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CAPITOL ACCOUNT

A Bimonthly Report on Federal Legislative Matters Affecting CPAs

December 1991

BILLS TO EASE WORKLOAD COMPRESSION INTRODUCED IN CONGRESS

A legislative proposal by the AICPA that would allow certain taxpayers to use fiscal years, instead of calendar years, for tax purposes has been introduced in the U.S. House of Representatives and Senate. They are H.R. 3943, which was introduced by Rep. Beryl Anthony (D-AR), and S. 2109, which was introduced by Senator Max Baucus (D-MT) and co-sponsored by Senators Bob Packwood (R-OR) and Orrin Hatch (R-UT). Rep. Anthony is a member of the House Ways and Means Committee and the senators are all members of the Senate Finance Committee.

The legislation will help relieve the shift in workload that resulted from the requirement in the Tax Reform Act of 1986 that most partnerships, S corporations, and personal service corporations use a calendar year end. (Support by the AICPA leadership for pursuing this legislative approach was demonstrated by the AICPA Council at its October meeting. See "Inside Focus," page 2). The onerous effect of the calendar-year-end requirement was somewhat mitigated by enactment of section 444 in 1987, but not sufficiently to prevent severe workload compression. Section 444 allowed entities to retain fiscal years or adopt a September, October, or November year end. However, section 444 is overly restrictive.

It's not just tax practitioners who have been hit by a workload imbalance. Firms with accounting and auditing clients have been caught because financial statements and audit reports are usually due within 90 days after year end.

Under H.R. 3943 and S. 2109, section 444 would be modified to allow a partnership, S corporation, or personal service corporation to elect any taxable year, provided such entity:

- makes an initial payment by September 15 of the calendar year preceding the calendar year in

(Continued on page 8)

CIVIL RICO REFORM — NOW OR NEVER?

All AICPA Key Person Contacts for the U.S. House of Representatives are being asked to talk to their Members of Congress during the Congressional recess to encourage them to vote for civil RICO reform legislation and to oppose any amendments.

H.R. 1717, which would amend the civil provisions of the Racketeer Influenced and Corrupt Organizations (RICO) Act, was approved by the House Judiciary Committee in July (see the July/August 1991 *Capitol Account*) and is expected to

(Continued on page 6)

NEW ESTIMATED TAX RULES OPPOSED BY AICPA

Legislation passed by Congress and signed into law by President Bush on November 15, 1991 to provide additional unemployment compensation benefits to the long-term unemployed includes a funding method that was strongly opposed by the AICPA.

The cost of the new benefits will be partially paid for by changing the requirements for calculating estimated tax payments for some taxpayers. (The 1990 budget agreement requires Congress to offset any new costs with spending cuts or revenue from some other source.) The change will limit taxpayers' ability to base quarterly estimated tax payments on the prior year's tax liability. The AICPA believes that the change introduces an unacceptable level of complexity and uncertainty for millions of taxpayers. While only about 400,000 taxpayers may exceed the law's allowed thresholds, it is likely that many times that will have to make the quarterly calculations to determine whether they are subject to the new rules.

During the three weeks between introduction and passage of the funding provision, the AICPA wrote the Administration and the Democrat and Republican leaders in the House and Senate to let them know of our opposition and to suggest alternative funding

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★ INSIDE FOCUS ★

Politics has been defined as the art of the possible. This applies to the accounting profession as well as all other groups that seek to influence the policy-making process in Washington, D.C. Those who wish to succeed in the political arena must understand that they very rarely get everything or exactly what they seek. Rather, the process is one of negotiation and compromise that leads to what is "possible" in a complex and competitive environment.

The Institute's efforts on fiscal year legislation are a vivid example of the compromising nature of the political process. We would prefer to have the calendar year requirement of TRA '86 repealed because of the severe workload compression it has caused for our members. However, political reality makes that option unattainable. This results from the "revenue neutrality" requirement adopted by Congress after TRA '86 was passed, which became even more binding last year when the 1990 budget act imposed a "pay as you go" requirement for any tax proposals.

While there is both understanding and empathy on Capitol Hill for our problems, Members of Congress are adamant that any solution must be revenue neutral. They want to help, but insist we develop a solution that is "possible" in the context of today's political environment. Our approach has been a modification of section 444. However, many of our members have told us that a 444 type approach is not acceptable to their clients and

therefore will not assist them.

To address member concerns, we presented the background on fiscal year legislation to the AICPA Council at its October meeting in San Francisco. We discussed the current political reality and described various options the AICPA Washington staff might take on this issue. Our objective was to obtain guidance from the Council as to the best option to pursue on behalf of the membership.

Overwhelmingly the Council voted that we should continue our present efforts to provide the best possible section 444 type relief which satisfies the revenue neutrality mandate of Congress. Council also endorsed our development of practice guides to help members implement 444 relief and cope with workload compression if too many clients remain on the calendar year. The Council agreed that this is our best option to provide relief for our members in today's political climate.

The details of our legislative efforts on this issue are described elsewhere in this newsletter. Legislation was recently introduced in the House and Senate to modify section 444. We plan to work aggressively for its passage in 1992. We will need your support!

Tax Complexity

Efforts to simplify the tax code took a giant step backward during the waning weeks of the Congress despite vigorous protests from AICPA. In deciding to pay for extended jobless benefits by speeding up collections from people with

rapidly rising incomes, Congress has made the estimated tax law unacceptably complex.

Compliance will be especially difficult for proprietors of small businesses, partnerships and small corporations. Losing the ability to base quarterly estimated payments on the preceding year's liability, many taxpayers will need to calculate their estimated payments four times a year, often with incomplete or inadequate information. It will also create major enforcement problems for the IRS.

Once this scheme surfaced on Capitol Hill, the AICPA recommended and lobbied strongly for alternative, less complex approaches. We communicated with every member of the House Ways and Means and Senate Finance Committees pointing out the problems this proposal would create. However, extending jobless benefits became a political "freight train" that few Members of Congress dared to challenge. No matter how strong the arguments were against this funding mechanism, in the end, the measure was passed quickly and with little debate.

While we failed to persuade Congress, the Institute's criticism of the proposal was covered in the news media, most notably the *Wall Street Journal* and *New York Times*. We will continue to argue our case to Congress and hope that a more rational, less complex approach can be substituted next year. ★

—**B.Z. Lee,**
Deputy Chairman Federal Affairs

AICPA SETS STAGE FOR DEBATE ON LITIGATION REFORM

A compromise on whether Congress should overturn a U.S. Supreme Court decision on a uniform statute of limitations for filing securities fraud cases reflects a successful effort by the AICPA and others to expand Congressional debate about the issue to include other litigation reform proposals.

The retroactivity ruling touched off a political furor.

The issue of whether the statute of limitations should be extended for filing private federal securities fraud lawsuits arose when the Supreme Court handed down its decision on *Lampf vs. Gilbertson* in July. Under the decision, claims brought under Section 10(b) of the Securities Exchange Act of 1934 must be brought within one year of the discovery of the violation or within three years after the date on which the violation occurred. A related Supreme Court decision also applied the new time limit retroactively to pending cases, which resulted in a large number of active cases being dismissed. That set the stage for Congressional consideration of the statute of limitations, and retroactive application of the new time frames which were determined by the Supreme Court.

The time limits imposed by the *Lampf* decision and the retroactivity ruling were particularly offensive to many in Congress because some of the cases thrown out related to Wall Street and savings and loan scandals. Members of Congress found the dismissal of these suits unacceptable. So legislation, S. 1533 and H.R. 3185, was

introduced to reverse the Court's position.

At a Senate Banking Securities Subcommittee hearing on October 2, 1991 on S. 1533, the AICPA and others in the business community argued that the statute of limitations supported by *Lampf* should not be modified without considering other litigation reforms that would help minimize frivolous lawsuits. Following the hearing, senators who were determined to overturn the *Lampf* decision agreed to a compromise—language reversing only the retroactivity ruling was included in the Senate banking bill. Ultimately, the House agreed to the Senate compromise and it was included in the final version of the banking bill passed by Congress. This action cleared the way for cases that were dismissed to be reinstated, thus neutralizing some of the political furor surrounding the *Lampf* decision.

In return, opponents of the legislation to overturn *Lampf* won an agreement that the prospective application of the one and three rule will be considered by the Congress next year as part of a larger debate on litigation reform. We are continuing to work to ensure that this happens. We have already been successful in having other litigation reform proposals discussed at a November 21, 1991 hearing by the House Telecommunications and Finance Subcommittee. The litigation reforms discussed at the hearing include the following:

- establishing a rule of proportionate liability, so that defendants would be accountable for only the share of damages for which they are directly responsible;

- prohibiting attorneys from paying "finders fees" or "bounties" to induce potential plaintiffs to sue;

- placing reasonable limits on pretrial discovery time and costs; and

- requiring the losing party to pay the winner's attorneys' fees.

Rep. Edward Markey (D-MA), the chairman of the Telecommunications Subcommittee and the sponsor of H.R. 3185, has said he will continue consideration of this issue next year. It is our goal to tie litigation reform proposals into any legislation modifying the *Lampf* decision.

Key Person Contacts are being asked to talk about proportionate liability with their elected representatives during this Congressional break. This type of grassroots activity is imperative in helping to emphasize to Members of Congress how important litigation reform is to accountants and others in the

Don't Forget!

Cast your vote on Rule 505, Form of Organization and Name.

Rule 505 now allows AICPA members to practice only in the form of a proprietorship, a partnership, or a professional corporation. The proposed amendment would allow CPAs to practice in any organizational form permitted by state law. The primary benefit of changing Rule 505 will be to provide those concerned about liability with greater flexibility in determining how to minimize their exposure.

The ballots have been mailed. You should already have yours.

Please vote today!

BANK BILL REFLECTS SUCCESSFUL LOBBYING EFFORTS

Bank reform legislation passed by the Congress just before Thanksgiving includes several accounting and auditing provisions important to banks, thrifts, and their independent accountants. They are highlighted in the summary below. However, the overriding importance of the story about this legislation is that the profession was successful in having a poorly drafted legislative proposal changed so that it is technically acceptable from our vantage point.

Early in the legislative process, the AICPA provided technical leg-

islative language aimed at helping Congress achieve its objectives and, at the same time, being consistent with authoritative auditing literature. Much of that language is incorporated in the bill Congress passed, the Federal Deposit Insurance Corporation Improvement Act of 1991.

The Act also reflects the Congress' confidence in the important role the accounting profession can play in Congressional efforts to enhance the financial reporting by insured depository institutions and reaffirms Congress' confidence in

the current audit process.

In addition, compromise language included in the bill regarding time limits for filing securities fraud cases reflected the successful efforts of the AICPA and others to broaden discussion concerning this issue to include other litigation reform proposals (see related article, page 3).

These changes were significant "wins" for the profession, but the battle to protect the profession's interests will continue next year. Further efforts to modernize the banking system are being discussed and there will be further consideration of filing limits for securities

ACCOUNTING AND AUDITING PROVISIONS INCLUDED IN BANKING BILL

Following is a brief summary of major accounting and auditing provisions identified by the AICPA in its initial review of S. 543, the Federal Deposit Insurance Corporation Improvement Act of 1991, which was passed by the Congress in late November.

Annual Financial Statement Audits—Annual audits of financial statements in accordance with generally accepted auditing standards are mandated for certain insured depository institutions. The independent auditor's report must address whether the financial statements are in conformity with GAAP and comply with any additional disclosure requirements that the regulators may establish.

Management and Auditor's Reports on Internal Control Structure and Compliance with Specified Laws and Regulations—Annually, management will report on its responsibility for and assessment of the effectiveness of both the institution's internal control structure over financial

reporting and the institution's compliance with specified laws and regulations relative to safety and soundness. The independent accountant will report separately on management's assertions using the standards for attestation engagements.

Communication with Regulators—Institutions must provide a copy of each audit report and notification of any change in auditors to the appropriate federal and state banking agencies.

Communication with Auditors—Each institution must provide its auditor with copies of the institution's most recent report of condition and report of examination, any supervisory memorandum of understanding or written agreement with any federal or state regulatory agency, and the report of any action initiated by the federal banking agencies.

Audit Committees—The covered institutions must have audit committees made up entirely of outside directors. Audit commit-

tees of large institutions are required to have relevant financial expertise and access to outside counsel, and may not include large customers.

Auditor Responsibilities—Auditors must agree to provide working papers, policies, and procedures to federal and state banking regulators upon request. Auditors must also participate in a peer review program and notify the FDIC if services to the institution cease.

FDIC Authority—The FDIC is given authority to require large institutions (to be defined) to obtain reviews of quarterly financial reports using agreed-upon procedures.

The new requirements are generally effective for fiscal years ending December 31, 1993 and beyond and are not applicable to institutions with total assets less than \$150 million as of the beginning of the applicable fiscal year. Also, with the exception of annual audited financial statements, the new requirements may be satisfied for subsidiaries of bank holding companies if the requirements are

(Continued on page 8)



In an effort to recognize and thank our members who serve as Key Person Contacts, Capitol Account introduces the "Spotlight on Key Person." Key Persons are the lifeblood of our grassroots program. Without them, we cannot effectively communicate our concerns to the Congress. Our hat is off to the following members of our Key Person team.

Spotlight on Key Persons

Key Person: Arthur Greenspan, Arthur Greenspan & Co., Beaumont, Texas

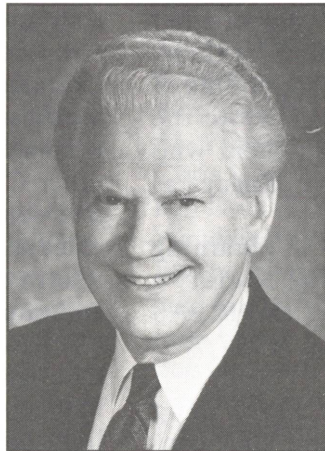
Contact For: Rep. Jack Brooks (D)

Form of Relationship: Personal friend.

Number of Years: Since inception of the Key Person Contact Program.

Comments About Being a Key Person: "I have a continuing interest in serving as a Key Person for Rep. Jack Brooks because I have had a life-long personal relationship with him and this is beneficial to both the public interest and the accounting profession."

Other AICPA Activities: Council member 1990-1993; also has served on a number of committees since 1975 including the Federal Government Executive Committee, PCPS Executive Committee, the Special Committee on Governance and Structure, and the Relations with State Societies Executive Committee.



Key Person: Jake L. Netterville, Postlethwaite & Netterville, Baton Rouge, Louisiana

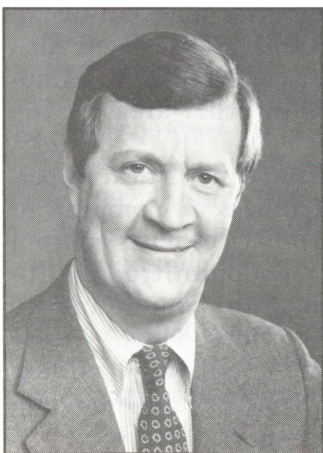
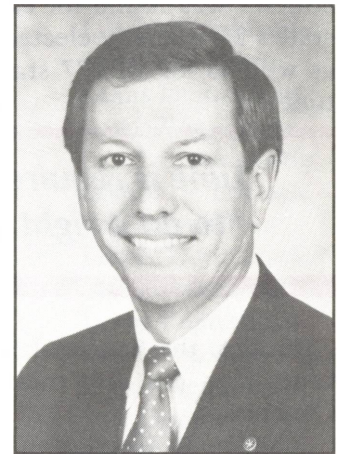
Contact For: Senator J. Bennett Johnston (D); Rep. W. J. (Billy) Tauzin (D)

Form of Relationship: Personal friend of both; campaign treasurer.

Number of Years: Since inception of Key Person Contact Program.

Comments About Being a Key Person: "All of our members need to know how important Washington politics is to the profession. Involvement as a Key Person Contact is a real contribution to the profession. Political involvement can also be helpful to one's career. If I had to look for one thing that's been helpful to my career, it has been my involvement in the political process. It allowed me to meet key persons in the business community at a younger age than normal."

Other AICPA Activities: Vice Chairman 1991-1992; also has served on a number of committees since 1976, including Management of an Accounting Practice Committee, Special Committee on Mandatory Continuing Professional Education, PCPS Executive Committee, AICPA Governance and Structure Evaluation and Implementation Committee, and the Finance Committee.



Key Person: William David Smith, Morrison & Smith, CPAs, Tuscaloosa, Alabama

Contact For: Senator Richard Shelby (D); Rep. Claude Harris (D)

Form of Relationship: Personal friend of both.

Number of Years: Since inception of Key Person Contact Program.

Comments About Being a Key Person: "I believe in maintaining a close, personal relationship with members of Congress who designate me as their Key Person, as well as other members of the Alabama Congressional Delegation. It is important to work in their campaigns, make personal contributions, and keep in touch often between elections."

Other AICPA Activities: Government Affairs Committee and chairman of the Government Affairs State Society Subcommittee; also has served on the Federal Government Executive Committee, the State Legislation Committee and on the State Legislation Area Planning Subcommittee.

**KEY PERSON CONTACTS
—COVERING THE BASES**

State societies in 35 states have succeeded in finding CPAs to serve as a legislative contact for each member of the state's congressional delegation. That provides a tremendous boost to the AICPA's Key Person Contact Program and makes our grassroots lobbying effort more effective. We thank all of you for your assistance.

Illinois Shows How to Do It

The Illinois CPA Society (ICPAS) is an outstanding example of how a state can develop a successful program. In 1985 the ICPAS had CPA contacts for 91 percent of its members of Congress; by 1987 the coverage had declined to 83 percent. This year, for the first time in the history of the Society's Legislative Contact Program, at least one CPA contact was found for each of the state's 24 federally elected officials, as well as for all 177 state legislators.

***Time is required
"to do it right."***

In fact, the Society has 82 contacts for its 24 members of Congress.

Thomas R. Wetzler, the Society's director of government relations, attributed the success to the hard work of two CPAs—Robert Thornton, chairman of the ICPAS Regulation & Legislation Committee, and Gila Bronner, chairman of the committee's Legislative Contact Subcommittee—and one ICPAS employee, Connie Lynn, ICPAS manager of legislative contact and communications.

Commitments of time are required "to do it right," Wetzler

said, who credited ICPAS' decision to dedicate more staff time to the Legislative Contact Program as "critical" to the success. The Society was "delighted" with the outcome, Wetzler said.

To recruit participants in the Legislative Contact Program, the ICPAS developed a marketing plan. Chapter presidents, committee chairpersons, and participants in various activities of the ICPAS were asked to publicize the program. A brochure explained the purpose and benefits of the program. The Society also found two other methods to be particularly helpful, according to Wetzler, in producing new CPA contacts. One was the regular listing in the Society's government relations newsletter of elected officials and whether a contact had been found for them. The other was the direct polling of elected officials; ICPAS wrote the elected officials to ask them who they would like to have assigned as their CPA contact.

Anyone interested in obtaining information about the Society's program or a copy of the ICPAS brochure may call Lynn at 217/789-7914.

We also thank the following state societies that have CPA contacts for all of their members of Congress:

- | | |
|---------------|----------------|
| Alabama | Nebraska |
| Alaska | Nevada |
| Arkansas | New Hampshire |
| California | New Jersey |
| Colorado | New Mexico |
| Delaware | North Carolina |
| Idaho | North Dakota |
| Illinois | Oklahoma |
| Indiana | Pennsylvania |
| Iowa | Rhode Island |
| Kansas | South Carolina |
| Kentucky | South Dakota |
| Louisiana | Virginia |
| Massachusetts | Washington |
| Michigan | West Virginia |
| Minnesota | Wisconsin |
| Mississippi | Wyoming |
| Montana | |

(RICO continued from page 1)

be considered by the full U.S. House of Representatives after Congress reconvenes in January.

The AICPA has been a longtime advocate of civil RICO reform and supports H.R. 1717 as it was reported by the House Judiciary Committee. Indeed, H.R. 1717 may be the last best chance for civil RICO reform. We oppose the adoption of any amendments on the House Floor where we expect opponents will try to attach weakening amendments. Opposition to reform comes primarily from the trial bar and public interest groups (i.e., Ralph Nader).

Civil RICO is important to all CPAs because frivolous and unfounded RICO suits have contributed to the overall escalating litigation costs facing CPAs and business today. While you may not personally face a RICO suit, many other CPAs and businessmen have and continue to experience its ill effects. Support for civil RICO reform extends beyond the business community. Both the Chief Justice of the Supreme Court and the Chairman of the Securities and Exchange Commission have publicly noted the need for change to this onerous statute.

Enactment of H.R. 1717 would help stop the flood of unwarranted RICO suits, thereby ensuring relief for plaintiffs with legitimate claims and protection for innocent defendants. The bill's enactment also could serve as a precedent to stimulate reform in other areas of the law.

Your assistance is critical in persuading Members of Congress to support H.R. 1717 as reported from the Judiciary Committee and to vote against any amendments offered on the House Floor. Please take the time to talk soon with the Member of Congress for whom you are a Key Person Contact. ★

(New Tax Rules continued from page 1)

methods. AICPA representatives also met with members and staff of the House Ways and Means Committee, as well as with Senate Finance Committee staff. While our overall suggestions were not embraced, we did succeed in having some of the harshest provisions of the law eased through exceptions and higher thresholds.

In general, the new law means that the 100 percent of the prior year's tax safe harbor for quarterly estimated taxes will not be available if the taxpayer's modified adjusted gross income (AGI) grows by more than \$40,000 over the prior year and if the taxpayer has AGI over \$75,000 in the current year.

The following exceptions are provided:

- The first estimated tax payment each year (generally due April 15) may be based on 100 percent of the prior year's liability;

- Taxpayers not subject to estimated tax requirements during any of the three prior years may base their current estimated payments on 100 percent of the prior year's liability;

- Gains from involuntary conversions and sale of a principal residence are not included in determining whether the \$40,000 threshold is exceeded;

- If they have less than a 10 percent ownership interest, limited partners and S corporation shareholders may use the prior year's income from the partnership or S corporation in determining whether the \$40,000 threshold is exceeded.

The new law is effective for tax years 1992 through 1996, and may require partnerships and S corporations to provide K-1 type information within a few days after the end of May, August, and December.

The Tax Division plans to issue a practice guide to assist members in interpreting and applying these new

rules. The guide will be available by the end of January 1992.

The possibility of having these new estimated tax rules repealed or modified is also being explored by

the AICPA. We plan to continue our lobbying activities on this matter during 1992 and will keep Key Persons informed about our efforts.★

ROLL CALL RATES 1992 SENATE RACES

The 1992 elections are less than a year away. Voters will be electing our president, one third of the U.S. Senate and the entire U.S. House of Representatives. Early projections are already being made about the outcome of some of those contests. Reprinted below are ratings by *Roll Call*, a newspaper reporting on Capitol Hill, of the 35 Senate races. We will provide information on other Congressional races in future issues of *Capitol Account*.

Incumbent

Brock Adams (D-Wash)	1st term
Kit Bond (R-Mo)	1st term
John Breaux (D-La)	1st term
Dale Bumpers(D-Ark)	3rd term
Dan Coats (R-Ind)	1st term
Kent Conrad(D-ND)	1st term
Alan Cranston(D-Calif)	Open Seat
Alfonse D'Amato (R-NY)	2nd term
Tom Daschle (D-SD)	1st term
Alan Dixon (D-Ill)	2nd term
Chris Dodd (D-Conn)	2nd term
Bob Dole (R-Kan)	4th term
Wendell Ford (D-Ky)	3rd term
Wyche Fowler (D-Ga)	1st term
Jake Garn (R-Utah)	Open Seat
John Glenn (D-Ohio)	3rd term
Bob Graham (D-Fla)	1st term
Charles Grassley (R-Iowa)	2nd term
Ernest Hollings (D-SC)	4th term
Daniel Inouye (D-Hawaii)	5th term
Bob Kasten (R-Wis)	2nd term
Patrick Leahy (D-Vt)	3rd term
John McCain (R-Ariz)	1st term
Barbara Mikulski (D-Md)	1st term
Frank Murkowski (R-Alaska)	2nd term
Don Nickles (R-Okla)	2nd term
Bob Packwood (R-Ore)	4th term
Harry Reid (D-Nev)	1st term
Warren Rudman (R-NH)	2nd term
Terry Sanford (D-NC)	1st term
John Seymour (R-Calif)	Appointed Jan. '91
Richard Shelby (D-Ala)	1st term
Arlen Specter (R-Pa)	2nd term
Steve Symms (R-Idaho)	Open Seat
Tim Wirth (D-Colo)	1st term

Outlook

Toss Up
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Likely Democratic
Safe Democratic
Leans Republican
Leans Democratic
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(Provisions continued from page 4)

fulfilled at the holding company level and the subsidiary has less than \$5 billion in assets or has between \$5 billion and \$9 billion in assets and a regulatory CAMEL rating of one or two.

Implications for 1991 Audits

Auditors of the financial statements of federally insured depository institutions should consider whether certain provisions of the Act affect their 1991 financial statement audits. For example, the Act requires that within one year of enactment, institutions that fail to meet a minimum 2 percent capital ratio will be considered critically undercapitalized and will be subject to being placed in receivership or conservatorship. Noncompliance

or expected noncompliance with regulatory capital requirements is a condition, in conjunction with others, that the auditor must consider to evaluate an entity's ability to continue as a going concern. ★

(Bills Ease continued from page 1)

which the first applicable election year ends;

■ makes a required payment each May 15 that the election is in effect; and

■ does not maintain its books or prepare annual financial statements on the basis of a year different than that adopted for tax purposes.

These provisions are aimed at ensuring that the U.S. Department of the Treasury does not lose cash flow as a result of enactment of this legislation, in keeping with the

"pay as you go" requirement of the 1990 budget agreement.

Your help is needed in building support in Congress for consideration and passage of H.R. 3943 and S. 2109. AICPA representatives have made every attempt to ensure that the legislation meets objections raised by Members of Congress and Congressional staff about previous proposals to amend section 444. However, the momentum for this change must come from the CPA community. Please talk to your elected representatives about the importance of fiscal year reform to the profession and many businesses. Then ask them to co-sponsor H.R. 3943 or S. 2109 and urge the leaders of the Ways and Means Committee and Finance Committee to hold hearings on the bills early next year. ★

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