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Legalization Under the Immigration Reform and Control Act of 1986: Scope of Confidentiality Provisions and Problems in Proving Residence

I. INTRODUCTION

The Immigration Reform and Control Act of 1986 (IRCA) imposes several specific requirements for legalization of aliens.¹ Most significantly, aliens seeking permanent resident status must show that they have resided continuously in the United States in an unlawful manner, since January 1, 1982.² Qualified aliens seeking to meet this requirement will encounter many difficulties.³ These aliens often lack the necessary documentation because of their prior efforts to remain undetected, and to avoid any "paper trail."⁴ Their employers may be reluctant to aid in this endeavor for a variety of reasons, including fears that documents provided by them might reveal prior noncompliance with tax and labor laws.⁵ Even when aliens can provide sufficient documentation, they may still be reluctant to participate because of a general "suspicion of government officials," and fears that information they provide may be used against them.⁶

1. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, §§ 201, 302, 100 Stat. 3359 (1986) (to be codified in scattered sections of 8 U.S.C.) [hereinafter IRCA]. The Act creates two legalization programs with different requirements; a main legalization program and a more lenient one restricted to certain agricultural workers. Both programs require aliens to submit timely applications proving continuous unlawful residence for specified periods. *Id.*

2. *Id.* §§ 201(a)(2), 202(a)(5), 302(a)(1)(B); see S. REP. NO. 132, 99th Cong., 1st Sess. 71-72 (1985). The main legalization program requires continuous residence since January 1, 1982. Aliens applying under the special agricultural workers program, however, must only show that they have resided in the United States for at least 90 days during the 12-month period ending on May 1, 1986. *Id.*; see also *infra* note 8. Aliens bear the burden of proving their eligibility by a preponderance of the evidence. IRCA § 302(b)(3)(B)(i).

3. Wall St. J., Nov. 26, 1986, at 1, col. 1; see *infra* notes 30-32 and accompanying text. The main legalization program requires that "continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and [these documents must be] . . . employment-related if employment-related documents with respect to the alien are available to the applicant." IRCA § 201(g)(2)(D).

4. L.A. Times, Jan. 10, 1987, at 1, col. 1. The term "paper trail" refers to documents that may be used by government officials to identify and locate illegal aliens.

5. 63 INTERPRETER RELEASES 1151, 1153 (1986). "Employers may worry that legalization will make their workers feel more secure and request higher wages or perhaps leave for better jobs." *Id.* Employers may also be reluctant to produce such documentation where it is a "big burden" to search for these records. Wall St. J., Nov. 26, 1986, at 11, col. 1.

6. Wall St. J., Nov. 26, 1986, at 11, col. 1. More specifically, aliens may be concerned

In framing the IRCA, Congress was aware of these administrative and practical impediments to legalization,⁷ and intended to minimize them in order to facilitate a high rate of participation among those eligible for legalization.⁸ The Act's confidentiality provisions are consistent with this goal.⁹ These provisions specifically provide

that this information will be used by the INS in deportation proceedings, or by other governmental agencies to investigate and perhaps prosecute for previous violations of the law. For the most part, these concerns may be put to rest by the confidentiality provisions of the IRCA. See IRCA §§ 201(c)(5), 302(b)(6). The extent of this confidentiality, however, is unclear where a determination is made that an application contains fraud. *Id.* §§ 201(c)(6), 302(b)(7).

7. H.R. REP. NO. 682, 99th Cong., 2d Sess., pt. 1, at 71-73 (1986), *reprinted in* 1986 U.S. CODE CONG. & ADMIN. NEWS 5649. "The committee has learned that legalization programs in other countries have usually produced a low rate of participation among the eligible candidates. At least part of the reason is distrust of authority and lack of understanding among the undocumented population." *Id.*; see *supra* note 6.

8. SEE H.R. REP. NO. 682, *supra* note 7, at 71-73. The House Report states that the legalization program should be implemented in a liberal and generous fashion, as has been the historical pattern with other forms of administrative relief granted by Congress. Such implementation is necessary to ensure that the program will be a one-time-only program.

. . . Unnecessarily rigid demands for proof of eligibility for legalization could seriously impede the success of the legalization effort. Therefore, the Committee expects the INS to incorporate flexibility into the standards for legalization eligibility

Id. at 72-73. In support of legalization, Congressman James H. Scheuer stated:

[I]t is offensive to every concept of America and what our Constitution stands for for us to have two classes of citizens, to have a class of 238 million Americans, and then to have an underclass . . . who are easily subject to exploitation and mistreatment, who are afraid to surface, [and] take advantage of the organs of justice in our community.

SENATE SUBCOMM. ON IMMIGRATION AND REFUGEE POLICY, 99th CONG., 1ST SESS., REPORT ON IMMIGRATION REFORM AND CONTROL ACT OF 1985, at 250 (Comm. Print 1985). Supporters of legalization further contend that illegal aliens have "substantially contributed to our economic well-being." Goode, *Simpson-Mazzoli*, NUESTRO, Aug. 1984, at 14, 18. Opponents of legalization, however, see it as a "reward for millions of aliens who had violated U.S. laws and an unfair move against millions of others who have patiently followed the laws regarding U.S. residency and naturalization." *Id.*; see Comment, *The Unfair Immigration-Related Employment Practices Provision: A Modicum of Protection Against National Origin and Citizenship Status Discrimination*, 41 U. MIAMI L. REV. 1025 (1987).

9. See IRCA §§ 201(c)(5), 302(b)(6). The language of these two sections is essentially identical. The provisions provide in pertinent part:

Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(A) use the information furnished pursuant to an application filed [for legalization] . . . for any purpose other than to make a determination on the application or for [the] enforcement [of penalties for false statements in applications],

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a

that information submitted in applications for legalization is confidential and is not available to any division of the Department of Justice without the consent of the alien.¹⁰ The statute extends confidentiality further by providing that no government agency may use any information in an application for legalization except to adjudicate the application or to enforce penalties for false statements or fraudulent activities in connection with the application.¹¹ Although these provisions go a long way toward eliminating unnecessary impediments to legalization, the question of what constitutes fraud under these provisions, and what confidentiality, if any, would remain if such a determination was made, is unclear.¹² Further, these confidentiality provisions conflict with a section of the Tax Reform Act of 1986, thereby creating further uncertainty and issues of statutory construction.¹³

This Comment will analyze uncertainties in the legalization process that may deter participation by qualified aliens. The scope of these uncertainties created by the IRCA's confidentiality provisions will be considered first, followed by a discussion of the ill-defined area of recourses against employers who fail to provide aliens with documents required for legalization.¹⁴

II. APPLICATIONS CONTAINING FRAUD

The IRCA's confidentiality provisions are designed to "assure applicants that the legalization process is serious, and is not merely a ruse to invite undocumented aliens to come forward only to be ensnared by the INS."¹⁵ These provisions are specifically waived, however, where an application contains *any* false statements or material concealments.¹⁶ The proposed regulations further provide that determinations of fraud will be made by the INS, will lead to possible

designated entity, that designated entity, to examine individual applications. Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

Id.; see *infra* note 15 and accompanying text.

10. IRCA §§ 201(c)(4), 302(b)(5).

11. The statute authorizes fines and imprisonment for anyone who violates the confidentiality provisions. IRCA §§ 201(c)(5), 302(b)(6).

12. See 52 Fed. Reg. 8745 (to be codified at 8 C.F.R. pt. 210) (proposed Mar. 19, 1987); 52 Fed. Reg. 8752 (to be codified at 8 C.F.R. pt. 245A) (proposed Mar. 19, 1987).

13. See *infra* notes 22-25 and accompanying text.

14. See *infra* section IV.

15. H.R. REP. NO. 682, *supra* note 7, at 73.

16. IRCA §§ 201(c)(5)-(6), 302(c)(6)-(7). In addressing the likelihood of fraudulent applications, Congressman James Scheuer stated that "an illegal alien can purchase on either side of the border all of the documents that he needs to show that he came over on the

prosecution, and may result in the applicant's deportation.¹⁷ Neither the Act nor the proposed regulations, however, provide any specific examples of fraud or the rights of aliens in these proceedings.

Because these untested provisions are vague and carry the threat of expulsion, they may deter qualified aliens from participating in the legalization process. This would frustrate Congress's intent to encourage the participation of qualified aliens.¹⁸ The INS, however, may mitigate this problem by promulgating specific guidelines in its regulations to narrowly define "fraud" and "material concealments," and by exercising flexibility in enforcing these provisions.

III. CONFLICT WITH TAX PROVISIONS

Aliens applying for permanent resident status under the legalization program¹⁹ must also comply with certain provisions of the Tax Reform Act of 1986 (Tax Act).²⁰ Section 6039E of the Tax Act requires aliens to provide certain information to the Internal Revenue Service (IRS) including whether the applicant is required to file a tax return for the three most recent taxable years.²¹ Additionally, this provision stipulates that "[n]otwithstanding any other provision of law, any agency of the United States which collects (or is required to

Mayflower if need be. . . . This can be done for a few hundred dollars and little or no effort." H.R. REP. NO. 682, *supra* note 7, at 247.

17. See 52 Fed. Reg. 8748, 8759 (proposed Mar. 19, 1987) (proposed rule providing that 8 U.S.C. § 1182(a)(19) applies upon a finding of fraud). Title 8, section 1182(a)(19) of the United States Code provides, in pertinent part, that "[a]ny alien who . . . seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact . . . shall be excluded from admission into the United States." 8 U.S.C. § 1182(a)(19) (1982). The IRCA provides for penalties for false statements in its legalization programs:

Whoever files an application for adjustment of status under [the legalization sections] and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

IRCA §§ 201(c)(6), 302(b)(7). These penalties are applied further under the special agricultural legalization program upon whoever "creates or supplies a false writing or document for use in making such an application." *Id.* § 302(b)(7).

18. See *supra* note 8.

19. In order to obtain United States citizenship, aliens must first apply for temporary resident status. Those granted temporary status must then wait eighteen months before they are eligible to apply for permanent resident status. IRCA §§ 201(b)-(c), 302(a)(2)-(b).

20. 26 U.S.C.A. § 6039E (West 1987).

21. *Id.* Additionally, the statute requires aliens to provide their taxpayer identification number (if any), and "such other information as the Secretary may prescribe." The Act imposes a \$500 penalty for noncompliance. *Id.*

collect)" this information must provide it to the IRS.²² This provision directly conflicts with the IRCA's confidentiality provisions,²³ which prohibit the disclosure of such information to any government agency.²⁴

Subsection 6039E(e) of the Tax Act, however, may provide a possible resolution to this conflict. This provision gives the IRS the power to exempt "any class of individuals" from the disclosure requirements of section 6039E.²⁵ The application of this exemption provision to aliens participating in the legalization process would effectively eliminate the conflict between the Tax Act's disclosure requirements and the IRCA's confidentiality provisions. If the tax provision is enforced, however, noncomplying aliens will be subject to IRS penalties, which may prejudice their legal status and even lead to deportation.²⁶ This may have a chilling effect on the legalization programs because illegal aliens who have previously violated tax laws may be unwilling to expose themselves to prosecution by participating in the legalization process.²⁷ Officials from the INS and IRS are working to resolve this conflict and will hopefully resolve it by the time the respective agencies promulgate their regulations.²⁸

IV. EMPLOYMENT RECORDS

Perhaps an alien's most burdensome obstacle to legalization is

22. *Id.* Further, the Tax Act's Conference Report states that "no other provision of law will exempt individuals from the new return-making requirements or bar agencies collecting the returns from providing them to the [IRS], as required." Conference Committee Report on P.L. 99-514, 8A Stand. Fed. Tax Rep. (CCH) 60,393, 60,394 (1986).

23. See *supra* notes 9-11 and accompanying text.

24. *Id.* In reaffirming the commitment to confidentiality, Alan C. Nelson, the Commissioner of the INS, stated that the INS "would not act as an arm of any other law-enforcement agency and that there would be 'no formal cross-referencing' of names with the Internal Revenue Service." N.Y. Times, Nov. 26, 1986, at 26, col. 6. The confidentiality provisions, however, have no impact on aliens' tax liabilities. *Id.*

25. 26 U.S.C.A. § 6039E (West 1987) (emphasis added). Section 6039E(e) provides: "The [IRS] may by regulations exempt any class of individuals from the requirements of this section if [it determines] that applying this section to such individuals is not necessary to carry out the purposes of this section." *Id.*

26. An adjustment of status will not be conferred upon an alien who has "been convicted of any felony or of three or more misdemeanors committed in the United States." IRCA § 201(a)(4)(B). Further, criminal adjudication may be grounds for deportation. 8 U.S.C.A. § 1251 (West Supp. 1986). Such information is not protected by the IRCA's confidentiality provisions, which only apply to information contained in an *application for legalization*. See *supra* notes 9-11 and accompanying text.

27. See L.A. Times, Jan. 10, 1987, at 1, col. 5 ("Immigration experts estimate that as many as 30% of illegal immigrants have not paid federal taxes.").

28. *Id.* It is likely that the IRS will exempt participating aliens from section 6039E's requirements in order to further Congress's intent. See *supra* note 8.

production of those documents necessary to prove residence.²⁹ The IRCA specifies that the best way for aliens to establish residence is through past employment records.³⁰ Many alien-employees, however, either lack employment records, or have employers who are neither willing to provide such records nor willing to sign an affidavit attesting to the alien's employment history.³¹ Although the proposed regulations offer the applicant some relief by allowing for flexibility in the documents that may be used to show prior residency,³² if employers refuse to assist applicants, many will be unable to establish residency by other means because of their prior efforts to avoid a "paper trail" while living underground.³³ The INS and the alien-employee may, however, have recourse.

A. *INS Recourse*

Although neither the Act nor the proposed regulations promulgated by the INS address recourse in the primary legalization pro-

29. *See supra* notes 2-6 and accompanying text.

30. The importance of employment records in proving residency may be adduced from the language of the IRCA and preliminary regulations. The Act provides that documents proffered to prove residency "be employment-related, if employment-related documents with respect to the alien are available to the applicant." IRCA § 201(g)(D)(ii). Past employment records is the first item specified by the proposed regulations in its listing of acceptable documentation. 52 Fed. Reg. 8756 (proposed Mar. 19, 1987). Moreover, the Conference Report states: "The Conferees prefer the use of employment-related documents whenever possible, because this type of documentation is viewed as the 'best evidence' of continuous residence." H.R. CONF. REP. NO. 1000, 99th Cong., 2d Sess., pt. 2, at 92, *reprinted in* 1986 U.S. CODE CONG. & ADMIN. NEWS 5840.

31. 63 INTERPRETER RELEASES 1021, 1028 (1986); *see* 52 Fed. Reg. 8749 (1987). The proposed regulations require such an affidavit to be signed, "attested to by the employer under penalty of perjury, and . . . state the employer's willingness to come forward and give testimony if requested." *Id.* Employers who violated laws incident to such employment may be especially reluctant to aid alien-employees. *See supra* notes 3-6 and accompanying text. In recognition of the problems caused by recalcitrant employers, the Commissioner of the INS has publicly "urged employers to help illegal aliens who are eligible to obtain amnesty by providing them with summaries of their employment history." N.Y. Times, Nov. 26, 1986, at 26, col. 6.

32. 52 Fed. Reg. 8748-49 (proposed Mar. 19, 1987). In reference to problems encountered by aliens in obtaining documentation, the House Judiciary Committee stated:

[T]he evidentiary standard should . . . take into account the fact that some flexibility may be necessary in accepting documents in proof of continuous residence. While employment documents may constitute the most direct evidence of continuous residence, many undocumented aliens have been clandestinely employed and thus may not have the usual trail of records. . . . Therefore, the Committee expects the INS to incorporate flexibility into the standards for legalization eligibility

H.R. REP. NO. 682, *supra* note 7, at 73.

33. *See supra* note 4 and accompanying text.

gram, provisions in the special agricultural workers program³⁴ provide some guidance.³⁵ These preliminary regulations provide that “[t]he service may solicit from agricultural employers . . . lists of workers against which evidence of qualifying employment can be checked.”³⁶ This language implies that the INS has the authority to compel employers of agricultural employees to provide employment records. Because the meaning of the term “may solicit” is unclear, however, the proposed regulations do not indicate whether the INS will ever exercise this power or under what circumstances it would do so. It is also unclear whether the INS intended to exercise any recourse against nonagricultural employers. Similarly, the INS has not explicitly promulgated any regulatory measures to compel employers to provide their employees with documents establishing the employees’ residency.

B. *Private Recourse*

Presumably, an alien’s rights are violated when his employer fails to provide documents within the employer’s exclusive control upon which the alien must rely to prove residence.³⁷ Although the Act and proposed regulations are silent on the alien’s right to bring a private cause of action against his employer for failure to provide such documents, language in the House of Representatives Conference Report³⁸ suggests that aliens may be able to sue their employers directly.³⁹ Although this language applies to “agricultural workers,”⁴⁰ it may apply by analogy to all other aliens seeking legalization.⁴¹

34. Section 302 of the IRCA sets forth the Seasonal Agricultural Workers legalization program (SAW), which is restricted solely to certain agricultural workers. IRCA § 302.

35. The Act provides several preferences to aliens qualifying for SAW that are not provided in the main legalization program. Compare IRCA § 302 with IRCA § 201. For further discussion of agricultural preferences, see *infra* notes 41, 53 and accompanying text.

36. This follows the guidance of the Conference Report, which states that “[t]he Conferees intend . . . that the Attorney General may by regulation provide . . . [procedures] . . . identifying [aliens’] current or immediate past employer(s).” H.R. CONF. REP. NO. 1000, *supra* note 31, at 97.

37. Employer recalcitrance is especially problematic because aliens often lack other documentation capable of proving residency because of their prior efforts to evade the INS. See *supra* notes 4-6, 31 and accompanying text. Consequently, the production of employment records may be the only way for many aliens to document their residency in the United States.

38. H.R. CONF. REP. NO. 1000, *supra* note 30, at 97.

39. *Id.*

40. *Id.* More specifically, the Conference Report interprets section 302(b)(3)(B)—Documentation of Work History. This section falls under the legalization program for “special agricultural workers.” *Id.*; see *supra* note 31 and accompanying text.

41. The problems of employer recalcitrance and inadequate record keeping are not peculiar to agricultural workers, but rather, may be present in all industries. See *supra* note 30 and accompanying text. Negative implication, however, suggests that the conferees

The Conference Report provides that the standards embodied in case law construing the Fair Labor Standards Act (FLSA)⁴² will govern judicial interpretations of the requirement that aliens provide documentation of their work history.⁴³ Further, the report lists leading cases dealing with "employee loss of records, destruction or falsification of records by employers, and other difficult circumstances where precise evidence of hours worked is lacking."⁴⁴ The conferees noted the similarities between these FLSA cases and an illegal alien's attempt to obtain documentation from his employer, as required by the IRCA.⁴⁵ The conferees, however, stopped short of stating that these similarities will allow the same recourses to aliens seeking legalization as provided to employees under the FLSA.⁴⁶ An analysis of the FLSA and leading cases is useful to determine the conferee's intent, the underlying purposes of the IRCA, and the availability of similar remedies to aliens seeking documentation from their employers.

Congress enacted the FLSA to protect certain employees from substandard wages and excessive hours which endanger the national health and well-being.⁴⁷ The FLSA's definition of an employee does not require citizenship, and thus, an employee's status as an illegal alien does not preclude his enforcement of FLSA violations.⁴⁸ Further, the FLSA sets minimum wage and overtime pay standards,⁴⁹ and imposes a duty on employers to keep accurate records of employee hours.⁵⁰ An employee's private right of action under the FLSA, however, is limited to the recovery of back wages and liquidated damages and does not encompass an employer's failure to keep records in accordance with the FLSA.⁵¹

intentionally omitted nonagricultural workers by referring solely to agricultural employees in the statutory language.

42. 29 U.S.C. §§ 201-219 (1982).

43. H.R. CONF. REP. NO. 1000, *supra* note 30, at 97.

44. *Id.*

45. See *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946); *Beliz v. W.H. McLeod Co.*, 765 F.2d 1317 (5th Cir. 1985); see also *infra* notes 53-56 and accompanying text.

46. H.R. CONF. REP. NO. 1000, *supra* note 30, at 97.

47. *Id.* § 202; see also Willis, *The Evolution of the Fair Labor Standards Act*, 26 U. MIAMI L. REV. 607 (1972).

48. "Employee" is defined in 29 U.S.C. § 203 (1982).

49. See 29 U.S.C. § 213(b)(12) (1982).

50. Section 11(c) of the FLSA provides: "[E]very employer subject to any provision of this Act . . . shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him [as the Administrator shall prescribe]." 29 U.S.C. § 211(c) (Supp. 1985). Section 15(a)(5) makes any violation of this provision unlawful. *Id.* § 215(a)(5).

51. 29 U.S.C. § 216(b) (Supp. 1987). The FLSA does not contain any provision that expressly precludes private actions for violations of the record keeping requirements. The

In the leading case of *Anderson v. Mt. Clemens Pottery Co.*,⁵² the Supreme Court addressed the issue of what types of documentation are required under FLSA. Several employees sued for back wages alleging that their employer underreported employee work hours.⁵³ In redefining the employee's burden of proof where an employer fails to maintain the required payroll records, the Court recognized the employee's difficulties in proving their hours worked.

The remedial nature of [the FLSA] and the great public policy which it embodies . . . militate against making [this] burden an impossible hurdle for the employee. Due regard must be given to the fact that it is the employer who has the duty under section 11(c) of the Act to keep proper records of wages, hours and other conditions . . . and who is in position to know and to produce the most probative facts concerning the nature and amount of work performed⁵⁴

Although the Court granted a private right of action for back pay, it did not provide any private recourse for an employer's noncompliance with FLSA record-keeping requirements.⁵⁵

The FLSA requires employers to keep adequate records but fails to give employees the power to enforce these record-keeping provisions. Similarly, the IRCA requires employers to provide information needed by aliens seeking legalization but fails to explicitly grant these aliens the power to compel employers to provide the required information. Thus, although the Conference Report's analogy to the FLSA appears to reaffirm an alien's right to documentation, perhaps the conferees did not intend to convey the concomitant power necessary to enforce these rights. Consequently, it may be difficult for qualifying aliens to participate unless the courts confer a private cause of action on aliens to compel employers to provide documents within their exclusive control.

language of the statute, however, clearly limits private actions to recovery of unpaid wages and liquidated damages. *Id.*

52. 328 U.S. 680 (1946). The Conference Report specifically mentioned *Anderson*, along with *Beliz v. W.H. McLeod Co.*, 765 F.2d 1317 (5th Cir. 1985). See H.R. CONF. REP. NO. 1000, *supra* note 30, at 97. In *Beliz*, the Fifth Circuit reaffirmed the holding of *Anderson* and suggested that courts must account for additional difficulties faced by agricultural employees. 765 F.2d at 1332. The court stated, "the legislative history of the Act notes that farm workers who attempt to assert their rights must overcome a general background of fear and intimidation caused by the widespread practice of retaliation against those who complain about violations." *Id.*

53. *Anderson*, 328 U.S. at 683-84.

54. *Id.* at 687.

55. *Id.* at 698.

V. CONCLUSION

Congress framed the legalization provisions of the IRCA intending to legitimize as many qualifying aliens as possible.⁵⁶ It should not be surprising, however, that qualified illegal aliens, having evaded the INS since before 1982, may choose not to test the uncertain scope of the Act's confidentiality provisions. Furthermore, aliens needing records from traditionally recalcitrant employers may be effectively precluded from legalization because the Act lacks both the incentives and explicit recourses needed to bolster employer cooperation. Consequently, the new legislation does not appear to have overcome the inherent suspicions and fears of illegal aliens. These impediments should be addressed in the forthcoming regulations and administrative rulings in order to further Congress's intent.

JAMES MARX*

56. *See supra* note 8.

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