[COMMITTEE PRINT]

DESCRIPTION OF TAX BILLS LISTED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE

ON JUNE 19, 1978

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

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I. INTRODUCTION

The bills described in this pamphlet have been scheduled for a hearing on June 19, 1978, by the Subcommittee on Taxation and Debt Management of the Committee on Finance. The bills include 11 bills which have passed the House of Representatives.

The pamphlet first briefly summarizes the bills, in the order in which the bills were listed in the press release announcing the hearings. This is followed by a discussion of each bill, setting forth present law, the issue involved, an explanation of what the bill would do, the bill's effective date, the revenue effect of the bill, any prior Congressional consideration of the bill, and the position of the Treasury Department with respect to the bill.

II. SUMMARY

1. S. 3134

Subsistence Allowance for Law Enforcement Officers

In 1977, the U.S. Supreme Court held that cash meal allowances paid to New Jersey highway patrol officers constitute gross income to the recipients and are not excludable under section 119 of the Code, relating to meals furnished for the convenience of the employer. The bill (S. 3134) provides an exclusion from gross income for statutory subsistence allowances received after 1969 and before 1978 by State police officers (including highway patrol officers).

2. H.R. 810

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 (H.R. 810) broadens 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.

3. H.R. 1337

Constructive Sale Price for Excise Tax on Certain Articles

Present law imposes a manufacturers excise tax on trucks, buses, highway tractors, and trailers at a rate of 10 percent of the price at which the manufacturer or importer sells a taxable product. Statutory rules provide for constructive sale prices in certain cases, including sales at retail by the manufacturer. In the case of a manufacturer selling at retail, the Internal Revenue Service has developed constructive prices as a percentage of the manufacturer's retail selling price.

The Service also has ruled, however, that in cases of such retail sales, if the manufacturer's actual costs in making and selling the article exceed the percentage constructive price, the costs instead will be used as the base for computing the manufacturer's excise tax.

The bill (H.R. 1337) provides that percentage constructive prices are to be used in cases where a manufacturer sells trucks, buses, highway tractors, or trailers at retail, and prohibits the use of manufacturer's costs as an alternative tax base in such situations.

4. H.R. 1920

Repayment of Alcohol Taxes and Duties After Loss Due to Disaster or Damage

The bill (H.R. 1920) expands the definition of the circumstances under which a loss of distilled spirits, wines, rectified products, or beer held for sale gives rise to payments by the Treasury, to those holding the products for sale, of amounts equal to the excise taxes and customs duties earlier paid on these products. At present, the only recognized circumstance which can give rise to such payments is a Presidentially declared "major disaster." The bill provides for payments on account of losses resulting from fire, flood, casualty, or other disaster, or from damage (not including theft) resulting from vandalism or malicious mischief.

5. H.R. 2028

Excise Tax Treatment of Home Producers of Beer or Wine

The bill (H.R. 2028) allows any individual 18 years of age or older to produce wine and (if the individual registers with the Treasury Department) to produce beer for personal and family use up to certain quantities without incurring the wine or beer excise taxes or any penalties. The maximum amounts which may be produced free of tax are 200 gallons of wine and 200 gallons of beer 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 of wine and 100 gallons of beer. In addition, the bill provides that the amount of such home-brewed beer on hand in any household at any one time (including beer in process) may not exceed 30 gallons.

6. H.R. 2852

Credit or Refund of Fuel Excise Taxes for Aerial Applicators

Present law provides an exemption from the excise taxes imposed on gasoline and special fuels if such fuels are used for farming purposes. Under the bill (H.R. 2852), an aerial applicator, such as a cropduster, who uses fuel (on which taxes have been paid) for farming purposes is authorized to claim the applicable excise tax repayment or income tax credit directly, in place of the farmer.

7. H.R. 2984

Exemption From Excise Tax for Farm, Horse, or Livestock Trailers and Semitrailers

The bill (H.R. 2984) provides 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) de-

signed to be used for farming purposes or for transporting horses or livestock. The exemption also applies to sales of separate bodies and chassis for these trailers and semitrailers.

8. H.R. 3050

Tax Treatment of Returns of Magazines, Paperbacks, and Records

Under present law, sellers of merchandise who use an accrual method of accounting generally must include sales proceeds in income for the taxable year when all events have occurred which fix the right to receive the income and the amount can be determined with reasonable accuracy. The Internal Revenue Service has taken the position that accrual-basis publishers and distributors of magazines, paperbacks, or records must include the sales proceeds of these items in income when they are shipped to purchasers, and may reduce income for returns only in the year the items actually are returned unsold by the purchaser.

The bill (H.R. 3050) permits an accrual-basis publisher or distributor of magazines, paperbacks, or records to elect to exclude from income amounts attributable to items returned within 2 months and 15 days (in the case of magazines) or 4 months and 15 days (in the case of paperbacks and records) after the close of the taxable year in which the sales of the items were made.

9. H.R. 5103

Excise Taxes on Tires and Tread Rubber

The bill (H.R. 5103) clarifies the treatment of credits or refunds of the manufacturers excise tax on new (or retreaded) tires where sales are later adjusted as the result of a warranty or guarantee.

The bill also provides for credits or refunds of the manufacturers excise tax on tread rubber where tax-paid tread rubber is (1) wasted in the recapping or retreading process, (2) used in the recapping or retreading of tires the sales of which are later adjusted under a warranty or guarantee, or (3) used in the recapping or retreading of tires which are exported, sold to State or local governments, sold to nonprofit educational institutions, or sold as supplies for vessels or aircraft.

In addition, the bill modifies the statute of limitations so that a credit or refund of the tread rubber or new tire tax can be obtained for a period of one year after the warranty or guarantee adjustment is made. Also, the bill imposes a tax on tread rubber used in recapping or retreading certain tires abroad, if those tires then are imported into the United States.

10. H.R. 6635

Interest Rate Adjustments on Retirement Savings 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 (H.R. 6635) authorizes the Treasury Department to make upward adjustments in the interest rate on outstanding retirement bonds, so that such a bond will earn interest at a rate consistent with the rate then established for Series E U.S. savings bonds.

11. H.R. 8535

Child Care Credit for Amounts Paid to Certain Relatives

Under present law, payments by a taxpayer to certain relatives for child care services qualify for the child care credit only if the relatives' services constitute "employment" as defined for purposes of social security taxes. Because of the operation of that definition, payments to grandparents to care for their grandchildren generally are not treated as qualifying for the credit.

The bill (H.R. 8535) repeals the requirement that qualifying child care services of relatives must constitute "employment" under the social security tax rules. Thus, otherwise qualifying payments to grandparents to care for their grandchildren will be eligible for the child care credit. Also, the bill disallows the credit for amounts for child care services paid by the taxpayer to his or her child if the child performing such services is under age 19.

12. H.R. 8811

Revocability of Election to Receive Tax Court Judge Retired Pay

The bill (H.R. 8811) allows an individual who has filed an election to receive retired pay as a Tax Court judge to revoke that election at any time before retired pay would begin to accrue, thereby enabling that individual to seek to qualify for benefits under the civil service retirement system (but not under both retirement systems).

III. DESCRIPTION OF BILLS

1. S. 3134

Subsistence Allowance for Law Enforcement Officers

Present law

Section 61 of the Code defines gross income as including "all income from whatever source derived," and further specifies that it includes "compensation for services." Treasury regulations provide that gross income generally includes compensation for services paid other than in money, including the value of meals which an employee receives in addition to salary (secs. 1.61–1(a), 1.61–2(d)(3)).

The Congress has provided a number of express statutory exceptions to the broad definition of gross income. One exception provides that an employee's gross income does not include the value of employer-furnished meals if they are supplied for the employer's convenience and on its business premises (sec. 119).

In *Commissioner* v. *Kowalski*, 98 S. Ct. 315 (1977), the United States Supreme Court held that New Jersey's cash payments to its police troopers for meals consumed while on highway patrol duty constitute gross income to the troopers.[1] In arriving at its decision, the Court pointed out that in 1954 the Congress had enacted a companion provision to section 119 which allowed an exclusion of up to $5 per day of statutory subsistence allowances received by police officials. This provision was repealed in 1958[2] in order "to bring the tax treatment of subsistence allowances for police officials into line with the treatment of such allowances in the case of other taxpayers. . . ."[3] Thus, if cash meal allowances were excludable from an employee's gross income under section 119, the Court reasoned, the repeal of the former $5-per-day exclusion would be rendered ineffective.

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[1] In *Central Illinois Public Service Co.* v. *U.S.*, — U.S. —, 41 AFTR2d 718 720 (1978), the Supreme Court noted that "it is fair to say that until this Court's' very recent decision in *Kowalski*, the Courts of Appeals have been in disarray on the issue whether, under §§61 and 119 of the 1954 Code or under the respective predecessor sections of the 1939 Code, [cash meal] reimbursements were income at all to the recipients * * *."

In *Central Illinois*, the Court held that cash reimbursements for employees' lunch expenses did not constitute "wages" subject to withholding under the law applicable at the time the reimbursements were made, even though the reimbursements constituted gross income. The Court's decision did not alter the treatment of meal reimbursements for FICA (Treas. regs. sec. 31.3121(a)–1(f)) or FUTA (sec. 3306(b)) purposes.

[2] Technical Amendments Act of 1958, sec. 3, 72 Stat. 1606, 1607.

[3] H.R. Rep. No. 775, 85th Cong., 1st Sess. 7 (1957).

Issue

The issue is whether certain subsistence allowances received by law enforcement officers should be excluded from gross income.

Explanation of the bill

The bill in effect applies the Supreme Court's *Kowalski* decision to State police officers on a prospective basis only.

The bill provides an exclusion from gross income for statutory subsistence allowances received by an officer during the years 1970 through 1976 to the extent that the allowances were not included in income on the officer's income tax return (including an amended return filed before December 1, 1977). In addition, the bill excludes from gross income statutory subsistence allowances received by an officer during 1977. The bill applies to police officers (including highway patrolmen) employed by a State or the District of Columbia on a full-time basis with the power to arrest.[1]

Effective date

The bill applies to statutory subsistence allowances received after December 31, 1969, and before January 1, 1978.

Revenue effect

It is estimated that the bill would result in a decrease in budget receipts of $8 million for fiscal year 1979.

Departmental position

The Treasury Department opposes the bill on the ground that it would provide an unjustified tax refund to individuals who chose not to follow the clear and long-standing interpretation of the law by the Internal Revenue Service. The Department believes that any tax exclusion for subsistence allowances received by State police officers would be unfair to the overwhelming majority of workers who had to pay tax on the compensation out of which they bought their lunches and met their other subsistence needs.

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[1] The press release issued by the Subcommittee on Taxation and Debt Management of the Committee on Finance to announce the June 19 hearing stated that the issue of the tax treatment of statutory subsistence allowances paid to law enforcement officers would be considered at the hearing, and referred to S. 2872. The latter bill would amend section 119 of the Code, retroactively to January 1, 1970, to provide that certain amounts paid to full-time law enforcement officers (including conservation officers, wardens, prison guards, and coroners) as statutory subsistence allowances are excludable from gross income. Subsequent to issuance of the press release, the House Committee on Ways and Means reported H.R. 12841 (H.R. Rep. No. 95–1232), section 3 of which is substantially identical to S. 3134 described in the text above.

2. H.R. 810

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 provides 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 thich can be paid or reimbursed by a private foundation for any one wrip by a government official is 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 $102.50, for travel in Paris, $100.00, and for travel in Tokyo, $110.00.

The exception added by this bill is not 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 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.

Prior Congressional action

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.

Departmental position

The Treasury Department recommends that the bill should be amended to limit the permitted amount of reimbursable transportation expenses to the cost of the lowest coach or economy air fare charged by a commercial airline.

The recommended change would make the reimbursable amounts under the bill consistent with the limitation on deductions for attending foreign conventions under the Administration's 1978 tax program. The Treasury Department would not oppose the bill if this change were made.

3. H.R. 1337

Constructive Sale Price for Excise Tax on Certain Articles

Present law

Under present law, a manufacturers excise tax of 10 percent is imposed on the sale by a manufacturer or importer of trucks, buses, highway tractors, and their related chassis, bodies, and trailers (sec. 4061(a)).[1] Generally, the tax is based on the price at which a taxable item is sold by the manufacturer.

However, present law also provides for a constructive sale price if taxable articles are sold by a manufacturer or importer to other than a wholesale distributor (sec. 4216). If a manufacturer or importer sells a taxable article at retail—i.e., directly to ultimate consumers—the constructive sale price is the lower of (1) the price for which the article was sold, or (2) the highest price at which competing articles are sold by wholesale distributors, as determined by the Treasury Department (sec. 4216(b)(1)).

The Internal Revenue Service has ruled that if a manufacturer sells taxable items at retail, the price at which competing items are sold to wholesale distributors is considered to be 75 percent of the established retail price (Rev. Rul. 54–61, 1954–1 CB 259). The "established retail price" is the highest price for which a manufacturer sells, or offers to sell, an item for use by an independent purchaser who ordinarily would not be expected to buy more than one item. If a taxable item actually is never sold at its list price, because of discounts or other price modifications, the "established retail price" is the price resulting from the minimum discount off the list price (Rev. Rul. 68–519, 1968–2 CB 513).

The Service also has ruled that if a manufacturer's actual cost of making and selling a taxable item is greater than the percentage constructive price referred to above, then its actual cost is used in lieu of the percentage constructive price for purposes of computing the applicable excise tax (Rev. Ruls. 54–61 and 68–519, as noted above). This method of calculating the tax base has been referred to as the "cost floor" rule.

Issue

The issue is whether the "cost floor" rule should be applied for purposes of determing a constructive sale price if a manufacturer sells trucks, buses, and similar articles at retail.

Explanation of the bill

The bill amends the constructive sale price rule to eliminate the use of a constructive sale price based upon the manufacturer's costs in cases where trucks, buses, highway tractors, and related articles tax-

[1] The tax is scheduled to be reduced to 5 percent on October 1, 1979. Revenues from this tax go to the Highway Trust Fund (through September 30, 1979).

able under section 4061(a) are sold at retail by a manufacturer. The excise tax in these situations is to be determined by using a percentage constructive sale price based on the price for which such articles are sold, in the ordinary course of trade, by manufacturers, as determined pursuant to Treasury regulations. As under present law, the Internal Revenue Service may establish percentages to be used for determining the excise tax base. However, under the bill, the percentage constructive price is not to exceed 100 percent of the actual sale price.

Effective date

This bill would apply to articles which are sold by the manufacturer or producer after September 30, 1977.

Revenue effect

The bill is estimated to reduce budget receipts by $1 million in fiscal year 1979 and by $500,000 annually thereafter. These revenues would otherwise go into the Highway Trust Fund (through September 30, 1979).

Departmental position

The Treasury Department supports the bill. However, the Department recommends that the effective date of the bill be changed to September 30, 1978, in order to eliminate the need to adjust excise taxes on sales made before enactment of the bill.

4. H.R. 1920

Repayment of Alcohol Taxes and Duties After Loss Due to Disaster or Damage

Present law

The excise taxes and customs duties on distilled spirits, wines, rectified products, and beer are paid or determined before these products leave the site of their production and enter marketing channels. If the products subsequently are lost, made unmarketable, or officially condemned while held for sale, amounts equal to the taxes and duties can be paid by the Treasury to wholesalers or retailers holding the products for sale only if the cause is a "major disaster" so declared by the President (sec. 5064 of the Code). Similar repayment rules apply to tobacco products lost in major disasters so declared by the President (sec. 5708).

Issue

The issue is whether payment by the Treasury of alcohol excise taxes and duties should be authorized for losses resulting from vandalism or malicious mischief or from disasters of a lesser magnitude than those which are declared by the President to be "major disasters."

Explanation of the bill

The bill provides for payment (without interest) by the Treasury of amounts equal to the alcohol excise taxes and duties paid or determined on distilled spirits, wines, rectified products, or beer held for sale but lost or ruined because of certain events if these events occurred in the United States. These events are: (1) fire, flood, casualty, or other disaster or (2) breakage, destruction, or other damage (not including theft) resulting from vandalism or malicious mischief.

As under present law with respect to Presidentially declared major disasters, payment is not to be available for taxes, or taxes and duties, the loss of which was indemnified by insurance or otherwise.

Present law does not impose any "floor" or minimum amount for which a claim for repayment of taxes, or taxes and duties, may be filed under the Presidentially declared major disaster provision. The bill imposes a $250 floor on any claim arising from any single disaster or damage, other than one for which a claim would have been allowable under present law. The bill makes no change on this point with respect to claims that would have been allowable under present law.

The bill provides that no claim under this section is allowable unless it is filed within 6 months after the date of the loss, except that in the case of a Presidentially declared major disaster, the claim period is not to expire before the day which is 6 months after the date on which the President determined the disaster occurred.

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Effective date

The bill would apply to disasters (or other specified causes of loss) occurring on or after the first day of the first calendar month which begins more than 90 days after the date of the bill's enactment.

Revenue effect

It is estimated that the bill would reduce revenues by about $500,000 annually, beginning with fiscal year 1979.

Departmental position

The Treasury Department opposes the bill on the following grounds. The bill would, in effect, provide free fire, casualty, and flood insurance for merchants for the portion of their alcoholic beverage inventories attributable to excise taxes and customs duties. 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. The Treasury Department also recommends repeal of the "major disaster" provisions of present law for both alcoholic beverages and tobacco products, since these provisions also grant holders of alcoholic beverages and tobacco products free insurance that is not given merchants who lose other merchandise in a "major disaster."

5. H.R. 2028

Excise Tax Treatment of Home Producers of Beer or Wine

Present law

Present law (sec. 5042 of the Code) permits the "head of any family," after registering with the Treasury Department, to produce up to 200 gallons of wine a year for family use without payment of tax. However, a single individual who is not the head of a family is not covered by this exemption. (See Treas. Regs. 27 CFR §§ 240.540 *et seq.*)

The Bureau of Alcohol, Tobacco, and Firearms interprets present law (sec. 5054(a)(3)) as providing that it is illegal to brew beer in one's home for home consumption. As a result, the tax of $9 per barrel (31 gallons or less), which is imposed on the production of beer (sec. 5051(a), is due and payable immediately upon production. In addition, the Bureau takes the position that home brewers are subject to the criminal penalties imposed by the Code (sec. 5687) for liquor tax offenses that are not otherwise specifically covered.

Issues

One issue is whether the present exemption from the wine tax for a head of a family who produces up to 200 gallons of wine a year for family use should be expanded to include other adult individuals.

Another issue is whether there should be an exemption (similar to the exemption for home-produced wine) for beer which is produced by an individual in his or her home for personal use, rather than for commercial sale; and if so, under what limitations or conditions the exemption should be provided.

Explanation of the bill

Wine

The bill modifies the provisions of existing law that permit heads of families to produce wine tax-free for family use. Under the bill, the present limitation of 200 gallons of tax-free production in a calendar year is to apply if there are two or more adults (age 18 or older) in the household. The present law's requirement that any producer of wine under the family-use exemption must be a "head of any family" is repealed; however, the producer must be an adult.

The bill provides that, if there is only one adult in the household, then 100 gallons of wine may be produced by that adult tax-free in a calendar year.

In addition, the bill would eliminate the present-law requirement that the person producing the wine must have registered with the Treasury Department.

Beer

The bill provides essentially the same rule in the case of household production of beer, with the added requirement that, in order not to be subject to the beer tax, the amount of beer on hand at any one time (including beer in process) is not to exceed 30 gallons. Also, the bill requires that producers of beer register with the Treasury Department in order to qualify under the home brewing exception.

The bill also makes it 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 bill. The provisions dealing with illegally produced beer are amended to make it clear that home production of beer that does not qualify for the new exemption is illegal.

Identical bill

S. 2930 is identical to H.R. 2028.

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 the bill's enactment.

Revenue effect

The bill is estimated to reduce budget receipts by less than $1.5 million annually, beginning with fiscal year 1979.

Departmental position

The Treasury Department supports the bill.

6. H.R. 2852

Credit or Refund of Fuel Excise Taxes for Aerial Applicators

Present law

Under present law, gasoline and special fuels used by noncommercial aviation are subject to excise taxes totalling 7 cents per gallon (secs. 4041(c) and 4081 of the Internal Revenue Code).[1] Present law provides an exemption from these taxes if the fuel is used for farming purposes (sec. 4041(f)).

The farming-use exemption applies if gasoline or special fuel is sold for use, or used, on a farm in the United States for farming purposes by the owner, tenant, or operator of the farm (secs. 4041(f), 6420(c), and 6427(c)). If the taxes have been paid, the owner, tenant, or operator may obtain a "refund" of the excise taxes, either by a payment under the excise tax system (secs. 6420 and 6427) or by a refundable income tax credit (sec. 39). The repayment and credit provisions also apply if the gasoline or other fuel is used on the farm by someone other than the owner, tenant, or operator (such as a cropduster). In the latter situations, the owner, tenant, or operator reports the number of gallons of fuel consumed on or over the farm and claims the repayment or credit (see Treas. Regs. sec. 48.6420(a)–1(c)).

Issue

The issue is whether aerial applicators, such as cropdusters, should be allowed to claim the credit or refund of aircraft fuel taxes for fuel used on or over farms for farming purposes.

Explanation of the bill

The bill permits aerial applicators, such as cropdusters, to claim the credit or refund of aircraft fuel taxes for fuel used on farms for farming purposes. Under the bill, the farmer is no longer permitted to claim the credit or refund for these taxes. The bill does not change the uses which qualify a taxpayer to claim the credit or payment.

The exemption applies only to the extent that gasoline or special fuels are used for farming purposes by the aerial applicator as determined in accordance with Treasury regulations (secs. 4041(f)(1), 6420(f), and 6427(h)).[2]

Effective date

The bill would apply to fuels used on or after the first calendar quarter which begins more than 90 days after the date of enactment, even if the tax was paid before the effective date.

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[1] The excise tax on gasoline imposed by section 4081 is scheduled to be reduced to 1½ cents per gallon on October 1, 1979 (sec. 4081(b)). At that time, the excise taxes imposed by section 4041(c) are scheduled to be 5½ cents per gallon (to total 7 cents per gallon on aviation fuel; the section 4041(c) taxes are then scheduled to expire on July 1, 1980 (sec. 4041(c)(5)). The revenues from these taxes on fuel used by noncommercial aviation go to the Airport and Airway Trust Fund (through June 30, 1980).

[2] S. 196, which also has been referred to the Committee on Finance, would permit aerial applicators, effective July 1, 1977, to claim the credit or refund of aircraft fuel taxes for fuel used on or over a farm for farming purposes (sec. 2 of the bill).

Revenue effect

The bill is estimated to reduce budget receipts by less than $1 million annually, beginning with fiscal year 1979. These revenues would otherwise go into the Airport and Airway Trust Fund (through June 30, 1980).

Departmental position

The Treasury Department recommends that the bill should be amended to provide that aerial crop sprayers will be entitled to receive credits or refunds of the fuel excise taxes only if the farmers otherwise eligible for the credits or refunds have waived in writing their rights in favor of the aerial crop sprayers. The Department would support the bill if this change were made.

7. H.R. 2984

Exemption From Excise Tax for Farm, Horse, or Livestock Trailers and Semitrailers

Present law

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

Present law provides an exemption 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)). To be eligible for this exemption, 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)).[2] 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)).

Issue

Present law excludes from the manufacturers excise tax "light-duty" trailers and semitrailers suitable for use with "light-duty" trucks. The issue is whether the "light-duty" limitation on the trailer or semitrailer exclusion should be removed in the case of trailers or semitrailers designed to be used for farming purposes or for transporting horses or livestock.

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[1] The tax is scheduled to be reduced to 5 percent on October 1, 1979. Revenues from this tax go to the Highway Trust Fund (through September 30, 1979).

[2] "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 manufacturer, 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 modifications (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 (Treas. Regs. § 48.4061 (a)–1(f)(3)(v)). The total of the axle ratings is the sum of the maximum load-carrying 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)).

Explanation of the bill

Under the bill, an exemption is 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, eliminates 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 retains the present law limitations on the size of such a trailer or semitrailer—that it 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 does not affect the separate 8-percent manufacturers excise tax on truck parts and accessories (sec. 4061(b)).

To avoid creating competitive disadvantages which might arise because of the relative sizes of dealers' inventories, and in conformity with prior practice in excise tax legislation, the bill provides for floor stocks 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.

Effective date

The exemptions made by the bill would apply with respect to articles sold on or after the day after the bill's enactment.

Revenue effect

The bill is estimated to reduce budget receipts by less than $2 million per year, beginning with fiscal year 1979. These revenues would otherwise go into the Highway Trust Fund (through September 30, 1979). If the bill becomes public law within the next three months, it could also reduce 1978 budget receipts by a negligible amount.

Prior Congressional action

An identical bill (H.R. 6521, 94th Cong.) was passed by the House of Representatives by voice vote on August 24, 1976, but it was not acted upon by the Senate Finance Committee or considered by the Senate.

Departmental position

The Treasury Department opposes the bill because the bill would discriminate against single unit trucks (i.e., without trailers or semitrailers) and non-farm trailers and semi-trailers of the same carrying capacity. In addition, determination of whether a trailer was designed for farming purposes could be difficult and add to the complexity of the law.

8. H.R. 3050

Tax Treatment of Returns of Magazines, Paperbacks, and Records

Present law

Generally, sellers of merchandise who use an accrual method of accounting must report sales proceeds as income for the taxable year when all events have occurred which fix the right to receive the income and the amount can be determined with reasonable accuracy (Treas. Regs. sec. 1.451–1(a)).

In some cases, the seller expects that accrued sales income will be reduced on account of events subsequent to the date of sale, such as returns of unsold merchandise for credit or refund pursuant to a pre-existing agreement or understanding between the seller and the purchaser. In these instances, the reduction in sales income generally must be recognized in the taxable year during which the subsequent event, such as the return of unsold merchandise, occurs. Deductions or exclusions based on estimates of future losses, expenses, or reductions in income ordinarily are not allowed for Federal income tax purposes.

Under these general tax accounting rules, the Internal Revenue Service has taken the position that accrual-basis publishers and distributors of magazines, paperbacks, or records must include the sales proceeds of these items in income when they are shipped to the purchaser, and may reduce income for returned items only in the taxable year the items actually are returned unsold by the purchaser.

Issue

The issue is whether an accrual-basis publisher or distributor of magazines, paperbacks, or records should be permitted to elect to exclude from income amounts attributable to items returned within a specified period of time after the close of the taxable year in which the publisher or distributor shipped the items to purchasers.

Explanation of the bill

For taxpayers who account for sales of magazines, paperbacks, or records on an accrual method, the bill provides an election to exclude from gross income for a taxable year the income attributable to unsold merchandise returned within a certain time (the "merchandise return period") after the close of the taxable year (new sec. 457 of the Internal Revenue Code). In the case of magazines, the merchandise return period extends for 2 months and 15 days after the close of the taxable year. In the case of paperbacks and records, the merchandise return period extends for 4 months and 15 days after the close of the taxable year.

The bill establishes several requirements to define those returned items which may be used to reduce gross income if a timely election is made: (1) the taxpayer must be under a legal obligation, at the time

of sale, to adjust the sales price of the magazine, paperback, or record on account of the purchaser's failure to resell it; (2) the adjustment to the sales price must be on account of the purchaser's failure to resell the magazine, paperback, or record in its trade or business; and (3) the merchandise must be returned to the taxpayer by the close of the merchandise return period.

The amount to be excluded from gross income on account of otherwise qualifying returns is limited to the lesser of (1) the amount covered by the acknowledged legal obligation with respect to such returns or (2) the amount of adjustment to the sales price agreed to by the taxpayer before the close of the merchandise return period.

The computation of income under the merchandise-return election constitutes a method of accounting. In the absence of a specific statutory rule to the contrary, an adjustment to income attributable to a change in method of accounting (called the "transitional adjustment") is amortized over a period of time prescribed by the Internal Revenue Service, usually 10 years (sec. 481(c)). However, the bill provides specific rules for the transitional adjustments arising out of merchandise-return elections.

In the case of an election to account for magazine returns under this bill, a special 5-year amortization of the transitional adjustment is provided in place of the normal 10-year period. In the case of an election to account for paperback or record returns, the bill establishes a "suspense account" to hold the transitional adjustment. The operative effect of the suspense account is to defer deduction of the transitional adjustment until the taxpayer is no longer engaged in the trade or business of selling the items which were the subject of an election.

In the case of a suspense account established with respect to paperback or record returns, as long as merchandise returns during the merchandise return period remain at or below the level of the initial opening balance in the account, taxable income under the merchandise-return method is the same as it would have been absent an election. However, an increase in returns over the initial opening balance is recognized one year earlier under the elected method.

Effective date

The election provided by the bill could be made with respect to taxable years beginning after December 31, 1976. The time for making the election for any taxable year beginning before the date of enactment of this bill would not expire before the date which is one year after the enactment date.

Revenue effect

The bill is estimated to reduce revenues by $22 million in fiscal year 1979, $11 million in fiscal year 1980, $11 million in fiscal year 1981, $12 million in fiscal year 1982, and $12 million in fiscal year 1983.

Prior Congressional action

A bill relating to accounting for magazine returns (but not paperback or record returns), somewhat similar to this bill, was passed by the House of Representatives by voice vote on August 2, 1976, but it was not acted upon by the Senate Finance Committee or considered by the Senate (H.R. 5161, 94th Cong.).

Departmental position

The Treasury Department believes that the special relief provided by the bill should be allowed only to those taxpayers who, in the year they elect the new method of accounting, establish a suspense account to delay the deduction for goods returned during the year the election is made before the due date (without extensions of time) for filing the income tax return for the prior year. Requiring a suspense account would prevent a substantial revenue loss in the year of enactment. However, in the case of an election to account for magazine returns under the bill, if it is determined that amortization of the transitional adjustment is preferable to the establishment of a suspense account, the Treasury Department recommends that the normal ten-year amortization period for such adjustments be used instead of the special five-year amortization provided by the bill.

9. H.R. 5103

Excise Taxes on Tires and Tread Rubber

A. New Tires—Credit or Refund If Tire Sale Is Adjusted Pursuant to Warranty or Guarantee (Subsec. (d) of the bill)

Present law

Present law (sec. 4071(a) of the Code) imposes a manufacturers excise tax of 10 cents per pound on new tires of the type used on highway vehicles, and 5 cents per pound on new nonhighway tires.[1]

Since these taxes are imposed on the basis of weight, rather than on the basis of the price for which the tire is sold, changes in the sale price of the tire generally do not affect the amount of tax due on a manufacturer's sale. However, under present practice (Rev. Rul. 59–394, 1959–2 CB 280), if a tire manufacturer sells a customer a new replacement tire pursuant to a warranty or guarantee on the tire that is being replaced, the manufacturers excise tax on the replacement tire is reduced in proportion to the reduction in price of the replacement tire.

The tire industry's practice has been to apply this rule based on the proportionate reduction in the price to the ultimate consumer where the manufacturer's warranty or guarantee runs to the ultimate consumer. The Internal Revenue Service did not dispute this industry practice before the publication of Rev. Rul. 76–423, 1976–2 CB 345. In that ruling, the Service has taken the position that the tax should be reduced in proportion to the reduction in price from the manufacturer to its immediate vendee—usually, a wholesaler or a dealer. Since this price reduction often is proportionately less than the reduction given by the retail dealer to the ultimate consumer, the Service's position generally produces a smaller tax reduction (hence, a larger net tax) than that produced by the rule that focuses upon the adjustment in sale price to the ultimate consumer.

As originally announced, the 1976 ruling was to take effect with respect to this issue on April 1, 1977. This effective date has been twice postponed by the Service, most recently to April 1, 1978, in order to give the Congress an opportunity to consider whether legislative change is appropriate.

Issues

The issues relate to the proper method of computing the manufacturers excise tax where tire warranty or guarantee adjustments have been made.

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[1] The revenues from these taxes go into the Highway Trust Fund (through September 30, 1979). The tax on new highway tires is to be reduced to 5 cents per pound as of October 1, 1979.

Explanation of the provision

The bill codifies the long-standing administrative practice under which a manufacturer is allowed an excise tax credit or a refund with respect to sales of tires for which a warranty or guarantee adjustment is made on a tire-by-tire basis. The bill also applies the same general principles to cases where warranty or guarantee adjustments are made on an overall basis. In addition, the bill provides corresponding rules for situations where the manufacturer's warranty or guarantee runs only to its purchaser and not to the ultimate consumer.

B. Tread Rubber—Credit or Refund Under Certain Circumstances (Subsecs. (a), (b), and (c) of the bill)

Present law

Present law imposes a tax of 5 cents per pound on tread rubber used for recapping or retreading tires (secs. 4071(a)(4) and 4072(b)).[2]

Tread rubber may be sold tax-free for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (sec. 4073(c)). Also, a credit or refund (without interest) of the tread rubber tax may be obtained if the tax-paid tread rubber is used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (sec. 6416(b)(2)(G)).

In the case of new tires, sales may be made tax-free (or a credit or refund obtained if tax has been paid) if the tires are exported, sold for use as supplies for vessels or aircraft engaged in foreign trade, or sold to a State or local government for exclusive use by such an entity or to a nonprofit educational organization for its exclusive use (secs. 4221(a) and 6416(b)). A credit or refund also is available if the sale of a new tire is adjusted later under a guarantee or warranty. However, if a retreaded tire is exported, etc., or the price is adjusted pursuant to a warranty or guarantee, no credit or refund is available as to the tread rubber tax.

No credit or refund of the tread rubber tax currently is available if the rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process.

Issue

The issue is whether a credit or refund of the tread rubber tax should be made available in various situations if a credit or refund would be available for new tires in comparable situations.

Explanation of the provision

The bill makes a credit or refund of the tread rubber tax available (1) if rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process; (2) if the tread rubber is used in the recapping or retreading of a tire and the sales price of the tire is later adjusted because of a warranty or guarantee; (3) if a recapped or retreaded tire is exported, sold to a State or local government for the government's exclusive use, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for a

[2] Revenues from this tax go into the Highway Trust Fund. This tax is scheduled to expire as of October 1, 1979.

vessel or aircraft; and (4) in certain cases if a retreaded tire is sold by a second manufacturer on or in connection with another article manufactured by the second manufacturer.

C. Statute of Limitations (Subsec. (e) of the bill)

Present law

Under present law, the general time by which a claim for credit or refund of a tax must be filed is 3 years from the time the tax return was filed or, if later, 2 years from the time the tax was paid (sec. 6511).

Issue

The issue is whether the statute of limitations for filing refund claims should be extended with respect to credits or refunds of the excise taxes on tires and tread rubber.

Explanation of the provision

The bill modifies the statute of limitations in cases where a claim for credit or refund of tire tax or tread rubber tax is filed as a result of a warranty or guarantee adjustment. The bill provides that in such a case a claim for credit or refund may be filed at any time before the date which is one year after the date on which the adjustment is made, if otherwise the period for filing the claim would expire before that later date.

D. Imported Recapped or Retreaded U.S. Tires (Subsec. (f) of the bill)

Present law

The excise taxes on tires and tread rubber apply to imported articles as well as those produced or manufactured in the United States. However, if a used tire which has been taxed in the United States is exported, is retreaded (other than from bead to bead) abroad, and is then shipped back into the United States, then there is neither a tax on the imported retreaded tire nor on the tread rubber used in the retreading, because the tire already has been taxed and the tread rubber is considered to have lost its identity.

Issue

The issue is whether used tires which are exported, recapped or retreaded abroad, and then returned to this country, should be subject to the excise tax on tread rubber.

Explanation of the provision

The bill provides that used tires which are exported from the United States, recapped or retreaded abroad (other than from bead to bead), and then reimported into the United States are to be subject to the tax on tread rubber to the extent that tread rubber is incorporated into the tire. For this purpose, the amount of tread rubber to be taken into account is to be determined as of the completion of the recapping or retreading of the tire.

E. General

Effective date

The amendments made by this bill would take effect on the earlier of (1) April 1, 1978, or (2) the first day of the first calendar month which begins more than 10 days after the date of the bill's enactment.

The statute of limitations amendment would apply on and after the effective date. In effect, it would apply to adjustments made (or deemed made) on or after the date one year before the effective date.

Revenue effect

The bill is estimated to reduce budget receipts by less than $300,000 in fiscal year 1979 and by less than $200,000 per year thereafter. (If the bill becomes public law within the next three months, 1978 budget receipts could be reduced by as much as $100,000 and 1979 revenue loss would be reduced by a corresponding amount.) These revenues would otherwise go into the Highway Trust Fund (through September 30, 1979).

Prior Congressional action

A bill with somewhat similar provisions (H.R. 2474, 94th Cong.) was passed by the House of Representatives by voice vote on August 24, 1976. The bill was reported by the Senate Finance Committee (S. Rept. 94–1348) on September 29, 1976, but was not acted upon by the Senate because of lack of time before adjournment.

Departmental position

The Treasury Department does not oppose the bill.

10. H.R. 6635

Interest Rate Adjustments on Retirement Savings 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

The issue is whether the Treasury Department should be authorized to increase the interest rate on U.S. retirement plan bonds and U.S. individual retirement bonds so that the investment yield on the bonds is consistent with the yield on Series E savings bonds.

Explanation of the bill

The bill permits the interest rate on U.S. retirement plan bonds (sec. 405(b)) and U.S. individual retirement bonds (sec. 409(a)) 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 bill would apply to interest accrual periods that begin after September 30, 1977, with respect to bonds issued before, on, or after the date of the bill's enactment.

Revenue effect

It is estimated that this bill would have no effect on budget receipts, but would result in increased budget outlays of $1 million per year.

Departmental position

The Treasury Department would not object to the bill if it is amended (1) to permit the interest rate on already issued retirement bonds to be changed to match the interest rate on new retirement bonds rather than to match the interest rate on Series E savings bonds and (2) to change the effective date so that the bill applies to interest accrual periods that begin after the date of enactment of the bill, with respect to bonds issued before, on, or after the date of the bill's enactment.

11. H.R. 8535

Child Care Credit for Amounts Paid to Certain Relatives

Present law

Present law provides a nonrefundable income tax credit equal to 20 percent of household and dependent care expenses incurred to care for a dependent child under the age of 15 or for an incapacitated dependent or spouse. The maximum tax credit for one year's qualifying expenses is $400 for one dependent and $800 for two or more dependents (sec. 44A of the Code).

The credit is allowed for amounts paid to a relative only if (1) neither the taxpayer nor the taxpayer's spouse is entitled to treat the relative as a dependent for whom a personal exemption deduction could be claimed, and (2) the services provided by the relative constitute "employment" as that term is defined for purposes of social security taxes (sec. 44A(f)(6)).

For social security tax purposes, child care or other domestic services performed in the taxpayer's home by the taxpayer's parent generally do not constitute "employment" (sec. 3121(b)(3)(B)). Also, services by the taxpayer's parent which are not performed in the course of the taxpayer's trade or business generally do not constitute employment, whether or not performed in the taxpayer's home. The Internal Revenue Service apparently takes the position that child care services performed in a grandparent's home are not performed in the course of the taxpayer's trade or business. Under this view, both child care services performed by a grandparent in the taxpayer's home and child care services performed by a grandparent in the grandparent's home generally would not constitute "employment," and hence payments for such services would not qualify as expenses eligible for the child care credit.

However, services performed by a grandparent in caring for a child (living in the taxpayer's home) who is either under 18 or is mentally or physically incapacitated may constitute "employment" if the taxpayer is a surviving spouse or is divorced and not remarried, or if the taxpayer has a mentally or physically incapacitated spouse who is unable to care for the child (sec. 3121(b)(3)(B)). In these circumstances, payments for child care services performed by the child's grandparent may be eligible with respect to the child care credit.

Services performed for the taxpayer by other relatives (other than by the taxpayer's child if under age 21) may constitute "employment" under the social security tax definition if a bona fide employer-employee relationship exists. Therefore, payments to these relatives may qualify with respect to the child care credit if neither the taxpayer nor the taxpayer's spouse can claim a personal exemption deduction for the relative. Services performed by the taxpayer's child, if under age 21, do not constitute such "employment" (sec. 3121(b)(3)(A)) and hence cannot qualify with respect to the credit.

Issue

The issue is whether the child care credit should be allowed for payments to adult relatives in cases where the services rendered by the relatives do not constitute "employment" as that term is defined for purposes of social security taxes.

Explanation of the bill

The bill eliminates the requirement of present law that child care services performed by relatives must constitute "employment" within the meaning of the social security tax definition in order to qualify under the child care credit provisions. As a result, otherwise qualifying amounts paid by a taxpayer for care of his or her child by a grandparent of the child would be eligible for the credit to the same extent as if paid to a person who is not related to the taxpayer.

The bill does not affect the rule of present law that disallows the child care credit for amounts paid to a relative (including amounts paid to a child or to a parent of the taxpayer) for whom the taxpayer or the taxpayer's spouse could claim the deduction for personal exemptions for dependents. Thus no credit would be allowed for otherwise qualifying amounts paid by a taxpayer for child care services performed by a grandparent of the child if either the taxpayer or the taxpayer's spouse could, for the year in which such services are performed, claim a personal exemption deduction for the grandparent.[1]

The bill provides that the credit is not to be allowed for amounts paid by the taxpayer to his or her child (including a stepchild) for child care services if the child being paid is under the age of 19 as of the close of the year in which the services are performed. The credit would not be allowed for any such payments to the child under 19 whether or not either the taxpayer or the taxpayer's spouse could claim a personal exemption deduction for the child being paid for child care services. If the taxpayer's child is 19 or over by the end of the year, payments for child care services performed by the child would qualify for the credit only if neither the taxpayer nor the taxpayer's spouse could claim a personal exemption deduction for the child performing the services.

Amounts paid by a taxpayer to his or her spouse to care for the taxpayer's child (including a stepchild) would not qualify for the child care credit.

Effective date

The bill would apply to taxable years beginning after December 31, 1977.

Revenue effect

The bill is estimated to reduce budget receipts by $3 million in fiscal year 1978, $36 million in fiscal year 1979, $35 million in fiscal year 1980, $37 million in fiscal year 1981, $37 million in fiscal year 1982, and $38 million in fiscal year 1983.

Departmental position

The Treasury Department does not oppose the bill.

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[1] S. 2153, which also has been referred to the Senate Finance Committee, would delete, effective for taxable years beginning after December 31, 1976, the present-law requirement that amounts paid for child care services performed by relatives must be for services which constitute "employment" within the meaning of the social security tax definition in order to qualify for the credit.

12. H.R. 8811

Revocability of Election to Receive Tax Court Judge Retired Pay

Present law

If a United States Tax Court judge elects to come under the Tax Court retirement system, all civil service retirement benefits are waived. Thus, any Tax Court judge who elects to be covered by the Tax Court retirement system may not receive any benefits under the civil service retirement system for any service performed before or after the election is made, for services performed as a judge or otherwise.

The Tax Court retirement system is noncontributory. The survivors' benefit provisions, however, require that the judges make contributions (3 percent of salary) if they want coverage for their families. The civil service retirement system is contributory (generally, 7 percent of salary). The civil service system includes survivor benefits with no additional contributions required for those benefits. If a judge elects to come under the Tax Court retirement system, then not only is that judge excluded from civil service retirement benefits, but also the judge's survivors are excluded from the civil service survivors' program, whether or not the judge also elects to come under the Tax Court survivors' program.

Present law has been interpreted as barring an individual who elects to be covered by the Tax Court judges retirement system from ever receiving any civil service benefits, even though the minimum requirement of 10 years of Tax Court service necessary to qualify for Tax Court judge retired pay never may be met, and notwithstanding the fact that the individual otherwise might qualify for civil service retirement benefits. Thus, an individual who has creditable civil service time before and after Tax Court service, and who elected Tax Court retirement pay while a judge, but served in that capacity for less than 10 years, will be precluded from receiving benefits under either system.

Issue

The issue is whether an election to come under the Tax Court retirement system should be allowed to be revoked before retired pay begins to accrue, thereby allowing the individual to qualify to receive civil service retirement benefits.

Explanation of the bill

The bill allows an individual who has filed an election to receive retired pay as a Tax Court judge to revoke that election at any time before the first day on which retired pay would begin to accrue with respect to that individual.

Under the bill, no civil service retirement credit is to be allowed for any service as a Tax Court judge, unless with respect to that

service the amount required by the civil service retirement laws has been deposited, with interest, in the Civil Service Retirement and Disability Fund. The bill also provides that if an individual revokes an election to receive retired pay and thereafter deposits the required amount with the Civil Service Retirement and Disability Fund, service on the Tax Court is to be treated as service with respect to which deductions and contributions had been made during the period of service. Therefore, such a revocation will allow service on the Tax Court to satisfy the civil service rule that an individual must have current covered employment in order to be permitted to revive his or her credits for prior covered employment.

Under the bill, a revocation of an election to come under the Tax Court retirement system also constitutes a revocation of any election to come under the Tax Court survivors' benefit system. In addition, the bill provides that upon a revocation of an election, the individual's account is to be credited with any amounts paid by the individual, together with interest thereon, to the Tax Court judges survivors' annuity fund. This amendment is necessary to prevent the individual from having to contribute to two survivors' annuity systems (U.S. Tax Court and Civil Service) even though his or her survivors would be entitled to benefits under only one system.

This bill applies to any Tax Court judge who has elected the Tax Court retirement system and has not yet retired. It also applies to a former Tax Court judge, Russell E. Train, who did not serve on the Tax Court long enough to qualify for Tax Court retirement, but has been ruled by the Civil Service Commission to be ineligible for civil service retirement benefits because of his Tax Court election, and to any other former Tax Court judge who may be in a similar position.

Effective date

The bill would apply to revocations made after the date of enactment.

Also, if anyone revokes his or her Tax Court retirement system election within one year after the date of this bill's enactment, that individual is automatically treated as satisfying the civil service rule that an individual must have current covered employment in order to be permitted to revive his or her credits for prior covered employment. This provision is expected to apply to Mr. Train's situation, discussed above. After leaving the Tax Court, Mr. Train served in covered employment under the civil service retirement system from 1969 until early in 1977. If this bill had been enacted before the end of that 8-year period, Mr. Train could have complied with the regular civil service rules regarding current covered employment. This effective date provision gives Mr. Train, and anyone else similarly situated, one year to "catch up" to the change in the law.

Revenue effect

It is estimated that the bill will not have any significant revenue effect.

Departmental position

The Treasury Department supports the bill.

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