

tax notes international



taxanalysts

Follow-Up Regarding Binding Contract Relief and the Thomas ETI Repeal Bill

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Reprinted from *Tax Notes Int'l*, 13 October 2003, p. 153

TAX NOTES INTERNATIONAL

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ISSN 1048-3306

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Letters to the Editor



Follow-Up Regarding Binding Contract Relief and the Thomas ETI Repeal Bill

To the Editor:

Footnote 6 in my article “U.S. ETI Repeal and Transition Relief” in the 6 October 2003 *Tax Notes International* (p. 43) noted that the Thomas ETI repeal bill, H.R. 2896, “intended to retain ETI’s extension of FSC benefits for binding contracts” but perhaps did not due to the bill’s repeal of U.S. Internal Revenue Code (IRC) section 941, “in which [the binding contract extension] is codified as a note.” As a counterargument, I also noted that “[t]he Joint Taxation Committee’s [JCT] technical analysis of the Thomas bill is . . . silent on this issue, possibly indicating that the Committee does not think the bill makes a change to the FSC extension.”

After the 6 October article had gone to press, I received word from JCT that my speculation regarding its silence was correct. According to JCT staff, ETI’s binding contract extension is an “off-Code provision” — a provision not designated by ETI to amend an existing section of the IRC or create a new section.¹ Its presence as a note in section 941 does not make it part of 941, but rather something akin to legislative history. Therefore, the Thomas bill’s repeal of “[s]ubpart E of part III of subchapter N of chapter 1,” which includes section 941, leaves ETI’s binding contracts provision untouched.

Under this interpretation, both the Crane-Rangel and Grassley bills also retain ETI’s binding contract extension because neither explicitly repeals it. In practice, however, the binding contract relief provided in those bills² will likely subsume ETI’s FSC extension. ♦

Martin B. Tittle

7 October 2003

¹Telephone interviews with David Noren and Gretchen Sierra, JCT staff (1 Oct. 2003). For another example of an off-code section, see H.R. Conf. Rep. 104-350, Balanced Budget Act of 1995, 104th Cong. (16 Nov. 1995), 1995 WL 709269, at 1424 n.55 (“In addition, section 311 of the Deficit Reduction Act of 1984 (as modified by the Tax Reform Act of 1986) provides a special, off-Code exemption from the UBIT [unrelated business income tax] for games of chance conducted by nonprofit organizations in the State of North Dakota.”).

²Job Protection Act of 2003, H.R. 1769, 108th Cong. section 2(c)(2), (visited 29 Aug. 2003) <http://thomas.loc.gov>; Jumpstart Our Business Strength (JOBS) Act, S. 1637, 108th Cong. section 101(c)(2) (visited 19 Sept. 2003), <http://finance.senate.gov/sitepages/legislation.htm>.