[JOINT COMMITTEE PRINT]

DESCRIPTION OF MISCELLANEOUS TAX BILLS

LISTED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON
SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS
ON JUNE 27, 1979

PREPARED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

JUNE 22, 1979

U.S. GOVERNMENT PRINTING OFFICE
46-959 O WASHINGTON : 1979 JSC-28-79

CONTENTS

INTRODUCTION

The bills described in this pamphlet are those on which the Subcommittee on Select Revenue Measures of the Committee on Ways and Means has announced a public hearing for June 27, 1979.

In connection with this hearing, the staff of the Joint Committee on Taxation has prepared a description of the bills, similar to the descriptions the staff prepared in connection with the hearings on miscellaneous tax bills during the 95th Congress.

The first part of the pamphlet summarizes the bills in consecutive bill number order. This is followed in the second part by a more detailed description of each bill, indicating in each case the present law treatment, the issue involved, an explanation of what the bill would do, the effective date of the provision, the revenue effect of the provision, the position of the Treasury Department or other relevant departments with respect to the bill, and any prior Congressional consideration of the provisions of the bill.

I. SUMMARY

1. H.R. 306—Mr. Duncan of Tennessee

Excise Tax Exemption for Certain Trailers Designed To Be Used With Light-Duty Vehicles

The bill would provide an exemption from the 10-percent manufacturers excise tax on sales of trailers and semitrailers which are (1) suitable for use with "light-duty" towing vehicles and (2) designed to be used for farming purposes or for transporting horses or livestock. The exemption also would apply to sales of separate bodies and chassis for these trailers and semitrailers.

2. H.R. 960—Mr. Brodhead

Voluntary Withholding of Income Taxes From Certain Payments Under Employer Wage Continuation Plans

Under present law, no tax is required to be withheld upon payments of sick pay made to an employee by a person who is not the employer for whom the employee performs services. For example, no tax is withheld with respect to payments of sick pay made on behalf of an employer by an insurance company under an accident or health policy.

In general, the bill would provide for voluntary withholding upon payments of sick pay made by a third party. In addition, the bill contains a special provision relating to sick pay paid pursuant to certain collective-bargaining agreements and contains various reporting requirements.

3. H.R. 988—Mr. Conable

Treatment of Payment or Reimbursement by Private Foundations for Expenses of Foreign Travel by Government Officials

Present law, in effect, prohibits any "self-dealing" between private foundations and "disqualified persons." Under these rules, any payment or reimbursement by a private foundation of expenses of government officials generally is classified as an act of self-dealing. However, a limited exception in existing law permits a private foundation to pay or reimburse certain expenses of government officials for travel solely within the United States.

The bill would broaden this existing exception to permit a private foundation (other than a foundation supported by any one business enterprise, trade association, or labor organization) to pay or reimburse government officials for certain expenses of foreign travel under similar types of limitations as apply under current law in the case of expenses for domestic travel.

4. H.R. 2173—Mr. Frenzel

Services Provided by a Private Foundation as Trustee

The bill would provide that the furnishing of trustee services to a "disqualified person" by a private foundation as trustee of an irrevocable trust in which the foundation itself has a beneficial interest does not constitute "self-dealing" subject to excise taxes for taxable years beginning after December 31, 1979, and on or before December 31, 1989, if the disqualified person's status results from the operation of a trust which was irrevocable prior to October 9, 1969, and if the foundation receives reasonable compensation for its services.

5. H.R. 2459—Messrs. Jones of Oklahoma, Vander Jagt, and Hagedorn

Postponement of Time for Paying Excise Tax on Fishing Equipment

Present law imposes a 10-percent excise tax upon the sale of fishing rods, creels, reels, and artificial lures, baits, and flies by the manufacturer, producer, or importer thereof. This tax generally is payable relatively soon after such fishing equipment is sold.

The bill would allow manufacturers, producers, and importers of fishing equipment to postpone payment of the excise tax upon the sale of such equipment until the close of the quarter immediately following the quarter in which shipment of the equipment was made.

6. H.R. 2667—Mr. Vander Jagt

Nonrecognition of Gain on Sale of Residence for Certain Members of the Armed Forces

Under present law, a member of the Armed Forces serving on extended active duty generally is not required to recognize gain on the sale of a principal residence if he or she purchases a new principal residence within four years after the date of the sale of the old residence.

The bill would extend the replacement period for members of the Armed Forces who are stationed outside of the United States or who are required to reside in Government-owned quarters to the later of: (1) four years after the date of the sale of the old residence, or (2) one year after the date on which the member no longer is stationed outside of the United States or required to reside in Government-owned quarters.

7. H.R. 3353—Messrs. Rostenkowski and Vanik

Tax Treatment of Repayments of Supplemental Unemployment Compensation Benefits Required Because of Receipt of Trade Readjustment Allowances

Under present law, if a worker who has been laid off is required to pay back supplemental unemployment compensation benefits because

of the subsequent receipt of trade readjustment assistance, the worker may be entitled to tax relief in the year of repayment under a special tax computation for cases where the taxpayer restores a substantial amount held under a claim of right (Code sec. 1341). However, if the amount of supplemental unemployment compensation benefits required to be paid back by the worker is $3,000 or less, the worker may receive no tax relief for the repayment of previously taxed amounts unless itemized deductions are claimed.

The bill would allow a deduction from gross income for the repayment of supplemental unemployment compensation benefits if the repayment is required because of the receipt of trade readjustment allowances.

8. H.R. 3372—Messrs. Findley, Symms, Marriott, Erlenborn, McClory, Simon, and Rahall

Authorization for a State Taxing Authority Which Receives Federal Tax Return Information to Disclose Such Information to a State Auditing Agency for the Purpose of Auditing the Activities of the State Taxing Authority

Present law authorizes the disclosure of returns and return information to State agencies which are charged under the laws of the State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws. The bill would permit State taxing authorities to disclose Federal tax return information in their possession to State auditing agencies for the purpose of auditing the activities of the State taxing authority.

9. H.R. 3433—Mr. Jones of Oklahoma

Simplification of Private Foundation Return and Reporting Requirements

The bill would combine information reporting requirements for private foundations so that only one return would have to be filed to furnish information now required on two separate returns. The bill also would provide that nonexempt wholly charitable trusts would be required to report the same information and be subject to the same disclosure requirements as exempt charitable organizations. Finally, the bill would provide that disclosure of the name and address of indigent or needy persons receiving grants of less than $1,000 in any year need not be made.

10. H.R. 3688—Mr. Pickle

Rate of Interest on United States Retirement Bonds

Under present law, the interest rate on an individual retirement bond issued by the Treasury Department or a retirement plan bond issued by the Treasury Department remains the same from the date of issuance until the bond is redeemed (generally when the owner retires, becomes disabled, or dies). The bill would authorize the

46-959 O - 79 - 2

Treasury Department to make upward adjustments in the interest rate on outstanding retirement bonds, so that such a bond would earn interest at a rate consistent with the yield for Series E U.S. savings bonds.

11. H.R. 3741 Mr. Holland

Treatment of Petroleum Coke as Other Than a Petroleum Product for Purposes of the Energy Tax Credit and for Purposes of the Denial of Investment Tax Credit and Rapid Depreciation for Certain Boilers Fueled by Petroleum Products

Present law, under rules enacted as part of the Energy Tax Act of 1978, provides a 10-percent energy investment credit for certain energy property which uses a fuel or feedstock other than petroleum or petroleum products. In addition, the 10-percent regular investment credit and accelerated methods of depreciation are denied for certain boilers which use petroleum or petroleum products as a fuel. Petroleum coke, a by-product of petroleum refining, is treated as a petroleum product for purposes of these provisions.

The bill would treat petroleum coke as a substance other than petroleum or a petroleum product for purposes of these rules. As a result, equipment involved with the use of petroleum coke as a fuel or feedstock would be eligible for the energy investment credit and boilers which use petroleum coke as a fuel would not be denied the regular investment credit or accelerated depreciation methods. Generally, these provisions would be effective on October 1, 1978.

12. H.R. 3744—Mr. Jenkins

Convention and Trade Show Activities of Certain Tax-Exempt Organizations

Under present law, income derived by tax-exempt labor or trade association organizations from a convention and trade show activity is not subject to the unrelated business income tax if the activity is intended to stimulate interest in and demand for the products of the industry in which the organization's members are engaged. The bill would extend the exemptions (1) income from convention and trade show activities intended to educate persons in the industry in the development of new products and services or new rules and regulations affecting the industry (so-called "supplier shows"), and (2) income from convention and trade show activities (including "supplier shows") conducted by charitable, educational, religious, and similar organizations exempt from tax under section 501(c)(3) of the Code.

13. H.R. 4290—Mr. Frenzel

Alternative Minimum Tax on Charitable Lead Trusts Created by Corporations

Under present law, the alternative minimum tax is imposed on a charitable lead trust set up by a corporation because the deduction for income paid to charity would give rise to the preference for ad-

justed itemized deductions. However, if the corporation had made a contribution to charity directly instead of through a charitable lead trust, there would be no alternative minimum tax because corporations are not subject to the alternative minimum tax. The bill would provide that the charitable deduction of a charitable lead trust will not be considered in determining the adjusted itemized deduction preference for purposes of the alternative minimum tax if the grantor of the trust and the owner of all reversionary interests in the trust is a corporation.

14. H.R. 4299—Messrs. Rostenkowski, Corman, Fisher, Holland, and Archer

Application of the Investment Tax Credit to Certain Property Used by the International Maritime Satellite Organization

Under present law, the investment credit is not generally available for property used outside the United States or for property used by an international organization. Under the Revenue Act of 1971, these limitations were made inapplicable to interests of United States persons in communications satellites used by the International Telecommunications Satellite Organization (INTELSAT), in order to permit the Communications Satellite Corporation (COMSAT), the governmentally designated United States participant in INTELSAT, to obtain the credit on its share of qualifying investments made by the INTELSAT joint venture.

The bill would similarly make the credit available for interests of United States persons in communications satellites used by the International Maritime Satellite Organization (INMARSAT), an international organization established to develop and operate a global maritime satellite telecommunications system.

15. H.R. 4307—Messrs. Archer and Cavanaugh

Postponement of Effective Date for Advance Payment of Earned Income Credit

Under present law, effective for remuneration paid after June 30, 1979, employees who qualify for the earned income credit may elect to have advance payments of the earned income credit added to their paychecks by the employer each pay period. The bill would make optional, until January 1, 1980, the provisiion requiring employers to make advance payments of the earned income credit.

II. DESCRIPTION OF BILLS

1. H.R. 306—Mr. Duncan of Tennessee

Excise Tax Exemption for Certain Trailers Designed To Be Used With Light-Duty Vehicles

Present law

Under present law, a manufacturers excise tax of 10 percent is imposed on sales of chassis and bodies of trucks, highway tractors, or their related trailers and semitrailers by a manufacturer, producer, or importer of such an article (Code sec. 4061(a)).[1]

Present law provides an exclusion from the tax in the case of sales of chassis and bodies of light-duty trucks, buses, truck trailers, and semitrailers (sec. 4061(a)(2)).[2] To be eligible for this exclusion, the chassis or body of the truck trailer or semitrailer must be "suitable for use" with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less, determined in accordance with Treasury Department regulations (sec. 4061(a)(2)).[3] Furthermore, in order to be exempt, the truck trailer or semitrailer itself must be suitable for use with a towing vehicle having a gross vehicle weight of 10,000 pounds or less (sec. 4061(a)(2)).

Before the Revenue Act of 1971, which repealed the tax on automobiles and their trailers and semitrailers, the automobile tax rate

---

[1] The tax is scheduled to be reduced to 5 percent on October 1, 1984. Revenues from this tax go to the Highway Trust Fund (through September 30, 1984).

[2] The 7-percent manufacturers excise tax on automobiles, etc., was repealed by the Revenue Act of 1971 (Pub. L. 92–178). Since many persons use smaller trucks, etc., as passenger vehicles, sales of light-duty trucks, trailers, and semitrailers also were excluded from the 10-percent truck excise tax by the 1971 Act.

[3] "Gross vehicle weight" is defined as the maximum total weight of a loaded vehicle. (Treas. Regs. § 48.4061(a)–1(f)(3)(i)). The maximum total weight of a loaded vehicle is the gross vehicle weight rating of the manufactured article as specified or established by the manufacturers, unless such a rating is unreasonable in light of the particular facts and circumstances. Generally, a manufacturer must specify or establish a weight rating for each chassis, body, or vehicle sold by it if the item requires no significant post-manufacture modification (Treas. Regs. § 48.4061(a)–1(f)(3)(ii)). The manufacturer's gross vehicle weight rating must take into account the strength of the chassis frame, the axle capability (capacity and placement), and the spring, brake, rim, and tire capacities. The lowest weight rating component ordinarily is determinative of the gross vehicle weight. If the capacity of any readily attachable components (springs, brakes, rims, or tires) would otherwise be determinable of a gross vehicle weight rating of 10,000 pounds or less, no readily attachable component will be taken into account in determining such rating unless the rating determined solely on the basis of the chassis frame or the total of the axle ratings is 12,000 pounds or less. (Treas. Regs. § 48.4061(a)–1(f)(3)(v)). The total of the axle ratings is the sum of the maximum load-carrrying capability of the axles and, in the case of a trailer or semitrailer, the weight that is to be borne by the vehicle used in combination with the trailer or semitrailer for which gross vehicle weight is determined (Treas. Regs. § 48.4061(a)–1(f)(3)(vi)).

applied to "trailers and semitrailers * * * suitable for use in connection with passenger automobiles." (Sec. 4061(a)(2)(B).) The Service ruled that "one-horse and two-horse trailers are considered to be suitable for use in connection with passenger automobiles, inasmuch as they possess actual and practical fitness for such use." Three-horse and 4-horse trailers were "concluded to be primarily designed for highway use in combination with taxable trucks." (Rev. Rul. 68–584, 1968–2 CB 492.)

Issue

The issue is whether trailers designed to to be used for farming purposes or for transporting horses or livestock should be exempt from the 10-percent manufacturers excise tax where such trailers are suitable for use with light-duty towing vehicles.

Explanation of the bill

Under the bill, an exemption would be provided from the 10-percent manufacturers excise tax for certain trailers or semitrailers which are designed to be used for farming purposes or for transporting horses or livestock. The bill, in effect, would eliminate the present law requirement for exemption that a trailer or semitrailer designed for such purposes have a gross vehicle weight of 10,000 pounds or less. However, the bill would retain the present law requirement that the trailer or semitrailer be suitable for use with a light-duty vehicle having a gross vehicle weight of 10,000 pounds or less. If a body or chassis is sold separately, then it must be suitable for use with such a trailer or semitrailer in order to qualify under the exemption.

The bill would not affect the separate 8-percent manufacturers excise tax on parts and accessories (sec. 4061(b)).

The bill provides for floor stock refunds or credits (without interest) with respect to all articles exempted by the bill that are in dealers' inventories on the day after the date of enactment. These floor stock refunds (or credits are to be available with respect to exempted trailers or semitrailers (and their chassis and bodies), sold by the manufacturer, producer, or importer on or before the date of enactment which have not been used, but are intended for sale by the dealer. The credits or refunds for these floor stocks must be claimed by the manufacturer, producer, or importer before the first day of the 10th calendar month beginning after the day after the date of enactment of the bill, based upon requests submitted to it from the dealer before the first day of the 7th calendar month beginning after the day after the date of enactment. Also, on or before the first day of the 10th calendar month beginning after the day after the date of enactment, the manufacturer, producer, or importer must have reimbursed the dealer for the tax or obtained the dealer's written consent to the refund or credit. In addition, the manufacturer, producer, or importer must have in its possession evidence of the inventories on which the credit or refund is claimed (to the extent required by Treasury regulations).

An article is considered "held by a dealer", for these purposes, if title to the article has passed to the dealer (even if delivery has not been made). However, the article will not be considered "held by a dealer" unless title to the article or possession of the article has never been transferred to a nondealer for purposes of consumption. The

term "dealer" is defined to include a wholesaler, jobber, distributor, or retailer.

Effective date

The provisions of the bill would apply with respect to articles sold on or after the day after the bill's enactment.

Revenue effect

It is estimated that this provision will reduce budget receipts by less than $2 million annually.

Departmental position

The Treasury Department opposes this bill for the following reasons: (1) The proposed exemption would discriminate against non-farmer users of trailers of similar gross weight—*e.g.*, persons transporting general merchandise, construction machinery, tools, etc. The argument for exemption is that farmers do not travel extensively on the highways. But farmers are not unique. Many businessmen, contractors and service people often drive a trailer to a job site in the morning, leave the trailer parked in one spot all day and then drive home in the evening. Extension of the exemption to all trailers of the specified weight—farming and non-farming—would discriminate against single unit trucks in the 10-20,000 pound class (*e.g.*, delivery vans). (2) There would be interpretive and administrative problems in differentiating trailers and semi-trailers "designed to be used for farming purposes" from similar vehicles designed for the carriage of general cargo."

Prior Congressional action

The provisions of this bill were reported by the Committee in H.R. 2984 in the 95th Congress (House Report No. 95–988, March 20, 1978), and passed the House on May 8, 1978.

In the 94th Congress, the provisions of this bill were reported by the Committee in H.R. 6521, and passed by the House by voice vote on August 24, 1976.

2. H.R. 960—Mr. Brodhead

Voluntary Withholding of Income Taxes From Certain Payments Under Employer Wage Continuation Plans

Present law

Under present law (Code sec. 105(a)), amounts received by an employee through accident or health insurance for personal injuries or sickness (generally referred to as wage continuation payments or "sick pay") generally must be included in gross income to the extent such amounts are attributable to contributions by the employer which were not includible in the gross income of the employee, or are paid by the employer.

Under section 3402(a) of the Code, every employer who makes wage payments is required to deduct and withhold upon such wages a tax determined in accordance with tables prescribed by the Secretary. Payments made by an employer to an employee under a wage continuation plan generally are treated as wages and subject to withholding (except to the extent that an employee receives back contributions he or she previously made to a wage continuation plan). However, no tax is required to be withheld upon any wage continuation payment made by a person who is not the employer for whom the employee performs services. Thus, for example, no tax is witheld with respect to wage continuation payments made on behalf of an employer by an insurance company under an accident or health policy, by a separate trust under an accident or health plan, or by a State agency from a sickness and disability fund maintained under State law (Treas. Reg. sec. 31.3401(a)-1(b)(8)(ii)(*d*)). Because of the absence of withholding upon wage continuation payments made by third-party payors, employees who have received these payments during the year may have an unexpected tax liability at the end of the year.[1]

Issue

The issue is whether an individual who receives "sick pay," which is not subject to withholding because it is paid by a third party, should be allowed to have such pay withheld voluntarily.

Explanation of the bill

In general

The bill would amend section 3402(o) of the Code to specifically authorize withholding upon sick pay, if the payee so requests. For purposes of this provision, sick pay would be defined as any amount which is paid to an employee pursuant to a plan to which the employer is a

[1] Section 3402(o) of the Code authorizes withholding on certain pension and annuity payments if the payee so requests. This voluntary withholding is limited to pensions or annuities paid over a period of more than one year and applies only to the taxable portion of the payments.

party, and constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

Under the bill, the amount of sick pay and annuity payments subject to withholding would be an amount specified by the payee in his or her request for withholding. However, in no case could this amount be less than a minimum amount to be set forth in regulations prescribed by the Secretary. In the case of a payment which is greater, or less, than a full payment, the amount withheld is to bear the same relation to the specified amount as such payment bears to a full payment.[2]

Requests for withholding

An individual who wishes to have his or her annuity or sick pay be subject to withholding must make a written request to the person making the payments. This request must contain the individual's social security number and must specify the amount to be withheld from each full payment. In the case of sick pay, a request for withholding would be effective with respect to payments made more than 7 days after the date on which the request is furnished to the payor. In the case of an annuity, a request would be effective at such time (after the request is made) as the Secretary prescribes by regulations. A request for withholding may be changed or terminated by furnishing to the payor a written statement of change or termination.

Special rule for sick pay paid pursuant to collective-bargaining agreements

Under the bill, in the case of any sick pay paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers, the amount of sick pay to be withheld would be determined in accordance with such agreement if the agreement so provided. (That is, an employee who is a party to such an agreement would not be required to submit a written request for withholding to the payor.) However, there could be no withholding with respect to sick pay paid to an employee (who is party to a collective bargaining agreement) who has in effect a withholding exemption certificate certifying that he incurred no tax liability for the preceding taxable year and anticipates that he will incur no tax liability for the current taxable year.

The special treatment accorded to collective-bargaining agreements would not apply to sick pay paid pursuant to such an agreement to any individual unless the individual's social security number is furnished to the payor and the payor is furnished with the information necessary to determine whether the payment is pursuant to the agreement and to determine the amount to be withheld.

Reporting requirement

The bill would require a person who makes a payment of third-party sick pay to an employee to furnish a written statement to the

[2] For example, assume an individual receives sick pay of $100 per week and requests $25 per week to be withheld for taxes. After four full weeks of absence, the individual returns to work on a Wednesday. For the week he returns to work, he would be entitled to $40 of sick pay, $10 of which would be withheld for taxes.

46-959 O - 79 - 3

employer in respect of whom the payment was made showing the name of the employee, the social security number of the employee (if there was withholding), the total amount of third-party sick pay paid to the employee during the calendar year, and the total amount (if any) withheld from sick pay. This statement would be due on or before January 15 of the year succeeding the year in which the payment of third-party sick pay was made. The bill defines "third-party sick pay" as any sick pay which does not constitute wages for purposes of withholding. This reporting requirement would be in lieu of the reporting requirements of section 6041(a) (relating to certain payments of $600 or more). In addition, the bill would provide that a person required to furnish a statement to an employer who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required would for each such failure be subject to a penalty of $50 and, upon conviction of each such offense, could be fined not more than $1,000, or imprisoned not more than 1 year, or both.

Every employer who receives a statement from a person who made a third-party payment of sick pay to an employee would be required to furnish a written statement to such employee showing the information shown on the statement and showing which portion (if any) of the sick pay is excludable from gross income and which portion is not excludable. This statement must be furnished to the employee on or before January 31 of the year succeeding the year in which the payment of third-party sick pay was made.

Effective date

The provisions of the bill would apply to payments made on or after the first day of the first calendar month beginning more than 120 days after the date of enactment.

Revenue effect

It is estimated that this bill will cause a one time increase in budget receipts of less than $5 million in fiscal year 1980.

Departmental position

The Treasury Department does not oppose this bill.

Prior Congressional action

The provisions of this bill were included in H.R. 12982 (95th Cong.), which was reported to the Committee by the Subcommittee on Miscellaneous Revenue Measures on September 29, 1978.

3. H.R. 988—Mr. Conable

Treatment of Payment or Reimbursement by Private Foundations for Expenses of Foreign Travel by Government Officials

Present law

The Tax Reform Act of 1969 added a provision to the Code (sec. 4941) which in effect prohibits "self-dealing" acts between private foundations and certain designated classes of persons (referred to as "disqualified persons") by imposing a graduated series of excise taxes on the self-dealer (and also on any foundation manager who willfully and knowingly engages in self-dealing acts). Under this provision, the payment or reimbursement by a private foundation of expenses of a government official generally is classified as an act of self-dealing (sec. 4941(d)(1)(F)).

A limited exception to this provision permits a private foundation to pay or reimburse certain expenses of government officials for travel solely within the United States (sec. 4941(d)(2)(G)(vii)). Under this exception, it is not an act of self-dealing for a private foundation to pay or reimburse a government official for actual transportation expenses, plus an amount for other traveling expenses not to exceed 1¼ times the maximum *per diem* allowed for like travel by Federal employees. However, no such private foundation payment or reimbursement to government officials is permitted for travel to or from a point outside the United States.

Issue

The issue is whether private foundations should be permitted to pay or reimburse government officials for expenses for foreign travel and, if so, under what circumstances.

Explanation of the bill

The bill would provide that a private foundation does not engage in an act of self-dealing in paying or reimbursing certain expenses of government officials paid or incurred for travel between a point in the United States and a point outside the United States. The maximum amount which could be paid or reimbursed by a private foundation for any one trip by a govenment official under the bill would be the sum of (1) the lesser of the actual cost of the transportation involved or $2,500 plus (2) an amount for all other traveling expenses not in excess of 1¼ times the maximum amount payable under section 5702(a) of title 5, United States Code (relating to like travel by a U.S. Government employee) for a maximum of 4 days.[1]

---

[1] Under 5 U.S.C. 5702(a), in the case of travel outside the continental United States, the President or his designee has the authority to establish the maximum *per diem* allowance for the locality where the travel is performed. Currently, for example, 1¼ times the daily amount so established for travel expenses in London is $113.75, for travel in Paris, $107.50, and for travel in Tokyo, $121.25.

The exception added by this bill would not be available to a private foundation if more than one-half of the foundation's support (as defined in sec. 509(d)) is normally derived from any one business enterprise, any one trade association, or any one labor organization, whether such support takes the form of interest, dividends, other income, grants, or contributions.

Effective date

The provisions of the bill would apply with respect to travel beginning after the date of enactment.

Revenue effect

It is estimated that this bill would not have any direct revenue effect.

Departmental position

The Treasury Department does not oppose this bill.

Prior Congressional action

An identical bill (H.R. 810, 95th Cong.) was passed by the House of Representatives by a recorded vote of 387–2 on March 14, 1978, but was not acted upon by the Senate Finance Committee or considered by the Senate.

Also, an identical bill (H.R. 2984, 94th Cong.) was passed by the House of Representatives by voice vote on May 18, 1976, but was not acted upon by the Senate Finance Committee or considered by the Senate.

4. H.R. 2173—Mr. Frenzel

Services Provided by a Private Foundation as Trustee

Present law

The Tax Reform Act of 1969 added a provision to the Internal Revenue Code (sec. 4941) which, in effect, prohibits acts of "self-dealing" between private foundations and certain designated classes of persons (referred to as "disqualified persons") by imposing a graduated series of excise taxes on the self-dealer (and also on any foundation manager who willfully engages in acts of self-dealing). Under this provision, the furnishing of services by a private foundation to a disqualified person generally is classified as an act of self-dealing, whether or not the foundation receives reasonable compensation for the services it performs (sec. 4941(d)(1)(C)).[1] If disqualified persons hold more than 35 percent of the beneficial interest in a trust, the trust is a disqualified person (sec. 4946(a)(1)(G)).

The statute also provides that the furnishing of services by a private foundation to a disqualified person is not an act of self-dealing if it is done on a basis no more favorable than that on which the services are made available to the general public (sec. 4941(d)(2)(D)). In addition, the 1969 Act provided a transitional rule permitting the continuation until 1980, without imposition of self-dealing taxes, of services which are shared between a private foundation and a disqualified person, so long as the services are pursuant to an arrangement in effect before October 9, 1969 and that arrangement was not a "prohibited transaction," as defined in section 503(b) or the corresponding provisions of prior law, at the time it was made and does not, at any time thereafter or during the 10-year transitional period, become a pro-

[1] Prior to the 1969 Act, private foundations were subject to section 503 of the Code, which provided that a charitable organization could lose its exempt status if it engaged in a prohibited transaction. This section generally required arm's-length standards with regard to loans, payments of compensation, preferential availability of services, and substantial purchases or sales to or from creators of charitable trusts and substantial donors and their families and controlled corporations.

Section 4941 was enacted in large part because the Congress concluded that arm's-length standards could not be effectively enforced and that such standards still allowed leeway for foundation resources to be used to provide benefits to donors and their families which were not available to the general public. Also, the Congress adopted the general approach of flatly prohibiting self-dealing arrangements to minimize the need to apply subjective arm's-length standards, to avoid the temptation to misuse private foundations for noncharitable purposes, to provide a more rational realtionship between sanctions and improper acts, and to make it more practical to properly enforce the law. Also, it was felt that the highest fiduciary standards require that self-dealing not be engaged in, rather than that arm's-length standards be observed, H. Rept. 91–413 (Part 1), 91st Cong., 1st Sess. (1969), pp. 20–21; S. Rept. 91–552, 91st Cong., 1st Sess. (1969), pp. 28–29.

hibited transaction, determined as if section 503(b) continued to apply (sec. 101(1)(2)(D) of P.L. 91–172).

The Internal Revenue Service takes the position that if a foundation serves as trustee of a trust which is a disqualified person, the foundation is furnishing services to a disqualified person and therefore is engaged in an act of self-dealing. The furnishing of such services therefore constitutes an act of self-dealing, giving rise to excise taxes, unless the services are provided to the disqualified person on a basis no more favorable than that on which such services are made available to the general public, or unless a transitional rule applies.

In at least some instances, foundations are prohibited by local law from serving as trustee of any trust other than one in which they have a beneficial interest. This restriction makes unavailable the statutory self-dealing exception for furnishing services on a basis no more favorable than the basis on which made available to the general public.

Issue

The issue is whether a private foundation should, under limited circumstances, be permitted to serve as trustee of a trust which is a disqualified person where the private foundation is a beneficiary of the trust.

Explanation of the bill

The bill would provide that, for taxable years beginning after December 31, 1979 and on or before December 31, 1989, the furnishing of services by a private foundation to a disqualified person is not an act of self-dealing if (1) the services are furnished in the capacity of trustee for an irrevocable trust established prior to October 9, 1969, designating the private foundation as trustee; (2) the foundation may not, under the laws of the State of its incorporation, act as trustee of a trust other than one in which it possesses a beneficial interest; (3) the private foundation receives compensation from the trust for the services performed as trustee which is reasonable in light of the facts and circumstances; and (4) the disqualified person attained that status solely because of the operation of a trust instrument which was irrevocable prior to October 9, 1969.[2]

The intended beneficiaries of the bill are the Hormel Foundation, incorporated in Minnesota, and certain trusts of which it is trustee.

Effective date

The provisions of the bill would apply to services furnished in taxable years beginning after December 31, 1979, and on or before December 31, 1989.

Revenue effect

It is estimated that the provisions of the bill would reduce budget receipts by less than $1 million annually.

---

[2] The bill sets forth requirements which must be met for taxable years beginning after December 31, 1979 and on or before December 31, 1989, in order for the self-dealing transitional rule provided by the bill to be available. To qualify for this transitional rule for a taxable year beginning after December 31, 1979, and on or before December 31, 1989, a private foundation must satisfy the requirements of the bill for such taxable year, without regard to whether or not the foundation satisfied a statutory self-dealing exception or a transitional rule for a prior year or years. The provisions of the bill do not apply to years ending before or after the taxable years specified in the bill.

Departmental position

The Treasury Department opposes this bill for the following reasons: (1) While the Hormel Foundation is presently in a situation that it could not have anticipated when it began acting as trustee, it is also true that the effective date of the provisions to which it will become subject were intentionally deferred for 10 years from the date of enactment for the specific purpose of enabling an orderly transition; (2) The obvious, nonlegislative solution to the problem is a petition for the appointment of a new trustee, a proceeding which is routine in most jurisdictions. In the absence of a demonstration that judicial relief is unavailable, there is little merit to the legislation; and (3) The rendering of trustee services by the Hormel Foundation is not functionally related to the Foundation's exempt purpose, and there is nothing unique about trustee services which requires that they be performed by the Foundation.

Prior Congressional action

The committee reported an identical bill (H.R. 12592; H. Rept. 95–1622) in 1978. H.R. 12592 (95th Cong.) was passed by the House of Representatives by voice vote on October 10, 1978, but it was not acted upon by the Senate Finance Committee or considered by the Senate.

5. H.R. 2459—Messrs. Jones of Oklahoma, Vander Jagt, and Hagedorn

Postponement of Time for Paying Excise Tax in the Case of Fishing Equipment

Present law

Under present law (Code sec. 4161(a)), there is imposed upon the sale of fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of such articles sold on or in connection therewith, or with the sale thereof) by the manufacturer, producer, or importer a tax equivalent to 10 percent of the price for which so sold.

Treasury Department regulations prescribing the time for making deposits of manufacturers excise taxes are found in Treas. Reg. sec. 48.6302(c)–1. If an individual is liable in any month for more than $100 of taxes reportable on Form 720 (Quarterly Excise Return) and he is not required to make semimonthly deposits, the individual must deposit the amount on or before the last day of the next month at an authorized depository or at the Federal Reserve Bank serving the area in which the individual is located. If an individual had more than $2,000 in excise tax liability for any month of a preceding calendar quarter, he must deposit such taxes for the following quarter (regardless of amount) on a semimonthly basis. The taxes must be deposited by the ninth day following the semimonthly period for which they are reported. In addition, if the semimonthly period is in either of the first two months of the quarter, any underpayment of excise taxes for a month must be deposited by the ninth day of the second month following such month. Underpayments in the third month of the quarter must be deposited by the end of the following month.

No special rules are provided to defer payment of the excise tax with respect to sales of taxable articles on credit.

Issue

The issue is whether the payment of excise taxes imposed upon the sale of fishing equipment should be postponed in order to match more closely the collection of sales' proceeds by the manufacturer, producer, or importer.

Explanation of the bill

The bill would amend section 4161(a) to provide that the excise tax imposed upon the sale of fishing equipment would be payable at the close of the quarter following the quarter in which shipment was made.

Effective date

The provisions of the bill would apply to articles sold by manufacturers, producers, or importers thereof on or after October 1, 1979.

Revenue effect

This bill is estimated to reduce budget receipts by $12 million in fiscal year 1980, $1 million in 1981 and $1 million in 1982.

Departmental position

The Treasury Department opposes this bill for the following reasons: (1) The argument advanced for extending the time of payment of the excise tax is that the seasonal retail sales pattern for sport fishing equipment leads manufacturers to grant lengthy credit terms to distributors, so that the latter will increase stock during the off-season and enable the manufacturers to produce at a more even pace. Under present regulations, the manufacturers thus may pay the excise tax before they receive payment from their distributors. However, the extended credit terms of the manufacturers also require the manufacturers to finance all other expenses (rent, wages, raw materials, etc.) for some time before receiving payment from their distributors. H.R. 2459 would have the effect of delaying payment of the excise tax more than that of other expenses of the manufacturers. (2) Different trades have different customary credit terms, which are designed to facilitate operations and maximize profits. Since the credit terms of an industry are for the benefit of the industry, Treasury sees no reason why the time of payment of excise taxes should be varied for different industries depending on the usual credit terms in the industry.

Prior Congressional action

In the 95th Congress, the Ways and Means Committee reported a bill (H.R. 6853) which provided that the excise tax on fishing equipment for articles sold during quarters ending on December 31, March 31, and June 30 would be payable, respectively, on March 31, June 30, and September 24. The tax on such articles sold during the quarter ending September 30 would have been due by the date specified by Treasury regulations.

In the 94th Congress, the Ways and Means Committee voted (14–7) not to report out a bill (H.R. 11006) which would have postponed payment of this excise tax.

6. H.R. 2667—Mr. Vander Jagt

Nonrecognition of Gain on Sale of Residence for Certain Members of the Armed Forces

Present law

Under present law, the entire amount of gain or loss realized on the sale or exchange of property generally is recognized. However, under a so-called "rollover" provision of the Code (sec. 1034), gain is not recognized on the sale or exchange of a taxpayer's principal residence if a new principal residence, at least equal in cost to the adjusted sales price of the old residence, is purchased and used by the taxpayer as his or her principal residence within a period beginning 18 months before and ending 18 months after the date of the sale of the old residence. The basis of the new residence then is reduced by the amount of gain not recognized on the sale of the old residence.

The replacement period is suspended during any time that the taxpayer (or the taxpayer's spouse) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence. Currently, this suspension may not extend more than four years beyond the date of the sale of the old residence. Thus, a member of the Armed Forces generally is not required to recognize gain on the sale of a principal residence if he or she purchases a new principal residence within four years after the date of the sale of the old residence.

Issue

The issue is whether the period of time in which a new principal residence may be purchased, in order to qualify for nonrecognition of gain on the sale of the old principal residence, should be extended in the case of a member of the Armed Forces who is stationed outside of the United States or is required to reside in Government-owned quarters.

Explanation of the bill

The bill would extend the period of time in which a member of the Armed Forces who is stationed outside of the United States or is required to reside in Government-owned quarters may purchase a new principal residence in order to qualify for nonrecognition of gain on the sale of the old principal residence. Under the bill, a member of the Armed Forces who is stationed outside of the United States or is required to reside in Government-owned quarters after the date of the sale of the principal residence generally will not be required to recognize gain on the sale of the residence if the taxpayer purchases a new principal residence within the later of four years after the date of the sale of the old residence or one year after the date on which the taxpayer is no longer stationed outside of the United States or is no longer required to reside in Government-owned quarters.

Effective date

The provisions of the bill would apply to sales of old residences for eligible members of the Armed Forces occurring on or after January 1, 1973.

Revenue effect

It is estimated that this bill will reduce budget receipts by $70 million in fiscal 1980 and by $10 million each year thereafter.

Departmental position

The Treasury Department opposes this bill for the following reasons: The rationale underlying section 1034 is that gain realized on the sale of a personal residence should not be recognized, provided the taxpayer reinvests an amount at least equal to the proceeds of the sale in similar property within a reasonably short period of time. The replacement period is important because it establishes the parameters of a reasonable period of time over which taxpayers may be treated as not having an unjustified oportunity for converting the proceeds of the sale of the old residence to other, unrelated uses with respect to which nonrecognition treatment should not be permitted. Members of the Armed Forces are not in a unique situation. For example, should section 1034(h) be amended as proposed in H.R. 2667, there would be great pressure similarly to amend section 1034(k), which was based upon section 1034(h) and which applies to any individual whose tax home is outside the United States. Treasury has already experienced such pressure, independently of H.R. 2667.

If this bill is to be approved, however, Treasury maintains that it should be prospective only.

Prior Congressional action

Bills identical to H.R. 2667 were introduced in the 95th Congress. On September 29, 1978, one of these bills (H.R. 5470) was favorably reported by the Subcommittee on Miscellaneous Revenue Measures to the Ways and Means Committee.

7. H.R. 3353—Messrs. Rostenkowski and Vanik

Tax Treatment of Repayments of Supplemental Unemployment Compensation Benefits Required Because of Receipt of Trade Readjustment Allowances

Present law

Under present law, workers who are laid off may become entitled to taxable supplemental unemployment compensation benefits [1] during periods for which they are laid off.

Subsequently, they may receive trade readjustment assistance,[2] which generally is nontaxable (except to the extent provided in section 85 of the Code). When this occurs, those workers may be required to pay back the supplemental unemployment benefits they previously received. In such a situation, a special relief provision (Code sec. 1341), relating to the computation of tax where the taxpayer restores a substantial amount held under a claim of right, may apply.

Under this provision, if the worker pays back more than $3,000 of supplemental unemployment compensation benefits, income tax for the taxable year of repayment may be computed by claiming a deduction for the repayment or, if a greater benefit is derived, the tax for the current year may be reduced by the amount of tax for the prior taxable year which was attributable to the inclusion of such benefits in gross income. However, this special tax computation does not apply if the repayment does not exceed $3,000. If, in this case, the worker does not claim itemized deductions for the year of repayment, no relief is available for the repayment of amounts previously included in gross income because this item must be claimed as an itemized deduction by an employee.

Issue

The issue is whether workers who are required to repay supplemental unemployment compensation benefits because of the receipt of trade readjustment assistance should be allowed to claim a deduction from gross income in the year of repayment.

---

[1] These benefits generally are paid by trusts exempt from taxation under Code sec. 501(c)(17) or by voluntary employees' beneficiary associations exempt from taxation under Code sec. 501(c)(9).

[2] Under the Trade Act of 1974, benefits are provided to workers who are separated from their jobs as a result of the adverse effect of increased imports. The worker's separation must be due to lack of work in adversely affected employment, and covered under a certification of eligibility. In the 52 weeks preceding his qualifying separation, he must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm. Benefits under the Trade Act equal 70 percent of the worker's average weekly wage, but may not exceed the average weekly manufacturing wage. Benefits are reduced by 50 percent of any earnings during the week for which benefits are provided. These benefits generally are payable for up to 52 weeks, and also are provided in the form of training allowances, job search allowances, and relocation allowances.

Explanation of the bill

The bill would allow a deduction from gross income for the repayment of supplemental unemployment compensation benefits if the repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974. In the case of a repayment of more than $3,000 of supplemental unemployment compensation benefits, the taxpayer would have the option of computing his tax for the current taxable year under existing provisions for restoration of amounts held under a claim of right (Code sec. 1341).

Effective date

The provisions of the bill would apply to repayments made in taxable years beginning after the date of enactment.

Revenue effect

It is estimated that this bill will reduce budget receipts by $5 million in fiscal 1980 and in each year thereafter.

Departmental position

The Treasury Department does not oppose this bill.

8. H.R. 3372—Messrs. Findley, Symms, Marriott, Erlenborn, McClory, Simon, and Rahall

Authorization for a State Taxing Authority Which Receives Federal Tax Return Information to Disclose Such Information to a State Auditing Agency for the Purpose of Auditing the Activities of the State Taxing Authority

Present law

Under present law (Code sec. 6103(d)), returns and return information may be disclosed to State agencies which are charged under the laws of the State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws. Section 6103(d) sets forth specific rules with which a State agency must comply in order to receive Federal tax information. For example, the request for disclosure must be made by the head of the State tax agency in writing and the actual disclosure of the tax information may be made only to the representatives of the State tax agency who are designated in the written request to receive the information. Also, the law provides that the tax information cannot be disclosed to the Governor of a State. In addition, return information may not be disclosed to the extent that the Secretary determines such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

Return information that is disclosed to State agencies is subject to strict safeguard, recordkeeping, and reporting requirements (Code secs. 6103(p)(3) and 6103(p)(4)). These requirements provide assurances that Federal tax return information will be used only for the purposes authorized by law and provide a basis for determining when violations occur.

Issue

Present law allows State auditing agencies access to Federal tax return information only when the auditing agency actually is involved in the determination, assessment, collection, or refunding of taxes (that is, tax administration activities). Thus, a State auditing agency is not authorized access to Federal tax return information when the auditing agency's role is limited to general oversight of the taxing authority.

The issue is whether State taxing authorities should be permitted to disclose Federal tax return information in their possession to State auditing agencies for the purpose of auditing the activities of the State tax authority.

Explanation of the bill

The bill would provide that any returns or return information obtained by a State agency pursuant to the provisions of section 6103(d) may be open to inspection by, or disclosure to, officers and employees

of the State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State agency that obtained the returns or return information. Under the bill, a "State audit agency" would be defined as any State agency, body, or commission which is charged under the laws of the State with the responsibility of auditing State revenues and programs.

In addition, a State audit agency that receives return information would be subject to the same safeguard, recordkeeping, and reporting requirements as apply to other State agencies that receive return information and would be subject to the confidentiality requirements imposed by section 6103(a) and to the civil and criminal penalties applicable in the case of unauthorized disclosure of such return information.

Effective date

The provisions of the bill would become effective upon enactment.

Revenue effect

The provisions of the bill would not have any impact on Federal revenues.

Departmental position

The Treasury Department does not oppose this bill if it is amended to include express language incorporating the restraints of confidentiality imposed by section 6103(a) of the Code (as well as the civil and criminal penalties applying in case of violation).

In addition, H.R. 3372 contains one technical error. The list of returns covered by section 6103(d) of the Code was amended in 1978 to include returns under Chapter 31 (Manufacturers Excise Taxes). Accordingly, H.R. 3372 should be modified to conform to existing section 6103(d) in this respect.

9. H.R. 3433—Mr. Jones of Oklahoma

Simplification of Private Foundation Return and Reporting Requirements

Present law

Present law requires the foundation managers of every private foundation having at least $5,000 of assets to file an annual report (Code sec. 6056). The report Form 990-AR is to contain the foundation's gross income, expenses, disbursements, balance sheet, total amount of contributions and gifts received by it during the year, an itemized list of all grants or contributions made or approved, the names and addresses of the foundation managers, and a list of those foundation managers who are substantial contributors or own certain interests in businesses in which the foundation owns an interest. This report must be made available for public inspection at the principal office of the foundation (sec. 6104(d)) and is open to public inspection at the offices of the Internal Revenue Service (sec. 6104((b)). In addition, the report must be furnished to the appropriate State officials (sec. 6056(d)).

Under present law, exempt organizations described in section 501 (c)(3) of the Code (including exempt private foundations) must file an annual information return (sec. 6033). Under this provision. the return in the case of foundations, Form 990-PF, must state items of gross income, etc., and such other information as may be required by the forms and regulations. Presently, this return contains most of the information required in the annual report of the foundation managers. This annual information return is also open to public inspection at the offices of the Internal Revenue Service (sec. 6104(b)). In addition, a copy of this return must be attached to the annual report of a private foundation when the report is furnished to the appropriate State officials (Regs. sec. 1.6056-1(b)(3)). Thus, information furnished on a foundation manager's report (Form 990-AR) substantially duplicates or overlaps the return filed by the foundation (Form 990-PF) in content and availability for public inspection.

Under present law, trusts which have solely charitable beneficiaries but which are not exempt from taxation (sec. 4947(a)(1) trusts) are subject to different return and disclosure requirements from those applicable to exempt charitable trusts and organizations. A nonexempt charitable trust is not required to file an annual information return, open to public inspection. Instead, this type of trust is required to file an income tax return (Form 1041) under section 6012 if its gross income for the year is at least $600 or if it has any taxable income (except that Form 1041 need not be filed by a nonexempt charitable trust which is a private foundation and which has no taxable income for the year); these tax returns are not open to public inspection. In addition, a nonexempt charitable trust, other than one which is required to

distribute all its net income currently, must file an annual information return (Form 1041–A), open to public inspection, setting forth certain information concerning its charitable contributions, income and expenses, and balance sheet items, but not containing all of the information required of exempt charitable trusts (sec. 6034). If a nonexempt charitable trust is a private foundation, it also must file a return (pursuant to the regulations under sec. 6011) setting forth much of the information contained on an exempt organization's information return, but this return (Form 5227) is not open to public inspection. In addition, a nonexempt charitable trust which is a private foundation must file the annual report (Form 990–AR or an equivalent report), which is open to inspection and must be furnished to the appropriate State officials as in the case of exempt private foundations.

Issues

One issue is whether the private foundation reporting requirements should be simplified by combining the annual return (Form 990–PF) and annual report (Form 990–AR) into a single annual return containing the information presently required on each of the two separate forms.

Another issue is whether nonexempt charitable trusts described in section 4947(a)(1) of the Code should be required to report the same information and be subject to the same disclosure requirements as exempt charitable organizations.

A further issue is whether the disclosure of the name and address of indigent or needy persons receiving grants of less than $1,000 in any year should no longer be required.

Explanation of the bill

The bill would eliminate the requirement (under sec. 6056) that the managers of a private foundation with assets of $5,000 or more must file an annual report (Form 990–AR) in addition to an annual information return. Instead, the bill would require that the information currently required to be furnished on the annual report (Form 990–AR) but not on the information return (Form 990–PF) be furnished instead on a single annual information return (under sec. 6033). The annual information return would be subject to public inspection at the foundations' office and would be required to be furnished to the appropriate State officials under the same conditions now applicable to the annual report and would be available for public inspection at the offices of the Internal Revenue Service as under present law.

The bill also provides that the return would not be required to list the name and address of a needy or indigent recipient (other than a disqualified person) of a gift or grant made by the foundation if the total of the gifts or grants received by the person during the year from the foundation did not exceed $1,000.

Under the bill, the section 6033 information reporting requirements and the disclosure of the information reported would apply to nonexempt charitable trusts described in section 4947(a)(1) as well as to exempt charities. If the nonexempt charitable trust is a private foundation, the trust's information return would be required to con-

tain all the information required of an exempt private foundation and the trust would not be required to file a separate annual report. In addition, nonexempt trusts would no longer be required to file a Form 1041–A (under section 6034).

Effective date

The provisions of the bill would apply to taxable years beginning after December 31, 1979.

Revenue effect

This bill will not have any direct effect on budget receipts.

Departmental position

The Treasury Department supports this bill.

Prior Congressional action

In the 95th Congress, similar provisions were contained in H.R. 12578, which was passed by the House. (In addition, H.R. 3900, which has been introduced by Messrs. Ullman and Conable in the 96th Congress, contains substantially identical provisions. This bill has been referred to the Subcommittee on Select Revenue Measures but has not yet been scheduled for hearings.

10. H.R. 3688—Mr. Pickle

Rate of Interest on United States Individual Retirement Bonds

Present law

Under present law, a person eligible to establish an individual retirement account may purchase retirement bonds issued for this purpose by the Treasury Department. These bonds are not transferable and are subject to many of the restrictions that apply to individual retirement accounts. Retirement plan bonds are issued for "H.R. 10 plans" established by self-employed persons and for retirement and annuity plans established by employers for their employees. The interest rate on any such retirement bond remains unchanged throughout its life.

By contrast, the interest rates on issued Series E savings bonds are increased whenever there is an increase in the interest rates on new issues of Series E bonds. This adjustment is made in recognition of the holder's ability to redeem the outstanding bond before maturity for the principal and accrued interest and to reinvest the proceeds in new Series E bonds issued with the higher interest rate.

Issue

Absent any provision authorizing adjustments in the interest rate for outstanding U.S. retirement bonds, potential purchasers may be expected to turn to various retirement plan arrangements offered in the private sector. Any net reduction in Treasury Department sales of retirement bonds will increase the amount of money that must be raised by the Treasury Department in some other manner.

The issue is whether the Treasury Department should be authorized to adjust upward the interest rate paid on outstanding retirement bonds.

Explanation of the bill

The bill would permit the interest rate on U.S. retirement plan bonds and U.S. individual retirement bonds (described in secs. 405(b) and 409(a), respectively) to be increased for any interest accrual period so that the investment yield for that accrual period on the bonds is consistent with the investment yield for that accrual period on Series E savings bonds.

Any increased interest rates, and the accrual periods to which these rates apply, are to be specified in regulations to be issued by the Treasury Department. The bill provides that these regulations, to be effective, must be approved by the President.

Effective date

The provisions of the bill would apply to interest accrual periods that begin after September 30, 1976.

Revenue effect

It is estimated that this bill will have no effect on budget receipts, but it will increase outlays by $6 million in fiscal 1980 and by $2 million each year thereafter.

Departmental position

The Treasury Department would support this bill if it were amended: (1) to apply to interest rates, rather than investment yields, (2) to permit the interest rate on already-issued retirement plan and individual retirement bonds to be changed to match the interest rate on new issues of such bonds, rather than on series E bonds, and (3) to change the effective date to permit an increase in the interest rate for accrual periods beginning after the date of enactment rather than for periods beginning after September 30, 1976. In other words, Treasury would support H.R. 3688, if it were amended to reflect the changes made to a similar bill, H.R. 6635, as passed by the House and reported favorably by the Senate Finance Committee last year.

Prior Congressional action

A similar provision was passed by the House (applying to interest accrual periods beginning after September 30, 1977, with respect to bonds issued before, on, or after the date of enactment) in the 95th Congress (H.R. 6635). The provisions of H.R. 6635 were amended by the Senate Finance Committee and, as amended, added to H.R. 3050, which was reported favorably on July 27, 1978. No further action was taken with respect to these bills.

In the 94th Congress, the Ways and Means Committee reported another bill (H.R. 13649) containing a similar provision.

11. H.R. 3741—Mr. Holland

Treatment of Petroleum Coke as Other Than a Petroleum Product for Purposes of the Energy Tax Credit and for Purposes of the Denial of Investment Tax Credit and Rapid Depreciation for Certain Boilers Fueled by Petroleum Products

Present law

Energy investment credit

Present law provides a 10-percent tax credit for investments in certain depreciable (or amortizable) energy property after September 30, 1978, and before January 1, 1983 (Code sec. 46(a)). This energy investment credit is in addition to the regular 10-percent investment credit for which energy property may also qualify.[1]

Qualifying property for purposes of the energy credit includes a category of property called "alternative energy property." Alternative energy property is defined generally to include boilers, burners and other equipment which use an alternate substance (that is, a substance other than oil or natural gas or any product of oil or natural gas) as a fuel or feedstock, plus related fuel or feedstock handling equipment and pollution control equipment (Code sec. 48(l)(3)). Equipment which uses petroleum coke, a product of oil, would consequently not be eligible for the energy investment credit.[2]

Denial of regular investment tax credit and rapid depreciation methods

Present law makes ineligible for the regular 10-percent investment credit certain boilers placed in service after September 30, 1978, where these boilers are fueled by petroleum or petroleum products, including natural gas (Code sec. 48(a)(10)). In addition, no accelerated method of depreciation (such as the declining balance method or the sum of the years-digits method) may be used for these boilers. Instead,

---

[1] The additional energy investment credit was enacted under section 301 of the Energy Tax Act of 1978 (P.L. 95–618, enacted November 9, 1978).

[2] Petroleum coke is a by-product of petroleum refining. It is created when the heavy residual oil which remains after the fractionization process is further processed to yield additional light petroleum products (gasoline, jet fuel, etc.). This further process, called coking, maximizes the yield of gasoline and other distillate products from a given quantity of crude oil.

The residue, which is petroleum coke, is in the form of either chunks or granules (depending on the type of coking process). Petroleum coke has a high carbon content but also contains relatively high quantities of impurities, such as sulphur. The amount of peroleum coke produced has risen in recent years because of the increasing efforts of the oil refiners to maximize production of gasoline and other distillate fuels. About 4–5 percent of a barrel of heavy crude oil is left as petroleum coke at the end of the refining and coking process.

Petroleum coke can be used as a fuel or as a raw material to produce low-intermediate Btu gas. It is also used in electrolytic anodes by the aluminum industry and in a variety of other carbon products. Much of the fuel-type petroleum coke is presently exported.

the boilers must be depreciated by using the straight-line method of depreciation over a period equal to the applicable class life without regard to the 20-percent ADR variance in class lives which is allowed under present law (Code sec. 167(q)).[3] As a result, industrial boilers which use petroleum coke as a fuel generally are not eligible for either the regular investment credit or accelerated depreciation methods and the ADR class life variance.

Issues

The issues are whether boilers and other equipment which use petroleum coke as a fuel or feedstock should be eligible for the energy investment credit and be exempt from provisions which deny the regular investment credit and accelerated depreciation benefits to boilers fueled by petroleum and petroleum products.

Explanation of the bill

The bill would exclude petroleum coke from the definition of petroleum or petroleum products for purposes of the provisions which deny the regular investment credit and accelerated depreciation to certain boilers fueled by petroleum or petroleum products. In addition, the bill would include petroleum coke as an alternate substance for purposes of the energy investment credit for equipment which uses an alternate substance as a fuel or feedstock.

Effective date

The provisions of the bill would generally be effective on October 1, 1978, the effective date for the relevant provisions of the Energy Tax Act of 1978.

Revenue effect

This bill is estimated to reduce budget receipts by $40 million in fiscal year 1980, $28 million in 1981, and $33 million in fiscal year 1982.

Departmental position

The Treasury Department is opposed to this bill for the following reasons: (1) Consideration of H.R. 3741, an energy-related matter, should be deferred until Phase II, of the President's Energy Program, involving tax credits, is taken up. (2) Substantively, it is the view of the Treasury that petroleum coke is not an "alternative energy source." The bill provides an incentive to use a commercially marketable ($20/ton) petroleum product as an energy source, which is contrary to the basic energy policy of the Administration.

---

[3] These provisions were also enacted under the Energy Tax Act of 1978 (P.L. 95–618, § 301(d)).

12. H.R. 3744—Mr. Jenkins

Convention and Trade Show Activities of Certain Tax-Exempt Organizations

Present law

Under present law, certain otherwise tax-exempt organizations are subject to Federal income taxation on unrelated business taxable income (secs. 511–514 of the Code). These organizations include charitable organizations described in section 501(c)(3), labor unions and similar organizations described in section 501(c)(5), and trade associations and similar organizations described in section 501(c)(6).

An organization's unrelated business taxable income is its gross income derived from regularly carrying on an unrelated trade or business, less certain allowable deductions. An unrelated trade or business is a trade or business the conduct of which is not substantially related to the performance by the organization of its exempt functions.

Section 1305 of the Tax Reform Act of 1976 amended section 513 of the Code to exempt from the unrelated business income tax any income derived from a qualified convention and trade show activity carried on by an organization which is exempt under section 501(c)(5) or (6) of the Code and which regularly conducts as one of its exempt purposes a convention or trade show activity which stimulates interest in, and demand for, the products of the industry in which the members of the organization generally are engaged. In order to constitute a qualified convention and trade show activity, all the following conditions must be met: (1) the activity must be conducted in conjunction with an international, national, State, regional, or local convention, annual meeting, or show; (2) one of the purposes of the organization in sponsoring that activity must be the promotion and stimulation of interest in, and demand for, the industry's products and services in general; and (3) the show must promote that purpose through the character of the exhibits and the extent of the industry products displayed.

Issues

The first issue is whether to treat a convention or trade show activity as a qualified activity (so that the income derived therefrom is not subject to tax if one of the purposes of the organization in sponsoring the activity is the education of persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry. The second issue is whether the tax treatment of income from qualified convention and trade show activities should be extended to apply to organizations described in section 501(c)(3) of the Code.

Explanation of the bill

The bill would exempt from the unrelated business income tax any income derived from an otherwise qualified convention and trade show activity (including the leasing of exhibition space to suppliers who make sales to the organization's members) if one purpose of the organization in sponsoring the activity is the education of persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry. Thus, the present-law exemption, which applies to income derived from certain activities promoting the products and services of the industry in which the organization's members are engaged, would be extended to income derived in connection with so-called "supplier shows" intended to educate the sponsoring organization's members in the development of new products and services, or new rules and regulations, affecting the industry in which the members are engaged.

The bill also would extend the exemption for income from qualified convention and trade show activities to such activities conducted by organizations described in section 501(c)(3) of the Code.

Effective date

The provisions of the bill would apply to qualified convention and trade show activities carried on in taxable years beginning after October 4, 1976.

Revenue effect

It is estimated that this provision would decrease budget receipts by less than $1 million annually beginning with fiscal year 1980.

Departmental position

The Treasury Department opposes this bill. The bill would expand current law in three particulars. First, it would add organizations described in section 501(c)(3) to the list of qualifying organizations. Second, it would broaden the limitation on qualifying organizations to include those that regularly conduct as a substantial exempt purpose a "suppliers' show," that is, a show "which educates persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry." Finally, it would add that same language to the definition of a qualified convention and trade show activity.

Thus, the bill would permit section 501(c)(3) organizations—which are not typically regarded as carrying on shows or meetings to stimulate interest in and demand for the products of their members—to derive tax-free income from the lease of exhibition space to suppliers in connection with an annual meeting. It would also make the trade show exemption available to section 501(c)(5) organizations that do not presently meet the definition of qualifying organizations. Finally, the bill would permit trade associations to derive tax-free income from the lease of exhibition space in connection with a trade show, even where the show was *not* conducted to promote the common business interests of the association members by stimulating interest in and demand for their products.

The distinctions made by current law are at least arguably consistent with the purposes for which business leagues and trade associations are

granted tax exemption, namely "to promote" the "common business interest" of the association members, and "not to engage in a regular business of a kind ordinarily carried on for profit." This consistency is implemented by restricting the trade show exemption to situations where one of the exempt purposes of the organization, and one of the organization's purposes in carrying on the show in question, is to stimulate interest and demand for the products of the organization's members. This rationale does not exist in the case of suppliers' shows carried on either by organizations described in section 501(c)(5) or 501(c)(6) or by organizations described in section 501(c)(3).

Prior Congressional action

In the 95th Congress, an identical bill (H.R. 12828) was passed by the House of Representatives by a voice vote on October 3, 1979, but was not acted upon by the Senate Finance Committee or considered by the Senate.

13. H.R. 4290—Mr. Frenzel

Alternative Minimum Tax on Charitable Lead Trusts Created by Corporations

Present law

The Revenue Act of 1978 imposed an alternative minimum tax with rates up to 25 percent on taxpayers other than corporations. Alternative minimum taxable income is gross income reduced by allowable deductions and increased by the amount of the taxpayer's adjusted itemized deductions and capital gains deduction. Adjusted itemized deductions are the amount by which the itemized deductions (such as the charitable deduction) exceed 60 percent of adjusted gross income. In general, the preference for adjusted itemized deductions was applied to charitable lead trusts (i.e., where the present interest in the trust is paid to the charity) in order that such a trust may not be used to circumvent application of the alternative minimum tax to the grantor (or beneficiary) of the trust. Exceptions were provided where avoidance of the alternative minimum tax was not possible, e.g., estates, testamentary charitable lead trusts and trusts created before 1978. However, the alternative minimum tax is imposed on a charitable lead trust created by a corporation (which is not subject to the alternative minimum tax) because the trust's charitable deduction for income paid to charity would give rise to the preference for adjusted itemized deductions.

Issue

The issue is whether an additional exception should be provided for charitable lead trusts where the grantor of the trust (and the owner of the reversionary interest in the trust) is a corporation.

Explanation of the bill

The bill would provide that the charitable deduction of a charitable lead trust will not be considered in determining the adjusted itemized deduction preference for purposes of the alternative minimum tax if the grantor of the trust and the owner of all reversionary interests in the trust is a corporation.

Effective date

The bill would be effective for taxable years beginning after December 31, 1975.

Revenue effect

The bill would reduce budget receipts by less than $5 million annually.

Departmental position

The Treasury Department does not oppose this bill.

14. H.R. 4299—Messrs. Rostenkowski, Corman, Fisher, Holland, and Archer

Application of the Investment Tax Credit for Certain Property Used by the International Maritime Satellite Organization

Present law

Under present law, a credit against tax liability is provided with respect to a taxpayer's investment in certain types of depreciable business assets. Generally, the investment credit rate is 10 percent of qualified investment. Qualifying property for purposes of this investment tax credit includes tangible personal property and other tangible property used as an integral part of certain activities, including the furnishing of communications services. However, property which otherwise qualifies will generally be excluded from the credit if it is used predominantly outside of the United States or is used by a governmental unit or an international organization.

Under provisions enacted in the Revenue Act of 1971, these exclusions are made inapplicable to any interest of a United States person in communications satellites and property used by the International Telecommunications Satellite Organization (INTELSAT), an international joint venture established to develop and operate the space segment of the global commercial communications satellite system. As a result, the Communications Satellite Corporation (COMSAT) is able to utilize the credit for its investments in the INTELSAT system. COMSAT, a private, for-profit corporation created pursuant to the Communications Satellite Act of 1962, is the designated United States participant in INTELSAT.

During the 95th Congress, the International Maritime Satellite Telecommunications Act (P.L. 95–564) amended the Communications Satellite Act of 1962 to designate COMSAT as the United States participant in the International Maritime Satellite Organization (INMARSAT). INMARSAT is an international organization, similar in structure and operation to INTELSAT, which is being established to develop and operate a global maritime satellite telecommunications system.

Issue

The issue is whether investments in property used by INMARSAT should be eligible for the investment tax credit.

Explanation of the bill

The bill would make the international organization exclusion inapplicable to property used by INMARSAT in order to make the investment tax credit available for interests of United States persons in property used by INMARSAT. This amendment has been requested by COMSAT, the designated United States participant in INMARSAT.

Effective date

The provisions of the bill would apply to taxable years beginning after December 31, 1979.

Revenue effect

It is estimated that this bill will have an insignificant effect on budget receipts through fiscal year 1984.

Departmental position

The Treasury Department does not oppose this bill.

15. H.R. 4307—Messrs. Archer and Cavanaugh

Postponement of Effective Date for Advance Payment of Earned Income Credit

Present law

Under present law, effective for remuneration paid after June 30, 1979, employees who qualify for the earned income credit may elect to have advance payments of the earned income credit added to their paychecks each pay period. This allows an employee who so desires to receive the benefit of the credit throughout the year, in the form of increased paychecks, rather than having to wait until he files a tax return and receives a refund.

An employee who believes that he is eligible for the earned income credit may claim advance payments by providing the employer with a certificate on which the employee certifies that he expects to be eligible for the credit and that he does not have a certificate in effect with another employer, and on which the employee states whether his spouse has a certificate in effect.

For any employee with a certificate in effect, the employer is required to add the advance payment amount to the employee's paycheck. The advance payment would be reflected in the employee's W–2 form as a separate item; it would not be treated as a reduction of withholding. The amount of advance payment is to be determined from tables which take into account the amount of wages paid and whether an employee's spouse is also claiming advance payments. These tables are similar in form to those used to calculate income tax withholding amounts.

The aggregate amount of advance payments which an employer makes to employees in any pay period will be treated as payments, for that pay period, of withholding taxes on all employees, the employee share of FICA taxes, and the employer share of FICA taxes. Thus, the amount of these payments which the employer will make to the Federal Government will be reduced by the amount of advance payments. If the aggregate amount of advance payments exceeds the total amount of these payroll taxes, then the employer either may reduce the amounts of advance payments to all eligible employees by a uniform rate in order to eliminate the excess, or under regulations prescribed by the Secretary, the employer may treat the excess as advance payment of any other tax imposed by the Code. An employer who fails to make advance payments to an employee is subject to the same penalty which would be imposed by the Code if the employer refused to withhold the same amount.

Issue

During its deliberations on H.R. 2797 (Technical Corrections Act of 1979), the Committee on Ways and Means became aware that some employers may not be able to provide advance payments to eligible

employees by July 1, 1979, despite good faith efforts to comply, because they may require additional time to make necessary adjustments in their payroll systems.

The issue is whether employers should be given the option to wait until January 1, 1980, to provide for advance payments of the earned income credit to their employees, in order to give the employers additional time to make the necessary adjustments in their payroll systems.

Explanation of the bill

The bill would give employers the option to wait until January 1, 1980, to begin advance payments of the earned income credit to their employees.

Effective date

The provisions of this bill would be effective as of November 6, 1978 (the date of enactment of the Revenue Act of 1978).

Revenue effect

It is estimated that this bill will increase budget receipts by $41 million in fiscal 1979 and reduce them by the same amount in fiscal 1980. Approximately $82 million of advance payments of earned income credit will be deferred until eligible taxpayers file for a refund in the spring of 1980.

Departmental position

The Treasury Department opposes this bill.

With Treasury's approval, the Internal Revenue Service will shortly issue a news release stating generally that any employers who are experiencing difficulty in meeting the effective date of the advance payment provisions shall be deemed to be in compliance with those provisions so long as a good faith effort to implement the provisions has been made. Consequently, there is no need to enact H.R. 4307. Employers who have made good faith efforts to comply with the law, but have been unable to meet the effective date of the advance payment provisions will be protected by the administrative relief granted by the Internal Revenue Service.

○