108TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 108–102
Part 2

CLARIFYING THE TAX TREATMENT OF BONDS AND OTHER OBLIGATIONS ISSUED BY THE GOVERNMENT OF AMERICAN SAMOA

OCTOBER 7, 2003.—Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Mr. POMBO, from the Committee on Resources, submitted the following

REPORT

[To accompany H.R. 982]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 982) to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 982 is to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 982 amends Section 202(b) of Public Law 98–454 to permit the interest on any bond or other obligation issued by or on behalf of the American Samoan Government (ASG) to be exempt from both State and local taxation.

American Samoa, an unincorporated and unorganized U.S. territory, is comprised of the South Pacific Polynesian islands of Tutuila, Aunuu, Ofu, Olosega, Tau, Rose, and the Swain islands. In April 1900, the traditional chiefs of Tutuila and Aunuu agreed to become a part of the U.S. by treaty of cession in return for protection of their land and culture. Congress ratified the treaty of cessions in 1929 (48 U.S.C. §1661–1662) and created statutory authority for American Samoa's civil government. The Department of

29–006

the Navy controlled American Samoa up until 1951, upon which jurisdiction was transferred to the Secretary of the Interior. In the mid–1950s, the people of American Samoa began drafting a constitution which was eventually completed in 1960 and approved by the Secretary of the Interior.

The Samoan Constitution of 1960 created a bicameral legislature (the Fono), provided for judicial and executive branches, and contained an extensive bill of rights. The Constitution was revised and approved by the Samoan people in 1966, and by the Secretary of the Interior the following year, to provide for increased powers to the Fono. The revised Constitution is the basis for the current government of American Samoa. In 1983, the Interior Secretary's authority over American Samoa was rescinded in the 1983 Omnibus Territories Act which also provided that any future changes to American Samoa's Constitution be made only by an act of the Congress.

Article IV, section 3, clause 2 of the U.S. Constitution, known commonly as the Territorial Clause, gives Congress plenary authority over U.S. territories. Relying on this authority, the Congress has historically passed laws providing for a greater measure of self-government by territorial governments. For example, under article II, section 1 of the Revised American Samoan Constitution, the Fono was given broad authority to pass legislation with respect to subjects of local application. This authority provides the ASG the ability to issue qualified bonds under section 141 of the Internal Revenue Code.

Historically, Congress has also passed legislation to facilitate economic development in U.S. territories by providing assistance and removing statutory impediments. For instance, under current law, bonds issued by Guam, the Virgin Islands, Puerto Rico, and the Commonwealth of the Northern Mariana Islands are exempted from taxation by State and local governments. While the authority to issue similar bonds has been provided to American Samoa, the interest earned from American Samoan bonds is subject to taxation by the several States, Washington D.C. and the other territories. The Committee sees such taxation as an obstacle to the continuing development of American Samoa's economy.

The enactment of H.R. 982 will exempt bonds issued by American Samoa from taxation by State and local governments. H.R. 982 will provide parity for American Samoa.

Committee Action

H.R. 982 was introduced on February 27, 2003, by Delegate Eni F.H. Faleomavaega (D–AS). The bill was referred to the Committee on Resources and additionally to the Committee on the Judiciary. On September 25, 2003, the Full Resources Committee met to consider the H.R. 982. No amendments were offered and the bill was then ordered favorably reported to the House of Representatives by unanimous consent.

While there were no hearings on H.R. 982 in the 108th Congress, in the 107th Congress, a Subcommittee of the Committee on the Judiciary held a hearing on identical legislation (H.R. 1448) on March 6, 2002. Also in the 107th Congress, the Committee on Resources favorably reported H.R. 1448 on March 3, 2002.

SECTION-BY-SECTION ANALYSIS

Section 1. Clarification of tax treatment of bonds and other obligations issued by government of American Samoa

Section 1 amends subsection 202 (b) of Public Law No. 98–4545 (48 U.S.C. 1670) to exempt bonds issued by the government of American Samoa from State and local taxes. This exemption does not apply to gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

Section 2. Effective date

Section 2 makes the legislation effective upon its enactment into law.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.
2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.
3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.
4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 2003.

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 982, a bill to clarify the tax treatment of bonds and other obligations issued by the government of American Samoa.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 982—A bill to clarify the tax treatment of bonds and other obligations issued by the government of American Samoa

H.R. 982 would amend current law to make bonds issued by the government of American Samoa exempt from state, local, and territorial income tax. The bill would not affect federal taxes, and CBO estimates that implementing H.R. 982 would have no impact on the federal budget.

H.R. 982 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of the mandate would be well below the threshold established in that act ($59 million in 2003, adjusted annually for inflation). This mandate is a preemption of state and local taxing authority. The bill would exempt the interest on any bond issued by the government of American Samoa from state, local, and territorial taxes. Because American Samoa generally has only a few million dollars in bonds outstanding at any time, this preemption would not have a significant cost for state, local, or territorial governments. Enacting this bill would benefit the government of American Samoa by reducing its borrowing costs. The bill contains no private-sector mandates as defined in UMRA.

On May 9, 2003, CBO transmitted a cost estimate for H.R. 982 as ordered reported by the House Committee on the Judiciary on May 7, 2003. The two versions of the legislation are identical, as are the cost estimates.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates, as defined by Public Law 104–4.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any tribal law. It does preempt state and local taxing authority, but the Congressional Budget Office has concluded that "this preemption would not have a significant cost for state, local or territorial governments."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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):

SECTION 202 OF THE ACT OF OCTOBER 5, 1984

(Public Law 98–454)

AN ACT To enhance the economic development of Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and for other purposes.

* * * * * * *

SEC. 202. (a) * * *

⟦(b)(1) Except as provided in paragraph (2), any obligation shall be exempt from all State and local taxation in effect on or after October 1, 1984.

⟦(2) Any obligation issued under subsection (a) shall not be exempt from State or local gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

⟦(3) For purposes of this subsection—

⟦(A) The term "State" includes the District of Columbia.

⟦(B) The taxes imposed by counties, municipalities, or any territory, dependency, or possession of the United States shall be treated as local taxes.⟧

(b) EXEMPTION OF ALL BONDS FROM INCOME TAXATION BY STATE AND LOCAL GOVERNMENTS.—

(1) IN GENERAL.—The interest on any bond or other obligation issued by or on behalf of the Government of American Samoa shall be exempt from taxation by the Government of American Samoa and the governments of any of the several States, the District of Columbia, any territory or possession of the United States, and any subdivision thereof.

(2) EXEMPTION APPLICABLE ONLY TO INCOME TAXES.—The exemption provided by paragraph (1) shall not apply to gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

* * * * * * *

○