

# Debt-for-Equity Shuffle in H.R. 776

by Robert W. Wood • Bancroft & McAlister

**T**he Comprehensive Natural Energy Policy Act of 1992 (H.R. 776), not yet passed, has a great deal more in it than one would guess. For one thing, the Conference Agreement to the bill would provide that

Continued on Page 5

**DEBT-FOR-EQUITY** Continued From Page 3

the characterization (as of the time of issuance) of a corporate instrument as stock or debt by the corporate issuer would be binding on the issuer and on all holders of the instrument. But this characterization would not be binding on the Treasury Secretary. Neither a holder nor an issuer is excused from any interest or penalties that might result under present law from an improper characterization.

In fact, except to the extent provided in regulations, a holder who treats such an instrument in a manner inconsistent with such characterization must disclose the inconsistent treatment on the tax return. According to the Conference Agreement, the Treasury Secretary will also have the authority to require such information as is deemed necessary to implement this provision. If this provision is passed, it would obviously put an enormous burden on the issuer to “get it right.” Because the holder is not excused from interest or penalties arising from an improper characterization, one suspects that the marketplace will demand that issuers exercise due diligence in characterizing new obligations. ■