[COMMITTEE PRINT]

DESCRIPTION OF TECHNICAL AND MINOR BILLS LISTED FOR A HEARING BY THE COMMITTEE ON WAYS AND MEANS ON AUGUST 26, 1976

PREPARED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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CONTENTS

I. INTRODUCTION

The technical and minor bills described in this pamphlet are those on which the Committee on Ways and Means has announced a one-day public hearing for Thursday, August 26, 1976.

The bills for consideration in this hearing were compiled from a list submitted by the members of the Committee on Ways and Means. The bills submitted were reviewed by a special screening committee of committee members in order to determine whether the bills met the criteria of being technical or minor bills. The fact that a bill appears on the list, or has been deleted, does not indicate any view of the members of the screening committee as to the proposed legislation. The criteria used by the screening committee in determining whether a bill should be included for this hearing are as follows:

1. The bill must not involve a significant revenue loss (generally, not more than $5 million full year effect; outside limit would be $15 to $20 million).

2. The bill must not involve a broad structural or major administrative change in the tax laws.

3. The bill must not have been included as a provision in the tax reform bill (H.R. 10612).

4. The bill must not have been referred to a study committee during the consideration of the tax reform bill (H.R. 10612).

5. The bill must not deal with an area specifically listed for consideration in phase II.

In connection with the hearing referred to above, the staff of the Joint Committee was directed to prepare a description of the bills, to indicate whether any of the bills are retroactive, and to name any particular taxpayer to which the bill might be directed to the extent of the staff's information.

This pamphlet was prepared by the staff to meet the directions set out above. The pamphlet first briefly summarizes the bills. This is in order of bill number. This is followed 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, any prior committee or congressional consideration of the bill, the effective date of the provision, the revenue effect of the provision, and departmental position with respect to the bill.

II. SUMMARY

1. H.R. 1143—Mr. Waggonner

Refund of Alcohol Taxes and Duties After Loss Due to Disasters or Damage

The bill would extend the circumstances under which loss of distilled spirits, wines, rectified products, and beer held for sale may generate a refund of the alcohol taxes and duties earlier paid on these products. At present, the only recognized cause is a presidentially-declared "major disaster." The bill would authorize refunds for losses resulting from fire, flood, casualty, or other disaster; or from breakage, destruction, or other damage (not including theft) resulting from vandalism or malicious mischief. However, no claim of less than $250 for any single occurrence or any claim for an insured loss would be allowable.

2. H.R. 3487—Mr. Rostenkowski

Investment Tax Credit for Certain Leased Commuter Cars

This bill deals with the allowance of the investment tax credit to the lessee of certain mass transit equipment (such as railroad cars) leased from a governmental unit pursuant to the Urban Mass Transportation Act of 1964. The bill would permit a lessor-governmental unit to pass the investment credit through to the lessee of the transit equipment. This provision would apply only to payments made by the lessee for the equipment after August 15, 1971, and before January 1, 1974.

3. H.R. 8643—Mr. Conable

Tax Treatment of Home Brewers

The bill provides that any individual 18 years of age or older who registers with the Treasury may produce beer for personal use up to certain quantities without incurring the beer tax or any penalties. The aggregate amount which could be produced free of tax could not exceed 200 gallons per year in a household in which there are two or more individuals 18 years or older. If there is only one individual 18 years or older in the household, the annual limit is 100 gallons. In addition, the bill provides that the amount of beer on hand at any one time (including beer in process) cannot exceed 20 gallons per household.

4. H.R. 8989—Mr. Ullman

Tax Treatment of Indian Tribes and Alaskan Native Villages

The bill would treat Indian tribes and Alaskan Native villages as State and local governments for certain Internal Revenue Code purposes; it would permit them, among other things, to issue tax-exempt obligations, including development bonds.

5. H.R. 11134—Mr. Steiger (Wisconsin)

Constructive Sale Price for Excise Tax Purposes

Manufacturers excise taxes are generally imposed as a percentage of the price at which the manufacturer sells a taxable product to a wholesale distributor. However, some manufacturers do not sell to wholesale distributors and statutory rules provide for constructive sale prices in these situations. In the case of a manufacturer selling only at retail, the Internal Revenue Service has developed constructive prices as a percentage of the manufacturer's retail selling price. The Service has also, however, promulgated a rule that in such cases of retail sales, if the manufacturer's actual costs in making the article exceed the percentage constructive price, the costs will instead be used as the base for computing the manufacturer's excise tax. The bill, while authorizing the continued use of percentage constructive prices in cases where an article is sold only at retail, would prevent the use of costs as an alternative tax base.

6. H.R. 11436—Mr. Mikva

Widow's Allowances

The bill would treat payments by an estate for the support of the decedent's surviving spouse or children as amounts paid in discharge of a debt of the estate. Thus, such payments would be treated as nontaxable to the surviving spouse instead of as distributions of the distributable net income of the estate. However, this nontaxable treatment does not apply where these payments must come from the income of the decedent's estate.

7. H.R. 13532—Mr Pickle; H.R. 14857—Mrs. Keys

Tax Exemption for Nonprofit Companies That Insure Shares In Credit Unions

These bills (which are identical) would provide a specific exemption from income taxes for any mutual nonprofit corporation or association which provides reserve funds for, or insurance of shares or deposits in, credit unions.

8. H.R. 13649—Mr. Pickle

Interest Rate Adjustment on Retirement Plan Savings Bonds

The bill would require semi-annual adjustments of the interest rate on outstanding U.S. individual retirement bonds to equate their yields with the current yield on Series E savings bonds.

9. H.R. 14135—Mr. Gibbons

Publication of Statistics of Income

The bill directs the Secretary of the Treasury to publish data on individuals with economic income over $200,000 who pay little or no regular income tax.

10. H.R. 14880—Mr. Schneebeli

Self-Employed Status for Tax Collectors Paid Solely in Commissions

The bill would allow tax collectors working for a State or political subdivsion to be treated as self-employed, and able to maintain their own retirement plans ("H.R. 10 plans"), if they are paid solely on commissions and are not covered under a social security agreement. A tax collector may elect, however, not to have this provision apply to his commission compensation.

75-899—76——2

III. DESCRIPTION OF BILLS

1. H.R. 1143—Mr. Waggonner

Refund of Alcohol Taxes and Duties After Loss Due to Disasters or Damage

Present law

The internal revenue taxes and customs duties on distilled spirits, wines, rectified products, and beer are paid or determined before these products enter marketing channels. If the products are subsequently lost, made unmarketable, or officially condemned while held for sale, the taxes and duties may be repaid by the Treasury only if the cause is a major disaster which is so declared by the President (sec. 5064).

Issue

Whether repayment of taxes and duties should be allowed for losses resulting from vandalism or malicious mischief or from disasters of a lesser magnitude than those which are declared a "major disaster" by the President.

Explanation of bill

The bill would provide for a repayment of the taxes and duties paid or determined on distilled spirits, wines, rectified products, and beer held for sale but lost or ruined because of certain causes. These causes are specified as fire, flood, casualty, or other disaster; or breakage, destruction, or other damage (not including theft) resulting from vandalism or malicious mischief. As a result, the causes of repayments by the Treasury of internal revenue taxes and duties would be expanded beyond presidentially-declared "major disasters" to include disasters of a lesser magnitude and intentional man-made damage. However, only uninsured losses are to be allowed.

This provision would not apply to Puerto Rican products brought into the United States.

To prevent the imposition of an undue administrative burden upon the Treasury, no claim of less than $250 in respect of any single occurrence would be allowable. To avoid abuse, repayment would not be made in cases of claims of loss due to theft. In addition, all claims must be filed within six months of the date of the loss, and the claimant must furnish the Treasury with satisfactory proof that there was no indemnification for the loss and that the claimant is also otherwise entitled to the payment.

When the taxes or duties on alcoholic products have been repaid pursuant to this provision, the alcoholic products which were not lost, but were condemned or made unmarketable, must be destroyed under Treasury supervision.

This provision is intended to provide for a refund of the high portion of the cost of alcoholic products that is attributable to prepaid taxes or duties when those products are lost. For example, the tax on the production of distilled spirits is, in general, $10.50 per gallon, the beer tax is $9 per barrel (31 gallons or less) and the wine tax ranges from 17 cents to $2.40 per wine gallon, depending upon the alcoholic content of the wine.

Effective date

The bill would take effect on the date of enactment.

Revenue effect

The bill is estimated to result in a revenue loss of approximately $500,000 annually.

Departmental position

The Treasury Department opposes the bill. The bill would in effect provide free fire, casualty, and flood insurance for merchants for the portion of their alcoholic beverage inventory attributable to excise tax and customs duty. Merchants holding other types of products do not receive similar protection against losses and there is no reason to provide such protection on a general basis. Furthermore, the bill would be difficult to administer since it would be difficult or impossible to make the required factual determination of the amount of loss by vandalism or malicious mischief as distinguished from theft.

2. H.R. 3487—Mr. Rostenkowski

Investment Tax Credit for Certain Leased Commuter Cars

Present law

Under existing law, property owned or used by the Federal Government, or by a State or local governmental unit, is not eligible for the investment tax credit (sec. 48(a)(5)). One effect of this rule is that a governmental unit which holds title to business property cannot pass through the investment credit to a taxpayer who leases the property from that governmental unit (Treas. Reg. § 1.48–1(k)(1)).

Issue

The question is whether an exception should be made from the present tax rules in order to permit a private entity, such as a railroad, which leases certain types of mass transit property from a governmental unit under the Urban Mass Transportation Act of 1964 to obtain an investment credit on payments which the private entity makes toward the cost of the property.

Under the Urban Mass Transportation Act of 1964, the Federal Government provides matching grants to local public bodies for the purpose of improving local mass transit. However, under the Act, the local public body, as the recipient of the Federal grant, must retain title to the equipment whether or not it spends its own funds to acquire the property from the manufacturer. Where the mass transit in the area is supplied by a private company, the grant recipient (the local public body) will arrange to have the private company pay the local matching share of the total purchase price and will then technically "lease" the equipment to the private company for nominal (if any) rental payments made by the private company.

The tax result of this arrangement under present law is that the private transit company does not obtain the benefits of the investment credit even though its outlay for the local share of the cost of the equipment is equivalent to payment of part of the purchase price. Since the private company cannot take title, and since the local public body is not a taxable entity, there is no tax credit which the private company can claim directly and no credit is available to the governmental unit to receive or pass through to the lessee.

The argument is made that this result is unintended and is inconsistent with the purposes of the investment credit rules. The tax benefits which would otherwise be available for this transaction are denied, it is argued, because of a technicality in a nontax Federal statute.

Explanation of bill

The bill would amend the public laws to permit a lessor which is a governmental unit to pass the investment credit through to a lessee of certain urban mass transit equipment. This provision would apply only to property acquired by a governmental unit pursuant to the Urban Mass Transportation Act of 1964 and, in turn, leased to a railroad or other private taxpayer.

For investment credit purposes, the bill would permit the lessor to treat the lessee as having acquired the property for an amount equal to the total payments made by the lessee as rent (and other payments) after August 15, 1971, and before January 1, 1974.

Because the effective date of the bill cuts off after 1973, the bill chiefly benefits the Illinois Central Railroad. (The staff understands, however, that the effective date may also cover a similar lease arrangement entered into by the Burlington Northern Railroad.)

To illustrate the problem with which the bill deals, the Illinois Central Railroad, in 1969, entered into an agreement with the Chicago South Suburban Mass Transit District calling for the transit district to purchase 130 commuter rail cars and deliver them to Illinois Central in return for an approximate $13 million cash payment. The $13 million was to be used by the transit district to pay its one-third share of the total purchase price, with the remaining two-thirds to be paid for with a grant from the Federal Government under the Urban Mass Transportation Act.

This transaction was completed during the period 1971 to 1973, when Chicago South Suburban Mass Transit District took delivery of the cars from the manufacturer. Illinois Central made its $13 million payment to South Suburban which turned the cars over to the Illinois Central. Since the Urban Mass Transportation Act prevented the railroad from taking title to the cars, they were transferred to Illinois Central under a lease, despite the fact that Illinois Central funds, not governmental funds, were used to pay the one-third local share of the total purchase price. Because Illinois Central is technically a lessee rather than a purchaser, it is not eligible for an investment tax credit for its $13 million investment; and because the transit district is a nontaxable governmental entity, there is no investment tax credit for it to take or pass through to Illinois Central.

Prior committee action

In the 93rd Congress, the Committee included an identical provision in its tax reform bill of 1974.

Effective date

The bill would apply to payments made by lessees after August 15, 1971, and before January 1, 1974, as rent and other payments toward the cost of the mass transit property.

Revenue effect

It is estimated that the bill would result in a total revenue loss of approximately $1,190,000 ($910,000 as a result of the Illinois Central transaction and $280,000 as a result of the Burlington Northern transaction).

Departmental position

The Treasury Department opposes the bill. In view of the substantial direct Federal assistance for the acquisition of commuter cars provided under the Urban Mass Transit Act of 1964, further incentives through the tax laws would be inappropriate. Further, the Administration is generally opposed to retroactive provisions. Retroactive application is especially inappropriate in the case of an investment tax credit provision, since the tax credit is supposed to serve as an incentive and no incentive is supplied where the property has already been purchased.

3. H.R. 8643—Mr. Conable

Tax Treatment of Home Brewers

Present law

Under present law, a tax of $9 per barrel (31 gallons or less) is imposed on the production of beer (sec. 5051(a)). There is no exemption for beer produced by an individual in his home for his own personal use. However, present law provides an exemption from the tax imposed on the production of wine for up to 200 gallons annually of home produced wine which is made for family use (sec. 5042(a)(2)).

Issue

The beer and wine taxes are basically sales taxes. The issue is whether there should be an exemption (an expanded version of the exemption for home produced wine) for beer which is produced by an individual in his home for personal use, rather than for commercial sale.

Explanation of bill

The bill would provide a limited exception from the beer tax for beer produced for personal use (and not for sale) by any duly registered individual 18 years or older. The aggregate amount which could be produced free of tax could not exceed 200 gallons per year in a household where there are two or more individuals 18 years of age or older. Where there is only one individual 18 years or older in the household, the annual limit is 100 gallons. In addition, the bill provides that in order to qualify for the exemption under these provisions, the amount of beer on hand at any one time (including beer in process) cannot exceed 20 gallons for the household.

The exemption provided under this legislation in connection with the Federal beer tax does not serve to authorize the home production of beer in cases where this is contrary to State law.

The legislation also makes clear that criminal penalties imposed under Federal law in connection with illegally produced beer do not apply to home production which qualifies for the exemption provided in this legislation.

Prior committee action

In the 93rd Congress, the committee included an identical provision in its tax reform bill of 1974, except that that provision similarily expanded the exemption for home manufacture of wine. In the 92nd Congress, the committee reported out a similar bill (H.R. 5372), but dealing only with wine (H. Rept. 92–784).

Effective date

The bill would take effect on the first day of the first calendar month which begins more than 90 days after the date of enactment.

Revenue effect

It is estimated that this bill would result in a revenue loss of less than $5 million annually.

Departmental position

The Treasury Department supports this bill.

The Justice Department states that, except for one minor reservation on its part, the bill is unobjectionable. The reservation concerns the twenty-gallon limitation of beer on hand, including in process. It is the Justice Department's understanding that, as a practical matter, home produced beer is brewed in 15- or 20-gallon crocks. Accordingly, a 30-gallon limitation would appear more appropriate. The analogous exemption for the production of family wine does not limit the amount which can be kept on hand.

4. H.R. 8989—Mr. Ullman

Tax Treatment of Indian Tribes and Alaskan Native Villages

Present law

The Internal Revenue Code does not specifically exempt Indian tribes from taxation; however, the Internal Revenue Service has ruled that "Income tax statutes do not tax Indian tribes. The tribe is not a taxable entity." (Rev. Rul. 67–284, 1967–2 CB 55, 58.) However, the Service goes on to rule that "tribal income not otherwise exempt from Federal income tax is includable in the gross income of the Indian tribal member when distributed or constructively received by him." The income of individual Indians is generally taxable; however, income to a tribe or individual Indian derived from allotment lands is not taxable.

Issue

The issue is whether Indian tribes and Alaskan native villages which meet certain criteria should be treated substantially the same as State and local governments for certain Internal Revenue Code purposes.

Explanation of bill

The bill would accord to recognized Indian tribes the tax treatment now available to governmental units. The term "recognized Indian tribes" includes any tribe, band, community, village, or group of Indians or Alaska Natives which is recognized by the Secretary of the Treasury, after consultation with the Secretary of the Interior, as performing governmental functions. In particular, it would provide beneficial tax treatment with respect to: retirement income derived from employment by such a tribe; contributions made to those seeking election to a tribal office; interest paid on bonds issued by tribes (including industrial development bonds); scholarships and fellowship grants made by tribes; taxes levied by tribes on real property and on income; charitable contributions to tribes; contributions by tribes for employee annuities unrelated business income of tribes, colleges and universities; estate and gift tax, charitable contributions to tribes; retailers and manufacturers excise taxes; and communications excise tax as they relate to tribes. In addition, the bill provides for payments by the Treasury Department with respect to gasoline used on farms of such tribes; gasoline used for certain nonhighway purposes or by local transit systems of such tribes, lubricating oil not used in highway motor vehicles of such tribes, and fuels not used for taxable purposes by such tribes. In addition, the bill would provide that certain tribal officials would be "government officials" for purposes of the tax on self-dealing between a private foundation and a disqualified person.

A major effect of the bill would be to permit recognized Indian tribes to issue tax-exempt obligations under section 103. In the case of industrial development bonds, however, the exemption would apply only if all of the proceeds of the bonds are used within "the area reserved by Federal statute or treaty to the Indian tribe issuing the bond."

It is difficult to ascertain how many tribes and Alaskan Native villages would be affected by these provisions. General revenue sharing currently provides assistance to Indian tribes and Alaskan Native villages which perform substantial governmental functions. Under this more restrictive definition, 347 Indian groups are presently listed as eligible for revenue sharing entitlements. These include about 25 rancherias, pueblos, and tribal councils with from 1 to 20 members.

Effective date

The provisions of the bill relating to deductions or credits apply to taxable years beginning after the bill's enactment. The other provisions relating to payments by the Treasury and exemptions from certain taxes take effect at the start of the first month beginning more than 20 days after the date of enactment of the bill. (The effective dates vary according to the section of the bill within the periods just described.)

Revenue effect

It is estimated that the section of the bill providing for the deductibility of tribal taxes would reduce revenues by $1 million a year. The revenue effects of other portions of the bill cannot be estimated.

Departmental position

The Treasury Department would not oppose the bill if the definition of "recognized Indian tribes" were restricted to those tribes performing *substantial* governmental functions and specific criteria were included for determining what constitutes performance of substantial governmental functions. For example, the definition might require that the tribe be primarily responsible with respect to its members for the provision of a minimum number of specified government services, such as police and fire protection, courts and corrections, health and social services, sewage disposal, education, and recreation. In addition, it recommends that the provision requiring the proceeds of industrial development bonds to be used within the land reserved to the tribe by statute or treaty be expanded to include reservations created by Executive Order so that all tribes would be treated equally regardless of the nature of the action creating the reservation.

The Treasury Department further recommends that the term "Indian Tribe" be substituted where the term "recognized Indian Tribe" appears in the bill. The definition in section 24 should be correspondingly changed to provide for a determination by the Secretary of the Treasury after consultation with the Secretary of the Interior, that the tribe performs substantial governmental functions. The term "recognition" has many connotations in Federal Indian policy associated with the provision of services by the Department of the Interior. It would be misleading and inappropriate to create a new designation of "recognized" tribes under the auspices of the Secretary of the Treasury when alternative wording is possible.

5. H.R. 11134—Mr. Steiger (Wisconsin)

Constructive Sale Price for Excise Tax Purposes

Present law

Present law imposes manufacturers excise taxes upon trucks, buses, and a variety of related articles such as trailers, parts, tires, gasoline, and lubricating oil; and also upon sporting goods and firearms. These *ad valorem* taxes are generally expressed as a percentage of the price at which a manufacturer sells an item of taxable property in the ordinary course of trade.

Since some manufacturers do not sell to wholesale distributors, special rules are provided for determining a constructive sales price on which the tax is based.

In the case where a manufacturer sells a taxable article only at retail, the constructive sale price is the lower of (1) the price at which the article was sold, or (2) the highest price at which competing articles are sold by other manufacturers to wholesale distributors. The Treasury is authorized to determine the price at which competing articles are sold to wholesale distributors.

The Service has, under this authorization, published two revenue rulings [1] which provide, in part, that where a manufacturer sells truck or truck trailer bodies only at retail, the price at which competing goods are sold to wholesale distributors is determined to be 75 percent of the price at which the instant manufacturer sold at retail.

Those rulings also provide a third alternative method for determining a constructive sale price where a manufacturer sells a product only at retail. This is the "cost floor" rule, which provides that where the manufacturer's actual costs of making and selling a taxable product

[1] Rev. Rul. 54–61, 1954–1 CB 259; Rev. Rul. 68–519, 1968–2 CB 513.

are greater than the constructive price determined using the applicable percentage, the actual costs are used as the tax base for excise tax purposes.

Issue

The issue is whether the "cost floor" rule should be applied for purposes of determining a constructive sale price if a manufacturer sells only at retail.

Explanation of bill

The bill would amend the constructive sale price provisions (sec. 4216(b)) by prohibiting the use of a manufacturer's costs for purposes of determining a constructive sale price for taxable articles sold only at retail. The Service would be authorized to determine (as under present law) a constructive sale price based upon a percentage of the highest price at which other manufacturers sell competing products to wholesale distributors.

This bill has been requested by Jacob Brenner Company, Inc., a manufacturer of bulk liquid truck tanks which are sold only at retail.

Effective date

This amendment would apply to articles which are sold by the manufacturer or producer after December 31, 1975.

Revenue effect

The revenue effect of this amendment is indeterminate because it depends upon what new constructive price percentages are set by the Service. It is, however, estimated that the maximum revenue impact would be either revenue gain or a loss of no greater than $2–3 million, depending upon where the percentages are set.

Departmental position

In general the Treasury Department does not oppose the bill, however, there are certain technical aspects of the bill which as noted below should be clarified or corrected.

The Treasury Department supports the provision of the bill which abolishes the "not less than cost rule" in the case of a sale at retail, but believes that it should be made clear that the rule continues to be available for use in constructing a taxable price where a person makes and uses a taxable item (sec. 4218 of the Internal Revenue Code). Such item may be a specialized unit which is never sold, so that no market price is available from which to construct a manufacturer's price. In this case, cost of production is the only realistic tax base.

The Treasury Department recommends the deletion of the provision of the bill which codifies the use of a percentage of the retail price for determining the constructive price. This provision is unnecessary since percentage of retail price is already the established method of determining constructive price. More importantly, the provision would unnecessarily limit the Treasury's flexibility in determining constructive prices. It is conceivable that under certain circumstances, or for certain products, it might be found desirable to use a specific price for a given article and the bill would not permit the Treasury to do so.

6. H.R. 11436—Mr. Mikva

Widow's Allowances

Present law

An estate is generally treated as a conduit for any of its taxable income that it distributes to its beneficiaries. Thus, amounts that are paid, credited, or required to be distributed by the estate are taxable to its beneficiaries and not to the estate to the extent of the estate's distributable net income (which is basically the estate's taxable income). (Secs. 661 and 662.) However, certain payments are not treated as distributions of the estate's distributable net income. These include gifts and bequests of a specific sum of money or of specific property (sec. 663(a)(1)) and amounts paid to beneficiaries as creditors of the estate.

Amounts paid by an estate under a court order or in accordance with local law for the support of a decedent's widow and their children are treated as distributions of the estate's distributable net income (Treas. Reg. § 1.661(a)-2(e)). This is so even though the obligation to make the payments is considered as a debt of the estate under local law (Rev. Rul. 75-124, 1975-1 C.B. 182).

Issue

The issue is whether or not allowances paid by an estate for the support of the decedent's widow and their children should be considered as distributions of the distributable net income of the estate.

Explanation of bill

The bill would treat payments by an estate for the support of the decedent's surviving spouse or children during the period of administration of the estate as not being distributions of the distributable net income of the estate, except to the extent that those payments must come from the income of the estate under the court order or local law.

Effective date

Amounts paid after date of enactment in taxable years ending after that date.

Revenue effect

This provision involves a revenue reduction of less than $5 million per year.

Departmental position

The Treasury Department supports this legislation. The restoration of the prior treatment of allowances for surviving spouses and their children will eliminate the existing confusion and avoid unnecessary litigation over such questions as whether such allowances constitute a payment of a debt or an estate distribution.

7. H.R. 13532—Mr. Pickle and H.R. 14857—Mrs. Keys

Tax Exemption for Nonprofit Companies That Insure Shares in Credit Unions

Present law

Present law exempts from Federal income taxation mutual nonprofit corporations or associations organized before September 1, 1957, which provide reserve funds for, and insurance of, shares or deposits in (1) domestic building and loan associations, (2) certain cooperative banks, or (3) mutual savings banks (sec. 501(c)(14)(B)).

No similar exemption is provided for State-chartered organizations which provide reserve funds for, and insurance of, shares or deposits in credit unions, notwithstanding the fact that credit unions qualify for tax exemption (sec. 501(c)(14)(A)).

Issue

There are currently in existence, or in the process of formation, at least 16 State-chartered corporations (or associations) which provide reserve funds for, and insurance of shares or deposits in, State-chartered credit unions.[1] Two of these organizations provide insurance for shares or deposits in savings and loan associations, as well as credit unions. The staff understands that all 16 of these corporations (or associations) are non-profit mutual organizations in which the members consist of the credit unions (and savings and loan associations), the shares or deposits of which are insured.

Under present law, there appears to be considerable uncertainty about the income tax status of these organizations. Apparently some of them have qualified for exemption as business leagues (sec. 501(c)(6)). Others have qualified for exemption under a provision which exempts certain mutual insurance companies if gross investment income (excluding capital gains) plus premiums (including deposits and assessments) does not exceed $150,000 for the taxable year (sec. 501(c)(15)). However, the Internal Revenue Service has taken the position that some of these organizations are taxable.[2]

The issue is whether the State-chartered organizations which provide reserve funds for, or insurance of shares or deposits in, credit unions should be exempt from Federal income taxes.

Explanation of bills

These bills would exempt from Federal income tax mutual nonprofit organizations which provide reserve funds for, or insurance of shares or deposits in, credit unions. Apparently the organizations intended to be benefited include the following:

Connecticut Credit Union Share Insurance Corp.
Florida Credit Union Guaranty Corp.
Georgia Credit Union Deposit Insurance Corp.
Kansas Credit Union Guaranty Corp.
Maryland Credit Union Insurance Corp.
Massachusetts Credit Union Share Insurance Corp.
New Mexico Credit Union Share Insurance Corp.
North Carolina Savings Guaranty Corp.
Ohio Credit Union Shareowners Guaranty Corp.
Rhode Island Share and Deposit Insurance Corp.
Tennessee Share Insurance Corp.

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[1] In addition to these organizations, insurance of shares or deposits in State credit unions may be obtained from the National Credit Union Administration, a tax-exempt agency of the United States government.

[2] A provision in H.R. 10612, as passed by the Senate, would amend section 501(c)(14)(B) to add credit unions to the list of types of organizations for which an exempt mutual nonprofit corporation could provide reserve funds and share insurance. However, this amendment would cover only organizations which were organized prior to January 1, 1969. Thus, it would apparently only cover two of the 16 organizations mentioned above.

Texas Share Guaranty Credit Union.
Utah Share and Deposit Guaranty Corp.
Virginia Credit Union Share Insurance Corp.
Washington Credit Union Share Guaranty Association.
Wisconsin Credit Union Savings Insurance Corp.

It should be noted, however, that two of these organizations, the Georgia Credit Union Deposit Insurance Corporation and the North Carolina Savings Guaranty Corporation, also insure shares or deposits in savings and loan associations. Thus, it would appear that these organizations would not be covered by the bills in their current form.

As noted above, a provision in the Senate version of H.R. 10612 would extend the effective date for exemption (sec. 501(c)(14)(B)) to corporations organized before January 1, 1969, and would extend the types of organizations in which shares or deposits could be insured, and for which reserve funds could be provided, to include credit unions. This provision, in itself, would cover only two of the organizations listed above—the Massachusetts Credit Union Share Insurance Corporation created in 1961, and the North Carolina Savings Guaranty Corporation created in 1967. The staff understands that all of the other organizations have been incorporated after January 1, 1969. However, if the January 1, 1969, organization date were eliminated, the Senate provision would appear to cover all of these organizations.

Effective date

The bills apply to taxable years ending after the date of enactment.

Revenue effect

It is estimated that these bills would result in a revenue loss of less than $5 million per year.

Departmental position

The Treasury Department does not oppose the bill since it would provide state-chartered credit union insurance funds with tax treatment similar to that currently provided to entities which perform comparable functions, i.e., the Federal agency insuring credit unions and state chartered agencies serving mutual savings banks and state-chartered building and loan associations.

8. H.R. 13649—Mr. Pickle

Interest Rate Adjustment on Retirement Plan Savings Bonds

Present law

Individuals may deduct payments made to purchase individual retirement bonds issued for this purpose by the Treasury Department. (These bonds, which are not transferable, are subject to many of the restrictions that apply to individual retirement accounts.) Similar bonds are issued for retirement and annuity plans established by employers for their employees. The interest rate on each of these U.S. individual retirement bonds remains unchanged throughout the period it is outstanding.

The interest rates on outstanding Series E savings bonds which are available for purchase by the general public are increased whenever there is a change in the interest rates on new issues of Series E bonds.

Issue

Interest rates on outstanding Series E bonds are increased whenever the yield on new issues is increased in recognition of the bondholder'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. Individual retirement bonds retain the interest rate unchanged from the time of issue until redemption, some time after the taxpayer reaches the age of 59½ years. Retirement plan bonds are like bonds issued by private corporations (in which an individual retirement account may invest some of its corpus) in that the interest rate on a corporate bond generally remains unchanged from time of issue until maturity. If interest rates rise, the trustee of an individual retirement account which holds a marketable corporate bond may sell it in order to take advantage of the higher yield on new issues, but the account probably would suffer a capital loss, as the market adjusts the prices of bonds to equalize the yields on issues with comparable risk.

The issue is whether the interest rate on U.S. individual retirement plan bonds should be increased semiannually to equality with the interest rate on Series E U.S. savings bonds.

Explanation of bill

The bill would require that the interest rate on U.S. individual retirement plan bonds be increased for each semiannual interest accrual period so that the investment yield on the bonds is consistent with the current investment yield on Series E savings bonds.

Effective date

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

Revenue effect

This bill would have no effect on budget receipts through fiscal year 1981.

Departmental position

The Treasury Department supports this bill. It will help maintain the competitiveness of retirement plan bonds and individual retirement bonds with other investment vehicles and, therefore, will assist the Treasury in the exercise of debt management.

9. H.R. 14135—Mr. Gibbons

Publication of Statistics of Income

Present law

The Secretary of the Treasury is directed (sec. 6108) to publish annually statistics compiled from tax returns, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits and any other facts deemed pertinent and valuable.

Issue

The data published by the Treasury include the number of individuals with high adjusted gross income (AGI) who pay no tax. However, AGI is not an ideal measure of the individual's income for the purpose of measuring his economic well-being. The issue is whether a better measure of income for statistical purposes would be to add back into AGI the items of tax preference from the minimum tax. (Other suggestions include subtracting from AGI investment interest to the extent of investment income and adding tax preferences that are not in the minimum tax base.)

Explanation of bill

The bill directs the Secretary of the Treasury to publish data on individuals with economic income over $200,000 showing the number of such tax returns with no regular tax liability and the number with regular tax liability below 5.8 percent of economic income (approximately the social security tax rate). Economic income is defined as adjusted gross income plus items of tax preference under the minimum tax except those that are itemized deductions. The "regular tax" does not include the minimum tax.

Effective date

The bill applies to Statistics of Income for 1975 and future years.

Revenue effect

None.

Departmental position

The Treasury Department does not oppose a provision which would require the publication of a report relating to individuals with high income who pay little or no federal income axes. The Treasury Department, however, prefers section 1325 of H.R. 10612 as amended by the Senate since it would provide more meaningful statistical data.

10. H.R. 14880—Mr. Schneebeli

Self-Employed Status for Tax Collectors Paid Solely in Commissions

Present law

A government official of a State or political subdivision is not permitted, at present, to maintain and to make deductible contributions to a retirement plan for self-employed person (an "H.R. 10 plan") if he is compensated otherwise than solely on a "fee basis" or if he is covered under a social security agreement between his employer and the Secretary of Health, Education, and Welfare.[1] The Internal Revenue service has ruled [2] that where a tax collector pays over his collections to a governmental unit and receives a fixed percentage in return, this is not payment on a "fee basis." (This is usually referred to as payment on a "commission basis.") However, if the employee retains a portion

[1] Sec. 1402(c)(2)(E) of the Internal Revenue Code.
[2] Rev. Rul. 74-608, 1974-2 C.B. 275.

of his tax collections without turning over to the government, this constitutes payment on a "fee basis."

As a result of this distinction in the revenue ruling, the tax collector in question was unable to maintain an H.R. 10 plan, even though he was not covered under a social security agreement.[3]

Issue

The issue here is whether it is reasonable to distinguish (for purposes of eligibility for establishment of an H.R. 10 plan) between a case where a tax collector pays over his collections to a governmental unit and is compensated when a percentage of those collections is returned to him by the State or local government, and a case where the collector receives the safe percentage of taxes as compensation, but withholds those amounts from the collections which he pays over to the government.

Explanation of bill

The bill would amend the Internal Revenue Code to permit tax collectors of States or their political subdivisions who are paid soley in commissions to be treated as self-employed, unless these employees are covered under a social security agreement. As a result, these individuals would be subject to the tax on self-employment income and could earn social security benefits. The bill achieves this result by treating compensation as being "solely on a fee basis" regardless of whether the collector is compensated by withholding a percentage of his collections before he turns them over to the governmental unit, or whether he pays overall collected amounts and receives back a percentage of these collections.

An additional intended effect is to permit such an individual to establish an H.R. 10 for himself.

The bill also provides that any individual covered under the bill in 1977 may make an irrevocable election not to have the provision apply to commissions received in 1977 and thereafter. Generally the election would be made where the tax collector is covered under a satisfactory retirement plan sponsored by the governmental unit, and wishes to continue to participate in that plan, rather than opt for H.R. 10 plan coverage under a plan which he establishes for himself.

Effective date

The bill applies to commissions received after 1976.

Revenue effect

The bill would have a negligible revenue impact.

Departmental position

The Treasury Department does not oppose this provision.

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[3] In the case involved in the revenue ruling, Pennsylvania tax collectors were excluded from the social security agreements between the township for which the tax collector in question collected taxes and the Secretary of H.E.W., as well as from the agreement between the Secretary and the county for which he collected taxes. The exclusion was apparently for the reason that the tax collectors collected for several governmental entities (the township, the county, and school districts) and were not, therefore, regarded as full-time employees by either of those governmental units. (For the same reason, many Pennsylvania tax collectors are not covered by the employee retirement plans of the governments for which they collect taxes.) Still other Pennsylvania tax collectors are not covered by social security agreements because all elected officials (including the tax collectors) are excluded from coverage by the governmental units. On the other hand, State law requires the tax collectors to be included in the social security agreements between the school districts and the Secretary.

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