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APPROVED
AUG 9 - 1975

THE WHITE HOUSE
WASHINGTON
August 9, 1975

ACTION
Last Day: August 14

Perkins (Vail, Col.)
5/11
To Archive
9/12

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON ✓
SUBJECT: H.R. 83 - Tax Treatment of Distributions to Klamath Indians and Tax Treatment of Tax-exempt Organizations

Attached for your consideration is H.R. 83, sponsored by Representative Ullman, which would:

- Exclude from gross income gains from the condemnation of certain forest lands in trust for the Klamath Indians
- Amend the tax code regarding application of depreciation recapture provisions to liquidation of a wholly owned subsidiary into a tax-exempt organization and regarding the definition of "private foundation."

A discussion of the provisions of the bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 83 at Tab B.



APPROVED
AUG 9 - 1975



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 8 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 83 - Tax treatment of distributions to Klamath Indians and tax treatment of tax-exempt organizations
Sponsor - Rep. Ullman (D) Oregon

Last Day for Action

August 14, 1975 - Thursday

Purpose

- (a) To exclude from gross income gains from the condemnation of certain forest lands in trust for the Klamath Indians and
- (b) to amend the tax code regarding application of depreciation recapture provisions to liquidation of a wholly owned subsidiary into a tax-exempt organization and regarding the definition of "private foundation."

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval
Department of the Interior	Approval (Section 1)

Discussion

Section 1

In 1959, pursuant to a 1954 statute, Federal supervision over the Klamath Indian Tribe was terminated. Under the 1954 Act, members who withdrew from the tribe received a cash distribution which was exempt from income taxation. The portion of the land retained by the tribe was placed in private trust for the remaining members, who in 1969 voted to terminate the trust. In 1973, legislation was enacted to provide for Federal acquisition by condemnation of the remaining Klamath Indian forest lands; each remaining tribal member will receive condemnation proceeds substantially greater than the amount distributed to those who withdrew in 1959. Under current law, condemnation

proceeds received by the tribal members are taxable at capital gains rates on the difference between the 1959 cash distribution amount of about \$55,000 and the amount of the condemnation proceeds.

Section 1 of this bill would exclude the entire amount of those proceeds from Federal taxation. The Treasury Department points out that this altered treatment "could be considered an undesirable departure from principles of tax equity," because any earnings on the cash distribution made to those who withdrew from the tribe in 1959 are taxable (assuming the individual had sufficient income), and current tribal members will receive a larger tax-free amount. However, Treasury also notes that "the Indian tribes have a special relationship to the United States, and legislation providing for lump-sum settlements of Indian rights or claims has generally provided, as in the 1954 legislation, that such payments shall be free of tax." The Interior Department, moreover, believes that the enrolled bill "will avoid the unfair result of having Klamaths who chose to 'cash out' their interest in tribal lands in 1959 receiving their funds tax free while remainder who are now 'cashing out' their interests will have their payments reduced by taxation."

Section 2

This section deals with the application of depreciation recapture rules to the liquidation of a wholly owned subsidiary into a tax-exempt organization.

Under the tax code, as a general rule a non tax-exempt parent organization acquiring the depreciated assets of a subsidiary can assume those assets, as depreciated, but incurs a tax liability based on the difference between depreciated value and any proceeds realized in a subsequent disposition. If the parent were a tax-exempt organization, however, no tax liability would apply to subsequent dispositions and owners could, by depreciating assets and then transferring them to tax-exempt parents, escape any tax liability on appreciated assets. To prevent such an avoidance of taxation where transfers are to tax-exempt parents, the tax code provides for recapture of depreciation by taxing as ordinary income a specified portion of the gain realized upon disposition of certain kinds of property. Section 2 would change this special treatment in cases of dispositions subsequent to December 31, 1969, in which the property is used by the transferee in an unrelated trade or business subject to tax under the unrelated business income tax. In such cases, as Treasury points out in its views letter, there is no reason not to apply the general

rule. In effect, the change would provide the same depreciation recapture treatment where the transferee is a tax-exempt organization using the property in a taxable business as is provided under current law where the transferee is a taxable corporation using the property in a taxable business.

Section 2 was prompted by the case of the tax-exempt Colonial Williamsburg, Inc., which in 1970, in order to terminate its status as a private foundation under the tax code, liquidated a wholly-owned subsidiary and used the property in an unrelated taxable business.

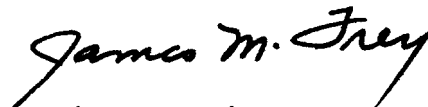
Section 3

Colonial Williamsburg's purpose in liquidating its profitable subsidiary was to shift the income it realized from that operation from the category of dividends to that of ordinary income. It did this to change its status under the tax code from private foundation to that of a publicly supported organization -- a charity -- and thereby avoid the provisions of the 1969 Tax Reform Act which subjected private foundations to special taxes and rules designed to prevent such abuses as self-dealing, failure to distribute substantial amounts for charitable purposes, and retention of excess business holdings. The tax code provides, generally, that a charity which normally derives more than one-third of its income from dividends is a private foundation for tax code purposes.

Section 3 would prevent such avoidance in the future by treating unrelated business income from businesses acquired after June 30, 1975, in the same way as dividends for purposes of determining the organization's status as a private foundation for tax code purposes.

* * * * *

Finally, we note that the facsimile of the enrolled bill includes an apparently redundant phrase which reads "such organization acquiring such property." The phrase is contained in the sentence in Section 2(a)(2) in the part relating to amendment of Section 1245(b)(7)(B) of the Internal Revenue Code. Although an apparent printer's error, the existence of this redundant phrase has no effect on the intent of the bill.


Assistant Director for
Legislative Reference

Enclosures



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 5 1975

Dear Mr. Lynn:

This responds to your request for our views on the enrolled bill H.R. 83, "To exclude from gross income gains from the condemnation of certain forest lands held in trust for the Klamath Indian Tribe."

With regard to section 1 of H.R. 83, we recommend Presidential approval. We defer in our views to the Department of the Treasury as to sections 2 and 3 of the enrolled bill.

Section 1 of enrolled bill H.R. 83 provides that gain resulting from the condemnation of the Klamath Indian Forest lands (pursuant to Public Law 93-102) presently held in trust for members of the Klamath Indian Tribe shall be excluded from the gross income of the trust, and also that the distribution by the trust to each beneficiary of a share of the condemnation proceeds shall be excluded from the gross income of each beneficiary.

In 1954 Congress passed legislation (P.L. 83-587, 68 Stat. 718) which provided for the termination of Federal supervision over the Klamath Indian Tribe and for the disposition of federally owned property held for the administration of the tribe. Under this legislation each tribal member was given an opportunity to elect to withdraw from the tribe and have his interest in tribal property converted into money and paid to him, or to remain in the tribe and participate in a plan for the management of tribal property through a trustee, corporation or other legal entity. The Act specifically provided that cash payments to tribal members who elected to have their interest converted into money were not subject to Federal or State income tax. The Act further provided that any income derived after the disposition of the property under the provisions of the Act would be treated for tax purposes in the same manner as in the case of non-Indians. For purposes of capital gains and losses in subsequent dispositions, the Act provided that the basis of the property was to be its value at the time the property was distributed.



Save Energy and You Serve America!

Actual termination of Federal supervision and cash distributions to members who elected to withdraw from the tribe occurred in 1959. The portion of the Klamath Indian Forest retained by the tribe at that time was transferred to a private trust and held by a bank as trustee for those members who remained in the tribe. This transfer of forest land to the trustee was not taxable to the remaining tribal members. In 1969 the remaining tribal members voted to terminate the trust. In 1973 Congress passed legislation (Public Law 93-102, 87 Stat. 349) which directed the Secretary of Agriculture to acquire by condemnation all of the remaining Klamath Indian Forest lands held by the trustee and to add the acquired lands to the Winema National Forest. The proceeds of the Federal acquisition are to be distributed to each tribal member having an interest in the trust. The Federal Government has already distributed the amount of its initial valuation of the land but the amount of the final distribution will await court determination.

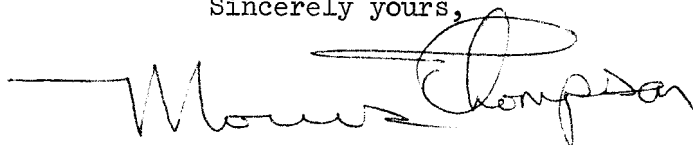
As indicated above, when Federal supervision over the Klamath Indian Tribe was terminated, the tribal members who elected to have their interest converted into money were not subject to Federal or State income tax on the cash payments they received. However, in the case of those tribal members who placed their interest in the property in trust, they will be subject to tax on the proceeds distributed to them as a result of the condemnation of the property by the Federal Government. Since their property is a capital asset, they will be subject to a capital gains tax on their gain; that is, on the difference between the amount they receive from the Federal Government and their basis for the property, which is the fair market value of the property at the time it was put in trust for their benefit.

In our judgment, the disposition of the remaining land owned by the trust should be treated in the same manner as the disposition of reservation land was treated in 1959 when Federal supervision over the Klamath Tribe was terminated. We believe that approval of H.R. 83 will avoid the unfair result of having Klamaths who chose to "cash out" their interest in tribal lands in 1959 receiving their funds tax free while the remainder who are now "cashing out" their interests will have their payments reduced by taxation.

Sections 2 and 3 of the enrolled bill amend the Internal Revenue Code of 1954. Section 2 concerns transfers of section 1245 property

or section 1250 property to tax-exempt organizations which uses such property in an unrelated trade or business. Section 3 concerns the definition of private foundation. Accordingly, we defer in our views on these two sections to the Department of the Treasury.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mow-Chung". The signature is written in black ink and is positioned above the typed name of the Commissioner of Indian Affairs.

Commissioner of Indian Affairs

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D. C. 20503



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

AUG 7 1975

Dear Sir:

This is in response to your request for the views of the Treasury Department on the enrolled bill, "AN ACT To exclude from gross income gains from condemnation of certain forest lands held in trust for the Klamath Indian Tribe."

Section 1 concerns the tax treatment of amounts received by tribal members as a result of the acquisition by condemnation by the federal government of forest lands held for the Klamath Indian Tribe. In 1959, federal supervision of the Klamath Indian Tribe was terminated. Tribal members who elected to withdraw from the tribe received a cash distribution which was exempt from tax under the 1954 legislation providing for the termination of federal supervision. We have been told that the cash amount was approximately \$55,000 per person. The portion of the reservation land retained by the tribe at that time was transferred to a private trust and held by a bank as trustee for those members who remained in the tribe. In 1969, the remaining tribe members voted to terminate the trust, and Congress in 1973 provided legislation for federal acquisition by condemnation of the remaining Klamath Indian forest lands. Each of the remaining tribal members will receive condemnation proceeds equal to two or three times the cash distribution that would have been received had the tribal member withdrawn from the tribe in 1959.

Under the present income tax provisions, each tribal member receiving condemnation proceeds would be taxable at capital gains rates on the difference between the 1959 cash distribution amount (\$55,000) and the amount of the current condemnation proceeds. By an amendment outside the Internal Revenue Code, section 1 of the Bill would alter that rule solely for the Klamath Indian condemnation case and provide that the entire amount of the condemnation proceeds is excludible from gross income for federal income tax purposes.

If a tribal member withdrew in 1959 and received a cash distribution at that time, any earnings (including realized appreciation) on the amount received has been taxable under the ordinarily applicable rules (assuming the individual has sufficient income to be above the nontaxable level). Similarly,

any income earned by the trust from tribal reservation lands between 1959 and 1973 has been subject to tax. The enrolled bill would, in effect, put tribal members in a preferred position since they will receive a larger tax-free amount than those who withdrew in 1959. Thus, this provision of the enrolled bill could be considered an undesirable departure from principles of tax equity.

However, the Indian tribes have a special relationship to the United States, and legislation providing for lump-sum settlements of Indian rights or claims has generally provided, as in the 1954 legislation, that such payments shall be free of tax. If one considers the holding of the tribal reservation land in trust as equivalent to an extension of federal tutelage, it could be concluded that the practice respecting tax-free distributions to Indians should apply to the entire amount of the condemnation proceeds, and it is asserted that the Indian recipients have viewed the matter in that light. Moreover, the provision will have limited precedential significance. Given a Congressional determination that the provision is appropriate as a matter of federal policy regarding the Indian tribes, the Treasury Department does not object to this provision.

Section 2 of the Bill concerns the application of the depreciation recapture rules to the liquidation of a wholly-owned subsidiary into a tax-exempt organization. Under present law, sections 1245 and 1250 of the Internal Revenue Code provide for "recapture" of depreciation deductions upon the disposition of certain kinds of property. The recapture is effected by taxing as ordinary income a specified portion of the gain realized upon the disposition. These recapture provisions generally do not apply to certain tax-free transactions to which carryover basis rules apply. However, the recapture rules do apply where the successor organization is a tax-exempt organization. This prevents avoidance of tax upon a later disposition by the tax-exempt organization.

Section 2 deals with a situation where a wholly-owned subsidiary was liquidated into Colonial Williamsburg, a tax-exempt organization, to be held in an unrelated trade or business subject to tax under the unrelated business income tax. In such a case, there is no reason not to apply the general rule under which the recapture provisions do not apply to liquidations. The unrelated trade or business is taxable in the same way as any other transferee corporation. Accordingly, the Treasury Department supports this provision of the Bill.

Section 3 of the Bill deals with the definition of a private foundation. Under the private foundation provisions enacted by the Tax Reform Act of 1969, private foundations are subject to special taxes and rules designed to prevent such abuses as self-dealing, failure to distribute substantial amounts annually for charitable purposes, and the retention of excess business holdings. Under the existing provisions, a charity will not be classified as a private foundation if it normally receives more than one-third of its support from described public sources and it normally receives not more than one-third of its support from gross investment income (generally interest, dividends, rents, and royalties). One of the effects of the liquidation of Colonial Williamsburg's subsidiary was the elimination of dividend income to the parent so as to make it easier for Colonial Williamsburg to meet the requirements for exclusion from the private foundation category as a publicly-supported organization. Section 3 of the Bill would prevent such an avoidance of the private foundation provisions in the future by treating unrelated business income from businesses acquired after June 30, 1975, in the same way as dividends for purposes of determining whether more than one-third of the organization's income normally comes from gross investment income. The Treasury Department supports this provision.

In accordance with these comments, the Treasury Department recommends that the President sign the enrolled bill.

Sincerely yours,



Richard R. Albrecht
General Counsel

Director, Office of Management and Budget
Attention: Assistant Director for
Legislative Reference
Legislative Reference Division
Washington, D. C. 20503

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 8 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 83 - Tax treatment of distributions to Klamath Indians and tax treatment of tax-exempt organizations
Sponsor - Rep. Ullman (D) Oregon

Last Day for Action

August 14, 1975 - Thursday

Purpose

(a) To exclude from gross income gains from the condemnation of certain forest lands in trust for the Klamath Indians and
(b) to amend the tax code regarding application of depreciation recapture provisions to liquidation of a wholly owned subsidiary into a tax-exempt organization and regarding the definition of "private foundation."

Agency Recommendations


Office of Management and Budget	Approval
Department of the Treasury	Approval
Department of the Interior	Approval (Section 1)

Discussion

Section 1

In 1959, pursuant to a 1954 statute, Federal supervision over the Klamath Indian Tribe was terminated. Under the 1954 Act, members who withdrew from the tribe received a cash distribution which was exempt from income taxation. The portion of the land retained by the tribe was placed in private trust for the remaining members, who in 1969 voted to terminate the trust. In 1973, legislation was enacted to provide for Federal acquisition by condemnation of the remaining Klamath Indian forest lands; each remaining tribal member will receive condemnation proceeds substantially greater than the amount distributed to those who withdrew in 1959. Under current law, condemnation

To
J. Cunningham
8-8-75
3:30 p.m.



proceeds received by the tribal members are taxable at capital gains rates on the difference between the 1959 cash distribution amount of about \$55,000 and the amount of the condemnation proceeds.

Section 1 of this bill would exclude the entire amount of those proceeds from Federal taxation. The Treasury Department points out that this altered treatment "could be considered an undesirable departure from principles of tax equity," because any earnings on the cash distribution made to those who withdrew from the tribe in 1959 are taxable (assuming the individual had sufficient income), and current tribal members will receive a larger tax-free amount. However, Treasury also notes that "the Indian tribes have a special relationship to the United States, and legislation providing for lump-sum settlements of Indian rights or claims has generally provided, as in the 1954 legislation, that such payments shall be free of tax." The Interior Department, moreover, believes that the enrolled bill "will avoid the unfair result of having Klamaths who chose to 'cash out' their interest in tribal lands in 1959 receiving their funds tax free while remainder who are now 'cashing out' their interests will have their payments reduced by taxation."

Section 2

This section deals with the application of depreciation recapture rules to the liquidation of a wholly owned subsidiary into a tax-exempt organization.

Under the tax code, as a general rule a non tax-exempt parent organization acquiring the depreciated assets of a subsidiary can assume those assets, as depreciated, but incurs a tax liability based on the difference between depreciated value and any proceeds realized in a subsequent disposition. If the parent were a tax-exempt organization, however, no tax liability would apply to subsequent dispositions and owners could, by depreciating assets and then transferring them to tax-exempt parents, escape any tax liability on appreciated assets. To prevent such an avoidance of taxation where transfers are to tax-exempt parents, the tax code provides for recapture of depreciation by taxing as ordinary income a specified portion of the gain realized upon disposition of certain kinds of property. Section 2 would change this special treatment in cases of dispositions subsequent to December 31, 1969, in which the property is used by the transferee in an unrelated trade or business subject to tax under the unrelated business income tax. In such cases, as Treasury points out in its views letter, there is no reason not to apply the general

rule. In effect, the change would provide the same depreciation recapture treatment where the transferee is a tax-exempt organization using the property in a taxable business as is provided under current law where the transferee is a taxable corporation using the property in a taxable business.

Section 2 was prompted by the case of the tax-exempt Colonial Williamsburg, Inc., which in 1970, in order to terminate its status as a private foundation under the tax code, liquidated a wholly-owned subsidiary and used the property in an unrelated taxable business.

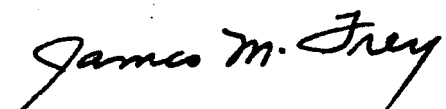
Section 3

Colonial Williamsburg's purpose in liquidating its profitable subsidiary was to shift the income it realized from that operation from the category of dividends to that of ordinary income. It did this to change its status under the tax code from private foundation to that of a publicly supported organization -- a charity -- and thereby avoid the provisions of the 1969 Tax Reform Act which subjected private foundations to special taxes and rules designed to prevent such abuses as self-dealing, failure to distribute substantial amounts for charitable purposes, and retention of excess business holdings. The tax code provides, generally, that a charity which normally derives more than one-third of its income from dividends is a private foundation for tax code purposes.

Section 3 would prevent such avoidance in the future by treating unrelated business income from businesses acquired after June 30, 1975, in the same way as dividends for purposes of determining the organization's status as a private foundation for tax code purposes.

* * * * *

Finally, we note that the facsimile of the enrolled bill includes an apparently redundant phrase which reads "such organization acquiring such property." The phrase is contained in the sentence in Section 2(a)(2) in the part relating to amendment of Section 1245(b)(7)(B) of the Internal Revenue Code. Although an apparent printer's error, the existence of this redundant phrase has no effect on the intent of the bill.


Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 8

Time: 500pm

FOR ACTION: Dick Parsons *may ok* cc (for information):
 Tod Hullin *ok*
 Max Friedersdoff *ok*
 Ken Lazarus *ok*

Jim Cavanaugh
 Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: August 9

Time: 11oopn

SUBJECT:

H.R. 83 - Tax Treatment of distributions to
 Klamath Indians and tax treatment of Tax-exempt
 organizations

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
 delay in submitting the required material, please
 telephone the Staff Secretary immediately.

K. R. COLE, JR.
 For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 8

Time: 500pm

FOR ACTION: Dick Parsons
Tod Hullin
Max Friedersdorf
Ken Lazarus

cc (for information):

Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: August 9

Time: 1100pm

SUBJECT:

H.R. 83 - Tax Treatment of distributions to
Klamath Indians and tax treatment of Tax-exempt
organizations

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Give Judy approved

on 8 Aug '77

QKA

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cannon
for the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 8

Time: 500pm

FOR ACTION: Dick Parsons
Tod Hullin
Max Friedersdorf
Ken Lazarus

cc (for information):

Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: August 9

Time: 11oopn

SUBJECT:

H.R. 83 - Tax Treatment of distributions to
Klamath Indians and tax treatment of Tax-exempt
organizations

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection

Ken Lazarus

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

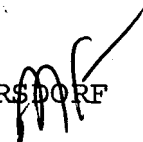
If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.

James H. Carter
for the President

THE WHITE HOUSE

WASHINGTON

August 12, 1975

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF 
SUBJECT: H.R. 83 - Tax Treatment of distributions to
Klamath Indians and tax treatment of Tax exempt
organizations.

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

EXCLUSION FROM GROSS INCOME OF GAINS FROM
CONDEMNATION OF FOREST LANDS HELD FOR
KLAMATH INDIAN TRIBE

JUNE 3, 1975.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 83]

The Committee on Ways and Means, to whom was referred the bill (H.R. 83) to amend the Internal Revenue Code of 1954 to exclude from gross income gains from the condemnation of certain forest lands held in trust for the Klamath Indian Tribe, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, for purposes of the Internal Revenue Code of 1954, gain resulting from the condemnation, pursuant to Public Law 93-102, of the Klamath Indian forest lands held by the trustee for the Klamath Indian Tribe—

(1) shall be excluded from the gross income of the trust, and

(2) on the distribution from the trust of the proceeds of such condemnation, shall be excluded from the gross income of each person receiving such distribution.

Amend the title so as to read:

A bill to exclude from gross income gains from the condemnation of certain forest lands held in trust for the Klamath Indian Tribe.

I. SUMMARY

This bill, H.R. 83, deals with the tax treatment of the proceeds received by tribal members as a result of the acquisition by condemnation by the Federal Government of forest lands held for the Klamath Indian Tribe. In 1954, Congress terminated its supervision over the Klamath Indian Tribe and provided for the disposition of the fed-

erally owned property held for the administration of the tribe. Actual termination of Federal supervision occurred in 1959. Pursuant to the 1954 legislation, tribal members who elected to withdraw from the tribe received cash distributions which were exempt from Federal or State income tax; the portion of the reservation land retained by the tribe at that time was transferred to a private trust and held by a bank as trustee for those members who remained in the tribe. In 1969, the remaining tribal members voted to terminate the trust, and Congress in 1973 provided legislation to acquire by condemnation the remaining Klamath Indian forest lands and distribute the proceeds to each tribal member having an interest in the land.

Your committee believes it is appropriate to provide the same tax treatment for the proceeds received by the tribal members as a result of the condemnation of their land by the Federal Government as was provided to those tribal members who received cash payments upon their withdrawal from the tribe in 1959. As a result, the bill excludes from Federal taxation the gain received by the trust or the tribal members as a result of the condemnation by the Federal Government of the Klamath Indian forest lands.

II. GENERAL STATEMENT

In 1954 Congress passed legislation (P.L. 83-587, 68 Stat. 718) which provided for the termination of Federal supervision over the Klamath Indian tribe and for the disposition of federally owned property held for the administration of the tribe. Under this legislation each tribal member was given an opportunity to elect to withdraw from the tribe and have his interest in tribal property converted into money and paid to him, or to remain in the tribe and participate in a plan for the management of tribal property through a trustee, corporation or other legal entity. The Act specifically provided that cash payments to tribal members who elected to have their interest converted into money were not subject to Federal or State income tax. The Act further provided that any income derived after the disposition of the property under the provisions of the Act would be treated for tax purposes in the same manner as in the case of non-Indians. For purposes of capital gains and losses in subsequent dispositions, the Act provided that the basis of the property was to be its value at the time the property was distributed.

Actual termination of Federal supervision and cash distributions to members who elected to withdraw from the tribe occurred in 1959. The portion of the Klamath Indian Forest retained by the tribe at that time was transferred to a private trust and held by a bank as trustee for those members who remained in the tribe. This transfer of forest land to the trustee was not taxable to the remaining tribal members. In 1969 the remaining tribal members voted to terminate the trust. In 1973 Congress passed legislation (Public Law 93-102, 87 Stat. 349) which directed the Secretary of Agriculture to acquire by condemnation all of the remaining Klamath Indian Forest lands held by the trustee and to add the acquired lands to the Winema National Forest. The proceeds of the Federal acquisition are to be distributed

to each tribal member having an interest in the trust. The Federal Government has already distributed the amount of its initial valuation of the land but the amount of the final distribution will await court determination.

As indicated above, when Federal supervision over the Klamath Indian Tribe was terminated, the tribal members who elected to have their interest converted into money were not subject to Federal or State income tax on the cash payments they received. However, in the case of those tribal members who placed their interest in the property in trust, they will be subject to tax on the proceeds distributed to them as a result of the condemnation of the property by the Federal Government. Since their property is a capital asset, they will be subject to a capital gains tax on their gain; that is, on the difference between the amount they receive from the Federal Government and their basis for the property, which is the fair market value of the property at the time it was put in trust for their benefit.

Your committee believes that the disposition of the remaining land owned by the trust should be treated in the same manner as the disposition of reservation land was treated in 1959 when Federal supervision over the Klamath Tribe was terminated. Your committee feels that the arrangement whereby the land was placed in trust for the benefit of the members of the tribe is functionally equivalent to continuing the existence of Federal supervision over the tribe. Had Federal supervision been continued to the present, the entire gain from the sale of the land to the Federal Government would have been exempt from tax, and your committee believes that the trust arrangement that was worked out for those Indians who elected to keep their land should not alter this result. Consequently, your committee believes that the condemnation proceeds to be received by the remaining tribe members pursuant to Public Law 93-102 should not be taxable either to the trust or to the tribal members.

The bill provides that gain resulting from the condemnation of the Klamath Indian Forest lands (pursuant to Public Law 93-102) presently held in trust for members of the Klamath Tribe shall be excluded from the gross income of the trust, and also that the distribution by the trust to each beneficiary of a share of the condemnation proceeds shall be excluded from the gross income of each beneficiary.

III. EFFECT ON THE REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on the revenues of this bill. Your committee estimates that the bill will result in a revenue loss of approximately \$5 million. The Treasury Department agrees with this statement.

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported unanimously by a voice vote.

IV. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 2(1) (3) and 2(1) (4) of Rule XI of the Rules of the House of Representatives, the following statements are made.

With regard to subdivision (A) of clause 3, relating to oversight findings, the committee advises that in its review of the tax treatment of reservation lands of Indian tribes where Federal supervision was terminated, it concluded that it is appropriate in the case of the Klamath Indian tribe to provide generally the same tax treatment for those tribal members who received the proceeds from the condemnation by the Federal Government of their land which had been placed in trust upon the termination of the supervision, as was provided for those tribal members who elected to withdraw from the tribe and received their cash payments at the time of the termination of supervision.

In compliance with subdivision (B) of clause 3, the committee states that the changes made by this bill involve no new budgetary authority. The bill provides no permanent changes in tax expenditures because it only applies to the cash payments received by the Klamath Indian tribe members from the condemnation of their property by the Federal Government pursuant to Public Law 93-102.

With respect to subdivisions (C) and (D) of clause 3, the Committee advises that no estimate or comparison has been prepared by the Director of the Congressional Budget Office relative to any of the provisions of H.R. 83, nor have any oversight findings or recommendations been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 83.

In compliance with clause 2(1) (4) of rule XI, the committee states that the bill will not have an inflationary impact on prices or on costs of the operation of the national economy.



EXCLUDING FROM GROSS INCOME GAINS FROM THE CONDEMNATION OF CERTAIN FOREST LANDS HELD IN TRUST FOR THE KLAMATH INDIAN TRIBE

JULY 9 (legislative day, JULY 7), 1975.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 83]

The Committee on Finance, to which was referred the bill (H.R. 83) to exclude from gross income gains from the condemnation of certain forest lands held in trust for the Klamath Indian Tribe, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

This bill, H.R. 83, concerns the tax treatment of the proceeds received by tribal members as a result of the acquisition by condemnation by the Federal Government of forest lands held for the Klamath Indian Tribe. In 1954, Congress terminated its supervision over the Klamath Indian Tribe and provided for the disposition of the federally owned property held for the administration of the tribe. Actual termination of Federal supervision occurred in 1959. Pursuant to the 1954 legislation, tribal members who elected to withdraw from the tribe received cash distributions which were exempt from Federal or State income tax; the portion of the reservation land retained by the tribe at that time was transferred to a private trust and held by a bank as trustee for those members who remained in the tribe. In 1969, the remaining tribal members voted to terminate the trust, and Congress in 1973 provided legislation to acquire by condemnation the remaining Klamath Indian forest lands and distribute the proceeds to each tribal member having an interest in the land.

The committee believes it is appropriate to provide the same tax treatment for the proceeds received by the tribal members as a result

of the condemnation of their land by the Federal Government as was provided to those tribal members who received cash payments upon their withdrawal from the tribe in 1959. As a result, the bill excludes from Federal taxation the gain received by the trust or the tribal members as a result of the condemnation by the Federal Government of the Klamath Indian forest lands.

II. GENERAL STATEMENT

In 1954 Congress passed legislation (Public Law 83-587, 68 Stat. 718) which provided for the termination of Federal supervision over the Klamath Indian Tribe and for the disposition of federally owned property held for the administration of the tribe. Under the 1954 legislation each tribal member was given an opportunity to elect to withdraw from the tribe and have his interest in tribal property converted into money and paid to him, or to remain in the tribe and participate in a plan for the management of tribal property through a trustee, corporation or other legal entity. The act specifically provided that cash payments to tribal members who elected to have their interest converted into money were not subject to Federal or State income tax. The act further provided that any income derived after the disposition of the property under the provisions of the act would be treated for tax purposes in the same manner as in the case of non-Indians. For purposes of capital gains and losses in subsequent dispositions, the act provided that the basis of the property was to be its value at the time the property was distributed.

Actual termination of Federal supervision and cash distributions to members who elected to withdraw from the tribe occurred in 1959. The portion of the Klamath Indian forest retained by the tribe at that time was transferred to a private trust and held by a bank as trustee for those members who remained in the tribe. This transfer of forest land to the trustee was not taxable to the remaining tribal members. In 1969 the remaining tribal members voted to terminate the trust. In 1973 Congress passed legislation (Public Law 93-102, 87 Stat. 349) which directed the Secretary of Agriculture to acquire by condemnation all of the remaining Klamath Indian forest lands held by the trustee and to add the acquired lands to the Winema National Forest. The proceeds of the Federal acquisition are to be distributed to each tribal member having an interest in the trust. The Federal Government has already distributed the amount of its initial valuation of the land but the amount of the final distribution will await court determination.

As indicated above, when Federal supervision over the Klamath Indian Tribe was terminated, the tribal members who elected to have their interest converted into money were not subject to Federal or State income tax on the cash payments they received. However, in the case of those tribal members who placed their interest in the property in the trust, they will be subject to tax on the proceeds distributed to them as a result of the condemnation of the property by the Federal Government. Since their property is a capital asset, they will be subject to a capital gains tax on their gain; that is, on the difference between the amount they receive from the Federal Government and

their basis for the property, which is the fair market value of the property at the time it was put in trust for their benefit.

The committee believes that the disposition of the remaining land owned by the trust should be treated in the same manner as the disposition of reservation land was treated in 1959 when Federal supervision over the Klamath Tribe was terminated. The committee feels that the arrangement whereby the land was placed in trust for the benefit of the members of the tribe is functionally equivalent to continuing the existence of Federal supervision over the tribe. Had Federal supervision been continued to the present, the entire gain from the sale of the land to the Federal Government would have been exempt from tax, and your committee believes that the trust arrangement that was worked out for those Indians who elected to keep their land should not alter this result. Consequently, the committee believes that the condemnation proceeds to be received by the remaining tribe members pursuant to Public Law 93-102 should not be taxable either to the trust or to the tribal members.

Accordingly, the bill provides that gain resulting from the condemnation of the Klamath Indian forest lands (pursuant to Public Law 93-102) presently held in trust for members of the Klamath Tribe shall be excluded from the gross income of the trust, and also that the distribution by the trust to each beneficiary of a share of the condemnation proceeds shall be excluded from the gross income of each beneficiary.

III. EFFECT ON THE REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the effect on the revenues of this bill. The committee estimates that the bill will result in a revenue loss of approximately \$5 million. The Treasury Department agrees with this statement.

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported by voice vote.

○

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,
one thousand nine hundred and seventy-five*

An Act

To exclude from gross income gains from the condemnation of certain forest lands held in trust for the Klamath Indian Tribe.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for purposes of the Internal Revenue Code of 1954, gain resulting from the condemnation, pursuant to Public Law 93-102, of the Klamath Indian forest lands held by the trustee for the Klamath Indian Tribe—

- (1) shall be excluded from the gross income of the trust, and
- (2) on the distribution from the trust of the proceeds of such condemnation, shall be excluded from the gross income of each person receiving such distribution.

SEC. 2. TRANSFERS OF SECTION 1245 PROPERTY OR SECTION 1250 PROPERTY TO TAX-EXEMPT ORGANIZATION WHICH USES SUCH PROPERTY IN AN UNRELATED TRADE OR BUSINESS.

(a) AMENDMENTS OF SECTION 1245.—

(1) The second sentence of section 1245(b)(3) (relating to gain from dispositions of certain depreciable property) is amended by striking out "This" and inserting in lieu thereof "Except as provided in paragraph (7), this".

(2) Section 1245(b) is amended by adding at the end thereof the following new paragraph:

"(7) TRANSFERS TO TAX-EXEMPT ORGANIZATION WHERE PROPERTY WILL BE USED IN UNRELATED BUSINESS.—

"(A) IN GENERAL.—The second sentence of paragraph (3) shall not apply to a disposition of section 1245 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

"(B) LATER CHANGE IN USE.—If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation."

(b) AMENDMENTS TO SECTION 1250.—

(1) The second sentence of section 1250(d)(3) (relating to gain from dispositions of certain depreciable realty) is amended by striking out "This" and inserting in lieu thereof "Except as provided in paragraph (9), this".

(2) Section 1250(d) is amended by adding at the end thereof the following new paragraph:

"(9) TRANSFERS TO TAX-EXEMPT ORGANIZATION WHERE PROPERTY WILL BE USED IN UNRELATED BUSINESS.—

"(A) IN GENERAL.—The second sentence of paragraph (3) shall not apply to a disposition of section 1250 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses

such property in an unrelated trade or business (as defined in section 513).

“(B) LATER CHANGE IN USE.—If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) the amendments made by this section shall apply to dispositions after December 31, 1969, in taxable years ending after such date.

(2) ELECTION FOR PAST TRANSACTIONS.—In the case of any disposition occurring before the date of the enactment of this Act, the amendments made by this section shall apply only if the organization acquiring the property elects (in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate) within 1 year after the date of the enactment of this Act to have such amendments apply with respect to such property.

SEC. 3. DEFINITION OF PRIVATE FOUNDATION.

(a) Subparagraph (B) of section 509(a)(2) of the Internal Revenue Code of 1954 (relating to permitted extent of private support) is amended to read as follows:

“(B) normally receives not more than one-third of its support in each taxable year from the sum of—

“(i) gross investment income (as defined in subsection (e))

and

“(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;”

(b) The amendment made by this section shall apply to unrelated business taxable income derived from trades and businesses which are acquired by the organization after June 30, 1975.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

August 2, 1975

Dear Mr. Director:

The following bills were received at the White House on August 2nd:

H.R. 83 ✓	H.R. 7716 ✓
H.R. 1553 ✓	H.R. 9091 ✓
H.R. 4241 ✓	S. 409 ✓
H.R. 4723 ✓	S. 1531 ✓
H.R. 5405 ✓	S. 1716 ✓
H.R. 7710 ✓	S. 2073 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.