Therefore, according to Cole, AIA is working on recommendations for a revised liability system that would include among other things a carve-out for municipal sites to exempt municipalities from a large part of their potential liability under superfund.

Opposing such a carve-out in any superfund reform, Stanley Blossom, representing the National Association of Manufacturers, said the "single most important immediate superfund issue facing us today is the EPA's search for an equitable means of allocating costs for clean-up of so-called municipal waste sites," that involves full cost-sharing by all parties that have contributed waste to these sites.

"It has been a continuing struggle to bring the municipalities to the table to discuss contributions" on cleanup costs, Blossom said. "Exempting municipalities from their superfund responsibilities by an ill-conceived legislative amendment, or by an EPA regulatory retreat on the issue of cost allocation, would kill our efforts to bring all responsible parties" to the negotiating table, he said.

Linda Christenson, of the Landfill Solutions Group, similarly told the panel that any exemption from CERCLA responsibilities for certain classes of potentially responsible parties (PRPs), "will intensify the adversarial nature between PRPs, thereby delaying the cleanup of superfund municipal landfill sites and resulting in a further drain on the U.S. economy."

She recommended the establishment of a "cleanup trust" on a nationwide scale to fund the cleanup of society's closed landfills. This trust fund could be financed, she said, by an increase in the corporate environmental tax along with a more broad-based levy, such as a solid waste disposal fee, or by the establishment of tax-exempt "public purpose bonds" for environmental projects.

Tax Legislation

SENATE REJECTS CAPITAL GAINS TAX CUT, LEAVES TAX BILL UNFINISHED UNTIL SEPTEMBER

The Senate Aug. 12 made some progress on major amendments to a comprehensive urban aid tax bill (HR 11), rejecting proposals to cut the capital gains tax rate, to increase funding for urban aid, and to kill the bill's proposed expansion of individual retirement accounts.

The IRA provisions were modified, however, so that the tax incentive would only be available to lower- and middle-income taxpayers.

The Senate late Aug. 12 recessed until September without completing action on the bill, already passed by the House, leaving the ultimate fate of the bill uncertain.

While Senate Majority Leader George Mitchell (D-Maine) said that the Senate would return to the bill in September, it will not be the first item of business when the Senate reconvenes Sept. 8. The Senate instead is slated to take up a fiscal 1993 spending bill for the Departments of Veterans Affairs and Housing and Urban Development.

The tax package would create a federal enterprise zones program, extend a group of expiring tax provisions, allow uniform amortization of intangible assets, expand the deductibility of IRAs, repeal the luxury tax, and provide passive loss relief to the real estate industry.

Capital Gains Amendment Defeated

The Senate rejected a proposal that would have cut the capital gains tax rate to 15 percent from the current level of 28 percent for upper-income taxpayers during debate on a comprehensive urban aid tax package (HR 11).

In addition to lowering the top capital gains tax rate, the proposal would have allowed indexing of capital gains for inflation and would have exempted gains from the alternative minimum tax.

By a vote of 37-57 the Senate opposed a motion to waive the budget act in order to pass the proposal. The proposed capital gains tax cut—offered by Sens. Connie Mack (R-Fla) and Bob Kasten (R-Wis) would have violated the 1990 budget law because it did not include a revenue offset for the tax cut.

Senate Finance Committee Chairman Lloyd Bentsen (D-Texas) and Mitchell argued that adoption of the proposal would have added some $47 billion to the federal budget deficit. They blasted the proposal as a tax break for the rich.

Kasten, however, argued that a cut in the capital gains tax rate would encourage investment, promoting economic growth and the creation of new jobs. "The tax fairness argument denies the lower- and middle-class a growing economy," he said.

Attempt To Boost Urban Aid Rejected

The Senate also rejected an attempt to strip out of the bill some tax breaks for businesses in order to boost spending for urban aid programs. The amendment, offered by Senate Finance Committee member Bill Bradley (D-NJ), proposed spending an additional $2.7 billion over five years on community and job training programs.

The additional urban aid spending would have been financed by dropping from the bill provisions providing relief from the alternative minimum tax and relief under Internal Revenue Code Section 108 for discharge of indebtedness on qualified real property and by cutting back the proposed passive loss relief for the real estate industry.

Although tagged as an urban aid measure, Bradley said that the bill in its current form disproportionately benefits businesses and the wealthy. He described his proposal as an attempt to strike some of the tax breaks for the wealthy in order to create more jobs in needy urban areas.

Opponents of the amendment argued that the passive loss provision did not represent a tax break for the wealthy, but rather would aid small businesses. The real estate sector has been hard hit by the recession and is in need of tax relief, Bentsen said.

Bentsen raised a point of order against the amendment, saying that it would violate the budget act because it would not be revenue neutral on a year-by-year basis. The Senate rejected Bradley's motion to waive the budget law by a vote of 14-80.

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The Senate by voice vote accepted an amendment by Sen. John Danforth (R-Mo) relating to the impact of bankruptcy proceeding on airport gate leases held by bankrupt airlines.

IRAs Modified, Homebuyer Credit Restored

The Senate agreed to limit the availability of the bill's expanded IRA proposal to middle-income taxpayers, using the revenues saved to restore the $2,500 tax credit for first-time home buyers that was dropped from the bill Aug. 11 as part of a proposal to expand the enterprise zones program (156 DTR G-5, 8/12/92).

The Senate by voice vote adopted an amendment by Sen. Howard Metzenbaum (D-Mich) that would limit the availability of tax-deductible IRAs. Under Metzenbaum's proposal, both the tax deduction for regular IRAs and the bill's new special IRAs program would not be available to joint filers with income of $120,000 or above or individuals with income of $85,000 or above. Under current law, individuals making $25,000 or less and joint filers making $40,000 or less are eligible to contribute up to $2,000 annually tax free.

Limiting the IRAs to middle-income taxpayers would reduce the cost of the plan by $1.5 billion over five years, according to Joint Committee on Taxation staff estimates, Metzenbaum said.

The Senate also approved by voice vote a second-degree amendment by Sen. Bob Packwood (R-Ore) that would restore the $2,500 tax credit for first-time home buyers. Packwood had originally proposed paying for the tax credit by eliminating the deduction for club dues.

Bentsen endorsed the modification to his IRAs proposal after Metzenbaum agreed to modify his original amendment to increase the income level at which taxpayers would no longer be eligible for the IRAs. He also supported the return of the home buyer's tax credit to the package.

During consideration of the bill late Aug. 11, the Senate endorsed Bentsen's overall proposal to expand IRAs, squelching an attempt to drop the IRAs plan from the bill.

By a vote of 72-25, the Senate agreed to a motion to table an amendment that would have struck the IRAs proposal from the bill.

The amendment, offered by Sen. John Chafee (R-RI), would have eliminated both the expansion of deductibility for IRAs and the new special IRAs program, under which contributors would pay taxes on their contributions, but be allowed to make tax-free withdrawals after five years. The amendment would have retained the provision allowing penalty-free withdrawals from IRAs for the purchase of a first home, educational expenses, health expenses, and in times of prolonged unemployment.

The Senate's rejection of Chafee's amendment left intact Bentsen's long-standing plan to restore the pre-1986 deductibility of contributions to IRAs for all taxpayers. It would also create new special IRAs, for which contributions would not be tax deductible, but withdrawals would be tax-free on contributions held at least five years.

Taxpayers would be allowed to transfer their savings from regular IRAs to the special IRAs without paying the normal 10 percent tax on early withdrawals. Taxpayers would also be allowed to withdrawal funds penalty-free from either type of IRA to pay for a first home, educational or medical expenses, or during periods of prolonged unemployment. There is no IRA provision in the House bill.

Amendments Anticipated Next Month

A number of controversial amendments will still be in the wings when the Senate returns to consideration of the tax bill next month.

The Senate Aug. 12 began consideration of an amendment that it will return to in September that would extend the Section 29 tax credit for non-conventional fuels. The Section 29 tax credit is the only one of the so-called expiring tax provision that would not be extended under the bill. The extension would be financed by reducing the extension for all the expiring provisions from 18 months to 15 months.

Senate Republican Leader Robert Dole (R-Kan), who offered the amendment along with Sen. John Rockefeller (D-WVa), said that the Section 29 tax credit is an important part of the nation's energy strategy. Noting that the Section 29 credit has traditionally been part of the group of expiring provisions, Dole said that the credit "is not some untried program," but has been proven to be effective.

Dole said Aug. 12 that he plans to offer an amendment to strike the permanent extensions of the phase-out for the personal exemption and the itemized deduction limitation contained in the bill. Dole is also expected to propose that the luxury tax on automobiles be imposed on manufacturers and importers rather than on buyers.

Sen. Thomas Harkin (D-Iowa) said that he plans to offer an amendment to eliminate the deduction for advertising for cigarettes. The revenues saved from eliminating the deduction would be used to finance programs aimed at boosting awareness of the dangers of smoking, he said.□

International Trade

GEPHARDT RENEWS CALL FOR TRANSACTION FEE UNDER FREE TRADE AGREEMENT

House Majority Leader Richard Gephardt (D-Mo), commenting Aug. 12 on the conclusion of negotiations on the North American Free Trade Agreement among the United States, Canada, and Mexico, said a funding mechanism, such as a fee on cross border transactions, is necessary to pay for programs to retrain displaced workers and improve environmental conditions along the U.S./Mexico border.

Gephardt suggested that a fee on cross border transactions could be used to assist in developing Mexican infrastructure. He said the free trade agreement will not be acceptable to Congress unless it includes a substantive program to address these issues, and a means of funding such a program, noting that the United States, given its budget deficit, cannot fund the projects itself.

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which possessions corporations that elected the cost-sharing method for computing taxable income from intangible property may change to the profit-split method or another method under Internal Revenue Code Section 936(h).

Rangel also wrote that he plans to ask the Joint Committee on Taxation staff to draft legislation clarifying the changes in the Tax Reform Act of 1986 to the cost-sharing option for corporations claiming the possessions tax credit provided in Section 936.

Rangel's letter was in response to recent Treasury and Internal Revenue Service proposed rules (INTL-372-88, INTL-401-88) under Section 482, which he said went beyond the legislative intent to the 1986 tax act.

According to Rangel, the Ways and Means Committee in 1986 sought to make only minor changes to the cost-sharing method under Section 936 because it recognized that most of the more labor-intensive industries operating in Puerto Rico under Section 936 used that method, he said.

Under the 1986 changes, a possessions corporation that elects cost-sharing must make a cost-sharing payment equal to the greater of the "superroyalty" amount required under transfer pricing regulations under Section 482 or 110 percent of a proportion of product area research expenditures.

"I am advised that the recently proposed regulations under Section 482 are being interpreted by taxpayers as going beyond legislative intent, producing revenue up to ten time greater than originally intended," he wrote.

Transfer Pricing Proposal

Rangel said the committee in 1986 intended to ensure the preservation of the cost-sharing option and, therefore, made modifications with an estimated revenue effect of only $20 million per year.

However, the new proposed transfer pricing regulations would force many legitimate cost sharers onto the profit-split method and would reduce the benefits of those remaining on cost sharing, he said.

"These actions will likely curtail the possessions operations of Puerto Rico's most labor intensive industries which also generally have the lowest operating margins and thus, causing a loss of jobs," Rangel wrote.

Rangel asked IRS to extend the period in which possessions firms may switch from cost-sharing in response to IRS plans to let the current extension expire.

An IRS official in April said the Service would issue a revenue procedure ending the current extension because new IRS proposed transfer pricing and cost-sharing regulations gave possessions corporations sufficient guidance for choosing between the cost-sharing and profit-split methods (66 DTR G-10, 4/6/92).

"Clearly, any administrative decision to go forward with an approach which significantly alters the intent of the Congress in the 1986 Act is disturbing," he said.

Moreover, such a change would create burdens for those taxpayers who provide a substantial number of jobs in Puerto Rico as well as taxpayers who export a significant level of their production outside the United States and Puerto Rico, according to Rangel.

"Certainly any administrative action to foreclose the opportunity for making a decision between cost-sharing and profit-split methods before there is clarification either administratively in final regulations or legislatively is premature. A taxpayer should not be forced to make a decision until there is certainty over the consequences of the decision," he wrote.

"In order to resolve this matter in the least disruptive manner, I request that you have the Internal Revenue Service grant cost sharers an additional extension of time in which they may choose between the cost sharing and profit split method," Rangel said.

Legislative Clarification

In addition, Rangel wrote that he intends to ask the Joint Committee on Taxation staff to draft legislation to clarify the 1986 tax act confirming the understanding of the legislation that was reached at the time of its approval by the House Ways and Means Committee.

"The legislation will provide that the 'payment which would be required under Section 482' shall mean the payment that would be required if the electing corporation were a foreign corporation that was subject to the Section 482 cost sharing and was the owner of the manufacturing intangibles," he wrote.

The intent of that proposal would be to make Section 936 cost sharers subject to the Section 482 cost sharing regulations in calculating their annual cost sharing payment, but not subject to a "buy in" requirement, he said.

Rangel wrote that the clarification would produce at least the $20 million per year of revenue estimated in 1986.

"I believe this clarification is consistent with the statutory language of the 1986 act which treats the Section 936 cost sharer as the owner of manufacturing intangibles," he said.

Since foreign corporations owning manufacturing intangibles are not required to make royalty payments, but are required to make cost-sharing payments, Rangel said he believed the proposal would be a fair and reasonable reading of the 1986 statutory language.

Tax Legislation

SENATE AGREES TO INCREASE NUMBER OF ENTERPRISE ZONES AS TAX BILL DEBATE BEGINS

After almost a week's delay, the Senate Aug. 11 began consideration of a comprehensive urban aid tax package (HR 11) and approves a compromise proposal offered by Senate Finance Committee Chairman Lloyd Bentsen (D-Texas) to increase the number of enterprise zones the bill would create to 125.

Bentsen's compromise, which was included in a Finance Committee modification to the bill, was approved by voice vote. However, supporters of a more expansive enterprise zones plan said they will still try to add a capital gains tax incentive to the zones package.

Lawmakers do not expect to finish work on the tax bill before the August congressional recess, which will begin at the close of business today.

Bentsen told reporters that he is aware of 150 possible amendments to the bill. Bentsen said he hopes

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that it will be possible to settle some key issues before the recess , including enterprise zones. The House passed its version of the bill last month (129 DTR G-5, 7/6/92).

President Bush has threatened to veto the Finance Committee version of HR 11 over its enterprise zones proposal. The White House objected to the bill because it does not include a capital gains tax break among its tax incentives to encourage businesses to locate in economically depressed areas. The administration also wanted substantially more than the 25 proposed in the original Senate bill.

Many Other Changes In Modification

While Bentsen's proposal would increase the number of enterprise zones under the bill to 125, it still does not contain the capital gains incentive that the administration wants. In addition, to pay for the increase in the number of enterprise zones, the modification would strip from the tax bill two of the president's own economic growth initiatives — a $2,500 tax credit for first-time home buyers and a 15 percent investment allowance for purchases of business equipment.

In order to increase the number of zones, the employer-based tax incentives would also be cut back. Specifically, the 40 percent credit for employers for the first $20,000 in income for employees who are enterprise zone residents would be reduced to a 30 percent credit on the first $15,000 in income.

The modification also includes several changes to other parts of the Senate version of HR 11, including the addition of two provisions inadvertently left out of the Finance Committee bill language — an information reporting requirement for certain seller-provided financing, and the legislative language on the treatment of dispositions under passive loss rules.

The modification also would change the effective date on the earned income tax credit simplification proposed in the bill, strike a proposed increase in the tax on state-authorized betting to 1 percent, and add a provision that would allow farmer cooperatives to elect patronage treatment for certain gains or losses, which is similar to one of the House Ways and Means members' bills recently passed by the House (HR 5650). The modification also includes two technical changes to the technical corrections section of the bill, pertaining to the treatment of REMICs under Internal Revenue Code Section 860E(6)(b) and a clarification of the treatment of veterans benefits.

Capital Gains Still Sought

Proponents of a more expansive enterprise zones plan said that they felt vindicated by Bentsen's decision to increase the number of enterprise zones the bill would create, but vowed to press to add a capital gains tax incentive to the zone package.

While the new proposal would create an acceptable number of zones, it still focuses on labor-based tax credits and does not provide the kind of tax incentives needed to encourage businesses to invest in financially-depressed areas, commented Sen. Bob Kasten (R-Wis). Kasten and Sen. Joseph Lieberman (D-Conn) plan to offer an amendment that would provide a zero capital gains tax rate on enterprise zone assets held at least five years.

Both Kasten and Senate Republican Leader Robert Dole (R-Kan) expressed opposition to the elimination of the first-time home buyers and investment tax allowance.

In earlier comments on the Senate floor, Bentsen said he believes adding a capital gains tax break to the enterprise zones plan would send the wrong signal to potential investors in zone areas. "Capital gains preferences benefit people who sell businesses. Preferences don't support businesses while they struggle to become vital long-term enterprises, and that is what we are trying to do, after all," he said. The Senate package offers wage credits for employers, which would provide an immediate tax incentive, rather than the capital gains tax break, which would not be available for five years, he noted. Bentsen said that in crafting his enterprise zone plan he spoke to business leaders, who suggested that they were more interested in having easier access to financing than in a capital gains break. For that reason, Bentsen said he included in the package authorization for tax-exempt bonds for building businesses.

Speaking to reporters after a closed door meeting of Senate Democrats, Bentsen said he was disappointed by the president's decision to oppose the Finance Committee version of the tax package, because he had initially been advised that the White House would back the bill, which contained six of the seven economic growth initiatives proposed by the president last January. At the last minute, the White House withdrew its support because it decided it wanted a more expansive enterprise zones plan, Bentsen said.

IRAs Under Fire

During consideration of the bill Aug. 11, Sen. John Chafee (R-RI) offered an amendment to strike the expansion of individual retirement accounts proposed in the bill. Chafee's amendment would eliminate both the expansion of deductibility for IRAs and the new special IRAs program, under which contributors would pay taxes on their contributions, but be allowed to make tax-free withdrawals after five years.

The amendment would retain the provision allowing penalty-free withdrawals from IRAs for the purchase of a first home, educational expenses, health expenses, and in times of prolonged unemployment.

In offering the amendment, Chafee said he was skeptical about the effectiveness of IRAs as a savings incentive. In addition, Chafee expressed concern about the potential cost to the federal government of the new special IRA program. "Whatever increase in private savings we get will be offset by an increase in the deficit," he warned.

Bentsen — the architect of the IRAs plan — defended the proposal, saying that it would help to increase the savings rate. Bentsen noted that there was a dip in the savings rate after enactment of the Tax Reform Act of 1986, which cut back the deductibility of IRAs.

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Bentsen said that he would offer a motion to table the amendment, which effectively would kill it.

Dole suggested that increasing the deductibility of IRAs would predominately benefit upper-income taxpayers, while the cost of the special IRAs proposal could force the need for an eventual tax increase. Dole suggested that the elimination of the IRAs plans could be used to restore the first-time home buyer and investment tax allowance provisions that were dropped as part of the earlier modification.

The texts of Joint Committee on Taxation staff estimated budget effects of the Finance Committee's enterprise zones modification, and of the JCT staff estimated budget effects of HR 11, as reported by the Finance Committee, as revised, and as modified, are in Section L.

Following is the text of a fact sheet on the Finance Committee's proposal to modify HR 11's enterprise zones provisions:

INCREASED URBAN AID PROPOSAL

The Finance Committee will modify H.R. 11, as reported by the Committee July 29, 1992, to substantially increase the aid it provides to cities.

Current Plan — The legislation currently provides $4.6 billion in urban aid.

It authorizes the Secretaries of Housing and Urban Development, Agriculture and Interior to designate 200 Certified Enterprise Zones, each of which would be eligible for tax free financing. From those, 25 would be eligible for additional tax incentives. Fifteen of these expanded zones would be in cities, eight in rural areas, two on Indian reservations. On average, each of these Enterprise Zones would receive $20,000,000 a year for five years.

TOTAL EXPENDITURE, Enterprise Zone provision: $2.5 billion

The Committee bill also expands and extends the Low Income Housing Tax Credit and the Targeted Job Tax Credit.

TOTAL EXPENDITURE, expanded LIHTC and TJTC: $2.1 billion

Modified Plan — The modified legislation provides $7.6 billion in urban aid.

The modification increases funding for Enterprise Zones by more than double. It would expand the number of Enterprise Zones eligible for additional tax incentives from 25 to 125. Seventy five of these would be in cities, 40 in rural areas, 10 on Indian reservations. Forty of the urban zones would be set aside for cities of less than 500,000 population. On average, each zone would receive $8,800,000 a year for five years.

TOTAL EXPENDITURE, new Enterprise Zone provision: $5.5 billion

The expanded LIHTC and TJTC would remain the same as in the original bill.

The modification to the Enterprise Zone provision would be paid for by eliminating the Investment Tax Allowance (which would have been in effect three months) and the Tax Credit for First-Time Home Buyers (which would have been in effect five months). Both were included in the original bill at the Administration's request, before the Administration changed its position and indicated it would veto the tax measure.

TOTAL REVENUE RAISED, eliminating ITA: $1.7 billion

TOTAL REVENUE RAISED, eliminating First-Time Home Buyer Tax Credit: $1.3 billion

End of Text

Environment

ADMINISTRATION OPPOSES DISCHARGE, PESTICIDE, FERTILIZER 'TAX' PROPOSAL

The Bush administration opposes a proposal to impose fees on the industrial discharge of toxic pollution and on the manufacture of active ingredients in pesticides and fertilizers in order to fund wastewater treatment projects, an Environmental Protection Agency official told a House panel Aug. 11.

The measure, which was outlined by a House Merchant Marine and Fisheries subcommittee and developed by the Congressional Research Service, would establish a National Clean Water Investment Corporation.

Two House Merchant Marine and Fisheries subcommittees held a hearing Aug. 11 on funding for clean water programs.

The corporation would disperse funds for a number of clean water activities, including but not limited to large capital projects, according to a CRS report. This organization, which would be supervised by an EPA-appointed board, would also be responsible for providing funds to state revolving loan funds already established under the Clean Water Act.

Funding from the corporation would provide grants, no-interest loans, and other flexible funding for clean water projects, CRS said.

The House Merchant Marine and Fisheries Subcommittee on Fisheries and Wildlife Conservation and the Environment specified the following funding sources and levels:

- $2 billion per year in fees assessed on wastewater discharges by municipal facilities.
- $1 billion per year in charges associated with the use of commercial pesticide and fertilizer products.
- $2 billion per year from federal appropriations.

The subcommittee proposal outline stressed that this fee system "should also contain exemption for small businesses whose ability to pay may be limited and whose pollution contribution may be limited."

Rep. Gerry Studds (D-Mass), the subcommittee chairman, plans to incorporate this proposal in a comprehensive Clean Water Act reauthorization bill next Jan., an aide told BNA Aug. 11.

In the interim, the measure will be circulated "as broadly as possible" for critique, he said. This will enable Studds to revise and improve the proposal, the aide said.

A 'Tax,' Not A Fee

"The administration does not support the use of revenue fees, such as those proposed for effluent discharges, pesticides and fertilizers," Martha Prothro, deputy assistant EPA administrator for water, told the subcommittees.

She added that "fees in excess of permitting costs would not represent a user fee, but a tax on the dischargers."

"In light of the President's opposition to new taxes, we oppose the Congressional Research Service proposal covering taxes for effluent discharges, pesticides and fertilizers," she added.

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Copies of the comment letters are available for a fee from BNA Plus. Call toll-free (800) 452-7773 nationwide; (202) 452-4323 in Washington, D.C.☐

Tax Administration

IRS HAS POLICY OF RECEPTIVITY TO OFFERS IN COMPROMISE, OFFICIAL SAYS

SAN FRANCISCO—Internal Revenue Service wants tax practitioners and taxpayers to know it is more willing then ever to entertain offers in compromise to settle outstanding tax liens, Steven Taylor, IRS assistant regional commissioner (collection), said Aug. 7.

Speaking to the Employment Taxes Committee of the American Bar Association Section of Taxation, Taylor said the Service has a new initiative to be more receptive to considering offers in compromise from taxpayers. IRS traditionally was reluctant to accept or even consider settlement offers but has had a change in philosophy. In reviewing a large number of cases in which IRS rejected offers in compromise on the basis that it could collect more administratively, "years later we in many, many cases hadn't collected anything at all," Taylor said.

"The policy is that we will accept an offer in compromise if the amount offered reasonably reflects the amount we could collect administratively," Taylor said. "The new philosophy is not intended to allow taxpayers to avoid liability if they can pay [and] have the ability to pay. The philosophy searches for the best solution both for the government and the taxpayer, and that allows us to collect money that otherwise, based on our experience, we would not have collected at all."

From June 1991 to June 1992, the Service increased the number of receipts by 50 percent over the year before and the number of acceptances increased by 77 percent, according to Taylor. The amount of offers increased by 182 percent, which amounted to $53 million more in offers tendered, and the number of compromises accepted nationally increased from 25 percent a year ago to about 39 percent now, he said. "We think that the message is getting out to some degree. We're looking forward to seeing those numbers go up," Taylor said.

One of the barriers to expanding the program has been the "deep-seeded, long-standing philosophy" against offers in compromise within the Service's staff, Taylor said. "I believe that because of the level of support for the changes, that there shouldn't be many entry-level managers around who are not willing to consider an offer in compromise or accept an offer if the right criteria is established," he said.

Paul Clark, program analyst for the IRS Western Region, said From 656 needs to be completed, including the basis for the offer detailing why the settlement is requested. "My guidance would be to furnish a detailed report," Clark said.

IRS' change in philosophy to consider offers in compromise involves "looking with a realistic view on collection problems," Clark told BNA. "It's sort of like bringing some business principles to the process."☐

Tax Legislation

CONTROVERSIAL AMENDMENTS EXPECTED AS SENATE TAKES UP TAX PACKAGE THIS WEEK

Controversial amendments are expected on the floor this week as the Senate takes up a comprehensive urban aid tax package (HR 11), on which the leadership hopes to complete action before adjourning for the August congressional recess.

Although the White House has threatened to veto the Senate Finance Committee version of HR 11, senators are lining up to offer numerous amendments to the measure, believing that the final tax package that emerges next month from a House and Senate conference will be signed by the president, a Senate aide told BNA Aug. 7.

Lawmakers had initially hoped to send a final version to the president before the August recess, but a delay in Senate consideration of the bill has postponed any chances for conference action until September (153 DTR G-5, 8/7/92).

Senate Finance Committee Chairman Lloyd Bentsen (D-Texas) may have to try to beat back an attempt to kill his long-standing proposal to encourage personal savings by expanding the tax breaks for individual retirement accounts.

Key Republican senators are concerned about the cost of Bentsen's plan—estimated at almost $7.8 billion over five years and are discussing offering an amendment to strike the IRAs plan from the bill, a Republican aide said. Moreover, there is a "certain amount of skepticism" about the effectiveness of IRAs as a savings incentive, the aide said.

Bentsen's proposal would restore the pre-1986 deductibility for up to $2,000 in annual contributions to IRAs. It would also allow taxpayers two choices in terms of the type of IRA they could have. Taxpayers would have the option of a backloaded IRA, for which contributions would not be deductible, but interest earned would be tax-free if withdrawn at maturity or a more traditional IRA with deductible contributions on which taxes would have to be paid on withdrawal. In either case, taxpayers would be allowed to make penalty-free withdrawals from their IRAs for the purchase of a first home, educational expenses, catastrophic medical expenses, or in cases of long-term unemployment.

Section 29 Threatens IRAs

Meanwhile, supporters of extension of the Section 29 tax credit for non-conventional fuel production—who include Senate Republican Leader Robert Dole (Kan) and Finance Committee member John Rockefeller (D-WVa)—are considering proposing to delay implementation of Bentsen's IRAs plan as a revenue offset, according to aides.

The Section 29 tax credit, which applies to such fuels as ethanol, is the only one of the expiring tax provisions that would not be extended under the Senate version of HR 11, which was drafted by Bentsen. At Finance's markup of HR 11, Dole suggested shortening the extension of the other temporary tax provi-

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sions from 18 months to 15 months in order to include the Section 29 tax credit (148 DTR G-3, 7/31/92).

Bentsen did not include the Section 29 credit in his package because questions have been raised about the effectiveness of the program and supporters did not come forward with a revenue offset, an aide said.

Capital Gains In Zones

Meanwhile, Sens. Joseph Lieberman (D-Conn) and Robert Kasten (R-Wis) are finalizing an amendment to expand the number of enterprise zones that would be created under the Senate bill from 25 to 150, while adding a zero capital gains tax rate for enterprise zone assets. If that amendment is adopted, the Senate would then go to conference with the House with a far more generous enterprise zones plan than provided in the House version of HR 11.

While the White House has expressed support for the House enterprise zones plan—would provide a 50 percent exclusion on capital gains and create 50 zones—a House Democratic aide expressed concern that the White House would switch its support to the more generous enterprise zones plan, making it more difficult for all sides to reach a compromise. "It took a long time for House [Democratic] leaders to get that deal with the White House. It's going to cause some bad feelings if they [the administration] start pushing for more," the aide said.

Although the Senate bill contains variations on all of the president's seven-point economic growth initiatives with the notable exception of the capital gains tax cut Bush has long sought, Senate Republicans will not push for its addition to the package, the Senate Republican aide said. Senate Republicans are confident that the final package will provide a capital gains tax break as part of a new federal enterprise zones program, and since it appears that the White House would be satisfied with that, Republicans are not going to seek a broader capital gains tax cut at this time, the aide said.□

Partnerships

IRS OFFICIAL ARGUES AGAINST BROAD RULE OF SEC. 108 TREATMENT OF GUARANTEE RELEASE

Practitioners participating in an Aug. 7 meeting of the Partnerships Committee of the American Bar Association Section of Taxation took a different position on the issue of whether release from a guarantee would trigger cancellation of indebtedness (COD) income for the guarantor than Internal Revenue Service Assistant Chief Counsel Paul Kugler.

A panel participating in a discussion of a recent report by the members of an Internal Revenue Code Section 108 Task Force made the argument, which also was made in the report, that release of a guarantee in cases where the fair market value of property is less than the debt on that property should never trigger cancellation of indebtedness income on the part of the guarantor.

Kugler, however, questioned this position, stating that it "paints too broad a brush," especially in certain partnership situations. He suggested that the issue of release from a guarantee needs further examination to determine what is really going on in the individual transaction, and that a broad general rule such as the one recommended by the members of the task force may go too far.

Section 108 governs those situations—insolvency and bankruptcy—where a taxpayer is provided with an exception from the general COD recognition rules under Section 61. However, in order to determine if the exception is applicable, it first must be determined if a transaction creates COD income.

In its report, the members of the Section 108 task force took the position that release from guarantees should be ignored for this purpose. Generally, the report uses the notion that the freeing up of assets because of the release of the guarantee is not applicable when determining COD income, according to C. Ronald Kalteyer, a panel participant and task force member.

In particular, the report said a guarantor should not realize COD income upon the release of his or her obligation, regardless of whether the guarantee has been triggered or the primary obligor is in default.

Similarly, no discharge income should be realized with respect to the release of a contingent liability, such as contested liability or upon the mere release of a lien, the report said.

"To conclude otherwise raises the difficult, and generally unnecessary, issue of how many times the same debt can result in COD income and the consequences of 'double counting'—such as the mismatch of ordinary income and a short-term capital loss arising form the failure of the guarantor to collect on a nonbusiness bad debt," the report said.

Kugler maintained that this general characterization may not work in all situations where a guarantor is released from a guarantee. He said he was unsure how the characterization of guarantee release should be done, but suggested that the same principles applied to the conversion of loans from recourse to non-recourse also might be applicable in the guarantee issue.

IRS plans to issue "extensive guidance" under Section 1274, original issue discount rules, that will cover when there has been a Section 1001 exchange—the taxable disposition of property. Kugler said he was not certain, but told the group hopefully, the Section 1274 package also will address the recourse to non-recourse conversion issue.

Overall, Kugler stated IRS has put a priority on Section 108 guidance with issuance of rules covering several issues anticipated before the end of the year.□

Pensions

IRS ANNOUNCES FURTHER DELAY OF EFFECTIVE DATE FOR NON-DISCRIMINATION RULES

The effective date of the final pension plan nondiscrimination rules would be delayed from Jan. 1, 1993, to the first day of plan years beginning on or after Jan. 1, 1994, under a proposed rule (EE-6-92) released by the Internal Revenue Service Aug. 7.

For tax-exempt and governmental plans, the effective date of the rules would be postponed to the first

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