The original documents are located in Box 59, folder "1976/10/02 HR11997 Bank Holding Company Tax Act of 1976" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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APPROVED

OCT 2 - 1976

S 10/2/76

THE WHITE HOUSE

WASHINGTON

October 2, 1976

ACTION

Last Day: October 8

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 11997 - Bank Holding Company Tax Act of 1976

Posted 10/4/76

archives 10/4/76

Attached for your consideration is H.R. 11997, sponsored by Representative Ullman.

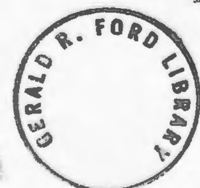
The enrolled bill would amend the Internal Revenue Code so as to provide tax relief for forced divestitures of assets by bank holding companies pursuant to the requirements of the Bank Holding Company Act Amendments of 1970.

Attached at Tab A is a memorandum from Alan Greenspan which details the provisions of the enrolled bill. Additional information is provided in OMB's enrolled bill report at Tab B.

OMB, Max Friedersdorf, Counsel's Office (Kilberg),CEA, Bill Seidman (Porter) and I recommend approval of the enrolled bill.

RECOMMENDATION

THat you sign H.R. 11997 at Tab C.



THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

October 2, 1976

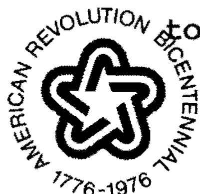
MEMORANDUM FOR JAMES M. CANNON

Subject: H. R. 1197-Bank Holding Company Tax Act of 1976

This is in response to your request for comments on H.R. 11997 - Bank Holding Company Tax Act of 1976. The bill would amend the Internal Revenue Code so as to provide tax relief for forced divestitures of assets by bank holding companies pursuant to the requirements of the Bank Holding Company Act Amendments of 1970. This 1970 legislation requires that one-bank holding companies divest themselves of either their banking or non-banking assets. Similar tax relief is now provided in Sections 1101 through 1103 of the Internal Revenue Code for forced divestitures of prohibited property under the Bank Holding Company Act of 1956 and its amendments in 1966 which require corresponding divestitures for bank holding companies controlling two or more banks. Thus the enrolled bill would extend to one-bank holding companies, tax relief that is now available to two-or-more bank holding companies. Such an extension is appropriate given the tax burdens associated with forced divestiture under the 1970 legislation.

The only major change in the form of tax relief provided by the enrolled bill, as compared to the previous legislation, is that it permit companies to make equal installments over a ten year period of the tax due from the sale of prohibited assets. Under Sections 1101 through 1103 of the Internal Revenue Code, companies can now obtain tax relief only by the"spinoff" technique through which a tax-free distribution of the prohibited assets is made to shareholders. Under the enrolled bill either the spinoff technique or the installment technique is permitted. Therefore, companies who prefer to sell rather than distribute the prohibited assets are not excluded from tax relief. This broadening thus has the advantage of eliminating the incentive for one form of divestiture over another, and permits each company to choose the form of divestiture most appropriate to its own circumstances.

The Council of Economic Advisers therefore has no objection to enactment of the enrolled bill.



Alan Greenspan

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

OCT 1 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 11997 - Bank Holding Company Tax Act of 1976
Sponsor - Rep. Ullman (D) Oregon

Last Day for Action

October 8, 1976 - Friday

Purpose

Provides tax relief with respect to certain divestitures made by bank holding companies pursuant to the Bank Holding Company Act Amendments of 1970.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval
Federal Reserve Board	No objection(Informally)
Securities and Exchange Commission	No objection

Discussion

Under the Bank Holding Company Act of 1956, and its amendments in 1966, bank holding companies controlling two or more banks were required to divest themselves of either their bank or non-bank assets. In 1970 the Bank Holding Company Act was further amended to require one-bank holding companies to divest themselves of either their banking or nonbanking assets before 1981. An exception was made for one-bank holding companies which had engaged in nonbanking activities prior to June 30, 1968.

In recognition of the tax burden which would result from the forced divestiture of some of a bank holding company's assets, the 1956 and 1966 legislation permitted bank holding companies to make tax-free distributions, generally known as "spinoffs",

of either their bank or nonbank assets. This special tax treatment provided that there would be no recognition of gain either to the companies or to their shareholders at the time of the distribution of the bank or nonbank property and accordingly, no tax would be levied. Instead, the tax on any gain realized would be imposed when the shareholder disposed of property received from the distribution.

When the 1970 Bank Holding Company Act Amendments were passed, it was anticipated that Congress would later provide relief from the tax burdens resulting from the divestitures required under the 1970 legislation. The enrolled bill would provide that anticipated tax relief by two means. First, it would continue the "spinoff" approach generally along the same lines as the 1956 and 1966 legislation.

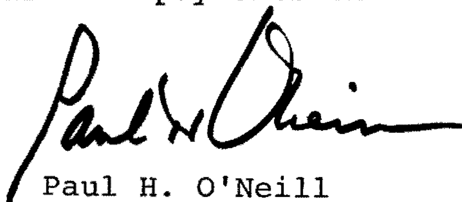
Second, a new method of tax relief has been added in recognition of differences between bank holding companies subject to the 1970 legislation compared with bank holding companies subject to the previous acts which in many instances make the spinoff method of distribution impractical. For example, because some bank holding companies subject to the 1970 amendments are widely held, the tax-free distribution of stock of a subsidiary to a company's shareholders would result in many shareholders receiving only a small number of shares or sometimes fractions of shares. The cost and complexity of making distributions under these circumstances would be such that many bank holding companies would opt to sell, and be taxed on, the interests which they must divest, rather than to distribute the stock or assets to their shareholders.

The enrolled bill would provide tax relief for bank holding companies choosing to sell their bank or nonbank property by permitting them to make equal annual interest-free installment payments of the tax due, generally over a 10-year period. After 1985, however, interest would be payable on any installment payments still due. The installment payment method could be applied only to bank or to nonbank property, not both. If a bank holding company elects to apply this method to the sale of bank property -- or if it "spins off" such bank property -- it could not opt to apply the same installment provision to nonbank property, or vice versa.

Under H.R. 11997, both the "spinoff" approach and the installment payment alternative could be applied to divestitures occurring between July 7, 1970 and December 31, 1980 (the terminal date for divestitures by one-bank holding companies) provided the property being divested was actually held by the company as of July 7, 1970.

The Federal Reserve Board would be required to monitor and certify compliance with the proposed legislation. The Board must initially certify that the distribution or sale of divested property is necessary or appropriate to carry out the legislative intent. The Board must issue a final certification that the bank holding company has disposed of all property consistent with law.

In general, the effective date for the tax relief provisions in H.R. 11997 would be postponed until October 1, 1977. The estimated revenue loss in fiscal year 1978 is $50 million, $25 million in 1979, $50 million in 1980, and $60 million in 1981. However, $125 million of the total anticipated loss of $185 million would be returned during the period 1981-1990 to the Treasury as installment payments on deferred taxes.



Paul H. O'Neill
Acting Director

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 1 Time: 130pm

FOR ACTION: Paul Leach
Bill Seidman
Max Friedersdorf
Alan Greenspan
Bobbie Kilberg

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 2 Time: noon

SUBJECT:

H.R. 11997-Bank Holding Company Tax Act of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

_X_ 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: October 1 Time: 130pm

FOR ACTION: Paul Leach
Bill Seidman
Max Friedersdorf
Alan Greenspan
Bobbie Kilberg

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 2 Time: noon

SUBJECT:

H.R. 11997-Bank Holding Company Tax Act of 1976

ACTION REQUESTED:

____ For Necessary Action

____ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

_x_ For Your Comments

____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

APPROVE
Roger B. Porter

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 M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 1 Time: 130pm

FOR ACTION: Paul Leach
Bill Seidman
Max Friedersdorf
Alan Greenspan
Bobbie Kilberg

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 2 Time: noon

SUBJECT:

H.R. 11997-Bank Holding Company Tax Act of 1976

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

x For Your Comments

___ Draft Remarks

REMARKS:

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OK on the merits, but it should be noted that this could be viewed as "special interest" legislation for big banks --- not a politically attractive action.

Paul Leach

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 M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 1 Time: 130pm

FOR ACTION: Paul Leach
Bill Seidman
Max Friedersdorf — OK RKW
Alan Greenspan
Bobbie Kilberg

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 2 Time: noon

SUBJECT:

H.R. 11997-Bank Holding Company Tax Act of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ 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.

James M. Cannon
For the President

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY

September 27, 1976

Dear Sir:

This is in response to your request for the views of the Treasury Department on the enrolled bill, H.R. 11997.

The purpose of the enrolled bill is to provide tax relief for divestitures made by bank holding companies pursuant to the requirements of the Bank Holding Company Act Amendments of 1970, which extended the coverage of the Act to one-bank holding companies by requiring, generally, that such companies elect either to (1) remain bank holding companies and divest themselves of their nonbanking assets, or (2) cease to be bank holding companies by divesting themselves of their banking assets.

When the 1970 amendments were enacted, Congress anticipated that it would provide tax relief for the resulting divestitures. Precedent for such relief is contained in sections 1101-1103 of the Internal Revenue Code which were added to the Code by the Bank Holding Company Act of 1956. These sections generally provide for nonrecognition of gain at the shareholder level upon the distribution of stock of a banking or nonbanking subsidiary (i.e., they permit a tax-free "spinoff" of such stock).

H.R. 11997 provides two methods for obtaining tax relief for divestitures of either bank or nonbank property required by the 1970 amendments to the Bank Holding Company Act. Under the first or "spinoff" method, a bank holding company may distribute either its bank or its nonbank assets directly to its own shareholders without inclusion in income or recognition of gain by the shareholders or it may transfer either of those assets to a wholly-owned subsidiary created expressly for the purposes of receiving them. In the latter situation, the stock of the subsidiary must immediately be distributed to the shareholders of the bank holding company in order for the distribution to qualify for favorable tax treatment provided. This "spinoff" approach is essentially an extension of the rules presently contained in sections 1101-1103 of the Code.

With one limited exception, the bill requires that distributions under the "spinoff" method be made pro rata either with respect to all shareholders of the distributing bank holding company or with respect to all holders of its common stock. The Treasury Department had recommended that non pro rata distributions be permitted.

The bill also adds a new exception to the general rule under section 311(d) of the Code that gain be recognized by a corporation which distributes appreciated property in redemption of its own stock. Under the new exception, gain will not be recognized by a corporation distributing appreciated stock of a pre-existing banking or nonbanking subsidiary in redemption of its own stock where the distributee is not a tax-exempt organization. The Treasury had recommended a broader exception to section 311(d).

The second method provided by H.R. 11997 for obtaining tax relief in connection with a required divestiture is the "installment" method. Under this method, a bank holding company selling either its bank or nonbank property may elect to pay the tax attributable to the sale in equal annual installments over at least a 10-year period. The first installment would be due on the due date of the taxpayer's return for the taxable year in which the sale occurred. Subsequent installments are to be paid annually thereafter with the latest installment payable on the due date of the taxpayer's return in 1985, or, if later, on the corresponding day 10 years after the due date for the year in which the sale occurred. Interest is not imposed upon the deferred tax in the case of installments due through 1985, but is payable with respect to installments due after 1985. Under certain circumstances, the installment payments are to be accelerated and the tax paid in full. In addition, the Secretary of the Treasury or his delegate may require the company to furnish a bond if he feels that it is necessary to insure payment of the tax.

The tax relief provided under H.R. 11997 is available for divestitures occurring from July 7, 1970, to December 31, 1980, the date upon which all required divestitures are to be completed. The bill's effective date is October 1, 1977. Therefore, there will be no revenue effect for fiscal year 1977. Thereafter, the revenue loss is estimated to be

approximately $50 million in fiscal year 1978, $25 million in fiscal year 1979, $50 million in fiscal year 1980, and $60 million in fiscal year 1981. Of this $185 million amount, $125 million would be returned to the Treasury during the period 1981 through 1990 as installment payments are made with respect to the taxes deferred under the installment payment method.

Treasury supported the enactment of H.R. 11997. With the exceptions noted above, the bill essentially embodies the recommendations of Treasury with respect to the appropriate forms of tax relief to be provided to bank holding companies required to make divestitures pursuant to the Bank Holding Company Act Amendments of 1970.

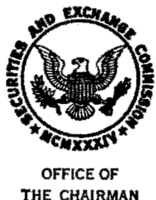
The Treasury Department recommends that the President approve H.R. 11997.

Sincerely,

William M. Goldstein

William M. Goldstein
Deputy Assistant Secretary
for Tax Policy

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



OFFICE OF
THE CHAIRMAN

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

September 28, 1976

HAND DELIVERED

The Honorable James T. Lynn
Director
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20543

Attn: James M. Frey
Assistant Director for
Legislative Reference

Re: H.R. 11997 - The Banking Holding Company Tax Act of 1976.

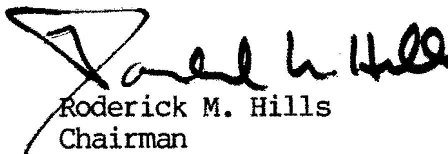
Dear Mr. Lynn:

In accordance with your request of September 23, 1976, we have considered H.R. 11997, the Bank Holding Company Tax Act of 1976, an enrolled bill. The Bill would amend the Internal Revenue Code of 1954 with respect to tax treatment of certain divestitures of assets by bank holding companies.

The Commission is presently engaged in a Congressionally-mandated study of the securities activities of banks (Securities Exchange Act of 1934, Section 11A(e), added by Securities Amendments Act of 1975, P.L. 94-29, June 4, 1975). As a result of that study, the Commission could propose legislation which, if adopted, might affect the activities of banks.

We understand, however, that the amendments accomplished by the Bill would not apply to the continuing operating activities of bank holding companies, but rather would give favorable tax treatment to one-time or infrequent divestitures required for compliance with the Bank Holding Company Act. Therefore, we have no objection to enactment of the Bill.

Sincerely yours,



Roderick M. Hills
Chairman

To - J. Johnston 10-1-76 12:15 p.m.

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

OCT 1 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 11997 - Bank Holding Company Tax Act of 1976
Sponsor - Rep. Ullman (D) Oregon

Last Day for Action

October 8, 1976 - Friday

Purpose

Provides tax relief with respect to certain divestitures made by bank holding companies pursuant to the Bank Holding Company Act Amendments of 1970.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval
Federal Reserve Board	No objection(Informally)
Securities and Exchange Commission	No objection

Discussion

Under the Bank Holding Company Act of 1956, and its amendments in 1966, bank holding companies controlling two or more banks were required to divest themselves of either their bank or non-bank assets. In 1970 the Bank Holding Company Act was further amended to require one-bank holding companies to divest themselves of either their banking or nonbanking assets before 1981. An exception was made for one-bank holding companies which had engaged in nonbanking activities prior to June 30, 1968.

In recognition of the tax burden which would result from the forced divestiture of some of a bank holding company's assets, the 1956 and 1966 legislation permitted bank holding companies to make tax-free distributions, generally known as "spinoffs",

Calendar No. 1126

94TH CONGRESS 2d Session } SENATE { REPORT No. 94–1192

BANK HOLDING COMPANY TAX ACT OF 1976

AUGUST 31 (legislative day, AUGUST 27), 1976.—Ordered to be printed

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

REPORT

[To accompany H.R. 11997]

The Committee on Finance, to which was referred the Act (H.R. 11997) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of certain divestitures of assets by bank holding companies, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

In general, the Bank Holding Company Act Amendments of 1970 require a bank holding company (generally any company controlling a bank) to divest either its banking or nonbanking properties on or before December 31, 1980. At the time of enactment, it was anticipated that the Congress would later consider the need for legislation to provide relief from any tax burden resulting from the divestitures required under the Amendments.

With respect to distributions previously required under the Bank Holding Company Act of 1956 (and its amendment in 1966), bank holding companies which controlled two or more banks were permitted to make tax-free distributions (referred to as "spinoffs") of either their bank or nonbank assets, as the case may have been. This special treatment provided for the nonrecognition of any gain to the shareholders, upon the distribution to them of banking or nonbanking property, including stock of a subsidiary. The tax on any gain realized by shareholders, or on any property received by them, would be imposed upon their later disposition of the stock or other property received in the spinoff.

The bill provides two possible methods in which tax relief may be obtained by individuals and corporations for divestitures made by a

bank holding company of either bank or nonbank property under the Bank Holding Company Act Amendments of 1970. First, the bill provides that a bank holding company may distribute either bank or nonbank assets to its own shareholders without inclusion in income or recognition of gain by such shareholders. This "spinoff" approach is generally the same as that adopted for divestitures under the bank holding company legislation enacted in 1956 and 1966. Second, the bill permits a bank holding company to sell its banking or nonbanking assets in a taxable sale or exchange, and to pay the income tax incurred by it in installments over a 10-year period to the extent the tax is attributable to divestitures made pursuant to the Bank Holding Company Act Amendments of 1970.

II. Reasons for Bill

Bank holding company legislation

The Bank Holding Act of 1956 was enacted in response to a concern about concentrations of economic power if holding companies were allowed to control not only large numbers of banks but also nonbanking enterprises. A bank holding company was defined in the 1956 Act as an entity which owned or controlled 25 percent or more of the voting shares of two or more banks.

In general, a corporation coming within the terms of the bank holding company legislation was given its choice of two alternative routes—to remain a bank holding company, or to dispose of its interest in banks. If the corporation decided to remain a bank holding company subject to the supervision of the Federal Reserve Board, it had to divest itself of any so-called "prohibited property," or nonbank assets.

In 1966, a number of technical amendments were made to the 1956 Act and one exception to the definition of bank holding company was removed.[1]

During the late 1960's, there was a dramatic growth not only in the number of commercial banking enterprises which became affiliated with one-bank holding companies, but also in the extent such entities controlled commercial banking activity. As as result of this change in the structure of U.S. commercial banking ownership, the Congress enacted the Bank Holding Amendments of 1970.

Of the 1970 amendments, the most significant is the extension of the Act to cover, for the first time, one-bank holding companies (i.e., any company controlling 25 percent or more of the voting shares of a bank). As a result, one-bank holding companies are made subject to the requirements of the Federal Reserve Board regarding expansion in their banking activities. In addition, one-bank holding companies which are engaged in both banking and nonbanking activities are generally required to divest themselves of either their banking or nonbanking assets before January 1, 1981. However, a "gandfather clause" in the 1970 amendments, provided that a one-bank holding company is generally not required to divest itself of those non-

[1] The repealed exception had provided that a company was not to be considered a bank holding company if it was registered prior to May 15, 1955, under the Investment Company Act of 1940 (or was an affiliate of such a company) unless the company or its [illegible] *directly* owned 25 percent or more of the voting shares of each of two or more banks.

banking activities in which it was lawfully engaged on June 30, 1968.[2]

In addition, the Federal Reserve Board is authorized to determine that a company owning between 5 percent and 25 percent of the voting stock of a bank or nonbanking corporation possesses a "controlling influence" in the bank or nonbank and should also be treated as controlling the bank or nonbanking corporation.

Tax treatment of divestitures

In case of distributions required under the Bank Holding Company Act of 1956 (and its amendment in 1966), bank holding companies which controlled two or more banks were permitted to make tax-free distributions (referred to as "spinoffs") of either their bank or nonbank assets, as the case may have been. This special treatment provided for the nonrecognition of any gain to the shareholders upon the distribution to them of banking or nonbanking property, including stock of a subsidiary. Instead, tax on any gain was imposed on the shareholders upon their later disposition of the stock received in the spinoff.

In the absence of special tax legislation, many distributions required to be made pursuant to the Bank Holding Company Act Amendments of 1970 will be taxable to the distributees as dividends subject to ordinary income rates.[3]

In addition, the bank holding company itself generally would be required to recognize gain on appreciated property (such as stock of a banking or nonbanking subsidiary) distributed by it in a redemption of its own stock, unless the distribution qualifies as a distribution in complete or partial liquidation of the company.[4]

On the other hand, if property is sold by a bank holding company to satisfy the divestiture requirements, gain is recognized. The involuntary conversion provision of the tax law (sec. 1033), which provides for nonrecognition of gain, is not available, since this provision does not treat these divestitures as an involuntary conversion. Consequently, a direct sale by a bank holding company will ordinarily be a taxable disposition, producing taxable gain or deductible loss.

While a distribution in the form of a spinoff (for which the relief provided in 1956 and 1966 may be useful for some of the divestitures made pursuant to the 1970 amendments, the number and types of bank holding companies which are subject to the 1970 legislation will, in

[2] Properties which are covered by the grandfather provision are not generally subject to the divestiture requirements; however, in a situation of this type the Board retains significant controls on the authority of the bank holding company to acquire new businesses or to expand existing businesses, and may terminate applicability of the grandfather clause for a company in certain cases.

[3] Generally, in the case of a redemption of stock by a bank holding company, the redemption would be treated as a sale or exchange of a capital asset by the shareholder, rather than a dividend, only if the redemption is not essentially equivalent to a dividend (sec. 302) or if the redemption is treated as a distribution in complete or partial liquidation of the company (sec. 331). Nonrecognition treatment would be available if the distribution qualifies under the divisive reorganization provisions of present law (sec. 355). This provision permits a corporation to distribute to its own shareholders stock of a controlled (80 percent or greater ownership) corporation without an immediate dividend tax or recognition of gain by the receiving shareholders. Under this provision, the shareholders may or may not simultaneously exchange some of their stock in the distributing company. Several prerequisites must be satisfied before this benefit under section 355 can be obtained, however. Two of these requirements are that both corporations must be engaged in active conduct of a trade or business immediately after the distribution, and the distributed company must have actively conducted a trade or business for at least 5 years before the distribution.

[4] Under the Tax Reform Act of 1969, recognition of gain by a corporation using appreciated property to redeem its own stock was required in certain cases (sec. 311(d)). Included among the exceptions to this rule was a distribution of stock or securities pursuant to a final judgment under an antitrust proceeding. A similar exception for distributions required under the Bank Holding Company Act was not considered necessary at that time.

many instances, make the spinoff distribution impractical. For example, some of the bank holding companies which will be subject to the 1970 amendments are widely held. In such a situation, the distribution of the stock of a subsidiary to the shareholders of the bank holding company would frequently result in many of the holding company's shareholders receiving only a small number of shares (or in some cases fractions of whole shares). Further, if the distribution consists of stock issued by a bank which serves only a local or regional market, the shareholders of the holding company would receive an investment in which they may have little or no interest.[5]

In those cases where it is not feasible to distribute stock, many bank holding companies will be forced to sell the interests required to be divested. In these circumstances, the committee believes that an alternative form of relief should be provided.[6]

Accordingly, the bill provides two methods in which tax relief may be obtained by individuals and corporations for divestitures made by a bank holding company (pursuant to the Bank Holding Company Act Amendments of 1970) of either bank or nonbank property; namely, a "spinoff" method and an installment payment of tax method.

III. Explanation of Bill

As indicated above, the bill provides two possible methods in which tax relief may be obtained by individuals and corporations for divestitures made by a bank holding company of either bank or nonbank property pursuant to the Bank Holding Company Act Amendments of 1970.

First, the bill provides that a bank holding company may distribute either the bank or nonbank assets to its own shareholders (or, in some cases, security holders) without inclusion in income or recognition of gain by these stock (or security) holders. However, any loss realized by a shareholder (or security holder) as a result of a distribution may be recognized. This "spinoff" approach is generally the same as that adopted with respect to divestitures under the bank holding company legislation enacted in 1956 and 1966.

Second, the bill permits a bank holding company to sell its banking or nonbanking assets in a taxable sale or exchange and to pay the income tax incurred at the corporate level in installments over at least a 10-year period with respect to sales or exchanges made under the divestiture requirements of the Bank Holding Company Amendments of 1970.

The methods of tax relief for divestitures permitted by the bill are not intended, however, to be exclusive. As a result they do not limit the availability of any tax relief for dispositions covered specifically by other provisions of the code. For example, a bank holding company could make a required divestiture by means of a spinoff covered at the shareholder level by section 355 of present law (distribution of

[5] In some cases, distribution of the stock of a subsidiary to the shareholder of the holding company will not be feasible because it would result in the holding company being unable to service acquisition indebtedness, or to pay dividends on preferred stock which it issued for the original acquisition of the subsidiary.

[6] In addition to the tax relief extended under present law to divestitures required under the Bank Holding Company Act, nonrecognition of gain or loss treatment has been provided with respect to certain exchanges required under Federal Communications Commission policies (sec. 1071) and certain exchanges or distributions made in obedience to orders of the Securities and Exchange Commission (sec. 1081).

stock of a controlled corporation) if the specific requirements of that provision are otherwise fully satisfied.

Spinoff method

With respect to the spinoff approach, the bill generally adopts the provisions contained in present law (secs. 1101–1103), which applied to divestitures made pursuant to the 1956 and 1966 bank holding company legislation.

In general, a corporation coming within the terms of the bank holding company legislation of 1970 is given its choice of two alternative routes—to remain a bank holding company and divest its prohibited nonbanking assets, or to dispose of its interest in banks and, as a result, cease to be a bank holding company.

If a corporation decides to remain a bank holding company, subject to supervision by the Federal Reserve Board, it must divest itself of any "prohibited property" (that is, nonbank property). Under the "spinoff" approach, nonbanking property (including stock) may be distributed to a bank holding company's shareholders without recognition of gain by them on the distribution.

For this purpose, "prohibited property," in general, means stock, securities or other obligations, or other assets of nonbanking businesses to the extent the bank holding company is required to divest itself of such assets, pursuant to the Bank Holding Company Act Amendments of 1970. The term does not include cash, government bonds or certain short term obligations.

The distribution of "prohibited property" may be made either directly to the shareholders of the corporation which is a bank holding company (with or without a surrender by the shareholders of some of their stock in the holding company) or may be transferred, together with other nonbank property, to a wholly owned subsidiary created expressly for the purposes of receiving the prohibited property.[7] In the latter situation, the stock of the subsidiary must be immediately distributed to the shareholders of the corporation which is a bank holding company if the distribution is to qualify for nonrecognition of gain to (or noninclusion in income of) the shareholders.

If a corporation which qualifies as a bank holding company decides to cease to be a bank holding company (that is, if it wants to continue its nonbank activities), it must divest itself of its bank property. Under the "spinoff" approach, it may distribute to its shareholders any bank stock or other property of a kind which causes it to be a bank holding company, without the recognition of gain to the distributee shareholders (if they exchange some of their stock in the holding company) or without current inclusion in their income (if they retain their stock in the holding company). As in the case where a bank holding company divests its nonbanking property, as indicated above, nonrecognition is available whether the bank stock or other similar property is distributed directly to shareholders or whether it is first transferred to a wholly owned subsidiary expressly

[7] In the case where a wholly owned subsidiary is created to receive the prohibited property, certain amounts of working capital may be transferred in addition to the prohibited property. However, the nonrecognition provisions of this bill would not apply if the subsidiary receives a greater amount of working capital than is necessary under the circumstances or if other evidence indicates the existence of a plan one of the principal purposes of which is to distribute earnings and profits of a corporation.

created for the purpose and the stock of the subsidiary is then immediately distributed to the shareholders of the parent company.

The spinoff provisions will not apply to a distribution of prohibited property if the bank holding company has made distributions of bank property or has made an election under the installment payment provision with respect to the sale of bank property. Conversely, the spinoff provisions will not apply with respect to distributions of bank property if distributions of prohibited property have been made by the bank holding company under the spinoff provisions, or if it has made an election to pay the tax installments with respect to prohibited property.

Pro rata distribution requirements.—In general, distributions must be pro rata either with respect to all shareholders of the distributing bank holding company or with respect to all holders of common stock of the company. In the case of distributions to several classes of shareholders, the determination of whether the distributions are pro rata is to be made on the basis of the respective fair market values of classes of stock. For this purpose, the respective fair market value of the classes of stock may be determined as of a time reasonably close to the date upon which distribution is made (e.g., two months before the distribution is actually made) so the exchange ratio, if any, may be specified in any prospectus required in connection with the distribution.

Where the distribution is in exchange for stock (i.e., a redemption of the bank holding company's own stock), the pro rata requirement will be satisfied if a good faith offer to distribute is made on a uniform basis to all shareholders (including preferred shareholders) or to all common shareholders of the holding company. The requirement of a uniform offer means that the distributing company cannot offer different types of property to different shareholders; rather, it must offer the same types of property to all of its shareholders or to all of its common shareholders.

A limited exception is provided in the bill to permit non pro rata distributions where the Federal Reserve Board requires it in order to effectively separate banking and nonbanking businesses, e.g., if the result of a pro rata distribution would be that the same small group of shareholders would continue their respective interests in two corporations rather than one. This exception applies only in the case of a qualified bank holding corporation which does not have more than 10 individual shareholders (other than an estate) at any time during the period beginning on July 7, 1970, and ending after the final distribution required under the Bank Holding Company Act is made. Further, this exception is to apply only if the Board certifies that a pro rata distribution is not appropriate to effectuate the policies of the Bank Holding Company Act and that a disproportionate distribution is necessary or appropriate to effectuate such policies. In this case, the Board is to make such certification only after consultation with the Secretary of the Treasury or his delegate. The requirement for consultation with the Secretary or his delegate is intended to give the Treasury Department an opportunity to advise the Board with respect to tax avoidance possibilities which might result from a disproportionate distribution.

Where distributions of divestiture property (banking or nonbanking property as the case may be) are made directly by a qualified bank holding corporation, the distributions may be pro rata with respect to common shareholders without the surrender of shares of the distributing company held by them. In the case where the divestiture property is transferred to a wholly owned subsidiary and then the stock of the subsidiary is distributed, the common stock of the subsidiary may be distributed to all shareholders or only to the common shareholders of the distributing corporation without the surrender of shares in the distributing corporation. In addition, preferred stock or common stock in the subsidiary may be distributed in redemption of the holding company's own common and preferred stock (subject, however, to the tender offer requirement under the pro rata rule in the bill). In addition, if the exception to the pro rata requirements applies, the holding company may distribute preferred or common stock or securities of the subsidiary in exchange for the holding company's own securities.

Effect on shareholders.—If shareholders of a bank holding company do not recognize gain on a distribution of property to them in exchange for stock or securities held by them in the holding company, the basis of the property received by a shareholder is the same as the basis of the stock or securities exchanged. If property is received by such shareholders without an exchange of stock by them, the shareholder is required to allocate his basis in the stock of the bank holding company between such stock and the property distributed to him. Thus, the tax which would have otherwise been incurred by a shareholder with respect to a distribution is generally postponed until the shareholder disposes of the stock or property which is received.

Use of appreciated property by corporation to redeem its stock.—As a result of the Tax Reform Act of 1969, present law taxes any gain to a corporation which distributes appreciated property in redemption of its own stock (sec. 311(d)). However, a number of exceptions were provided to this rule at that time.[8] The bill adds another additional exception providing that gain will not be recognized by a corporation distributing appreciated stock of a pre-existing banking or nonbanking subsidiary in redemption of its own stock.

This additional exception to section 311(d) is not to be available for distributions of assets other than stock. Morever, the exception is to be available only for distributions made directly by the holding company (under new secs. 1101(a)(1) or (b)(1)) and does not apply to distributions of stock of any newly created subsidiary.[9] This exception is not to apply where the distributee is a tax-exempt organization.

Other than this exception for the distribution of appreciated stock, the usual provisions of the tax laws applying to the distributing com-

[8] The rule does not apply to (1) a distribution in partial or complete liquidation of a corporation, (2) a distribution of stock or securities in a divisive reorganization, (3) certain complete redemptions of a 10-percent shareholder, (4) certain distributions of stock of a 50-percent controlled corporation, (5) certain distributions of stock or securities pursuant to the terms of a judgment requiring divestiture under the antitrust laws, (6) certain distributions in redemption of stock to pay death taxes, (7) certain distributions to a private foundation in redemption of stock, and (8) certain distributions by a regulated investment company in redemption of its stock.

[9] If stock of a newly created subsidiary could be distributed under the protection of the new exemption to sec. 311(d), the rule limiting the exception to stock distributions could be circumvented by transferring business assets to a newly created subsidiary and then distributing the stock of that subsidiary to the shareholders of the bank holding company.

pany. That is, gain generally is recognized to the distributing corporation in the case of distributions of LIFO inventory, in the case of distributions of property subject to a liability in excess of its adjusted basis, and in the case of distributions of certain installment obligations (secs. 311 and 453). In the case of distributions of property in kind, the depreciation recapture provisions are to apply as under present law (secs. 1245 and 1250). Further, the investment credit recapture provisions are to apply as under present law with respect to dispositions of depreciable tangible property (sec. 47).

Installment method

The second form of tax relief provided by the bill permits the taxpayer to make installment payments of the tax attributable to a divestiture accomplished by a sale or taxable exchange of bank or nonbank property, as the case may be. Under the installment payment provision, a bank holding company selling bank property or nonbank property, after July 7, 1970, may elect to pay the tax attributable to the sale in equal annual installments. The first installment is to be due on the due date of the taxpayer's return of taxes for the taxable year in which the sale occurred. The installments are to be paid annually thereafter with the last installment payable on the due date of the taxpayer's return in 1985, or, if later, on the corresponding date 10 years after the due date for the year in which the sale occurred. If the taxpayer makes more than one sale under the 1970 bank holding company legislation, the tax attributable to each sale may be paid on an installment basis beginning in the year after each sale was made.

As indicated above, the bill provides for a minimum installment period of 10 years. Thus, in the case of a sale in 1980, the installment period would be available until 1990 (rather than 1985). However, interest is not imposed upon the deferred tax in the case of installments due through 1985, but is payable with respect to installment payments due after 1985.

The installment payment of tax is not to be available for a sale of nonbank property if the bank holding company elects to apply the provision to the sale of bank property or if the company has distributed bank property under the spinoff provisions. Conversely, the installment payment of tax is not to apply with respect to a sale of bank property if the bank holding company elects to pay the tax in installments with respect to nonbank property or has distributed nonbank property under the spinoff provisions. If the bank holding company elects to report gain on a sale under the regular installment method (section 453), it is not to be entitled also to elect for this sale the special installment method provided here.

If the company elects to pay the tax in installments, the payments are to be accelerated and the tax paid in full if (i) an installment is not paid on or before its due rate: or (ii) the Federal Reserve Board fails to make a certification, within the time prescribed that the company has disposed of all the property the disposition of which is necessary to effectuate the policies of the Bank Holding Company Act or that the company has ceased to be a bank holding company.

If the company elects to pay the tax in installments, the Secretary of the Treasury or his delegate may, if he feels that it is necessary to ensure payment of the tax, require the company to furnish a bond. The provision relating to bonds (sec. 6165) where the time to pay the

tax has been extended, is to apply as though the Secretary is extending the time for the payment of tax. The running of the period of limitations for the collection of the tax attributable to a sale is to be suspended for the period during which there are any unpaid installments.

Rules of General Applicability

The tax relief provided under the bill is available for divestitures occurring from July 7, 1970, through December 31, 1980. In general, a bank holding company must be qualified as such and the property being divested must have been held as of July 7, 1970. This date is the date upon which the Senate Banking and Currency Committee announced that it was reporting out a bill dealing with one-bank holding companies. This restriction is considered necessary to preclude tax relief for acquisitions made after it became clear that the separation of banking and nonbanking businesses was to be required of the one-bank holding companies.

Since the Bank Holding Company Act of 1970 requires all divestitures to be made by December 31, 1980, the tax relief is made available only for those divestitures which will have taken place by that date.

Qualification of holding company.—Under the bill, a bank holding company is treated as a "qualified bank holding corporation" only if it was "controlling" a bank for purposes of the Bank Holding Company Act as of July 7, 1970, or is later determined to be a qualified bank holding company because of (1) property acquired by it on or before July 7, 1970, or (2) property received after such date in a distribution from another qualified bank holding corporation, or (3) stock of a subsidiary it acquired after that date if the subsidiary was created for the purpose of receiving property required to be distributed by the company.

Generally, this definition includes a company which directly or indirectly owned 25 per cent or more of the stock of a bank or another bank holding company on July 7, 1970. In addition, the definition includes a company subsequently determined to be a bank holding company by the Federal Reserve Board because it exercises a "controlling influence" over a bank if the determination was made on the basis of the bank shares owned as of July 7, 1970, by the company. Thus, in such a case, the determination of the Federal Reserve Board is to be given retroactive effect for purposes of the tax provisions. Of course, the provisions of the bill relate solely to the treatment of a company as a qualified bank holding corporation for tax purposes. They do not relate in any respect to the effect, if any, of the Board's determination for purposes of the Bank Holding Company Act, e.g., applicability of grandfather privileges under the Act.[10]

The bill extends the tax relief provisions to distributions or sales by a subdisiary of a bank holding company. These distributions or sales would be subject to the same requirements applicable to the "parent" holding company, e.g., the property must satisfy the cutoff date and

[10] Generally, it is the position of the Federal Reserve Board that a determination relating to the status of a company as a bank holding company will be retroactive only when the company directly owned as much as 25 percent of a bank. A finding that a company is a bank holding company because of its "controlling influence" is not given retroactive effect. (Federal Reserve Order of January 15. 1976. relating to *Orwig & Co., Inc.*, and *Perpetual Corp.-Pierce National Life Insurance Co.*, 1973 Federal Reserve Bulletin 218.) In most cases, the prospective determination of status as a bank holding company results in the denial of grandfather privileges under the Bank Holding Company Act.

the Federal Reserve Board must certify that divestiture is necessary or appropriate to effectuate the policies of the Act.[11] For this purpose, the term "subsidiary" has the same meaning as under the Bank Holding Company, Act i.e., generally, a subsidiary is a company in which the holding company directly or indirectly owns 25 percent or more of the voting stock.

Under the bill, a successor corporation in a type "F" reorganization (mere change in identity or place of incorporation) is to be treated as a qualified bank holding corporation if its predecessor satisfied the qualification requirements.

Eligibility of property.—The tax relief is, generally, available only for distributions of property owned on July 7, 1970, by a qualified bank holding corporation. This restriction is not generally to apply to property acquired after that date if it is received in a distribution by another bank holding corporation, or to the stock of a subsidiary which is created to receive the property required to be distributed by the holding company.

In addition, the cutoff date is not generally to apply to certain other "substituted" property received by a bank holding company in a nontaxable transaction. Thus, the cutoff date is not to apply to nontaxable stock dividends received by the holding company, property received in a liquidation of a subsidiary in which gain or loss was not recognized, and property received in certain reorganizations to the extent gain or loss was not recognized. The reorganizations within the scope of the substituted property rules include mergers (a type "A" reorganization),[12] stock-for-stock exchanges (a type "B" reorganization), recapitalizations (a type "E" reorganization) and mere changes in identity or place of incorporation (a type "F" reorganization). If, in any of these reorganizations, additional consideration is received by the holding company which is required to be recognized under present law (sec. 356), this additional property is not to be treated as substituted property under the bill (although the additional consideration will not prevent nonrecognition property received in the same reorganization from being treated as substituted property for purposes of this bill).

The substituted property rules are to apply to property received in the liquidation of a subsidiary only if the property could have been distributed to shareholders without the recognition of income under the provisions, e.g., the property was held by the subsidiary on July 7, 1970. Property received in a merger or stock-for-stock exchange are to qualify under the substituted property rules if it is received in exchange for property which satisfied the cutoff date and the substituted property is also required to be divested. Also, there may be successive transactions involving substituted property and the substituted prop-

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[11] In certain cases, a parent corporation may be treated as a bank holding company because its subsidiary owns stock in a bank. If the corporation owning the bank stock is a subsidiary for purposes of tax law (generally the parent corporation owns 80 percent of the voting stock), tax relief under the divestiture provisions is available because the subsidiary could be liquidated into the parent corporation without the recognition of gain, and then the parent corporation could distribute the bank stock to its shareholders without recognition of income by the shareholders. However, a company may be treated as a subsidiary of a bank holding company under the bank holding company provisions if the holding company owns 25 percent or more of its stock. Thus, in the case where a corporation is treated as a subsidiary under the Bank Holding Company Act but not under the Internal Revenue Code, bank stock owned by the subsidiary may not be distributed without the recognition of income unless it is treated as a bank holding company.

[12] This would include mergers treated as a type "A" reorganization when using stock of a controlling corporation or a controlling merged corporation as described in section 368(a)(2) (D) or (E).

erty rules will be satisfied so long as the property acquired after July 7, 1970, can be traced back through successive tax-free transactions to property held on that date.

Under present law, one of the requirements for a tax-free reorganization is that there be a continuity of interest on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization (Reg. § 1.368–1). The Internal Revenue Service has ruled that the continuity of interest requirements are satisfied even though, at the time of the reorganization, a shareholder was required by a court decree under the antitrust laws to dispose of the stock by the end of a 7-year period (Rev. Rul. 66–23, 1966–1 C.B. 67). The committee understands that in some situations a bank holding company which desires to continue to engage solely in nonbanking activities may, before making a divestiture, transfer its banking properties to another corporation in a nontaxable reorganization. If stock received in the other corporation is promptly divested by the holding company, the prior transaction might not qualify as a tax-free reorganization on continuity of interest grounds because of the divestiture requirements. Solely in order to facilitate divestitures under the tax provisions of the bill, the committee intends that the tax status of a reorganization in these circumstances should not be adversely affected by the divestiture requirements under the Bank Holding Company Act where a bank holding company disposes of shares received in the reorganization shortly after the reorganization occurs.

Five-percent ownership rule.—Regulations promulgated under present law (sec. 1101), provides that, to the extent that the distribution made by the bank holding company represents a 5 percent (or less) interest in the stock of a company, nonrecognition treatment is not available. This position is based upon the fact that the bank holding company legislation exempts from the divestiture requirement an interest in a company which does not include more than five percent of the outstanding shares of the company. Your committee believes that a bank holding company making a distribution of either bank property or nonbanking property, under the divestiture requirements of bank holding company legislation, should be eligible for tax relief under the bill on the entire amount. Consequently, the bill provides tha the term "prohibited property" also includes shares of any company which a bank holding company may retain under the Bank Holding Company Act (sec. 4(c)(6)) if shares of a company are owned in excess of 5 percent and treated as property subject to the divestiture requirements of the Act.

"Grandfather" property.—The bill provides that the determination of whether property is eligible for tax relief under the bill is to be made without regard to the grandfather proviso of sec. 4(a)(2), of the Bank Holding Company Act, i.e., property held before June 30, 1968. Thus, even though property may be retained because it represents pre-June 30, 1968 activities which are not generally subject to the divestiture requirements), it may be eligible for tax relief if the Board certifies that, without regard to the grandfather privileges, the distribution is necessary or appropriate to effectuate the purposes of the bank holding company legislation. However, the tax relief is to be available only if the company irrevocably elects to forego the exemption from the divestiture requirements as to all property to which the exemption applies.

Certain family owned companies.—The Bank Holding Company Act of 1956 (sec. 4(c)(ii)) provides an exception to the divestiture requirements for a company covered by the 1970 amendments if more than 85 percent of the voting stock was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their spouses) who are lineal descendants of common ancestors. The bill extends the tax relief provisions to cover a company coming within this exemption if the company elects to waive the application of the exemption and dispose of either all of its bank property or all of its nonbanking property. In other respects, the requirements for obtaining the tax relief are to be the same as for any other bank holding company, e.g., the property must be held by the bank holding company on July 7, 1970 and the Federal Reserve Board must certify that the disposition is an appropriate reflection of the general divestiture requirements of the Bank Holding Company Act.

Certification by Federal Reserve Board.—Under the bill, the Federal Reserve Board is required to make both an initial certification before any distribution or sale by a bank holding company and a final certification that the required distribution or sale has been made. Initially, the Board must certify that the distribution or sale is necessary or appropriate to effectuate the policies of the bank holding company legislation. In addition, the Board must issue a final certification, before the close of the calendar year following the calendar year in which the last distribution or sale occurred, to the effect that the corporation has disposed of all the property which is necessary or Act. In the case of divestitures of bank property, nonrecognition treatment is not to apply unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has ceased to be a bank holding company.

The periods of limitation (provided in sec. 6501) are not to expire with respect to a deficiency resulting from a distribution made under the spinoff provisions until five years after the corporation notifies the Secretary that the final certification (referred to above) has been made or that the final certification will not be made.

Special successor corporation rules.—The bill contains a special successor corporation rule to deal with a situation brought to the committee's attention. In this case, a company became a bank holding company in 1974 through certain tax-free transactions in which it succeeded [13] to the controlling interests in banks and nonbanking assets owned by another corporation, which is a trusted affiliate. In connection with these tax-free transactions, a predecessor corporation, which would have been treated as a qualified bank holding corporation because it satisfied the general cutoff date of July 7, 1970, was merged into a newly chartered bank corporation.

The effect of this special rule is to treat the corporations involved in the tax-free transactions occurring after July 7, 1970 and before August 1, 1974 and any subsidiaries [14] of these corporations as satisfying the general cutoff date of July 7, 1970. In addition, the shares of the trusteed corporation (which are held for the benefit of the new controlling corporation as a result of the tax-free transactions) are to be

[13] By a triangular merger and transfers of beneficial interests by the shareholders of the predecessor corporation.

[14] For this purpose, the term "subsidiary" means a subsidiary within the meaning of the Bank Holding Company Act, i.e., a company in which the holding company directly or indirectly owns 25 percent or more of the voting stock.

treated as property acquired in substitution for property which satisfied the cutoff date. The special rule would not apply to property acquired after the date on which the tax-free transactions occurred unless the general substituted property rules described above apply.

Effective Dates

The "spinoff" amendments made by the bill are to be effective with respect to distributions after July 7, 1970. The bill, however, is to take effect on October 1, 1977. The effective date of the bill is postponed until October 1, 1977, so that there will be no revenue loss until fiscal year 1978.[15]

In the case of distributions occurring before enactment of the bill, the period of limitations for refunds or credits is extended for one year following the October 1, 1977.

The provision relating to nonrecognition of gain by a corporation using appreciated property to redeem its stock is to apply to distributions made after December 31, 1975. However, the bill also provides that this provision is not to take effect until October 1, 1977.

The installment payment of tax provision is to apply to sales made after July 7, 1970. The bill, however, is not effective until October 1, 1977. As in the case of the spinoff approach, the postponement of the effective date of the bill is provided so that there will be no revenue loss until fiscal year 1978.

In the case of any sale which takes place on or before 90 days after the date of enactment, a certification by the Federal Reserve Board is to be treated as made before the sale if application for the certification is made within 90 days after the date of enactment.

In the case of a sale occurring before enactment of the bill, refunds or credits are to be available for the portion of the tax attributable to the sale not yet due on October 1, 1977 under the installment payment provision. Under the bill, no refund may be made or credit allowed under the provision before October 1, 1977.

Any refund due under this provision may be used by the Internal Revenue Service as an offset to any outstanding deficiencies as provided under present law (sec. 6402). In the case of refunds attributable to sales, in two or more taxable years the refunds attributable to the sales are to be used in the order of time as offsets to the deficiencies arising in the order of time and in the manner provided under present law where the taxpayer does not specify the liability being satisfied (first as to interest, second as to penalties, and third as to tax liabilities).

In the case of an overpayment arising from the installment provisions interest to the taxpayer is to be allowed for only for periods 6 months or more after the later of the date of enactment, the date on which application for refund is filed, or the due date for filing the income tax return for the taxable year in which the sale occurs.

[15] In the case of any distribution which takes place on or before 90 days after the date of the enactment of this bill, the requirement that the Federal Reserve Board certify that the distribution is necessary or appropriate to effectuate the purposes of the Bank Holding Company Act is to be treated as made before the distribution if an application for certification is made before the close of the 90th day after the date of enactment. The final certification (required by section 1101(e)) is to be treated as made before the close of the calendar year following the calendar year in which the last distribution occurred if application for that certification is also made before the close of the 90th day after the date of enactment.

IV. Costs of Carrying Out the Bill and Vote of the Committee in Reporting H.R. 11997

Revenue cost

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs incurred in carrying out H.R. 11997. The bill would become effective on October 1, 1977, so that there would be no revenue effect for fiscal year 1977. Thereafter, the revenue loss is estimated to be approximately $50 million in fiscal year 1978, $25 million in fiscal year 1979, $50 million in fiscal year 1980, and $60 million in fiscal year 1981. Of this amount, $125 million would be returned to the Treasury during the period 1981 through 1990 as installment payments are made with respect to the taxes deferred under the installment payment method.

In accordance with section 403 of the Congressional Budget Act of 1974, the Director of the Congressional Budget Office has not made an estimate or comparison of the estimates of the cost of H.R. 11997, but has examined the committee's estimates and agrees with the methods and the dollar estimates resulting therefrom.

Vote of the committee

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. H.R. 11997 was ordered reported by a voice vote.

V. Changes in Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Internal Revenue Code of 1954

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter C—Corporate Distributions and Adjustments

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PART I—DISTRIBUTIONS BY CORPORATIONS

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Subpart B—Effects on Corporation

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SEC. 311. TAXABILITY OF CORPORATION ON DISTRIBUTION.

(a) General Rule.—Except as provided in subsections (b), (c), and (d) of this section and section 453 (d), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock, of—

(1) its stock (or rights to acquire its stock), or

(2) property.

(b) LIFO Inventory.—

(1) Recognition of gain.—If a corporation inventorying goods under the method provided in section 472 (relating to last-in, first-out inventories) distributes inventory assets (as defined in paragraph (2)(A)), then the amount (if any) by which—

(A) the inventory amount (as defined in paragraph (2)(B)) of such assets under a method authorized by section 471 (relating to general rule for inventories), exceeds

(B) the inventory amount of such assets under the method provided in section 472,

shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(2) Definitions.—For purposes of paragraph (1)—

(A) Inventory assets.—The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(B) Inventory amount.—The term "inventory amount" means in the case of inventory assets distributed during a taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(3) Method of determining inventory amount.—For purposes of this subsection, the inventory amount of assets under a method authorized by section 471 shall be determined—

(A) if the corporation uses the retail method of valuing inventories under section 412, by using such method, or

(B) if subparagraph (A) does not apply by using cost or market, whichever is lower.

(c) Liability in Excess of Basis.—If—

(1) a corporation distributes property to a shareholder with respect to its stock,

(2) such property is subject to a liability, or the shareholder assumes a liability of the corporation in connection with the distribution, and

(3) the amount of such liability exceeds the adjusted basis (in the hands of the distributing corporation) of such property,

then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. In the case of a distribution of property subject to a liability which is not assumed by the shareholder, the amount of gain to be recognized under the preceding sentence shall not exceed the excess, if any, of the fair market value of such property over its adjusted basis.

(d) Appreciated Property Used To Redeem Stock.—

(1) In General.—If—

(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a redemption (to which subpart A applies) of part or all of his stock in such corporation, and

(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then again[1] shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. Subsections (b) and (c) shall not apply to any distribution to which this subsection applies.

(2) EXCEPTIONS AND LIMITATIONS.—Paragraph (1) shall not apply to—

(A) a distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution, owns at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualifies under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii));

(B) a distribution of stock or an obligation of a corporation—

(i) which is engaged in at least one trade or business,

(ii) which has not received property constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of the distribution, and

(iii) at least 50 percent in value of the outstanding stock of which is owned by the distributing corporation at any time within the 9-year period ending one year before the date of the distribution;

(C) a distribution before December 1, 1974, of stock of a corporation substantially all of the assets of which the distributing corporation (or a corporation which is a member of the same affiliated group (as defined in section 1504(a)) as the distributing corporation) held on November 30, 1969, if such assets constitute a trade or business which has been actively conducted throughout the one-year period ending on the date of the distribution;

(D) a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (26 Stat. 209; 15 U.S.C. 1-7) or the Clayton Act (38 Stat. 730; 15 U.S.C. 12-27), or both, to which the United States is a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock is in furtherance of the purposes of the judgment;

(E) a distribution to the extent that section 303(a) (relating to distributions in redemption of stock to pay death taxes) applies to such distribution;

[1] Probably should be "a gain".

(F) a distribution to a private foundation in redemption of stock which is described in section 537(b)(2)(A) and (B); [and]

(G) a distribution by a corporation to which part I of subchapter M (relating to regulated investment companies) applies, if such distribution is in redemption of its stock upon the demand of the shareholder [.] *; and*

(H) a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a), if with respect to such distributee, subsection (a)(1) or (b)(1) of section 1101 (relating to distributions pursuant to Bank Holding Company Act) applies to such distribution.

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Subchapter O—Gain or Loss on Disposition of Property

Part I. Determination of amount of and recognition of gain or loss.
Part II. Basis rules of general application.
Part III. Common nontaxable exchanges.
Part IV. Special rules.
Part V. Changes to effectuate F.C.C. policy.
Part VI. Exchanges in obedience to S.E.C. orders.
Part VII. Wash sales of stock or securities.
Part VIII. Distributions pursuant to Bank Holding Company Act [of 1956].
Part IX. Distributions pursuant to orders enforcing the antitrust laws.

PART VIII—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT [OF 1956]

Sec. 1101. Distributions pursuant to Bank Holding Company Act [of 1956].
Sec. 1102. Special rules.
Sec. 1103. Definitions.

SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT [OF 1956].

(a) DISTRIBUTIONS OF CERTAIN NON-BANKING PROPERTY.—

(1) DISTRIBUTIONS OF PROHIBITED PROPERTY.—If—

(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder(, without the surrender by such shareholder of stock in such corporation [; or], *or*

(ii) to a shareholder, in exchange for its preferred stock [; or], *or*

(iii) to a security holder, in exchange for its securities [; and], *and*

(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act [of 1956],

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (C) (2) APPLIES.—If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation [; or], *or*

(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock [; or], *or*

(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock [; or], *or*

(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder in exchange for its securities [; and], *and*

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

[(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.]

(3) PRO RATA AND OTHER REQUIREMENTS.—

(A) IN GENERAL.—Paragraphs (1) and (2) of this subsection, or paragraphs (1) and (2) of subsection (b), as the case may be, shall apply to any distribution to the shareholders of a qualified bank holding corporation only if each distribution—

(i) which is made by such corporation to its shareholders after July 7, 1970, and on or before the date on which the Board makes its final certification under subsection (e), and

(ii) to which such paragraph (1) or (2) applies (determined without regard to this paragraph),

meets the requirements of subparagraph (B), (C), or (D).

(B) PRO RATA REQUIREMENTS.—A distribution meets the requirements of this subparagraph if the distribution is pro rata with respect to all shareholders of the distributing qualified bank holding corporation or with respect to all shareholders of common stock of such corporation.

(C) REDEMPTIONS WHEN UNIFORM OFFER IS MADE.—A distribution meets the requirements of this subparagraph if the distribution is in exchange for stock of the distributing qualified bank holding corporation and such distribution is pursuant to a good faith offer made on a uniform basis to all shareholders of the distributing qualified bank holding corporation or to all shareholders of common stock of such corporation.

(D) NON-PRO RATA DISTRIBUTIONS FROM CERTAIN CLOSELY-HELD CORPORATIONS.—A distribution meets the requirements of this subparagraph if such distribution is made by a qualified bank holding corporation which does not have more than 10 shareholders (within the meaning of section 1371 (a)(1)) and does not have as a shareholder a person (other than an estate) which is not an individual, and if the Board (after consultation with the Secretary or his delegate) certifies that—

(i) a distribution which meets the requirements of subparagraph (B) or (C) is not appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, and

(ii) the distribution being made is necessary or appropriate to effectuate section 4 or the policies of such Act.

(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation [which] *if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation* has made any distribution pursuant to subsection (b) *or has made an election under section 6158 with respect to bank property (as defined in section 6158(f)(3))*.

(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (1) or (2) applies[,] but which—

(A) results in a gift, see section 2501[,] and following, or

(B) has the effect of the payment of compensation, see section 61[(a)(1)].

(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—

(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—

(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder, without the surrender by such shareholder of stock in such corporation[; or], *or*

(ii) to a shareholder, in exchange for its preferred stock [; or], *or*

(iii) to a security holder, in exchange for its securities [; and], *and*

(B) the Board has, before the distribution, certified that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act [of 1956]) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distrib-

uted under this subsection or exchanged under subsection (c)(3) [; and], *and*

(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) Distributions of stock and securities received in an exchange to which subsection (c)(3) applies.—If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation [; or], *or*

(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its common stock [; or], *or*

(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock [; or], *or*

(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities [; and], *and*

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

[(3) Non pro rata distributions.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.]

(3) Pro rata and other requirements.—For pro rata and other requirements, see subsection (a)(3).

(4) Exception.—This subsection shall not apply to any distribution by a corporation [which] *if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation* has made any distribution pursuant to subsection (a) *or has made an election under section 6158 with respect to prohibited property.*

(5) Distributions involving gift or compensation.—In the case of a distribution to which paragraph (1) or (2) applies [.] but which—

(A) results in a gift, see section 2501[.] and following, or

(B) has the effect of the payment of compensation, see section 61[(a)(1)].

(*c*) Property Acquired After [May 15, 1955] *July 7, 1970.—*

(1) In general.—Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

(A) any property acquired by the distributing corporation after [May 15, 1955] *July 7, 1970*, unless (i) gain to such

corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 *or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss)* with respect to a reorganization described in section [368(a)(1)(E)] *368(a)(1)(A), (B), (E)*, or (F), or

(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after [May 15, 1955] *July 7, 1970*, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on [May 15, 1955] *July 7, 1970*, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 *or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss)* with respect to a reorganization described in section [368(a)(1)(E)] *368(a)(1)(A), (B), (E)*, or (F), or

(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1)[.], *or*

(D) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 354 or 356 with respect to a reorganization described in section 368(a)(1)(A) or (B), unless such property was acquired by the distributing corporation in exchange for property which the distributing corporation could have distributed under subsection (a)(1) or (b)(1).

(2) Exchanges involving prohibited property.—If—

(A) any qualified bank holding corporation exchanges (i) property, which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1)(B)(i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such [property;] *property*,

(B) immediately after the exchange, the qualified bank holding corporation distribtues all of such stock in a manner prescribed in subsection (a)(2)(A) [; and], *and*

(C) before such [exchange] *distribution*, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act [of 1956], then paragraph (1) shall not apply with respect to such distribution.

(3) EXCHANGES INVOLVING INTERESTS IN BANKS.—If—

(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such [property;] *property*,

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b) (2) (A) [; and] , *and*

(C) before such [exchange] *distribution*, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act [of 1956]) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b) (1) or exchanged under this paragraph [; and] , *and*

(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

(d) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—

(1) PROHIBITED PROPERTY.—Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after [May 15, 1955] *July 7, 1970*, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(2) BANKING PROPERTY.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after [May 15, 1955] *July 7, 1970*, to any corporation, property (other than property described in subsection (b) (1) (B) (i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

[(3) CERTAIN CONTRIBUTIONS TO CAPITAL.—In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a) or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purpose of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1) or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.]

(e) FINAL CERTIFICATION.—

[(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4(a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under such section 4(a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

[(2) FOR SUBSECTION (b).—

[(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

[(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.]

(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) disposed of all of the property the disposition of which is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act.

(2) For subsection (b).—Subsection (b) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) ceased to be a bank holding company.

(f) Certain Exchanges of Securities.—In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

SEC. 1102. SPECIAL RULES.

(a) Basis of Property Acquired in Distributions.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

(1) if the property is received by a shareholder with respect to stock[,] without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock[; or], *or*

[(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

[(A) the amount of the property received which was treated as a dividend, and

[(B) the amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend.]

(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by the amount of gain to the taxpayer recognized on the property received.

(b) Periods of Limitation.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until 5 years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations [prescribe) that the period (including extensions thereof) prescribed in section 4(a) of the Bank Holding Company Act of 1956, or section 1101(e)(2)(B), whichever is applicable, has expired:] *prescribe*)—

(1) that the final certification required by subsection (e) of section 1101 has been made, or

(2) that such final certification will not be made;

and such assessment may be made not withstanding any provision of law or rule of law which would otherwise prevent such assessment.

(c) Allocation of Earnings and Profits.—

(1) Distribution of stock in a controlled corporation.—In the case of a distribution by a qualified bank holding corporation under section 1101 (a)(1) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

(2) Exchanges described in section 1101 (c) (2) or (3).—In the case of any exchange described in section 1101(c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

(3) Definition of controlled corporation.—For purposes of paragraph (1), the term "controlled corporation" means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

(d) Itemization of Property.—In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

[(e) Certain Bank Holding Companies.—This part shall apply in respect of any company which becomes a bank holding company as a result of the enactment of the Act entitled "An Act to amend the Bank Holding Company Act of 1956", approved July 1, 1966 (Public Law 89–485), with the following modifications:

[(1) Subsections (a)(3) and (b)(3) of section 1101 shall not apply.

[(2) Subsections (a)(1) and (2) and (b)(1) and (2) of section 1101 shall apply in respect of distributions to shareholders of the distributing bank holding corporation only if all distributions to each class of shareholders which are made—

[(A) after April 12, 1965, and

[(B) on or before the date on which the Board of Governors of the Federal Reserve System makes its final certification under section 1101(e),

are pro rata. For purposes of the preceding sentence, any redemption of stock made in whole or in part with property other than money shall be treated as a distribution.

[(3) In applying subsections (c) and (d) of section 1101 and subsection (b) of section 1103, the date "April 12, 1965" shall be substituted for the date "May 15, 1955".

[(4) In applying subsection (d)(3) of section 1101, the date of the enactment of this subsection shall be treated as being the date of the enactment of this part.

[(5) In applying subsection (b)(2)(A) of section 1103, the reference to the Bank Holding Company Act of 1956 shall be

treated as referring to such Act as amended by Public Law 89-485.]

SEC. 1103. DEFINITIONS.

[(a) BANK HOLDING COMPANY.—For purposes of this part, the term "bank holding company" has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.]

(a) BANK HOLDING COMPANY; BANK HOLDING COMPANY ACT.—For purposes of this part—

(1) BANK HOLDING COMPANY.—The term "bank holding company" means—

(A) a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act, or

(B) a bank holding company subsidiary within the meaning of section 2(d) of such Act.

(2) BANK HOLDING COMPANY ACT.—The term "Bank Holding Company Act" means the Bank Holding Company Act of 1956, as amended through December 31, 1970 (12 U.S.C. 1841 et seq.).

(b) QUALIFIED BANK HOLDING CORPORATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this part of the term "qualified bank holding corporation" means any corporation (as defined in section 7701(a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

(A) on or before [May 15, 1955] *July 7, 1970,*

(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

(C) in exchange for all of its stock in an exchange described in section 1101 (c)(2) or (c)(3).

(2) LIMITATIONS.—

(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on [May 15, 1955] *July 7, 1970,* if the Bank Holding Company Act [of 1956] *Amendments of 1970* had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

(i) property acquired by it on or before [May 15, 1955] *July 7, 1970,*

(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, [and] *or*

(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

For purposes of this subparagraph, property held by a corporation having control of the corporation or by a subsidiary of the corporation shall be treated as held by the corporation.

(B) A bank holding company shall not be a qualified bank-holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

(i) on or before [May 15, 1955] *July 7, 1970,*

(ii) in a distribution (with respect to stock held by it on [May 15, 1955] *July 7, 1970,* or with respect to stocks in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

(3) CERTAIN SUCCESSOR CORPORATIONS.—For purposes of this subsection, a successor corporation in a reorganization described in section 368(a)(1)(F) shall succeed to the status of its predecessor corporation as a qualified bank holding corporation.

(c) PROHIBITED PROPERTY.—For purposes of this part, the term "prohibited property" means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act [of 1956] if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section [or in section 1101 (e)(2)(B) of this part, as the case may be. The term "prohibited property" does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c)(5) of such section]. *The term "prohibited property" also includes shares of any company not in excess of 5 percent of the outstanding voting shares of such company if the prohibitions of section 4 of such Act apply to the shares of such company in excess of such 5 percent.*

(d) NONEXEMPT PROPERTY.—For purposes of this part, the term "nonexempt property" means—

(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace[;],

(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision[; or], *or*

(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

(e) BOARD.—For purposes of this part, the term "Board" means the Board of Governors of the Federal Reserve System.

(f) CONTROL; SUBSIDIARY.—For purposes of this part—

(1) CONTROL.—Except as provided in section 1102(c)(3), a corporation shall be treated as having control of another corporation if such corporation has control (within the meaning of section 2(a)(2) of the Bank Holding Company Act) of such other corporation.

(2) Subsidiary.—The term "subsidiary" has the meaning given to such term by section 2(d) of the Bank Holding Company Act.

(g) Election To Forego Grandfather Provision for All Property Representing Pre-June 30, 1968, Activities.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain the proviso of section 4(a)(2) thereof. Any election under this subsection shall apply to all property described in such proviso and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable. An election under this subsection or subsection (h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the board that the bank holding company has disposed of either all banking property or all nonbanking property.

(h) Election To Divest All Banking or Nonbanking Property in Case of Certain Closely-Held Bank Holding Companies.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1), made under the Bank Holding Company Act as if such Act did not contain clause (ii) of section 4(c) of such Act. Any election under this subsection shall apply to all property described in subsection (c), or to all property eligible to be distributed without recognition of gain under section 1101(b)(1), as the case may be, and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable.

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Subtitle F—Procedure and Administration

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

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Subchapter A—Place and Due Date for Payment of Tax

Sec. 6151. Time and place for paying tax shown on returns.
Sec. 6152. Installment payments.
Sec. 6153. Installment payments of estimated income tax by individuals.
Sec. 6154. Installment payments of estimated income tax by corporations.
Sec. 6155. Payment on notice and demand.
Sec. 6156. Installment payments of tax on use of highway motor vehicles and civil aircraft.
Sec. 6157. Payment of Federal unemployment tax on quarterly or other time period basis.
Sec. 6158. Installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) General Rule.—Except as otherwise provided in this [section] *subchapter*, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) Exceptions.—

(1) Income tax not computed by taxpayer.—If the taxpayer elects under section 6014 not to show the tax on the return, the amount determined by the Secretary or his delegate as payable shall be paid within 30 days after the mailing by the Secretary or his delegate to the taxpayer of a notice stating such amount and making demand therefor.

(2) Use of government depositaries.—For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) Date Fixed for Payment of Tax.—In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

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SEC. 6158. INSTALLMENT PAYMENT OF TAX ATTRIBUTABLE TO DIVESTITURES PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

(a) Election of Extension.—If, after July 7, 1970, a qualified bank holding corporation sells bank property or prohibited property, the divestiture of either of which the Board certifies, before such sale, is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, the tax under chapter 1 attributable to such sale shall, at the election of the taxpayer, be payable in equal annual installments beginning with the due date (determined without extension) for the taxpayer's return of tax under chapter 1 for the taxable year in which the sale occurred and ending with the corresponding date in 1985. If the number of installments determined under the preceding sentence is less than 10, such number shall be increased to 10 equal annual installments which begin as provided in the preceding sentence and which end on the corresponding date 10 years later. An election under this subsection shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribed.

(b) Limitations.—

(1) Treatment not available to taxpayer for both bank property and prohibited property.—This section shall not apply to any sale of prohibited property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the tax-

payer) has made an election under subsection (a) with respect to bank property or has made any distribution pursuant to section 1101(b). This section shall not apply to bank property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to prohibited property or has made any distribution pursuant to section 1101(a).

(2) TREATMENT NOT AVAILABLE FOR CERTAIN INSTALLMENT SALES.—No election may be made under subsection (a) with respect to a sale if the income from such sale is being returned at the time and in the manner provided in section 453 (relating to installment method).

(c) ACCELERATION OF PAYMENTS.—If an election is made under subsection (a) and before the tax attributable to such sale is paid in full—

(1) any installment under this section is not paid on or before the date fixed by this section for its payment, or

(2) the Board fails to make a certification similar to the applicable certification provided in section 110(e) within the time prescribed therein (for this purpose treating the last such sale as constituting the last distribution),

then the extension of time for payment of tax provided in this section shall cease to apply, and any portion of the tax payable in installments shall be paid on notice and demand from the Secretary or his delegate.

(d) PRORATION OF DEFICIENCY TO INSTALLMENTS.—If an election is made under subsection (a) and a deficiency attributable to the sale has been assessed, the deficiency shall be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid on notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(e) BOND MAY BE REQUIRED.—If an election is made under this section, section 6165 shall apply as though the Secretary were extending the time for payment of the tax.

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

(1) TERMS HAVE MEANINGS GIVEN TO THEM BY SECTION 1103.—The terms "qualified bank holding corporation", "Bank Holding Company Act", "Board"; "control", and "subsidiary" have the respective meanings given to such terms by section 1103.

(2) PROHIBITED PROPERTY.—The term "prohibited property" means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(a)(1).

(3) BANK PROPERTY.—The term "bank property" means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(b)(1).

(g) CROSS REFERENCES.—

(1) Security.—For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

(2) Period of limitation.—For extension of the period of limitation in the case of an extension under this section, see section 6503(i).

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CHAPTER 66—LIMITATIONS

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Subchapter A—Limitations on Assessment and Collection

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SEC. 6503. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) ISSUANCE OF STATUTORY NOTICE OF DEFICIENCY.—

(1) GENERAL RULE.—The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, gift and certain excise taxes), shall (after the mailing of a notice under section 6212(a)) be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(2) CORPORATION JOINING IN CONSOLIDATED INCOME TAX RETURN.—If a notice under section 6212(a) in respect of a deficiency in tax imposed by subtitle A for any taxable year is mailed to a corporation, the suspension of the running of the period of limitations provided in paragraph (1) of this subsection shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year.

(b) ASSETS OF TAXPAYER IN CONTROL OR CUSTODY OF COURT.—The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any State or of the District of Columbia, and for 6 months thereafter.

(c) TAXPAYER OUTSIDE UNITED STATES.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire

before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months.

(d) EXTENSIONS OF TIME FOR PAYMENT OF ESTATE TAX.—The running of the period of limitations for collection of any tax imposed by chapter 11 shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161(a)(2) or (b)(2) or under the provisions of section 6166.

(e) CERTAIN POWERS OF APPOINTMENT.—The running of the period of limitations for assessment or collection of any tax imposed by chapter 11 shall be suspended in respect of the estate of a decedent claiming a deduction under section 2055(b)(2) until 30 days after the expiration of the period for assessment or collection of the tax imposed by chapter 11 on the estate of the surviving spouse.

(f) EXTENSIONS OF TIME FOR PAYMENT OF TAX ATTRIBUTABLE TO RECOVERIES OF FOREIGN EXPROPRIATION LOSSES.—The running of the period of limitations for collection of the tax attributable to a recovery of a foreign expropriation loss (within the meaning of section 6167(f)) shall be suspended for the period of any extension of time for payment under subsection (a) or (b) of section 6167.

(g) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTY.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

(h) SUSPENSION PENDING CORRECTION.—The running of the periods of limitations provided in sections 6501 and 6502 on the making of assessments or the collection by levy or a proceeding in court in respect of any tax imposed by chapter 42 or section 507 or section 4971 or section 4975 shall be suspended for any period described in section 507(g)(2) or during which the Secretary or his delegate has extended the time for making correction under section 4941(e)(4), 4942(j)(2), 4943(d)(3), 4933(e)(3), 4945(i)(2), 4971(c)(3), or 4975(f)(4).

(i) EXTENSION OF TIME FOR COLLECTING TAX ATTRIBUTABLE TO DIVESTITURES PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—The running of the period of limitations for collection of the tax attributable to a sale with respect to which the taxpayer makes an election under section 6158(a) shall be suspended for the period during which there are any unpaid installments of such tax.

[(i)] *(j)* CROSS REFERENCES.—

For suspension in case of—

(1) Deficiency dividends of a personal holding company, see section 547(f).

(2) Bankruptcy and receiverships, see subchapter B of chapter 70.

(3) Claims against transferees and fiduciaries, see chapter 71.

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CHAPTER 67—INTEREST

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Subchapter A—Interest on Underpayments

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SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT, OF TAX.

(a) GENERAL RULE.—If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at an annual rate established under section 6621 shall be paid for the period from such last date to the date paid.

(b) LAST DATE PRESCRIBED FOR PAYMENT.—For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) EXTENSIONS OF TIME DISREGARDED.—The last date prescribed for payment shall be determined without regard to any extension of time for payment.

(2) INSTALLMENT PAYMENTS.—In the case of an election under section 6152(a) [or 6156(a)], *6156(a), or 6158(a)*, to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6152(b) [or 6156(b)], *6156(b), or 6158(a)*, as the case may be, and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment of any portion of the tax not shown on the return.

For purposes of subparagraph (A), section 6158(a) shall be treated as providing that the date prescribed for payment of each installment shall not be later than the date prescribed for payment of the 1985 installment.

(3) JEOPARDY.—The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior to the last date otherwise prescribed for such payment.

(4) LAST DATE FOR PAYMENT NOT OTHERWISE PRESCRIBED.—In the case of taxes payable by stamp and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary or his delegate).

(c) Suspension of Interest in Certain Income, Estate, Gift, and Chapter 42 or 43 Tax Cases.—In the case of a deficiency as defined in section 6211 (relating to income, estate, gift, and certain excise taxes), if a waiver of restrictions under section 6213(d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary or his delegate for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(d) Income Tax Reduced by Carryback or Adjustment for Certain Unused Deductions.—

(1) Net operating loss or capital loss carryback.—If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss or net capital loss arises.

(2) Investment credit carryback.—If the credit allowed by section 38 for any taxable year is increased by reason of an investment credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the investment credit carryback arises, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

(3) Adjustment for certain unused deductions of life insurance companies.—If the amount of any tax imposed by subtitle A is reduced by operation of section 815(d)(55) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).

(4) Work incentive program credit carryback.—If the credit allowed by section 40 for any taxable year is increased by reason of a work incentive program credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the work incentive program credit carryback arises, or, with respect to any portion of a work incentive program carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

(e) Applicable Rules.—Except as otherwise provided in this title—

(1) Interest treated as tax.—Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.

(2) No interest on interest.—No interest under this section shall be imposed on the interest provided by this section.

(3) Interest on penalties, additional amounts, or additions to the tax.—Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(4) Payments made within 10 days after notice and demand.—If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(f) Satisfaction by Credits.—If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(g) Limitation on Assessment and Collection.—Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

(h) Exception as to Estimated Tax.—This section shall not apply to any failure to pay estimated tax required by section 6153 (or section 59 of the Internal Revenue Code of 1939) or section 6154.

(i) Exception as to Federal Unemployment Tax.—This section shall not apply to any failure to make a payment of tax imposed by section 3301 for a calendar quarter or other period within a taxable year required under authority of section 6157.

(j) No Interest on Certain Adjustments.—

For provisions prohibiting interest on certain adjustments in tax, see section 6205(a).

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94–879

BANK HOLDING COMPANY TAX ACT OF 1976

MARCH 4, 1976.—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

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 11997]

The Committee on Ways and Means, to whom was referred the bill (H.R. 11997) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of certain divestitures of assets by bank holding companies, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 21, strike out "Board, has before" and insert "Board has, before".

Page 6, line 12, after "subsection (b)" insert the following:
or has made an election under section 6158 with respect to bank property (as defined in section 6158(f)(3))

Page 9, line 16, after "subsection (a)" insert the following:
or has made an election under section 6158 with respect to prohibited property

Page 11, strike out line 19 and all that follows down through line 8 on page 12, and insert the following:

> (D) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 354 or 356 with respect to a reorganization described in section 368(a)(1)(A) or (B), unless such property was acquired by the distributing corporation in exchange for property which the distributing corporation could have distributed under subsection (a)(1) or (b)(1).

Page 17, line 5, strike out "stock of" and insert "stock or".

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Page 24, strike out line 13 and insert in lieu thereof the following:

be irrevocable. An election under this subsection or subsection (h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(h) ELECTION TO DIVEST ALL BANKING OR NONBANKING PROPERTY IN CASE OF CERTAIN CLOSELY-HELD BANK HOLDING COMPANIES.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain clause (ii) of section 4(c) of such Act. Any election under this subsection shall apply to all property described in subsection (c), or to all property eligible to be distributed without recognition of gain under section 101(b)(1), as the case may be, and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable.

Page 25, line 9, strike out "apply to" and insert "take effect on October 1, 1977, with respect to".

Page 25, line 11, strike out "such date" and insert "July 7, 1970".

Page 26, strike out lines 9 through 14 and insert:

at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978.

Page 26, strike out lines 16 through 18, and insert:

by subsection (b) shall take effect on October 1, 1977, with respect to distributions after December 31, 1975, in taxable years ending after December 31, 1975.

Page 28, line 7, after "bank property" insert "or has made any distribution pursuant to section 1101(b)".

Page 28, line 11, after "prohibited property" insert "or has made any distribution pursuant to section 1101(a)".

Page 32, line 17, after "Bank Holding Company Act" insert "(as defined in section 1103(a)(2) of the Internal Revenue Code of 1954)".

Page 32, line 20, strike out "in control of such acquiring corporation)" and insert:

in control (within the meaning of section 2(a)(2) of such Act) of the acquiring corporation or a subsidiary (within the meaning of section 2(d) of such Act) of the corporation so in control).

Page 32, beginning in line 23, strike out "section 2(g)(2) of the Bank Holding Company Act" and insert in lieu thereof "such section 2(g)(2)".

Page 33, line 5, strike out "apply to" and insert "take effect on October 1, 1977, with respect to".

Page 33, line 6, strike out "such date" and insert "July 7, 1970".

Page 33, strike out line 20 and all that follows down through line 10 on page 34 and insert in lieu thereof the following:

(3) REFUND OF TAX.—

(A) IN GENERAL.—If any tax attributable to a sale which occurred before October 1, 1977, is payable in annual installments by reason of an election under section 6158(a) of the Internal Revenue Code of 1954, any portion of such tax for which the due date of the installment does not occur before October 1, 1977, shall, on application of the taxpayer, be treated as an overpayment of tax.

(B) INTEREST ON OVERPAYMENTS.—For purposes of section 6611(b), in the case of any overpayment attributable to subparagraph (A), the date of the overpayment shall be the day which is 6 months after the latest of the following:

(i) the date on which application for refund or credit of such overpayment is filed,

(ii) the due date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 of the Internal Revenue Code of 1954 for the taxable year the tax of which is being refunded or credited, or

(iii) the date of the enactment of this Act.

(C) EXTENSION OF PERIOD OF LIMITATIONS.—If any refund or credit of tax attributable to the application of subparagraph (A) is prevented at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978.

I. Summary

In general, the Bank Holding Company Act Amendments of 1970 require a bank holding company (generally any company controlling a bank) to divest either its banking or nonbanking properties on or before December 31, 1980. At the time of enactment, it was anticipated that the Congress would later consider the need for legislation to provide relief from any tax burden resulting from the divestitures required under the Amendments.

With respect to distributions previously required under the Bank Holding Company Act of 1956 (and its amendment in 1966), bank holding companies which controlled two or more banks were permitted to make tax-free distributions (referred to as "spinoffs") of either their bank or nonbank assets, as the case may have been. This special treatment provided for the nonrecognition of any gain to the shareholders, upon the distribution to them of banking or nonbanking property, including stock of a subsidiary. The tax on any gain realized by shareholders, or on any property received by them, would be imposed upon their later disposition of the stock or other property received in the spinoff.

Your committee's bill provides two possible methods in which tax relief may be obtained by individuals and corporations for divestitures made by a bank holding company of either bank or nonbank property under the Bank Holding Company Act Amendments of 1970. First, the bill provides that a bank holding company may distribute either bank or nonbank assets to its own shareholders without inclusion in income or recognition of gain by such shareholders. This "spinoff" approach is generally the same as that adopted for divestitures under the bank holding company legislation enacted in 1956 and 1966. Second, your committee's bill permits a bank holding company to sell its banking or nonbanking assets in a taxable sale or exchange, and to pay the income tax incurred by it in installments over a 10-year period to the extent the tax is attributable to divestitures made pursuant to the Bank Holding Company Act Amendments of 1970.

II. Reasons for Bill

Bank holding company legislation

The Bank Holding Act of 1956 was enacted in response to a concern about concentrations of economic power if holding companies were allowed to control not only large numbers of banks but also nonbanking enterprises. A bank holding company was defined in the 1956 Act as an entity which owned or controlled 25 percent or more of the voting shares of two or more banks.

In general, a corporation coming within the terms of the bank holding company legislation was given its choice of two alternative routes—to remain a bank holding company, or to dispose of its interest in banks. If the corporation decided to remain a bank holding company subject to the supervision of the Federal Reserve Board, it had to divest itself of any so-called "prohibited property," or nonbank assets.

In 1966, a number of technical amendments were made to the 1956 Act and one exception to the definition of bank holding company was removed.[1]

During the late 1960's, there was a dramatic growth not only in the number of commercial banking enterprises which became affiliated with one-bank holding companies, but also in the extent such entities controlled commercial banking activity. As a result of this change in the structure of U.S. commercial banking ownership, the Congress enacted the Bank Holding Amendments of 1970.

Of the 1970 amendments, the most significant is the extension of the Act to cover, for the first time, one-bank holding companies (i.e., any company controlling 25 percent or more of the voting shares of a bank). As a result, one-bank holding companies are made subject to the requirements of the Federal Reserve Board regarding expansion in their banking activities. In addition, one-bank holding companies which are engaged in both banking and nonbanking activities are generally required to divest themselves of either their banking or nonbanking assets before January 1, 1981. However, a "grandfather clause" in the 1970 amendments, provided that a one-bank holding company is generally not required to divest itself of those nonbanking activities in which it was lawfully engaged on June 30, 1968.[2]

In addition, the Federal Reserve Board is authorized to determine that a company owning between 5 percent and 25 percent of the voting stock of a bank or nonbanking corporation possesses a "controlling influence" in the bank or nonbank and should also be treated as controlling the bank or nonbanking corporation.

Tax treatment of divestitures

In case of distributions required under the Bank Holding Company Act of 1956 (and its amendment in 1966), bank holding companies which controlled two or more banks were permitted to make tax-free distributions (referred to as "spinoffs") of either their bank or nonbank assets, as the case may have been. This special treatment provided for the nonrecognition of any gain to the shareholders upon the distribution to them of banking or nonbanking property, including stock of a subsidiary. Instead, tax on any gain was imposed on the shareholders upon their later disposition of the stock received in the spinoff.

In the absence of special tax legislation, many distributions required to be made pursuant to the Bank Holding Company Act

[1] The repealed exception had provided that a company was not to be considered a bank holding company if it was registered prior to May 15, 1955, under the Investment Company Act of 1940 (or was an affiliate of such a company) unless the company or its affiliate *directly* owned 25 percent or more of the voting shares of each of two or more banks.

[2] Properties which are covered by the grandfather provision are not generally subject to the divestiture requirements; however, in a situation of this type the Board retains significant controls on the authority of the bank holding company to acquire new businesses or to expand existing businesses, and may terminate applicability of the grandfather clause for a company in certain cases.

Amendments of 1970 will be taxable to the distributees as dividends subject to ordinary income rates.[3]

In addition, the bank holding company itself generally would be required to recognize gain on appreciated property (such as stock of a banking or nonbanking subsidiary) distributed by it in a redemption of its own stock, unless the distribution qualifies as a distribution in complete or partial liquidation of the company.[4]

On the other hand, if property is sold by a bank holding company to satisfy the divestiture requirements, gain is recognized. The involuntary conversion provision of the tax law (sec. 1033), which provides for nonrecognition of gain, is not available, since this provision does not treat these divestitures as an involuntary conversion. Consequently, a direct sale by a bank holding company will ordinarily be a taxable disposition, producing taxable gain or deductible loss.

While a distribution in the form of a spinoff (for which the relief provided in 1956 and 1966 may be useful for some of the divestitures made pursuant to the 1970 amendments, the number and types of bank holding companies which are subject to the 1970 legislation will, in many instances, make the spinoff distribution impractical. For example, some of the bank holding companies which will be subject to the 1970 amendments are widely held. In such a situation, the distribution of the stock of a subsidiary to the shareholders of the bank holding company would frequently result in many of the holding company's shareholders receiving only a small number of shares (or in some cases fractions of whole shares). Further, if the distribution consists of stock issued by a bank which serves only a local or regional market, the shareholders of the holding company would receive an investment in which they may have little or no interest.[5]

In those cases where it is not feasible to distribute stock, many bank holding companies will be forced to sell the interests required to be divested. In these circumstances, your committee believes that an alternative form of relief should be provided.[6]

[3] Generally, in the case of a redemption of stock by a bank holding company, the redemption would be treated as a sale or exchange of a capital asset by the shareholder, rather than a dividend, only if the redemption is not essentially equivalent to a dividend (sec. 302) or if the redemption is treated as a distribution in complete or partial liquidation of the company (sec. 331). Nonrecognition treatment would be available if the distribution qualifies under the divisive reorganization provisions of present law (sec. 355). This provision permits a corporation to distribute to its own shareholders stock of a controlled (80 percent or greater ownership) corporation without an immediate dividend tax or recognition of gain by the receiving shareholders. Under this provision, the shareholders may or may not simultaneously exchange some of their stock in the distributing company. Several prerequisites must be satisfied before this benefit under section 355 can be obtained, however. Two of these requirements are that both corporations must be engaged in active conduct of a trade or business immediately after the distribution, and the distributed company must have actively conducted a trade or business for at least 5 years before the distribution.

[4] Under the Tax Reform Act of 1969, recognition of gain by a corporation using appreciated property to redeem its own stock was required in certain cases (sec. 311(d)). Included among the exceptions to this rule was a distribution of stock or securities pursuant to a final judgment under an antitrust proceeding. A similar exception for distributions required under the Bank Holding Company Act was not considered necessary at that time.

[5] In some cases, distribution of the stock of a subsidiary to the shareholders of the holding company will not be feasible because it would result in the holding company being unable to service acquisition indebtedness, or to pay dividends on preferred stock which it issued for the original acquistion of the subsidiary.

[6] In addition to the tax relief extended under present law to divestitures required under the Bank Holding Company Act, nonrecognition of gain or loss treatment has been provided with respect to certain exchanges required under Federal Communications Commission policies (sec. 1071) and certain exchanges or distributions made in obedience to orders of the Securities and Exchange Commission (sec. 1081).

Accordingly, your committee's bill provides two methods in which tax relief may be obtained by individuals and corporations for divestitures made by a bank holding company (pursuant to the Bank Holding Company Act Amendments of 1970) of either bank or nonbank property; namely, a "spinoff" method and an installment payment of tax method.

III. Explanation of Bill

As indicated above, your committee's bill provides two possible methods in which tax relief may be obtained by individuals and corporations for divestitures made by a bank holding company of either bank or nonbank property pursuant to the Bank Holding Company Act Amendments of 1970.

First, the bill provides that a bank holding company may distribute either the bank or nonbank assets to its own shareholders (or, in some cases, security holders) without inclusion in income or recognition of gain by these stock (or security) holders. However, any loss realized by a shareholder (or security holder) as a result of a distribution may be recognized. This "spinoff" approach is generally the same as that adopted with respect to divestitures under the bank holding company legislation enacted in 1956 and 1966.

Second, your committee's bill permits a bank holding company to sell its banking or nonbanking assets in a taxable sale or exchange and to pay the income tax incurred at the corporate level in installments over at least a 10-year period with respect to sales or exchanges made under the divestiture requirements of the Bank Holding Company Amendments of 1970.

The methods of tax relief for divestitures permitted by the bill are not intended, however, to be exclusive. As a result they do not limit the availability of any tax relief for dispositions covered specifically by other provisions of the code. For example, a bank holding company could make a required divestiture by means of a spinoff covered at the shareholder level by section 355 of present law (distribution of stock of a controlled corporation) if the specific requirements of that provision are otherwise fully satisfied.

Spinoff method

With respect to the spinoff approach, the bill generally adopts the provisions contained in present law (secs. 1101–1103), which applied to divestitures made pursuant to the 1956 and 1966 bank holding company legislation.

In general, a corporation coming within the terms of the bank holding company legislation of 1970 is given its choice of two alternative routes—to remain a bank holding company and divest its prohibited nonbanking assets, or to dispose of its interest in banks and, as a result, cease to be a bank holding company.

If a corporation decides to remain a bank holding company, subject to supervision by the Federal Reserve Board, it must divest itself of any "prohibited property" (that is, nonbank property). Under the "spinoff" approach, nonbanking property (including stock) may be distributed to a bank holding company's shareholders without recognition of gain by them on the distribution.

For this purpose, "prohibited property," in general, means stock, securities or other obligations, or other assets of nonbanking businesses to the extent the bank holding company is required to divest itself of such assets pursuant to the Bank Holding Company Act Amendments of 1970. The term does not include cash, government bonds or certain short term obligations.

The distribution of "prohibited property" may be made either directly to the shareholders of the corporation which is a bank holding company (with or without a surrender by the shareholders of some of their stock in the holding company) or may be transferred, together with other nonbank property, to a wholly owned subsidiary created expressly for purposes of receiving the prohibited property.[7] In the latter situation, the stock of the subsidiary must be immediately distributed to the shareholders of the corporation which is a bank holding company if the distribution is to qualify for nonrecognition of gain to (or noninclusion in income of) the shareholders.

If a corporation which qualifies as a bank holding company decides to cease to be a bank holding company (that is, if it wants to continue its nonbank activities), it must divest itself of its bank property. Under the "spinoff" approach, it may distribute to its shareholders any bank stock or other property of a kind which causes it to be a bank holding company, without the recognition of gain to the distributee shareholders (if they exchange some of their stock in the holding company) or without current inclusion in their income (if they retain their stock in the holding company). As in the case where a bank holding company divests its nonbanking property, as indicated above, nonrecognition is available whether the bank stock or other similar property is distributed directly to shareholders or whether it is first transferred to a wholly owned subsidiary expressly created for that purpose and the stock of the subsidiary is then immediately distributed to the shareholders of the parent company.

The spinoff provisions will not apply to a distribution of prohibited property if the bank holding company has made distributions of bank property or has made an election under the installment payment provision with respect to the sale of bank property. Conversely, the spinoff provisions will not apply with respect to distributions of bank property if distributions of prohibited property have been made by the bank holding company under the spinoff provisions, or if it has made an election to pay the tax in installments with respect to prohibited property.

Pro rata distribution requirements.—In general, distributions must be pro rata either with respect to all shareholders of the distributing bank holding company or with respect to all holders of common stock of the company. In the case of distributions to several classes of shareholders, the determination of whether the distributions are pro rata is to be made on the basis of the respective fair market values of classes of stock. For this purpose, the respective fair market value of the classes of stock may be determined as of a time reasonably

[7] In the case where a wholly owned subsidiary is created to receive the prohibited property, certain amounts of working capital may be transferred in addition to the prohibited property. However, the nonrecognition provisions of this bill would not apply if the subsidiary receives a greater amount of working capital than is necessary under the circumstances or if other evidence indicates the existence of a plan one of the principal purposes of which is to distribute earnings and profits of a corporation.

close to the date upon which distribution is made (e.g., two months before the distribution is actually made) so the exchange ratio, if any, may be specified in any prospectus required in connection with the distribution.

Where the distribution is in exchange for stock (i.e., a redemption of the bank holding company's own stock), the pro rata requirement will be satisfied if a good faith offer to distribute is made on a uniform basis to all shareholders (including preferred shareholders) or to all common shareholders of the holding company. The requirement of a uniform offer means that the distributing company cannot offer different types of property to different shareholders; rather, it must offer the same types of property to all of its shareholders or to all of its common shareholders.

A limited exception is provided in the bill to permit non pro rata distributions where the Federal Reserve Board requires it in order to effectively separate banking and nonbanking businesses, e.g., if the result of a pro rata distribution would be that the same small group of shareholders would continue their repsective interests in two corporations rather than one. This exception applies only in the case of a qualified bank holding corporation which does not have more than 10 individual shareholders (other than an estate) at any time during the period beginning on July 7, 1970, and ending after the final distribution required under the Bank Holding Company Act is made. Further, this exception is to apply only if the Board certifies that a pro rata distribution is not appropriate to effectuate the policies of the Bank Holding Company Act and that a disproportionate distribution is necessary or appropriate to effectuate such policies. In this case, the Board is to make such certification only after consultation with the Secretary of the Treasury or his delegate. The requirement for consultation with the Secretary or his delegate is intended to give the Treasury Department an opportunity to advise the Board with respect to tax avoidance possibilities which might result from a disproportionate distribution.

Where distributions of divestiture property (banking or nonbanking property as the case may be) are made directly by a qualified bank holding corporation, the distributions may be pro rata with respect to common shareholders without the surrender of shares of the distributing company held by them. In the case where the divestiture property is transferred to a wholly owned subsidiary and then stock of the subsidiary is distributed, the common stock of the subsidiary may be distributed to all shareholders or only to the common shareholders of the distributing corporation without the surrender of shares in the distributing corporation. In addition, preferred stock or common stock in the subsidiary may be distributed in redemption of the holding company's own common and preferred stock (subject, however, to the tender offer requirement under the pro rata rule in the bill). In addition, if the exception to the pro rata requirements applies, the holding company may distribute preferred or common stock or securities of the subsidiary in exchange for the holding company's own securities.

Effect on shareholders.—If shareholders of a bank holding company do not recognize gain on a distribution of property to them in exchange for stock or securities held by them in the holding company, the basis of the property received by a shareholder is the same as the basis of the stock or securities exchanged. If property is received by such shareholders without an exchange of stock by them, the shareholder is required to allocate his basis in the stock of the bank holding company between such stock and the property distributed to him. Thus, the tax which would have otherwise been incurred by a shareholder with respect to a distribution is generally postponed until the shareholder disposes of the stock or property which is received.

Use of appreciated property by corporation to redeem its stock.—As a result of the Tax Reform Act of 1969, present law taxes any gain to a corporation which distributes appreciated property in redemption of its own stock (sec. 311(d)). However, a number of exceptions were provided to this rule at that time.[8] The bill adds another additional exception providing that gain will not be recognized by a corporation distributing appreciated stock of a pre-existing banking or nonbanking subsidiary in redemption of its own stock.

This additional exception to section 311(d) is not to be available for distributions of assets other than stock. Morever, the exception is to be available only for distributions made directly by the holding company (under new secs. 1101(a)(1) or (b)(1)) and does not apply to distributions of stock of any newly created subsidiary.[9] This exception is not to apply where the distributee is a tax-exempt organization.

Other than this exception for the distribution of appreciated stock, the usual provisions of the tax laws apply to the distributing company. That is, gain generally is recognized to the distributing corporation in the case of distributions of LIFO inventory, in the case of distributions of property subject to a liability in excess of its adjusted basis, and in the case of distributions of certain installment obligations (secs. 311 and 453). In the case of distributions of property in kind, the depreciation recapture provisions are to apply as under present law (secs. 1245 and 1250). Further, the investment credit recapture provisions are to apply as under present law with respect to dispositions of depreciable tangible property (sec. 47).

Installment method

The second form of tax relief provided by the bill permits the taxpayer to make installment payments of the tax attributable to a divestiture accomplished by a sale of bank or nonbank property, as the case may be. Under the installment payment provision, a bank holding company selling bank property or nonbank property, after July 7, 1970, may elect to pay the tax attributable to the sale in equal annual installments. The first installment is to be due on the due date of the taxpayer's return of taxes for the taxable year in which the sale occurred. The installments are to be paid annually thereafter with the

[8] The rule does not apply to (1) a distribution in partial or complete liquidation of a corporation, (2) a distribution of stock or securities in a divisive reorganization, (3) certain complete redemptions of a 10-percent shareholder, (4) certain distributions of stock of a 50-percent controlled corporation, (5) certain distributions of stock or securities pursuant to the terms of a judgment requiring divestiture under the antitrust laws, (6) certain distributions in redemption of stock to pay death taxes, (7) certain distributions to a private foundation in redemption of stock, and (8) certain distributions by a regulated investment company in redemption of its stock.

[9] If stock of a newly created subsidiary could be distributed under the protection of the new exception to sec. 311(d), the rule limiting the exception to stock distributions could be circumvented by transferring business assets to a newly created subsidiary and then distributing the stock of that subsidiary to the shareholders of the bank holding company.

last installment payable on the due date of the taxpayer's return in 1985 or, if later, on the corresponding date 10 years after the due date for the year in which the sale occurred. If the taxpayer makes more than one sale under the 1970 bank holding company legislation, the tax attributable to each sale may be paid on an installment basis beginning in the year after each sale was made.

As indicated above, the bill provides for a minimum installment period of 10 years. Thus, in the case of a sale in 1980, the installment period would be available until 1990 (rather than 1985). However, interest is not imposed upon the deferred tax in the case of installments due through 1985, but is payable with respect to installment payments due after 1985.

The installment payment of tax is not to be available for a sale of nonbank property if the bank holding company elects to apply the provision to the sale of bank property or if the company has distributed bank property under the spinoff provisions. Conversely, the installment payment of tax is not to apply with respect to a sale of bank property if the bank holding company elects to pay the tax in installments with respect to nonbank property or has distributed nonbank property under the spinoff provisions. If the bank holding company elects to report gain on a sale under the regular installment method (section 453), it is not to be entitled also to elect for this sale the special installment method provided here.

If the company elects to pay the tax in installments, the payments are to be accelerated and the tax paid in full if (i) an installment is not paid on or before its due date; or (ii) the Federal Reserve Board fails to make a certification, within the time prescribed that the company has disposed of all the property the disposition of which is necessary to effectuate the policies of the Bank Holding Company Act or that the company has ceased to be a bank holding company.

If the company elects to pay the tax in installments, the Secretary of the Treasury or his delegate may, if he feels that it is necessary to ensure payment of the tax, require the company to furnish a bond. The provision relating to bonds (sec. 6165) where the time to pay the tax has been extended, is to apply as though the Secretary is extending the time for the payment of tax. The running of the period of limitations for the collection of the tax attributable to a sale is to be suspended for the period during which there are any unpaid installments.

Rules of General Applicability

The tax relief provided under the bill is available for divestitures occurring from July 7, 1970, through December 31, 1980. In general, a bank holding company must be qualified as such and the property being divested must have been held as of July 7, 1970. This date is the date upon which the Senate Banking and Currency Committee announced that it was reporting out a bill dealing with one-bank holding companies. This restriction is considered necessary to preclude tax relief for acquisitions made after it became clear that the separation of banking and nonbanking businesses was to be required of the one-bank holding companies.

Since the Bank Holding Company Act of 1970 requires all divestitures to be made by December 31, 1980, the tax relief is made available only for those divestitures which will have taken place by that date.

Qualification of holding company.—Under the bill, a bank holding company is treated as a "qualified bank holding corporation" only

if it was "controlling" a bank for purposes of the Bank Holding Company Act as of July 7, 1970, or is later determined to be a qualified bank holding company because of (1) property acquired by it on or before July 7, 1970, or (2) property received after such date in a distribution from another qualified bank holding corporation, or (3) stock of a subsidiary it acquired after that date if the subsidiary was created for the purpose of receiving property required to be distributed by the company.

Generally, this definition includes a company which directly or indirectly owned 25 per cent or more of the stock of a bank or another bank holding company on July 7, 1970. In addition, the definition includes a company subsequently determined to be a bank holding company by the Federal Reserve Board because it exercises a "controlling influence" over a bank if the determination was made on the basis of the bank shares owned as of July 7, 1970, by the company. Thus, in such a case, the determination of the Federal Reserve Board is to be given retroactive effect for purposes of the tax provisions. Of course, the provisions of the bill relate solely to the treatment of a company as a qualified bank holding corporation for tax purposes. They do not relate in any respect to the effect, if any, of the Board's determination for purposes of the Bank Holding Company Act, .e.g, applicability of grandfather privileges under the Act.[10]

The bill extends the tax relief provisions to distributions or sales by a subsidiary of a bank holding company. These distributions or sales would be subject to the same requirements applicable to the "parent" holding company, e.g., the property must satisfy the cutoff date and the Federal Reserve Board must certify that divestiture is necessary or appropriate to effectuate the policies of the Act.[11] For this purpose, the term "subsidiary" has the same meaning as under the Bank Holding Company Act, i.e., generally, a subsidiary is a company in which the holding company directly or indirectly owns 25 percent or more of the voting stock.

Under the bill, a successor corporation in a type "F" reorganization (mere change in identity or place of incorporation) is to be treated as a qualified bank holding corporation if its predecessor satisfied the qualification requirements.

Eligibility of property.—The tax relief is, generally, available only for distributions of property owned on July 7, 1970, by a qualified bank holding corporation. This restriction is not generally to apply to property acquired after that date if it is received in a distribution

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[10] Generally, it is the position of the Federal Reserve Board that a determination relating to the status of a company as a bank holding company will be retroactive only when the company directly owned as much as 25 percent of a bank. A finding that a company is a bank holding company because of its "controlling influence" is not given retroactive effect. (Federal Reserve Order of January 15, 1976, relating to *Orwig & Co., Inc.*, and *Perpetual Corp.-Pierce National Life Insurance Co.*, 1973 Federal Reserve Bulletin 218.) In most cases, the prospective determination of status as a bank holding company results in the denial of grandfather privileges under the Bank Holding Company Act.

[11] In certain cases, a parent corporation may be treated as a bank holding company because its subsidiary owns stock in a bank. If the corporation owning the bank stock is a subsidiary for purposes of tax law (generally the parent corporation owns 80 percent of the voting stock), tax relief under the divestiture provisions is available because the subsidiary could be liquidated into the parent corporation without the recognition of gain, and then the parent corporation could distribute the bank stock to its shareholders without recognition of income by the shareholders. However, a company may be treated as a subsidiary of a bank holding company under the bank holding company provisions if the holding company owns 25 percent or more of its stock. Thus, in the case where a corporation is treated as a subsidiary under the Bank Holding Company Act but not under the Internal Revenue Code, bank stock owned by the subsidiary may not be distributed without the recognition of income unless it is treated as a bank holding company.

by another bank holding corporation, or to the stock of a subsidiary which is created to receive the property required to be distributed by the holding company.

In addition, the cutoff date is not generally to apply to certain other "substituted" property received by a bank holding company in a nontaxable transaction. Thus, the cutoff date is not to apply to nontaxable stock dividends received by the holding company, property received in a liquidation of a subsidiary in which gain or loss was not recognized, and property received in certain reorganizations to the extent gain or loss was not recognized. The reorganizations within the scope of the substituted property rules include mergers (a type "A" reorganization),[12] stock-for-stock exchanges (a type "B" reorganization), recapitalizations (a type "E" reorganization) and mere changes in identity or place of incorporation (a type "F" reorganization). If, in any of these reorganizations, additional consideration is received by the holding company which is required to be recognized under present law (sec. 356), this additional property is not to be treated as substituted property under the bill (although the additional consideration will not prevent nonrecognition property received in the same reorganization from being treated as substituted property for purposes of this bill).

The substituted property rules are to apply to property received in the liquidation of a subsidiary only if the property could have been distributed to shareholders without the recognition of income under the provisions, e.g., the property was held by the subsidiary on July 7, 1970. Property received in a merger or stock-for-stock exchange are to qualify under the substituted property rules if it is received in exchange for property which satisfied the cutoff date and the substituted property is also required to be divested. Also, there may be successive transactions involving substituted property and the substituted property rules will be satisfied so long as the property acquired after July 7, 1970, can be traced back through successive tax-free transactions to property held on that date.

Under present law, one of the requirements for a tax-free reorganization is that there be a continuity of interest on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization (Reg. § 1.368–1). The Internal Revenue Service has ruled that the continuity of interest requirements are satisfied even though, at the time of the reorganization, a shareholder was required by a court decree under the antitrust laws to dispose of the stock by the end of a 7-year period (Rev. Rul. 66–23, 1966–1 C.B. 67). The committee understands that in some situations a bank holding company which desires to continue to engage solely in nonbanking activities may, before making a divestiture, transfer its banking properties to another corporation in a nontaxable reorganization. If stock received in the other corporation is promptly divested by the holding company, the prior transaction might not qualify as a tax-free reorganization on continuity of interest grounds because of the divestiture requirements. Solely in order to facilitate divestitures under the tax provisions of the bill, the committee intends that the tax status of a reorganization in these circumstances should not be adversely affected by the divestiture requirements under the Bank Holding Company Act

[12] This would include mergers treated as a type "A" reorganization when using stock of a controlling corporation or a controlling merged corporation as described in section 368(a)(2)(D) or (E).

where a bank holding company disposes of shares received in the reorganization shortly after the reorganization occurs.

Five-percent ownership rule.—Regulations promulgated under present law (sec. 1101), provides that, to the extent that the distribution made by the bank holding company represents a 5 percent (or less) interest in the stock of a company, nonrecognition treatment is not available. This position is based upon the fact that the bank holding company legislation exempts from the divestiture requirement an interest in a company which does not include more than five percent of the outstanding shares of the company. Your committee believes that a bank holding company making a distribution of either bank property or nonbanking property, under the divestiture requirements of bank holding company legislation, should be eligible for tax relief under the bill on the entire amount. Consequently, the bill provides that the term "prohibited property" also includes shares of any company which a bank holding company may retain under the Bank Holding Company Act (sec. 4(c)(6)) if shares of a company are owned in excess of 5 percent and treated as property subject to the divestiture requirements of the Act.

"Grandfather" property.—The bill provides that the determination of whether property is eligible for tax relief under the bill is to be made without regard to the grandfather proviso of sec. 4(a)(2), of the Bank Holding Company Act, i.e., property held before June 30, 1968. Thus, even though property may be retained because it represents pre-June 30, 1968 activities which are not generally subject to the divestiture requirements), it may be eligible for tax relief if the Board certifies that, without regard to the grandfather privileges, the distribution is necessary or appropriate to effectuate the purposes of the bank holding company legislation. However, the tax relief is to be available only if the company irrevocably elects to forego the exemption from the divestiture requirements as to all property to which the exemption applies.

Certain family owned companies.—The Bank Holding Company Act of 1956 (sec. 4(c)(ii)) provides an exception to the divestiture requirements for a company covered by the 1970 amendments if more than 85 percent of the voting stock was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their spouses) who are lineal descendants of common ancestors. The bill extends the tax relief provisions to cover a company coming within this exemption if the company elects to waive the application of the exemption and dispose of either all of its bank property or all of its nonbanking property. In other respects, the requirements for obtaining the tax relief are to be the same as for any other bank holding company, e.g., the property must be held by the bank holding company on July 7, 1970 and the Federal Reserve Board must certify that the disposition is an appropriate reflection of the general divestiture requirements of the Bank Holding Company Act.

Certification by Federal Reserve Board.—Under the bill, the Federal Reserve Board is required to make both an initial certification before any distribution or sale by a bank holding company and a final certification that the required distribution or sale has been made. Initially, the Board must certify that the distribution or sale is necessary or appropriate to effectuate the policies of the bank holding company legislation. In addition, the Board must issue a final certification, be-

fore the close of the calendar year following the calendar year in which the last distribution or sale occurred, to the effect that the corporation has disposed of all the property which is necessary or appropriate to effectuate the policies of the Bank Holding Company Act. In the case of divestitures of bank property, nonrecognition treatment is not to apply unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has ceased to be a bank holding company.

The periods of limitation (provided in sec. 6501) are not to expire with respect to a deficiency resulting from a distribution made under the spinoff provisions until five years after the corporation notifies the Secretary that the final certification (referred to above) has been made or that the final certification will not be made.

Special successor corporation rules.—The bill contains a special successor corporation rule to deal with a situation brought to the committee's attention. In this case, a company became a bank holding company in 1974 through certain tax-free transactions in which it succeeded [13] to the controlling interests in banks and nonbanking assets owned by another corporation, which is a trusteed affiliate. In connection with these tax-free transactions, a predecessor corporation, which would have been treated as a qualified bank holding corporation because it satisfied the general cutoff date of July 7, 1970, was merged into a newly chartered bank corporation.

The effect of this special rule is to treat the corporations involved in the tax-free transactions occurring after July 7, 1970 and before August 1, 1974 and any subsidiaries [14] of these corporations as satisfying the general cutoff date of July 7, 1970. In addition, the shares of the trusteed corporation (which are held for the benefit of the new controlling corporation as a result of the tax-free transactions) are to be treated as property acquired in substitution for property which satisfied the cutoff date. The special rule would not apply to property acquired after the date on which the tax-free transactions occurred unless the general substituted property rules described above apply.

Effective Dates

The "spinoff" amendments made by the bill are to be effective with respect to distributions after July 7, 1970. The bill, however, is to take effect on October 1, 1977. The effective date of the bill is postponed until October 1, 1977, so that there will be no revenue loss until fiscal year 1978.[15]

In the case of distributions occurring before enactment of the bill, the period of limitations for refunds or credits is extended for one year following the October 1, 1977.

The provision relating to nonrecognition of gain by a corporation using appreciated property to redeem its stock is to apply to distributions made after December 31, 1975. However, the bill also provides that this provision is not to take effect until October 1, 1977.

[13] By a triangular merger and transfers of beneficial interests by the shareohlders of the predecessor corporation.

[14] For this purpose, the term "subsidiary" means a subsidiary within the meaning of the Bank Holding Company Act, i.e., a company in which the holding company directly or indirectly owns 25 percent or more of the voting stock.

[15] In the case of any distribution which takes place on or before 90 days after the date of the enactment of this bill, the requirement that the Federal Reserve Board certify that the distribution is necessary or appropriate to effectuate the purposes of the Bank Holding Company Act is to be treated as made before the distribution if an application for certification is made before the close of the 90th day after the date of enactment. The final certification (required by section 1101(e)) is to be treated as made before the close of the calendar year following the calendar year in which the last distribution occurred if application for that certification is also made before the close of the 90th day after the date of enactment.

The installment payment of tax provision is to apply to sales made after July 7, 1970. The bill, however, is not effective until October 1, 1977. As in the case of the spinoff approach, the postponement of the effective date of the bill is provided so that there will be no revenue loss until fiscal year 1978.

In the case of any sale which takes place on or before 90 days after the date of enactment, a certification by the Federal Reserve Board is to be treated as made before the sale if application for the certification is made within 90 days after the date of enactment.

In the case of a sale occurring before enactment of the bill, refunds or credits are to be available for the portion of the tax attributable to the sale not yet due on October 1, 1977 under the installment payment provision. Under the bill, no refund may be made or credit allowed under the provision before October 1, 1977.

Any refund due under this provision may be used by the Internal Revenue Service as an offset to any outstanding deficiencies as provided under present law (sec. 6402). In the case of refunds attributable to sales, in two or more taxable years the refunds attributable to the sales are to be used in the order of time as offsets to the deficiencies arising in the order of time and in the manner provided under present law where the taxpayer does not specify the liability being satisfied (first as to interest, second as to penalties, and third as to tax liabilities).

In the case of an overpayment arising from the installment provisions interest to the taxpayer is to be allowed for only for periods 6 months or more after the later of the date of enactment, the date on which application for refund is filed, or the due date for filing the income tax return for the taxable year in which the sale occurs.

IV. 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. The bill would become effective on October 1, 1977, so that there would be no revenue effect for fiscal year 1977. Thereafter, the revenue loss is estimated to be approximately $50 million in fiscal year 1978, $25 million in fiscal year 1979, $50 million in fiscal year 1980, and $60 million in fiscal year 1981. Of this amount, $125 million would be returned to the Treasury during the period 1981 through 1990 as installment payments are made with respect to the taxes deferred under the installment payment method.

In compliance with clause 2(l)(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 by a voice vote.

V. Other Matters Required To Be Discussed Under House Rules

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

With respect to subdivision (A) of clause 3 relating to oversight findings, it was as a result of your committee's oversight activity concerning the tax treatment of divestitures required under the Bank Holding Company Act that it concluded that the provisions of this bill are appropriate to cover the divestitures required under the Bank Holding Company Amendments of 1970.

In compliance with subdivision (B) of clause 3 of rule XI of the Rules of the House of Representatives, the committee states that the changes made to this bill involve no new budget authority.

With respect to subdivisions (C) and (D) of clause 3 of rule XI of the Rules of the House of Representatives, your committee advises that no estimate of comparison has been submitted to your committee by the Director of the Congressional Budget Office relative to the changes made by your committee, nor have any oversight findings or recommendations been submitted to your committee by the Committee on Government Operations.

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, your committee states that the inflation impact of the changes results from this bill should be negligible.

VI. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter C—Corporate Distributions and Adjustments

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PART I—DISTRIBUTIONS BY CORPORATIONS

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Subpart B—Effects on Corporation

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SEC. 311. TAXABILITY OF CORPORATION ON DISTRIBUTION.

(a) General Rule.—Except as provided in subsections (b), (c), and (d) of this section and section 453 (d), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock, of—

(1) its stock (or rights to acquire its stock), or

(2) property.

(b) LIFO Inventory.—

(1) Recognition of gain.—If a corporation inventorying goods under the method provided in section 472 (relating to last-in, first-out inventories) distributes inventory assets (as defined in paragraph (2) (A)), then the amount (if any) by which—

(A) the inventory amount (as defined in paragraph (2)(B)) of such assets under a method authorized by section 471 (relating to general rule for inventories), exceeds

(B) the inventory amount of such assets under the method provided in section 472,

shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(2) Definitions.—For purposes of paragraph (1)—

(A) Inventory assets.—The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(B) Inventory amount.—The term "inventory amount" means. in the case of inventory assets distributed during a taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(3) Method of determining inventory amount.—For purposes of this subsection, the inventory amount of assets under a method authorized by section 471 shall be determined—

(A) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(B) if subparagraph (A) does not apply by using cost or market, whichever is lower.

(c) Liability in Excess of Basis.—If—

(1) a corporation distributes property to a shareholder with respect to its stock,

(2) such property is subject to a liability, or the shareholder assumes a liability of the corporation in connection with the distribution, and

(3) the amount of such liability exceeds the adjusted basis (in the hands of the distributing corporation) of such property,

then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. In the case of a distribution of property subject to a liability which is not assumed by the shareholder, the amount of gain to be recognized under the preceding sentence shall not exceed the excess, if any, of the fair market value of such property over its adjusted basis.

(d) Appreciated Property Used To Redeem Stock.—

(1) In general.—If—

(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a redemption (to which subpart A applies) of part or all of his stock in such corporation, and

(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then again[1] shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. Subsections (b) and (c) shall not apply to any distribution to which this subsection applies.

(2) EXCEPTIONS AND LIMITATIONS.—Paragraph (1) shall not apply to—

(A) a distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution, owns at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualifies under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii));

(B) a distribution of stock or an obligation of a corporation—

(i) which is engaged in at least one trade or business,

(ii) which has not received property constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of the distribution, and

(iii) at least 50 percent in value of the outstanding stock of which is owned by the distributing corporation at any time within the 9-year period ending one year before the date of the distribution;

(C) a distribution before December 1, 1974, of stock of a corporation substantially all of the assets of which the distributing corporation (or a corporation which is a member of the same affiliated group (as defined in section 1504(a)) as the distributing corporation) held on November 30, 1969, if such assets constitute a trade or business which has been actively conducted throughout the one-year period ending on the date of the distribution;

(D) a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (26 Stat. 209; 15 U.S.C. 1–7) or the Clayton Act (38 Stat. 730; 15 U.S.C. 12–27), or both, to which the United States is a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock is in furtherance of the purposes of the judgment;

(E) a distribution to the extent that section 303(a) (relating to distributions in redemption of stock to pay death taxes) applies to such distribution;

(F) a distribution to a private foundation in redemption of stock which is described in section 537(b)(2)(A) and (B); [and]

(G) a distribution by a corporation to which part I of subchapter M (relating to regulated investment companies) applies, if such distribution is in redemption of its stock upon the demand of the shareholder[.] *; and*

[1] Probably should be "a gain".

(H) a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a), if with respect to such distributee, subsection (a)(1) or (b)(1) of section 1101 (relating to distributions pursuant to Bank Holding Company Act) applies to such distribution.

* * * * * * *

Subchapter O—Gain or Loss on Disposition of Property

Part I. Determination of amount of and recognition of gain or loss.
Part II. Basis rules of general application.
Part III. Common nontaxable exchanges.
Part IV. Special rules.
Part V. Changes to effectuate F.C.C. policy.
Part VI. Exchanges in obedience to S.E.C. orders.
Part VII. Wash sales of stock or securities.
Part VIII. Distributions pursuant to Bank Holding Company Act [of 1956].
Part IX. Distributions pursuant to orders enforcing the antitrust laws.

PART VIII—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT [OF 1956]

Sec. 1101. Distributions pursuant to Bank Holding Company Act [of 1956].
Sec. 1102. Special rules.
Sec. 1103. Definitions.

SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT [OF 1956].

(a) DISTRIBUTIONS OF CERTAIN NON-BANKING PROPERTY.—

(1) DISTRIBUTIONS OF PROHIBITED PROPERTY.—If—

(A) a qualified bank holding corporation distributes prohibited property (**other than stock received in an exchange to** which subsection (c)(2) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation [; or] *, or*

(ii) to a shareholder, in exchange for its preferred stock [; or] *, or*

(iii) to a security holder, in exchange for its securities [; and] *, and*

(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act [of 1956],

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c)(2) APPLIES.—If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation [; or] *, or*

(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock [; or], *or*

(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock [; or], *or*

(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder in exchange for its securities [; and], *and*

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

[(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.]

(3) PRO RATA AND OTHER REQUIREMENTS.—

(A) IN GENERAL.—Paragraphs (1) and (2) of this subsection, or paragraphs (1) and (2) of subsection (b), as the case may be, shall apply to any distribution to the shareholders of a qualified bank holding corporation only if each distribution—

(i) which is made by such corporation to its shareholders after July 7, 1970, and on or before the date on which the Board makes its final certification under subsection (e), and

(ii) to which such paragraph (1) or (2) applies (determined without regard to this paragraph),

meets the requirements of subparagraph (B), (C), or (D).

(B) PRO RATA REQUIREMENTS.—A distribution meets the requirements of this subparagraph if the distribution is pro rata with respect to all shareholders of the distributing qualified bank holding corporation or with respect to all shareholders of common stock of such corporation.

(C) REDEMPTIONS WHEN UNIFORM OFFER IS MADE.—A distribution meets the requirements of this subparagraph if the distribution is in exchange for stock of the distributing qualified bank holding corporation and such distribution is pursuant to a good faith offer made on a uniform basis to all shareholders of the distributing qualified bank holding corporation or to all shareholders of common stock of such corporation.

(D) NON-PRO RATA DISTRIBUTIONS FROM CERTAIN CLOSELY-HELD CORPORATIONS.—A distribution meets the requirements of this subparagraph if such distribution is made by a qualified bank holding corporation which does not have more than 10 shareholders (within the meaning of section 1371(a)(1)) and does not have as a shareholder a person (other than an estate) which is not an individual, and if the Board (after consultation with the Secretary or his delegate) certifies that—

(i) a distribution which meets the requirements of subparagraph (B) or (C) is not appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, and

(ii) the distribution being made is necessary or appropriate to effectuate section 4 or the policies of such Act.

(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation [which] *if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation* has made any distribution pursuant to subsection (b) *or has made an election under section 6158 with respect to bank property (as defined in section 6158(f)(3)).*

(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (1) or (2) applies[,] but which—

(A) results in a gift, see section 2501[,] and following, or

(B) has the effect of the payment of compensation, see section 61[(a)(1)].

(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—

(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—

(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation[; or], *or*

(ii) to a shareholder, in exchange for its preferred stock[; or], *or*

(iii) to a security holder, in exchange for its securities [; and], *and*

(B) the Board has, before the distribution, certified that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act [of 1956]) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c)(3) [; and], *and*

(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (C)(3) APPLIES.—If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect

to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation [; or] , *or*

(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its common stock [; or] , *or*

(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock [; or] , *or*

(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities [; and] , *and*

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

[(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.]

(3) PRO RATA AND OTHER REQUIREMENTS.—For pro rata and other requirements, see subsection (a)(3).

(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation [which] *if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation* has made any distribution pursuant to subsection (a) *or has made an election under section 6158 with respect to prohibited property.*

(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (1) or (2) applies[,] but which—

(A) results in a gift, see section 2501[,] and following, or

(B) has the effect of the payment of compensation, see section 61[(a)(1)].

(c) PROPERTY ACQUIRED AFTER [MAY 15, 1955] *July 7, 1970.*—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

(A) any property acquired by the distributing corporation after [May 15, 1955] *July 7, 1970*, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 *or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss)*

with respect to a reorganization described in section [368(a)(1)(E)] *368(a)(1) (A), (B), (E),* or (F), or

(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after [May 15, 1955] *July 7, 1970*, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on [May 15, 1955] *July 7, 1970*, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 *or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss)* with respect to a reorganization described in section [368(a)(1)(E)] *368(a)(1) (A), (B), (E)*, or (F), or

(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1)[.], *or*

(D) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 354 or 356 with respect to a reorganization described in section 368(a)(1) (A) or (B), unless such property was acquired by the distributing corporation in exchange for property which the distributing corporation could have distributed under subsection (a)(1) or (b)(1).

(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—If—

(A) any qualified bank holding corporation exchanges (i) property, which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1)(B)(i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such [property;] *property,*

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a)(2)(A) [; and] , *and*

(C) before such [exchange] *distribution*, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act [of 1956],

then paragraph (1) shall not apply with respect to such distribution.

(3) Exchanges involving interests in banks.—If—

(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such [property;] *property,*

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b)(2)(A) [; and] , *and*

(C) before such [exchange] *distribution,* the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act [of 1956]) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b)(1) or exchanged under this paragraph [; and] , *and*

(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

(d) Distributions To Avoid Federal Income Tax.—

(1) Prohibited property.—Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after [May 15, 1955] *July 7, 1970,* to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(2) Banking property.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after [May 15, 1955] *July 7, 1970,* to any corporation, property (other than property described in subsection (b)(1)(B)(i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

[(3) Certain contributions to capital.—In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a) or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purposes of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1)

or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.]

(e) Final Certification.—

[(1) For subsection (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4(a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under such section 4(a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

[(2) For subsection (b).—

[(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

[(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.]

(1) For subsection (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) disposed of all of the property the disposition of which is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act.

(2) For subsection (b).—Subsection (b) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) ceased to be a bank holding company.

(f) Certain Exchanges of Securities.—In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only

to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

SEC. 1102. SPECIAL RULES.

(a) BASIS OF PROPERTY ACQUIRED IN DISTRIBUTIONS.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

(1) if the property is received by a shareholder with respect to stock[,] without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock [; or], *or*

[(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

[(A) the amount of the property received which was treated as a dividend, and

[(B) the amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend).]

(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by the amount of gain to the taxpayer recognized on the property received.

(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until 5 years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations [prescribe) that the period (including extensions thereof) prescribed in section 4(a) of the Bank Holding Company Act of 1956, or section 1101(e)(2)(B), whichever is applicable, has expired;] *prescribe*)—

(1) that the final certification required by subsection (e) of section 1101 has been made, or

(2) that such final certification will not be made;

and such assessment may be made not withstanding any provision of law or rule of law which would otherwise prevent such assessment.

(c) ALLOCATION OF EARNINGS AND PROFITS.—

(1) DISTRIBUTION OF STOCK IN A CONTROLLED CORPORATION.—In the case of a distribution by a qualified bank holding corporation under section 1101 (a)(1) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

(2) EXCHANGES DESCRIBED IN SECTION 1101 (c) (2) or (3).—In the case of any exchange described in section 1101(c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

(3) DEFINITION OF CONTROLLED CORPORATION.—For purposes of paragraph (1), the term "controlled corporation" means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

(d) ITEMIZATION OF PROPERTY.—In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

[(e) CERTAIN BANK HOLDING COMPANIES.—This part shall apply in respect of any company which becomes a bank holding company as a result of the enactment of the Act entitled "An Act to amend the Bank Holding Company Act of 1956", approved July 1, 1966 (Public Law 89–485), with the following modifications:

[(1) Subsections (a)(3) and (b)(3) of section 1101 shall not apply.

[(2) Subsections (a)(1) and (2) and (b)(1) and (2) of section 1101 shall apply in respect of distributions to shareholders of the distributing bank holding corporation only if all distributions to each class of shareholders which are made—

[(A) after April 12, 1965, and

[(B) on or before the date on which the Board of Governors of the Federal Reserve System makes its final certification under section 1101(e),

are pro rata. For purposes of the preceding sentence, any redemption of stock made in whole or in part with property other than money shall be treated as a distribution.

[(3) In applying subsections (c) and (d) of section 1101 and subsection (b) of section 1103, the date "April 12, 1965" shall be substituted for the date "May 15, 1955".

[(4) In applying subsection (d)(3) of section 1101, the date of the enactment of this subsection shall be treated as being the date of the enactment of this part.

[(5) In applying subsection (b)(2)(A) of section 1103, the reference to the Bank Holding Company Act of 1956 shall be treated as referring to such Act as amended by Public Law 89–485.]

SEC. 1103. DEFINITIONS.

[(a) BANK HOLDING COMPANY.—For purposes of this part, the term "bank holding company" has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.]

(a) BANK HOLDING COMPANY; BANK HOLDING COMPANY ACT.—For purposes of this part—

(*1*) *Bank holding company.—The term "bank holding company" means—*

(*A*) *a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act, or*

(*B*) *a bank holding company subsidiary within the meaning of section 2(d) of such Act.*

(*2*) *Bank holding company act.—The term "Bank Holding Company Act" means the Bank Holding Company Act of 1956, as amended through December 31, 1970 (12 U.S.C. 1841 et seq.).*

(b) Qualified Bank Holding Corporation.—

(1) In general.—Except as provided in paragraph (2), for purposes of this part the term "qualified bank holding corporation" means any corporation (as defined in section 7701(a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

(A) on or before [May 15, 1955] *July 7, 1970,*

(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

(C) in exchange for all of its stock in an exchange described in section 1101 (c)(2) or (c)(3).

(2) Limitations.—

(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on [May 15, 1955] *July 7, 1970,* if the Bank Holding Company Act [of 1956] *Amendments of 1970* had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

(i) property acquired by it on or before [May 15, 1955] *July 7, 1970,*

(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, [and] *or*

(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

For purposes of this subparagraph, property held by a corporation having control of the corporation or by a subsidiary of the corporation shall be treated as held by the corporation.

(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

(i) on or before [May 15, 1955] *July 7, 1970,*

(ii) in a distribution (with respect to stock held by it on [May 15, 1955] *July 7, 1970,* or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

(*3*) *Certain successor corporations.—For purposes of this subsection, a successor corporation in a reorganization described in section 368(a)(1)(F) shall succeed to the status of its predecessor corporation as a qualified bank holding corporation.*

(c) Prohibited Property.—For purposes of this part, the term "prohibited property" means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act [of 1956] if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section [or in section 1101 (e)(2)(B) of this part, as the case may be. The term "prohibited property" does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c)(5) of such section]. *The term "prohibited property" also includes shares of any company not in excess of 5 percent of the outstanding voting shares of such company if the prohibitions of section 4 of such Act apply to the shares of such company in excess of such 5 percent.*

(d) Nonexempt Property.—For purposes of this part, the term "nonexempt property" means—

(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace[;],

(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision[; or] , *or*

(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

(e) Board.—For purposes of this part, the term "Board" means the Board of Governors of the Federal Reserve System.

(*f*) *Control; Subsidiary.—For purposes of this part—*

(*1*) *Control.—Except as provided in section 1102(c)(3), a corporation shall be treated as having control of another corporation if such corporation has control (within the meaning of section 2(a)(2) of the Bank Holding Company Act) of such other corporation.*

(*2*) *Subsidiary.—The term "subsidiary" has the meaning given to such term by section 2(d) of the Bank Holding Company Act.*

(*g*) *Election To Forego Grandfather Provision for All Property Representing Pre-June 30, 1968, Activities.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Com-*

pany Act as if such Act did not contain the proviso of section 4(a)(2) thereof. Any election under this subsection shall apply to all property described in such proviso and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable. An election under this subsection or subsection (h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(h) ELECTION TO DIVEST ALL BANKING OR NONBANKING PROPERTY IN CASE OF CERTAIN CLOSELY-HELD BANK HOLDING COMPANIES.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1), made under the Bank Holding Company Act as if such Act did not contain clause (ii) of section 4(c) of such Act. Any election under this subsection shall apply to all property described in subsection (c), or to all property eligible to be distributed without recognition of gain under section 1101(b)(1), as the case may be, and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable.

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Subtitle F—Procedure and Administration

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

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Subchapter A—Place and Due Date for Payment of Tax

Sec. 6151. Time and place for paying tax shown on returns.
Sec. 6152. Installment payments.
Sec. 6153. Installment payments of estimated income tax by individuals.
Sec. 6154. Installment payments of estimated income tax by corporations.
Sec. 6155. Payment on notice and demand.
Sec. 6156. Installment payments of tax on use of highway motor vehicles and civil aircraft.
Sec. 6157. Payment of Federal unemployment tax on quarterly or other time period basis.
Sec. 6158. Installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970.

SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) GENERAL RULE.—Except as otherwise provided in this [section] *subchapter*, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) EXCEPTIONS.—

(1) INCOME TAX NOT COMPUTED BY TAXPAYER.—If the taxpayer elects under section 6014 not to show the tax on the return, the amount determined by the Secretary or his delegate as payable shall be paid within 30 days after the mailing by the Secretary or his delegate to the taxpayer of a notice stating such amount and making demand therefor.

(2) USE OF GOVERNMENT DEPOSITARIES.—For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) DATE FIXED FOR PAYMENT OF TAX.—In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

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SEC. 6158. INSTALLMENT PAYMENT OF TAX ATTRIBUTABLE TO DIVESTITURES PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

(a) ELECTION OF EXTENSION.—If, after July 7, 1970, a qualified bank holding corporation sells bank property or prohibited property, the divestiture of either of which the Board certifies, before such sale, is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, the tax under chapter 1 attributable to such sale shall, at the election of the taxpayer, be payable in equal annual installments beginning with the due date (determined without extension) for the taxpayer's return of tax under chapter 1 for the taxable year in which the sale occurred and ending with the corresponding date in 1985. If the number of installments determined under the preceding sentence is less than 10, such number shall be increased to 10 equal annual installments which begin as provided in the preceding sentence and which end on the corresponding date 10 years later. An election under this subsection shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe.

(b) LIMITATIONS.—

(1) TREATMENT NOT AVAILABLE TO TAXPAYER FOR BOTH BANK PROPERTY AND PROHIBITED PROPERTY.—This section shall not apply to any sale of prohibited property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to bank property or has made any distribution pursuant to section 1101(b). This section shall not apply to bank property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to prohibited property or has made any distribution pursuant to section 1101(a).

(2) Treatment not available for certain installment sales.—No election may be made under subsection (a) with respect to a sale if the income from such sale is being returned at the time and in the manner provided in section 453 (relating to installment method).

(c) Acceleration of Payments.—If an election is made under subsection (a) and before the tax attributable to such sale is paid in full—

(1) any installment under this section is not paid on or before the date fixed by this section for its payment, or

(2) the Board fails to make a certification similar to the applicable certification provided in section 1101(e) within the time prescribed therein (for this purpose treating the last such sale as constituting the last distribution),

then the extension of time for payment of tax provided in this section shall cease to apply, and any portion of the tax payable in installments shall be paid on notice and demand from the Secretary or his delegate.

(d) Proration of Deficiency to Installments.—If an election is made under subsection (a) and a deficiency attributable to the sale has been assessed, the deficiency shall be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid on notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(e) Bond May be Required.—If an election is made under this section, section 6165 shall apply as though the Secretary were extending the time for payment of the tax.

(f) Definitions.—For purposes of this section—

(1) Terms have meanings given to them by section 1103.—The terms "qualified bank holding corporation", "Bank Holding Company Act", "Board"; "control", and "subsidiary" have the respective meanings given to such terms by section 1103.

(2) Prohibited property.—The term "prohibited property" means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(a)(1).

(3) Bank property.—The term "bank property" means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(b)(1).

(g) Cross References.—

(1) Security.—For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

(2) Period of limitation.—For extension of the period of limitation in the case of an extension under this section, see section 6503(i).

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CHAPTER 66—LIMITATIONS

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Subchapter A—Limitations on Assessment and Collection

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SEC. 6503. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) Issuance of Statutory Notice of Deficiency.—

(1) General rule.—The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, gift and certain excise taxes), shall (after the mailing of a notice under section 6212(a)) be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(2) Corporation joining in consolidated income tax return.—If a notice under section 6212(a) in respect of a deficiency in tax imposed by subtitle A for any taxable year is mailed to a corporation, the suspension of the running of the period of limitations provided in paragraph (1) of this subsection shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year.

(b) Assets of Taxpayer in Control or Custody of Court.—The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any State or of the District of Columbia, and for 6 months thereafter.

(c) Taxpayer Outside United States.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months.

(d) Extensions of Time for Payment of Estate Tax.—The running of the period of limitations for collection of any tax imposed by chapter 11 shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161(a)(2) or (b)(2) or under the provisions of section 6166.

(e) Certain Powers of Appointment.—The running of the period of limitations for assessment or collection of any tax imposed by chapter 11 shall be suspended in respect of the estate of a decedent

claiming a deduction under section 2055(b)(2) until 30 days after the expiration of the period for assessment or collection of the tax imposed by chapter 11 on the estate of the surviving spouse.

(f) EXTENSIONS OF TIME FOR PAYMENT OF TAX ATTRIBUTABLE TO RECOVERIES OF FOREIGN EXPROPRIATION LOSSES.—The running of the period of limitations for collection of the tax attributable to a recovery of a foreign expropriation loss (within the meaning of section 6167 (f)) shall be suspended for the period of any extension of time for payment under subsection (a) or (b) of section 6167.

(g) WRONGFUL SEIZURE OF PROPERTY OF THIRD PARTY.—The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary or his delegate to the date the Secretary or his delegate returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

(h) SUSPENSION PENDING CORRECTION.—The running of the periods of limitations provided in sections 6501 and 6502 on the making of assessments or the collection by levy or a proceeding in court in respect of any tax imposed by chapter 42 or section 507 or section 4971 or section 4975 shall be suspended for any period described in section 507(g)(2) or during which the Secretary or his delegate has extended the time for making correction under section 4941(e)(4), 4942(j)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4971(c)(3), or 4975(f)(4).

(i) EXTENSION OF TIME FOR COLLECTING TAX ATTRIBUTABLE TO DIVESTITURES PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—The running of the period of limitations for collection of the tax attributable to a sale with respect to which the taxpayer makes an election under section 6158(a) shall be suspended for the period during which there are any unpaid installments of such tax.

[(i)] *(j)* CROSS REFERENCES.—

For suspension in case of—

(1) Deficiency dividends of a personal holding company, see section 547(f).

(2) Bankruptcy and receiverships, see subchapter B of chapter 70.

(3) Claims against transferees and fiduciaries, see chapter 71.

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CHAPTER 67—INTEREST

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Subchapter A—Interest on Underpayments

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SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT, OF TAX.

(a) GENERAL RULE.—If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at an annual rate established under section 6621 shall be paid for the period from such last date to the date paid.

(b) LAST DATE PRESCRIBED FOR PAYMENT.—For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) EXTENSIONS OF TIME DISREGARDED.—The last date prescribed for payment shall be determined without regard to any extension of time for payment.

(2) INSTALLMENT PAYMENTS.—In the case of an election under section 6152(a) [or 6156(a)] , *6156(a), or 6158(a)*, to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6152(b) [or 6156(b)] , *6156(b), or 6158(a)*, as the case may be, and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment of any portion of the tax not shown on the return.

For purposes of subparagraph (A), section 6158(a) shall be treated as providing that the date prescribed for payment of each installment shall not be later than the date prescribed for payment of the 1985 installment.

(3) JEOPARDY.—The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior to the last date otherwise prescribed for such payment.

(4) LAST DATE FOR PAYMENT NOT OTHERWISE PRESCRIBED.—In the case of taxes payable by stamp and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary or his delegate).

(c) SUSPENSION OF INTEREST IN CERTAIN INCOME, ESTATE, GIFT, AND CHAPTER 42 OR 43 TAX CASES.—In the case of a deficiency as defined in section 6211 (relating to income, estate, gift, and certain excise taxes), if a waiver of restrictions under section 6213(d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary or his delegate for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(d) INCOME TAX REDUCED BY CARRYBACK OR ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS.—

(1) NET OPERATING LOSS OR CAPITAL LOSS CARRYBACK.—If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss or net capital loss arises.

(2) INVESTMENT CREDIT CARRYBACK.—If the credit allowed by section 38 for any taxable year is increased by reason of an invest-

ment credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the investment credit carryback arises, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

(3) ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS OF LIFE INSURANCE COMPANIES.—If the amount of any tax imposed by subtitle A is reduced by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).

(4) WORK INCENTIVE PROGRAM CREDIT CARRYBACK.—If the credit allowed by section 40 for any taxable year is increased by reason of a work incentive program credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the work incentive program credit carryback arises, or, with respect to any portion of a work incentive program carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

(e) APPLICABLE RULES.—Except as otherwise provided in this title—

(1) INTEREST TREATED AS TAX.—Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.

(2) NO INTEREST ON INTEREST.—No interest under this section shall be imposed on the interest provided by this section.

(3) INTEREST ON PENALTIES, ADDITIONAL AMOUNTS, OR ADDITIONS TO THE TAX.—Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(4) PAYMENTS MADE WITHIN 10 DAYS AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the

amount so paid shall not be imposed for the period after the date of such notice and demand.

(f) SATISFACTION BY CREDITS.—If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(g) LIMITATION ON ASSESSMENT AND COLLECTION.—Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

(h) EXCEPTION AS TO ESTIMATED TAX.—This section shall not apply to any failure to pay estimated tax required by section 6153 (or section 59 of the Internal Revenue Code of 1939) or section 6154.

(i) EXCEPTION AS TO FEDERAL UNEMPLOYMENT TAX.—This section shall not apply to any failure to make a payment of tax imposed by section 3301 for a calendar quarter or other period within a taxable year required under authority of section 6157.

(j) NO INTEREST ON CERTAIN ADJUSTMENTS.—

For provisions prohibiting interest on certain adjustments in tax, see section 6205(a).

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VII. ADDITIONAL VIEWS OF CONGRESSMEN BURLESON AND WAGGONNER

In 1974, the Committee considered and approved a third alternative method of tax relief, called the "rollover" provision, for eligible bank holding companies forced to divest property under the Bank Holding Company Act. Under this provision, a bank holding company would not be required to recognize gain on the sale of divested property if it reinvested the proceeds of that sale in qualified replacement property. Despite the Committee's failure to include the rollover provision in the Bank Holding Company Tax Act of 1976, we believe that such a provision should have been included.

Since 1970, bank holding companies have apprehensively watched their divestiture deadlines approach without direction from Congress as to what types of tax relief it will provide. Although some bank holding companies have made a small number of divestitures already, they are faced with an immediate need to make difficult business decisions involving the disposition of substantial amounts of property. With only a short period of time left within which they can lawfully divest, it is essential that Congress provide maximum tax flexibility for those divestitures.

The effect of the rollover provision is to leave a bank holding company in the same tax position after a forced divestiture that it was in prior to divestiture. There is no reason to impose harsh tax consequences on a bank holding company, so long as it complies with the divestiture requirements of the Bank Holding Company Act. Thus, the rollover provision is fair and equitable, since it merely provides for tax deferral, not tax avoidance.

In addition to the problem of providing equitable tax relief, bank holding companies are now placed at a substantial disadvantage in negotiating with prospective buyers who are aware of the pressure they are under to dispose of their property under the statutory time limits. As Congress said in 1970,

> [u]nder these circumstances, it will be a buyer's market and the sellers may not be able to get fair market value for the assets they are divesting, particularly if they are all required to divest simultaneously within a relatively short period of time. [S. Rep. No. 91–1084, 91st Congress 2d Sess. (1970)].

In these circumstances, the need for three alternative methods of tax relief becomes even more important.

The rationale of the rollover provision is analogous to Section 1033 of the Code which provides for the non-recognition of gain upon certain involuntary conversions of property. The 1974 rollover provision, however, was far more onerous than section 1033, since it required not only a reduction in the basis of the stock acquired, but

also a reduction in the basis of the acquired corporation's assets, whenever the holding company purchased stock of a corporation as qualified replacement property. This double basis reduction feature was widely regarded as being too complex to administer and grossly unfair to the taxpayer.

We believe that a rollover provision which would be fair to the holding companies, which would not be unduly difficult to administer, and which would not be open to abuses is required. On the other hand, it could be regarded as unfair to permit a taxpayer to rollover the assets from stock of one corporation into the stock of another corporation, without payment of some tax, if the purchased corporation had assets with a higher basis than the basis of the assets sold or, as the case may be, the basis which the first corporation had in its assets. Such a provision might work as follows:

> A qualified bank holding company or one of its subsidiaries would sell assets and/or stock of a corporation which constituted prohibited property and reinvest in the stock of another corporation as qualified replacement property. The basis of the assets and/or stock sold would be transferred to the stock of the corporation purchased, and there would be no adjustment to the basis of the assets of the corporation purchased. However, if the corporation purchased held assets with a basis which exceeded the basis in the assets sold or, as the case may be, the basis in assets held by the corporation sold, then the holding company would recognize gain on such excess and pay the tax thereon under the installment method outlined in this bill. The basis of the stock in the replacement corporation would then be increased to the extent of the recognized gain. If the assets held by the purchased corporation had the same or a lower basis, then no gain or loss would be recognized.

This proposal would place the holding company in no better a position than it was in prior to the forced divestiture. The holding company would have paid a tax if it realized gain to the extent it obtained the benefit of any increase in asset basis. This proposal, then, merely triggers the same kind of recognition that is triggered by the Code in all cases where assets with a low basis are sold and the proceeds are reinvested in new assets. Furthermore, the proposal is much simpler than the double basis adjustments contained in the 1974 draft bill.

OMAR BURLESON.
JOE D. WAGGONNER, Jr.

VIII. ADDITIONAL VIEWS OF HON. J. J. PICKLE

During the Committee debate it was brought out that the Federal Reserve Board has required some banks and will perhaps be requiring more banks to divest some of their banking as well as their non-banking assets under the Bank Holding Company Act. It seems to me that as a matter of equity we should make tax relief available for all divestitures required under the Act equally.

This problem was one of the problems that the committee considered but took no action on. It seems to me that it should have. This bill distinguishes between a divestiture required under the provisions of Section 3 of the Bank Holding Company Act, and a divestiture required under Section 4 of the Bank Holding Company Act. Yet both cases present the same problem, the property when acquired was legal. Now, due to the Bank Holding Act of 1970 the banks are forced to dispose of this property. To allow one type of forced sale a certain type of tax advantage, it seems fair to me to allow the same tax advantage to another forced sale required under the Act.

I would urge that any relief allowed to one type of divestiture be allowed to any divestiture required by the Federal Reserve Board as a matter of fairness to all.

It was suggested that there would be time for another bill to take care of this problem in another bill. Even though I personally questioned this possibility, I hope that there will be such legislation soon.

J. J PICKLE.

IX. ADDITIONAL VIEWS OF CONGRESSMAN MIKVA AND STARK

The issue of the tax treatment to be afforded bank holding company divestitures should not be permitted to obscure the rationale which initially required the divestitures. On two separate occasions, Congress determined that serious antitrust problems were inherent in the bank holding company concept. In 1956, the Bank Holding Company Act established the general policy of requiring the separation of banking activities from other commercial and industrial pursuits. The coverage of the Act was extended in 1970 to require one-bank holding companies to divest themselves of either their bank or nonbank assets by December 31, 1980. Thus, divestiture was ordered because bank holding companies represented a serious anticompetitive obstacle inimical to the public interest.

It is only against this background of conduct by the bank holding companies not in the public's interest that proposals for the tax treatment of divestitures can or should be considered. The Committee has wisely decided to provide two formats for the tax treatment of divestitures by bank holding companies. If the bank holding company chooses to divest itself of either its bank assets or nonbank assets by distributing the shares of the divested property to the stockholders of the bank holding company then the distribution may be considered as a tax-free spinoff along the lines of sections 1101–1103 of the Internal Revenue Code. However, because situations may arise in which the distribution of the divested property's stock to the holding company's shareholders would be inappropriate, another procedure covering the sale of the divested property was established. Essentially, the second method permits a bank holding company selling either bank or nonbank property to pay the tax on the gain realized on the sale in equal annual installments beginning in the year following divestiture and continuing for ten years.

In developing both of these procedures for the tax treatment of bank holding company divestitures, the Committee had three goals: (1) to avoid adding another layer of substantive tax provisions to the Internal Revenue Code; (2) to fashion a simple, workable procedure; and (3) to accord fair treatment to those companies forced to divest. The Committee's proposals live up to the first two of these principles but fall short of being fair. Or perhaps it would be more accurate to say that the Committee's installment payment proposal is too fair. Under the tax code, divestitures which result in gains are subject to tax even if these divestitures are required by antitrust laws. Congress has sometimes, but not always, granted tax relief to corporations subject to antitrust action. Because one-bank holding companies were not considered to violate antitrust principles before 1970, and because a decision regarding the tax treatment of divestitures has been five years in

the making, some tax relief would be fair. The draft of legislation prepared by this Committee in 1974 determined that requiring payment of the installment in full by 1985 was fair, and I think that deadline is still fair. To permit all bank holding companies ten years in which to pay the installment would allow the holding companies to wait until December 30, 1980, to divest in order to receive the most advantageous benefit in the sale of their property. Moreover, the ten-year installment plan would encourage bank holding companies to delay divestiture thereby prolonging the anticompetitive impact which the holding companies have been found to impose. This goes beyond fair treatment and enters the realm of preferential antitrust treatment.

The Committee has heard from witnesses who argued that the ten-year installment payment plan without the 1985 deadline is the only fair proposal because imposition of the deadline provides a benefit to those holding companies which divested themselves soon after the 1970 amendments. However, because the purpose of the Bank Holding Company Act was to eliminate anticompetitive conduct, it is not unfair to give some added benefit to those holding companies which complied with the divestiture requirements at an early date.

It is true that any installment payment plans which run after 1985 will be subject to the payment of interest on the outstanding taxes owed after 1985, but this interest will be at the U.S. government rate which is nine-tenths of the prime rate. The Treasury does not extend that benefit to other taxpayers, and no policy reason exists for doing so here. Again, this goes beyond mere fairness and verges on a gift from the federal government.

Reaffirmation of the 1985 deadline will promote the antitrust basis of the Bank Holding Company Act, provide some small reward to those holding companies which complied with the Act at the earliest possible time, and still grant some tax relief to those other bank holding companies which have persisted in an anticompetitive course of conduct. It can be hoped that the Senate will pare down this overdose of largess for the divesting bank holding companies.

ABNER J. MIKVA.
FORTNEY H. (PETE) STARK.

X. DISSENTING VIEWS OF CONGRESSMAN CHARLES A. VANIK

I oppose the adoption of H.R. 11977 to provide tax relief to bank holding companies facing divestitures pursuant to the Bank Holding Company Act of 1970.

The proposal is retroactive relief to companies which Congress concluded were engaging in practices detrimental to the public interest and sound banking. As the representative for Taxation with Representation pointed out, ten years of payments of taxes without interest is equal to forgiveness of almost half of the tax at capital gains computation. The effective tax rates on bank holding divestiture rights fall to ridiculous, insignificant levels.

Those involved in banking and bank holding companies are notorious for their low federal income tax payment. The asset appreciations subject to tax in bank holding divestiture were substantially created by a whole series of tax relief provisions—including the investment tax credit which they have used to enormous advantage in leased equipment schemes, purchase of tax-exempt municipal bonds which are heavy in their portfolios, special bad debt provisions, and special treatment for ordinary losses when they sell portfolio investments.

Frankly, I do not understand the priorities which bring this legislation to this point. It is one of the non-essential bills of the 94th Congress. At a time when this Congress is struggling to establish a record for legislative achievement, our efforts should not be clouded with another bill for the relief of bankers.

This year we will have to explain the relief we provided to bankers extensively investing in tax-free municipal bonds of high risk cities. It will be incredibly difficult to justify tax relief for the bank holding companies which were often designed to escape taxes, establish control and to use deposits in unrelated businesses.

CHARLES A. VANIK.

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H. R. 11997

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To amend the Internal Revenue Code of 1954 with respect to the tax treatment of certain divestitures of assets by bank holding companies.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bank Holding Company Tax Act of 1976".

SEC. 2. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

(a) TAX-FREE DISTRIBUTIONS.—Part VIII of subchapter O of chapter 1 of the Internal Revenue Code of 1954 (relating to distributions pursuant to Bank Holding Company Act of 1956) is amended to read as follows:

"PART VIII—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT

"Sec. 1101. Distributions pursuant to Bank Holding Company Act.
"Sec. 1102. Special rules.
"Sec. 1103. Definitions.

"SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT.

"(a) DISTRIBUTIONS OF CERTAIN NON-BANKING PROPERTY.—

"(1) DISTRIBUTIONS OF PROHIBITED PROPERTY.—If—

"(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—

"(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) to a shareholder, in exchange for its preferred stock, or

"(iii) to a security holder, in exchange for its securities, and

"(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

"(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c)(2) APPLIES.—If—

"(A) a qualified bank holding corporation distributes—

"(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

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"(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock, or

"(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock, or

"(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder in exchange for its securities, and

"(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

"(3) Pro rata and other requirements.—

"(A) In general.—Paragraphs (1) and (2) of this subsection, or paragraphs (1) and (2) of subsection (b), as the case may be, shall apply to any distribution to the shareholders of a qualified bank holding corporation only if each distribution—

"(i) which is made by such corporation to its shareholders after July 7, 1970, and on or before the date on which the Board makes its final certification under subsection (e), and

"(ii) to which such paragraph (1) or (2) applies (determined without regard to this paragraph),

meets the requirements of subparagraph (B), (C), or (D).

"(B) Pro rata requirements.—A distribution meets the requirements of this subparagraph if the distribution is pro rata with respect to all shareholders of the distributing qualified bank holding corporation or with respect to all shareholders of common stock of such corporation.

"(C) Redemptions when uniform offer is made.—A distribution meets the requirements of this subparagraph if the distribution is in exchange for stock of the distributing qualified bank holding corporation and such distribution is pursuant to a good faith offer made on a uniform basis to all shareholders of the distributing qualified bank holding corporation or to all shareholders of common stock of such corporation.

"(D) Non-pro rata distributions from certain closely-held corporations.—A distribution meets the requirements of this subparagraph if such distribution is made by a qualified bank holding corporation which does not have more than 10 shareholders (within the meaning of section 1371 (a)(1)) and does not have as a shareholder a person (other than an estate) which is not an individual, and if the Board (after consultation with the Secretary or his delegate) certifies that—

"(i) a distribution which meets the requirements of subparagraph (B) or (C) is not appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, and

"(ii) the distribution being made is necessary or appropriate to effectuate section 4 of the policies of such Act.

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"(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation has made any distribution pursuant to subsection (b) or has made an election under section 6158 with respect to bank property (as defined in section 6158(f)(3)).

"(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (1) or (2) applies but which—

"(A) results in a gift, see section 2501 and following, or

"(B) has the effect of the payment of compensation, see section 61.

"(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—

"(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—

"(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

"(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) to a shareholder, in exchange for its preferred stock, or

"(iii) to a security holder, in exchange for its securities, and

"(B) the Board has, before the distribution, certified that—

"(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c)(3), and

"(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

"(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c)(3) APPLIES.—If—

"(A) a qualified bank holding corporation distributes—

"(i) common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder in exchange for its common stock, or

"(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock, or

"(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities, and

"(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

"(3) PRO RATA AND OTHER REQUIREMENTS.—For pro rata and other requirements, see subsection (a)(3).

"(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation has made any distribution pursuant to subsection (a) or has made an election under section 6158 with respect to prohibited property.

"(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (1) or (2) applies but which—

"(A) results in a gift, see section 2501 and following, or

"(B) has the effect of the payment of compensation, see section 61.

"(c) PROPERTY ACQUIRED AFTER JULY 7, 1970.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

"(A) any property acquired by the distributing corporation after July 7, 1970, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss) with respect to a reorganization described in section 368(a)(1)(A), (B), (E), or (F), or

"(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after July 7, 1970, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on July 7, 1970, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss) with respect to a reorganization described in section 368(a)(1) (A), (B), (E), or (F), or

"(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1), or

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"(D) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 354 or 356 with respect to a reorganization described in section 368(a)(1) (A) or (B), unless such property was acquired by the distributing corporation in exchange for property which the distributing corporation could have distributed under subsection (a)(1) or (b)(1).

"(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—If—

"(A) any qualified bank holding corporation exchanges (i) property, which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1)(B)(i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property,

"(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a)(2)(A), and

"(C) before such distribution, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act,

then paragraph (1) shall not apply with respect to such distribution.

"(3) EXCHANGES INVOLVING INTERESTS IN BANKS.—If—

"(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property.

"(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b)(2)(A), and

"(C) before such distribution, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

"(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b)(1) or exchanged under this paragraph, and

"(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

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"(d) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—

"(1) PROHIBITED PROPERTY.—Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after July 7, 1970, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

"(2) BANKING PROPERTY.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after July 7, 1970 to any corporation, property (other than property described in subsection (b) (1) (B) (i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

"(e) FINAL CERTIFICATION.—

"(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) disposed of all of the property the disposition of which is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act.

"(2) FOR SUBSECTION (b).—Subsection (b) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) ceased to be a bank holding company.

"(f) CERTAIN EXCHANGES OF SECURITIES.—In the case of an exchange described in subsection (a) (2) (A) (iv) or subsection (b) (2) (A) (iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

"SEC. 1102. SPECIAL RULES.

"(a) BASIS OF PROPERTY ACQUIRED IN DISTRIBUTIONS.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

"(1) if the property is received by a shareholder with respect to stock without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock, or

"(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by the amount of gain to the taxpayer recognized on the property received.

"(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by

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shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until 5 years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe)—

"(1) that the final certification required by subsection (e) of section 1101 has been made, or

"(2) that such final certification will not be made;

and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

"(c) Allocation of Earnings and Profits.—

"(1) Distribution of stock in a controlled corporation.—In the case of a distribution by a qualified bank holding corporation under section 1101 (a)(1) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earning and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

"(2) Exchanges described in section 1101(c) (2) or (3).—In the case of any exchange described in section 1101(c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

"(3) Definition of controlled corporation.—For purposes of paragraph (1), the term 'controlled corporation' means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

"(d) Itemization of Property.—In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

"SEC. 1103. DEFINITIONS.

"(a) Bank Holding Company; Bank Holding Company Act.—For purposes of this part—

"(1) Bank holding company.—The term 'bank holding company' means—

"(A) a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act, or

"(B) a bank holding company subsidiary within the meaning of section 2(d) of such Act.

"(2) Bank holding company act.—The term 'Bank Holding Company Act' means the Bank Holding Company Act of 1956, as amended through December 31, 1970 (12 U.S.C. 1841 et seq.).

"(b) Qualified Bank Holding Corporation.—

"(1) In general.—Except as provided in paragraph (2), for purposes of this part the term 'qualified bank holding corporation' means any corporation (as defined in section 7701(a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

"(A) on or before July 7, 1970,

"(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

"(C) in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (c) (3).

"(2) LIMITATIONS.—

"(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on July 7, 1970, if the Bank Holding Company Act Amendments of 1970 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

"(i) property acquired by it on or before July 7, 1970,

"(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

"(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

For purposes of this subparagraph, property held by a corporation having control of the corporation or by a subsidiary of the corporation shall be treated as held by the corporation.

"(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

"(i) on or before July 7, 1970,

"(ii) in a distribution (with respect to stock held by it on July 7, 1970, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

"(iii) in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

"(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

"(3) CERTAIN SUCCESSOR CORPORATIONS.—For purposes of this subsection, a successor corporation in a reorganization described in section 368(a) (1) (F) shall succeed to the status of its predecessor corporation as a qualified bank holding corporation.

"(c) PROHIBITED PROPERTY.—For purposes of this part, the term 'prohibited property' means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section. The term 'prohibited property' also includes shares of any company not in excess of 5 percent of the outstanding voting shares of such company if the prohibitions of section 4 of such Act apply to the shares of such company in excess of such 5 percent.

"(d) NONEXEMPT PROPERTY.— For purposes of this part, the term 'nonexempt property' means—

"(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace,

"(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision, or

"(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

"(e) BOARD.—For purposes of this part, the term 'Board' means the Board of Governors of the Federal Reserve System.

"(f) CONTROL; SUBSIDIARY.—For purposes of this part—

"(1) CONTROL.—Except as provided in section 1102(c)(3), a corporation shall be treated as having control of another corporation if such corporation has control (within the meaning of section 2(a)(2) of the Bank Holding Company Act) of such other corporation.

"(2) SUBSIDIARY.—The term 'subsidiary' has the meaning given to such term by section 2(d) of the Bank Holding Company Act.

"(g) ELECTION TO FOREGO GRANDFATHER PROVISION FOR ALL PROPERTY REPRESENTING PRE-JUNE 30, 1968, ACTIVITIES.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain the proviso of section 4(a)(2) thereof. Any election under this subsection shall apply to all property described in such proviso and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable. An election under this subsection or subsection (h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Board that the bank holding company has disposed of either all banking property or all nonbanking property.

"(h) ELECTION TO DIVEST ALL BANKING OR NONBANKING PROPERTY IN CASE OF CERTAIN CLOSELY HELD BANK HOLDING COMPANIES.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain clause (ii) of section 4(c) of such Act. Any election under this subsection shall apply to all property described in subsection (c), or to all property eligible to be distributed without recognition of gain under section 1101(b)(1), as the case may be, and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable."

(b) AMENDMENT OF SECTION 311(d).—Paragraph (2) of section 311(d) of such Code (relating to exceptions and limitations to the recognition of gain where appreciated property is used to redeem stock) is amended by striking out "and" at the end of subparagraph (F), by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; and", and by adding at the end thereof the following new subparagraph:

"(H) a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a), if with respect to such distributee, subsection (a)(1) or (b)(1) of section 1101 (relating to distributions pursuant to Bank Holding Company Act) applies to such distribution."

(c) CLERICAL AMENDMENT.—The table of parts for subchapter O of chapter 1 of such Code is amended by striking out "of 1956".

(d) EFFECTIVE DATE.—

(1) FOR SUBSECTION (a).—The amendments made by subsections (a) and (c) shall take effect on October 1, 1977, with respect to distributions after July 7, 1970, in taxable years ending after July 7, 1970, but only in the case of qualified bank holding corporations (within the meaning of section 1103(b) of the Internal Revenue Code of 1954, as amended by subsection (a) of this section).

(2) SPECIAL RULE FOR CERTIFYING DISTRIBUTIONS WHICH HAVE ALREADY TAKEN PLACE.—For purposes of sections 1101(a)(1)(B), 1101(a)(3)(D), 1101(b)(1)(B), 1101(c)(2)(C), 1101(c)(3)(C), and 1101(e) of the Internal Revenue Code of 1954 (as amended by subsection (a) of this section), in the case of any distribution which takes place on or before the 90th day after the date of the enactment of this Act, a certification by the Federal Reserve Board described in any such section shall be treated as made before the distribution (or, in the case of section 1101(e), before the close of the calendar year following the calendar year in which the last distribution occurred) if application for such certification is made before the close of the 90th day after the date of the enactment of this Act.

(3) PERIOD OF LIMITATIONS.—If refund or credit of any overpayment of income tax attributable to the amendment made by subsection (a) is prevented at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978.

(4) FOR SUBSECTION (b).—The amendment made by subsection (b) shall take effect on October 1, 1977, with respect to distributions after December 31, 1975, in taxable years ending after December 31, 1975.

SEC. 3. INSTALLMENT PAYMENT OF TAX.

(a) INSTALLMENT PAYMENT.—Subchapter A of chapter 62 of the Internal Revenue Code of 1954 (relating to place and due date for payment of tax) is amended by adding at the end thereof the following new section:

"SEC. 6158. INSTALLMENT PAYMENT OF TAX ATTRIBUTABLE TO DIVESTITURES PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

"(a) ELECTION OF EXTENSION.—If, after July 7, 1970, a qualified bank holding corporation sells bank property or prohibited property, the divestiture of either of which the Board certifies, before such sale, is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, the tax under chapter 1 attributable to such sale shall, at the election of the taxpayer, be payable in equal annual installments beginning with the due date (determined without extension) for the taxpayer's return of tax under chapter 1 for the taxable year in which the sale occurred and ending with the corresponding date in 1985. If the number of installments determined under the preceding sentence is less than 10, such number shall be increased to 10 equal annual installments which begin as provided in the preceding sentence and which end on the corresponding date 10 years later. An election under this subsection shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe.

"(b) LIMITATIONS.—

"(1) TREATMENT NOT AVAILABLE TO TAXPAYER FOR BOTH BANK PROPERTY AND PROHIBITED PROPERTY.—This section shall not apply to any sale of prohibited property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to bank property or has made any distribution pursuant to section 1101(b). This section shall not apply to bank property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to prohibited property or has made any distribution pursuant to section 1101(a).

"(2) TREATMENT NOT AVAILABLE FOR CERTAIN INSTALLMENT SALES.—No election may be made under subsection (a) with respect to a sale if the income from such sale is being returned at the time and in the manner provided in section 453 (relating to installment method).

"(c) ACCELERATION OF PAYMENTS.—If an election is made under subsection (a) and before the tax attributable to such sale is paid in full—

"(1) any installment under this section is not paid on or before the date fixed by this section for its payment, or

"(2) the Board fails to make a certification similar to the applicable certification provided in section 1101(e) within the time prescribed therein (for this purpose treating the last such sale as constituting the last distribution),

then the extension of time for payment of tax provided in this section shall cease to apply, and any portion of the tax payable in installments shall be paid on notice and demand from the Secretary or his delegate.

"(d) PRORATION OF DEFICIENCY TO INSTALLMENTS.—If an election is made under subsection (a) and a deficiency attributable to the sale has been assessed, the deficiency shall be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid on notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

"(e) BOND MAY BE REQUIRED.—If an election is made under this section, section 6165 shall apply as though the Secretary were extending the time for payment of the tax.

"(f) DEFINITIONS.—For purposes of this section—

"(1) TERMS HAVE MEANINGS GIVEN TO THEM BY SECTION 1103.—The terms 'qualified bank holding corporation', 'Bank Holding Company Act', 'Board'; 'control', and 'subsidiary' have the respective meanings given to such terms by section 1103.

"(2) PROHIBITED PROPERTY.—The term 'prohibited property' means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(a)(1).

"(3) BANK PROPERTY.—The term 'bank property' means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(b)(1).

"(g) CROSS REFERENCES.—

"(1) Security.—For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

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"(2) Period of limitation.—For extension of the period of limitation in the case of an extension under this section, see section 6503(i)."

(b) EXTENSION OF TIME FOR COLLECTION OF TAX.—Section 6503 of such Code (relating to suspension of running of period of limitation) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) EXTENSION OF TIME FOR COLLECTING TAX ATTRIBUTABLE TO DIVESTITURES PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—The running of the period of limitations for collection of the tax attributable to a sale with respect to which the taxpayer makes an election under section 6158(a) shall be suspended for the period during which there are any unpaid installments of such tax."

(c) TECHNICAL AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 62 of such Code is amended by adding at the end thereof the following new item:

"Sec. 6158. Installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970."

(2) Subsection (a) of section 6151 of such Code (relating to time and place for paying tax shown on returns) is amended by striking out "section," and inserting in lieu thereof "subchapter,".

(3) Paragraph (2) of section 6601(b) of such Code (relating to interest) is amended—

(A) by striking out "or 6156(a)" and inserting in lieu thereof ", 6156(a), or 6158(a)",

(B) by striking out "or 6156(b)" and inserting in lieu thereof ", 6156(b), or 6158(a)"; and

(C) by inserting at the end thereof the following new sentence:

"For purposes of subparagraph (A), section 6158(a) shall be treated as providing that the date prescribed for payment of each installment shall not be later than the date prescribed for payment of the 1985 installment."

(d) APPLICABILITY TO CERTAIN SUCCESSOR CORPORATIONS.—If, after July 7, 1970, and before August 1, 1974—

(1) a corporation acquires substantially all of the properties of a qualified bank holding corporation (as defined in section 1103(b) of the Internal Revenue Code of 1954) in a transaction described in sections 368(a) (1) (A) and 368 (a) (2) (D), and

(2) the acquiring corporation (or a corporation in control of the acquiring corporation) acquires beneficial interests in shares described in section 2(g) (2) of the Bank Holding Company Act (as defined in section 1103(a) (2) of the Internal Revenue Code of 1954) in a transaction to which section 351 applies,

then, the acquiring corporation (or a corporation which is in control (within the meaning of section 2(a) (2) of such Act) of the acquiring corporation or a subsidiary (within the meaning of section 2(d) of such Act) of the corporation so in control) shall be treated as a qualified bank holding corporation for purposes of section 1103 (b) and 6158 of the Internal Revenue Code of 1954 and the shares described in such section 2(g) (2) shall be considered property which is acquired by such corporation, for purposes of section 1101(c) (1) (A) (iii) of the Internal Revenue Code of 1954, after July 7, 1970.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1977, with respect to sales after July 7, 1970, in taxable years ending after July 7, 1970, but only in the case of qualified bank holding corporations (within the meaning of section 1103(b) of the Internal Revenue Code of 1954, as amended by section 2(a) of this Act).

(2) SPECIAL RULE FOR CERTIFYING SALES WHICH HAVE ALREADY TAKEN PLACE.—For purposes of section 6158(a) of the Internal Revenue Code of 1954 (as added by subsection (a) of this section) in the case of any sale which takes place on or before the 90th day after the date of the enactment of this Act, a certification by the Federal Reserve Board described in section 6158(a) shall be treated as made before the sale if application for such certification is made before the close of the 90th day after the date of the enactment of this Act.

(3) REFUND OF TAX.—

(A) IN GENERAL.—If any tax attributable to a sale which occurred before October 1, 1977, is payable in annual installments by reason of an election under section 6158(a) of the Internal Revenue Code of 1954, any portion of such tax for which the due date of the installment does not occur before October 1, 1977, shall, on application of the taxpayer, be treated as an overpayment of tax.

(B) INTEREST ON OVERPAYMENTS.—For purposes of section 6611(b), in the case of any overpayment attributable to subparagraph (A), the date of the overpayment shall be the day which is 6 months after the latest of the following:

(i) the date on which application for refund or credit of such overpayment is filed,

(ii) the due date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 of the Internal Revenue Code of 1954 for the taxable year the tax of which is being refunded or credited, or

(iii) the date of the enactment of this Act.

(C) EXTENSION OF PERIOD OF LIMITATIONS.—If any refund or credit of tax attributable to the application of subparagraph (A) is prevented at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978.

Speaker of the House of Representatives.

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