care insurance policy providing the benefits described in subsection (b)(6)(B) shall be treated as payments made for insurance for purposes of section 213(d)(1)(D), and

"(5) a qualified long-term care insurance policy shall be treated as a guaranteed renewable contract subject to the rules of section 816(e).

"(b) Qualified Long-Term Care Insurance Policy. For purposes of this title

"(1) In general. The term 'qualified long-term care insurance policy' means any long-term care insurance policy (as defined in section 2304 of the Health Security Act) that

"(A) satisfies the requirements of subpart B of part 3 of subtitle B of title II of the Health Security Act,

"(B) limits benefits under such policy to individuals who are certified by a licensed professional (as defined in section 213(g)(4)) within the preceding 12-month period as being unable to perform, without substantial assistance from another individual (including assistance involving cueing or substantial supervision), 2 or more activities of daily living (as defined in section 213(g)(3)), or who have a severe cognitive impairment (as defined in section 213(g)(2)(B)), and

"(C) satisfies the requirements of paragraphs (2), (3), (4), (5), and (6).

"(2) Premium requirements. The requirements of this paragraph are met with respect to a policy if such policy provides that premium payments may not be made earlier than the date such payments would have been made if the contract provided for level annual payments over the life expectancy of the insured or 20 years, whichever is shorter. A policy shall not be treated as failing to meet the requirements of the preceding sentence solely by reason of a provision in the policy providing for a waiver of premiums if the insured becomes an individual certified in accordance with paragraph (1)(B).

"(3) Prohibition of cash value. The requirements of this paragraph are met if the policy does not provide for a cash value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed, other than as provided in paragraph (4).

"(4) Refunds of premiums and dividends. The requirements of this paragraph are met with respect to a policy if such policy provides that

"(A) policyholder dividends are required to be applied as a reduction in future premiums or, to the extent permitted under paragraph (6), to increase benefits described in subsection (a)(2), and

"(B) refunds of premiums upon a partial surrender or a partial cancellation are required to be applied as a reduction in future premiums, and

"(C) any refund on the death of the insured, or on a complete surrender or cancellation of the policy, cannot exceed the aggregate premiums paid under the contract. Any refund on a



complete surrender or cancellation of the policy shall be includible in gross income to the extent that any deduction or exclusion was allowable with respect to the premiums.

"(5) Coordination with other entitlements. The requirements of this paragraph are met with respect to a policy if such policy does not cover expenses incurred to the extent that such expenses are also covered under title XVIII of the Social Security Act or are covered under comprehensive health coverage described in section 1101 of the Health Security Act.

"(6) Maximum benefit.

"(A) In general. The requirements of this paragraph are met if the benefits payable under the policy for any period (whether on a periodic basis or otherwise) shall not exceed the dollar amount in effect for such period.

"(B) Nonreimbursement payments permitted. Benefits shall include all payments described in subsection (a) (2) to or on behalf of an insured individual without regard to the expenses incurred during the period to which the payments relate. For purposes of section 213(a), such payments shall be treated as compensation for expenses paid for medical care.

"(C) Dollar amount. The dollar amount in effect under this paragraph shall be \$150 per day (or the equivalent amount within the calendar year in the case of payments on other than a per diem basis).

"(D) Adjustments for increased costs.

"(i) In general. In the case of any calendar year after 1996, the dollar amount in effect under subparagraph (C) for any period or portion thereof occurring during such calendar year shall be equal to the sum of

"(I) the amount in effect under subparagraph (C) for the preceding calendar year (after application of this subparagraph), plus

"(II) the product of the amount referred to in subclause (I) multiplied by the cost-of-living adjustment for the calendar year of the amount under subclause (I).

"(ii) Cost-of-living adjustment. For purposes of clause (i),

the cost-of-living adjustment for any calendar year is the percentage (if any) by which the cost index under clause (iii) for the preceding calendar year exceeds such index for the second preceding calendar year.

"(iii) Cost index. The Secretary, in consultation with the Secretary of Health and Human Services, shall before January 1, 1997, establish a cost index to measure increases in costs of nursing home and similar facilities. The Secretary may from time to time revise such index to the extent necessary to accurately measure increases or decreases in such costs.

"(iv) Special rule for calendar year 1997. Notwithstanding clause (ii), for of clause (i), the cost-of-living adjustment for calendar year 1997 is the sum of 1  $\frac{1}{2}$  percent plus the percentage by which the CPI for calendar year 1996 (as defined in section 1(f)(4)) exceeds the CPI for calendar year 1995 (as so defined).

"(E) Period. For purposes of this paragraph, a period begins on the date that an individual has a condition which would qualify for certification under subsection (b)(1)(B) and ends on the earlier of the date upon which

"(i) such individual has not been so certified within the preceding 12-months, or

"(ii) the individual's condition ceases to be such as to qualify for certification under subsection (b)(1)(B).

"(F) Aggregation rule. For purposes of this paragraph, all policies issued with respect to the same insured shall be treated as one policy.

"(c) Treatment of Long-Term Care Insurance Policies. For purposes of this title, any amount received or coverage provided under a long-term care insurance policy that is not a qualified long-term care insurance policy shall not be treated as an amount received for personal injuries or sickness or provided under an accident and health plan and shall not be treated as excludible from gross income under any provision of this title.

"(d) Treatment of Coverage Provided as Part of a Life Insurance Contract. Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by rider

on a life insurance contract

"(1) In general. This section shall apply as if the portion of the contract providing such coverage is a separate contract or policy.

"(2) Premiums and charges for long-term care coverage. Premium payments for coverage under a long-term care insurance policy and charges against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A)) for such coverage shall be treated as premiums for purposes of subsection (b)(2).

"(3) Application of 7702. Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to a life insurance contract, as of any date

"(A) by the sum of any charges (but not premium payments) described in paragraph (2) made to that date under the contract, less

"(B) any such charges the imposition of which reduces the premiums paid for the contract (within the meaning of section 7702(f)(1)).

"(4) Application of section 213. No deduction shall be allowed under section 213(a) for charges against the life insurance contract's cash surrender value described in paragraph (2), unless such charges are includible in income as a result of the application of section 72(e)(10) and the coverage provided by the rider is a qualified long-term care insurance policy under subsection (b). For purposes of this subsection, the term 'portion' means only the terms and benefits under a life insurance contract that are in addition to the terms and benefits under the contract without regard to the coverage under a long-term care insurance policy.

"(e) Prohibition of Discrimination.

"(1) In general. Notwithstanding subsection (a)(3), any plan of an employer providing coverage under a qualified long-term care insurance policy shall qualify as an accident and health plan with respect to such coverage only if

"(A) the plan allows all employees, except as provided in

paragraph (2), to participate, and

"(B) the benefits provided under the plan are identical for all employees that choose to participate.

"(2) Exclusion of certain employees. For purposes of paragraph (1), there may be excluded from consideration

"(A) employees who have not completed 3 years of service;

"(B) employees who have not attained age 25;

"(C) part-time or seasonal employees; and

"(D) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

"(f) Regulations. The Secretary shall prescribe such regulations as may be necessary to carry out the requirements of this section, including regulations to prevent the avoidance of this section by providing long-term care insurance coverage under a life insurance contract and to provide for the proper allocation of amounts between the long-term care and life insurance portions of a contract."

(b) Clerical Amendment. The table of sections for chapter 79 is amended by inserting after the item relating to section 7702A the following new item:

"Sec. 7702B. Treatment of long-term care insurance."

(c) Effective Date.

(1) In general. The amendments made by this section shall apply to policies issued after December 31, 1995. Solely for purposes of the preceding sentence, a policy issued prior to January 1, 1996, that satisfies the requirements of a qualified long-term care insurance policy as set forth in section 7702B(b) shall, on and after January 1, 1996, be treated as being issued after December 31, 1995.

(2) Transition rule. If, after the date of enactment of this Act and before January 1, 1996, a policy providing for long-term care insurance coverage is exchanged solely for a qualified

long-term care insurance policy (as defined in section 7702B(b)), no gain or loss shall be recognized on the exchange. If, in addition to a qualified long-term care insurance policy, money or other property is received in the exchange, then any gain shall be recognized to the extent of the sum of the money and the fair market value of the other property received. For purposes of this paragraph, the cancellation of a policy providing for long-term care insurance coverage and reinvestment of the cancellation proceeds in a qualified long-term care insurance policy within 60 days thereafter shall be treated as an exchange.

(3) Issuance of certain riders permitted. For purposes of determining whether section 7702 or 7702A of the Internal Revenue Code of 1986 applies to any contract, the issuance, whether before, on, or after December 31, 1995, of a rider on a life insurance contract providing long-term care insurance coverage shall not be treated as a modification or material change of such contract.

Section 7703 TAX TREATMENT OF ACCELERATED DEATH BENEFITS UNDER LIFE INSURANCE CONTRACTS.

(a) General Rule. Section 101 (relating to certain death benefits) is amended by adding at the end thereof the following new subsection:

"(g) Treatment of Certain Accelerated Death Benefits.

"(1) In general. For purposes of this section, any amount distributed to an individual under a life insurance contract on the life of an insured who is a terminally ill individual (as defined in paragraph (3)) shall be treated as an amount paid by reason of the death of such insured.

"(2) Necessary conditions.

"(A) Paragraph (1) shall not apply to any distribution unless

"(i) the distribution is not less than the present value (determined under subparagraph (B)) of the reduction in the death benefit otherwise payable in the event of the death of the insured, and

"(ii) the percentage derived from dividing the cash surrender value of the contract, if any, immediately after the distribution by the cash surrender value of the contract immediately before

the distribution is equal to or greater than the percentage derived by dividing the death benefit immediately after the distribution by the death benefit immediately before the distribution.

"(B) The present value of the reduction in the death benefit occurring on the distribution must be determined by

"(i) using as the discount rate a rate not to exceed the highest rate set forth in subparagraph (C), and

"(ii) assuming that the death benefit (or the portion thereof) would have been paid at the end of a period that is no more than the insured's life expectancy from the date of the distribution or 12 months, whichever is shorter.

"(C) Rates. The rates set forth in this subparagraph are the following:

"(i) the 90-day Treasury bill yield,

"(ii) the rate described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto for the calendar month ending 2 months before the date on which the rate is determined,

"(iii) the rate used to compute the cash surrender values under the contract during the applicable period plus 1 percent per annum, and

"(iv) the maximum permissible interest rate applicable to policy loans under the contract.

"(3) Terminally ill individual. For purposes of this subsection, the term `terminally ill individual' means an individual who the insurer has determined, after receipt of an acceptable certification by a licensed physician, has an illness or physical condition which can reasonably be expected to result in death within 12 months of the date of certification.

"(4) Application of section 72(e)(10). For purposes of section 72(e)(10) (relating to the treatment of modified endowment contracts), section 72(e)(4)(A)(i) shall not apply to distributions described in paragraph (1).

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

Section 7704 TAX TREATMENT OF COMPANIES ISSUING QUALIFIED ACCELERATED DEATH BENEFIT RIDERS.

(a) Qualified Accelerated Death Benefit Riders Treated as Life Insurance. Section 818 (relating to other definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(g) Qualified Accelerated Death Benefit Riders Treated as Life Insurance. For purposes of this part

"(1) In general. Any reference to a life insurance contract shall be treated as including a reference to a qualified accelerated death benefit rider on such contract.

"(2) Qualified accelerated death benefit riders. For purposes of this subsection, the term 'qualified accelerated death benefit rider' means any rider on a life insurance contract which provides for a distribution to an individual upon the insured becoming a terminally ill individual (as defined in section 101(g)(3)).

(b) Definitions of Life Insurance and Modified Endowment Contracts. Paragraph (5)(A) of section 7702(f) is amended by striking "or" at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

"(v) any qualified accelerated death benefit rider (as defined in section 818(g)), or".

(c) Effective Date.

(1) In general. The amendments made by this section shall apply to contracts issued after December 31, 1993.

(2) Transitional rule. For purposes of determining whether section 7702 or 7702A of the Internal Revenue Code of 1986 applies to any contract, the issuance, whether before, on, or after December 31, 1993, of a rider on a life insurance contract permitting the acceleration of death benefits (as described in section 101(g) of such Code) shall not be treated as a modification or material change of such contract.

Title VII, Subtitle H

Subtitle H Tax Incentives for Health Services Providers

Section 7801 NONREFUNDABLE CREDIT FOR CERTAIN  
PRIMARY HEALTH SERVICES PROVIDERS.

(a) In General. Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 22 the following new section:

"SEC. 23. PRIMARY HEALTH SERVICES PROVIDERS.

"(a) Allowance of Credit. There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the product of

"(1) the number of months during such taxable year

"(A) during which the taxpayer is a qualified primary health services provider, and

"(B) which are within the taxpayer's mandatory service period, and

"(2) \$1,000 (\$500 in the case of a qualified practitioner who is not a physician).

"(b) Qualified Primary Health Services Provider. For purposes of this section, the term 'qualified primary health services provider' means, with respect to any month, any qualified practitioner who

"(1) has in effect a certification by the Bureau as a provider of primary health services and such certification is, when issued, for a health professional shortage area in which the qualified practitioner is commencing the providing of primary health services,

"(2) is providing primary health services full time in the health professional shortage area identified in such certification, and

"(3) has not received a scholarship under the National Health Service Corps Scholarship Program or any loan repayments under



the National Health Service Corps Loan Repayment Program. For purposes of paragraph (2), a provider shall be treated as providing services in a health professional shortage area when such area ceases to be such an area if it was such an area when the provider commenced providing services in the area.

"(c) Mandatory Service Period. For purposes of this section, the term `mandatory service period' means the period of 60 consecutive calendar months beginning with the first month the taxpayer is a qualified primary health services provider. A taxpayer shall not have more than 1 mandatory service period.

"(d) Definitions and Special Rules. For purposes of this section

"(1) Bureau. The term `Bureau' means the Bureau of Primary Health Care, Health Resources and Services Administration of the United States Public Health Service.

"(2) Qualified practitioner. The term `qualified practitioner' means a physician, a physician assistant, a nurse practitioner, or a certified nurse-midwife.

"(3) Physician. The term `physician' has the meaning given to such term by section 1861(r) of the Social Security Act.

"(4) Physician assistant; nurse practitioner. The terms `physician assistant' and `nurse practitioner' have the meanings given to such terms by section 1861(aa)(5) of the Social Security Act.

"(5) Certified nurse-midwife. The term `certified nurse-midwife' has the meaning given to such term by section 1861(gg)(2) of the Social Security Act.

"(6) Primary health services. The term `primary health services' has the meaning given such term by section 330(b)(1) of the Public Health Service Act.

"(7) Health professional shortage area. The term `health professional shortage area' has the meaning given such term by section 332(a)(1)(A) of the Public Health Service Act.

"(e) Recapture of Credit.

"(1) In general. If there is a recapture event during any

taxable year, then

"(A) no credit shall be allowed under subsection (a) for such taxable year and any succeeding taxable year, and

"(B) the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of

"(i) the applicable percentage, and

"(ii) the aggregate unrecaptured credits allowed to such taxpayer under this section for all prior taxable years.

"(2) Applicable recapture percentage.

"(A) In general. For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs during:	The applicable recapture percentage is:
--	---

Months 10924 100~05	
---------------------	--

Months 250936 7505	
--------------------	--

Months 370948 50~05	
---------------------	--

Months 490960 2505	
--------------------	--

Months 61 and thereafter 0.	
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"(B) Timing. For purposes of subparagraph (A), month 1 shall begin on the first day of the mandatory service period.

"(3) Recapture event defined.

"(A) In general. For purposes of this subsection, the term 'recapture event' means the failure of the taxpayer to be a qualified primary health services provider for any month during the taxpayer's mandatory service period.

"(B) Cessation of designation. The cessation of the designation of any area as a health professional shortage area

after the beginning of the mandatory service period for any taxpayer shall not constitute a recapture event.

"(C) Secretarial waiver. The Secretary, in consultation with the Secretary of Health and Human Services, may waive any recapture event caused by extraordinary circumstances.

"(4) No credits against tax; minimum tax. Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part or for purposes of section 55."

(b) Clerical Amendment. The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 22 the following new item:

"Sec. 23. Primary health services providers."

(c) Effective Date. The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

#### Section 7802 EXPENSING OF MEDICAL EQUIPMENT.

(a) In General. Paragraph (1) of section 179(b) (relating to dollar limitation on expensing of certain depreciable business assets) is amended to read as follows:

"(1) Dollar limitation.

"(A) General rule. The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed \$17,500.

"(B) Health care property. The aggregate cost which may be taken into account under subsection (a) shall be increased by the lesser of

"(i) the cost of section 179 property which is health care property placed in service during the taxable year, or

"(ii) \$10,000."

(b) Definition. Section 179(d) (relating to definitions) is amended by adding at the end the following new paragraph:

"(11) Health care property. For purposes of this section, the term `health care property' means section 179 property

"(A) which is medical equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment,

"(B) which is owned (directly or indirectly) and used by a physician (as defined in section 1861(r) of the Social Security Act) in the active conduct of such physician's full-time trade or business of providing primary health services (as defined in section 330(b)(1) of the Public Health Service Act) in a health professional shortage area (as defined in section 332(a)(1)(A) of the Public Health Service Act), and

"(C) substantially all the use of which is in such area."

(c) Effective Date. The amendments made by this section shall apply to property placed in service after December 31, 1994.  
Title VII, Subtitle I

#### Subtitle I Miscellaneous Provisions

##### Section 7901 CREDIT FOR COST OF PERSONAL ASSISTANCE SERVICES REQUIRED BY EMPLOYED INDIVIDUALS.

(a) In General. Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 23 the following new section:

"SEC. 24. COST OF PERSONAL ASSISTANCE SERVICES REQUIRED BY EMPLOYED INDIVIDUALS.

"(a) Allowance of Credit.

"(1) In general. In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the personal assistance expenses paid or incurred by the taxpayer during such taxable year.

"(2) Applicable percentage. For purposes of paragraph (1), the term `applicable percentage' means 50 percent reduced (but not below zero) by 10 percentage points for each \$5,000 by which the modified adjusted gross income (as defined in section 59B(d)(2)) of the taxpayer for the taxable year exceeds \$45,000. In the case

of a married individual filing a separate return, the preceding sentence shall be applied by substituting '\$2,500' for '\$5,000' and '\$22,500' for '\$45,000'.

"(b) Limitation. The amount of personal assistance expenses incurred for the benefit of an individual which may be taken into account under subsection (a) for the taxable year shall not exceed the lesser of

"(1) \$15,000, or

"(2) such individual's earned income (as defined in section 32(c)(2)) for the taxable year. In the case of a joint return, the amount under the preceding sentence shall be determined separately for each spouse.

"(c) Eligible Individual. For purposes of this section, the term 'eligible individual' means any individual (other than a nonresident alien) who, by reason of any medically determinable physical impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, is unable to engage in any substantial gainful activity without personal assistance services appropriate to carry out activities of daily living. An individual shall not be treated as an eligible individual unless such individual furnishes such proof thereof (in such form and manner, and at such times) as the Secretary may require.

"(d) Other Definitions. For purposes of this section

"(1) Personal assistance expenses. The term 'personal assistance expenses' means expenses for

"(A) personal assistance services appropriate to carry out activities of daily living in or outside the home,

"(B) homemaker/chore services incidental to the provision of such personal assistance services,

"(C) in the case of an individual with a cognitive impairment, assistance with life skills,

"(D) communication services,

"(E) work-related support services,

"(F) coordination of services described in this paragraph,

"(G) assistive technology and devices, including assessment of the need for particular technology and devices and training of family members, and

"(H) modifications to the principal place of abode of the individual to the extent the expenses for such modifications would (but for subsection (e) (2)) be expenses for medical care (as defined by section 213) of such individual.

"(2) Activities of daily living. The term 'activities of daily living' means the activities referred to in section 213(g) (3).

"(e) Special Rules.

"(1) Payments to related persons. No credit shall be allowed under this section for any amount paid by the taxpayer to any person who is related (within the meaning of section 267 or 707(b)) to the taxpayer.

"(2) Coordination with medical expense deduction. Any amount taken into account in determining the credit under this section shall not be taken into account in determining the amount of the deduction under section 213.

"(3) Basis reduction. For purposes of this subtitle, if a credit is allowed under this section for any expense with respect to any property, the increase in the basis of such property which would (but for this paragraph) result from such expense shall be reduced by the amount of the credit so allowed.

"(f) Cost-of-Living Adjustment. In the case of any taxable year beginning after 1996, the \$45,000 and \$22,500 amounts in subsection (a) (2) and the \$15,000 amount in subsection (b) shall be increased by an amount equal to

"(1) such dollar amount, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f) (3) for the calendar year in which the taxable year begins by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof. If any increase determined under the preceding sentence is not a multiple of \$1,000, such increase shall be rounded to the nearest multiple of \$1,000."

(b) Technical Amendment. Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (24), by striking the period at the end of paragraph (25) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(26) in the case of any property with respect to which a credit has been allowed under section 23, to the extent provided in section 23(e) (3)."

(c) Clerical Amendment. The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 22 the following new item:

"Sec. 23. Cost of personal assistance services required by employed individuals."

(d) Effective Date. The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Section 7902 DENIAL OF TAX-EXEMPT STATUS FOR  
BORROWINGS OF HEALTH CARE-RELATED ENTITIES.

(a) In General. Paragraph (6) of section 141(b) (relating to private business use) is amended by adding at the end thereof the following new subparagraph:

"(C) Certain health care-related entities. Use by

"(i) any regional alliance described in section 1301 of the Health Security Act,

"(ii) any corporate alliance described in section 1311 of such Act, and

"(iii) any guaranty fund described in section 1204 of such Act, shall be treated as private business use by an organization that is not a 501(c) (3) organization."

(b) Effective Date. The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

Section 7903 DISCLOSURE OF RETURN INFORMATION FOR  
ADMINISTRATION OF CERTAIN PROGRAMS UNDER THE HEALTH SECURITY ACT.

(a) In General. Subparagraph (D) of section 6103(1)(7) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended by striking "and" at the end of clause (viii), by striking the period at the end of clause (ix) and inserting "; and", and by inserting after clause (ix) the following new clause:

"(x) assistance provided under the Health Security Act."

(b) Information Not Available to Local Agencies. Subparagraph (D) of section 6103(1)(7) is amended by adding at the end thereof the following new sentence: "Subparagraphs (A) and (B) shall be applied without regard to any reference to any local agency with respect to the program referred to in clause (x)."