

Joint Committee on Taxation  
June 14, 1984  
JCX-18-84

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178. TENTATIVE RECOMMENDATIONS--TECHNICAL CORRECTIONS

A. Senate Proposed Modifications to Provisions  
in the House Bill

1. Casualty loss deduction.--The House bill provides that adjusted gross income, for purposes of computing the 10-percent floor for the casualty loss deduction, is determined without regard to the application of section 1231 to gains or losses from involuntary conversions arising from casualty or theft. Under the Senate modification, this provision would be retained for taxable years beginning in 1983, but replaced with a new set of rules for determining capital gains treatment and applying the 10-percent floor with respect to these gains and losses for taxable years beginning after December 31, 1983.

Under the new rules, these personal casualty gains and losses would not be under section 1231. Instead, if there are net personal casualty gains for a year, all gains and losses would be capital and not subject to the 10-percent floor. If there are net losses for a year, the gains and losses would be ordinary. Losses, to the extent of gains, would be an "above-the-line" deduction, and only net losses would be subject to the 10-percent floor.

2. Section 338.--

(a) The House bill provides that recapture taxes in a deemed section 338 sale are determined by the fair market value of the corporation's assets. The Senate modification would allow the Secretary to prescribe regulations allowing taxpayers to determine fair market value of the corporation's assets under a formula based on the cost of the stock purchased during the acquisition period.

(b) The House bill provides that the basis of assets deemed purchased would be determined by reference to their fair market value, with adjustments. The Senate modification would amend this provision to provide that the basis of the assets deemed purchased would be the grossed-up cost of the stock purchased by the corporation during the acquisition period plus the basis of its other stock. A purchaser could elect to recognize gain with respect to its other stock.

(c) The House bill provides that the purchase (and making a section 338 election) with respect to a parent corporation causes the stock the parent holds in its subsidiary to be treated as sold and purchased under section

338. Under the Senate modification, the acquisition date of the deemed purchase by the parent could be conformed, under regulations, to the acquisition date of the parent.

(d) The House bill provides that members of a affiliated group could be treated as one, only for purposes of the consistency rules. Under the Senate modification, this affiliated group treatment would apply for all purposes of section 338.

3. Section 304.--The House bill provides that in determining whether a deemed distribution is a dividend under section 304, in the case of "brother-sister" corporations, the distribution will be treated as a distribution by the acquiring corporation to the extent of its earnings and profits and then by the issuing corporation to the extent of its earnings and profits. The Senate modification would apply this same rule to "parent-subsidiary" transactions and would clarify that this rule will determine the source, as well as the amount, of the dividend.

#### 4. Subchapter S

(a) The House bill extends the grace period to make an election to be treated as a qualified subchapter S trust from 60 days to 75 days. The Senate modification would change the 75 days to 2 1/2 months, to conform to the time for making a subchapter S election.

(b) The House bill provides that previously taxed subchapter S income would be allocated pro-rata among all distributions made during the year. The Senate modification would allow exceptions to this rule to be provided by the Secretary.

(c) The House bill clarifies that an S corporation election may be made, in all situations, within 2 1/2 months of the beginning of the taxable year. The Senate modification would clarify that a late election made with respect to a short taxable year which is timely for the following taxable year would be effective for the following year.

5. Highway Revenue Act.--Section 523(b) of the Highway Revenue Act provided floor stocks refunds in the case of tires on which the Federal excise tax was repealed. The House bill extends these refunds to tires on which tax was reduced, but not repealed. Claims for refunds on tax-repealed and tax-reduced tires must be submitted to manufacturers on or before July 1, 1984. Manufacturers must in turn submit claims to the Government on or before October 1, 1984. The Senate modification would extend the July 1, 1984, and October 1, 1984, dates to January 1, 1985, and April 1, 1985, respectively.

## B. Senate Proposed Additional Technical Corrections

1. Alternative minimum tax.--The amount includible in gross income with respect to the alcohol fuels credit (sec. 87) would not be included in the alternative minimum taxable income since that credit is not allowed against the minimum tax.

2. Section 338.--Amendments to section 338 would be made to delete the exception from the consistency rules for property acquired whose basis is determined in part (but not in whole) by the transferor's basis; to provide that certain property acquired in nontaxable transactions is not purchased; to allow a combined return to be filed by two or more target corporations purchased from an affiliated group; and to delete the regulating authority reference in section 338(i) to the target corporation and its target affiliates.

3. Compliance.--The Senate proposals would--

(a) Deprive the Court of Claims of jurisdiction over refund cases involving the promoter penalty and the penalty for aiding and abetting the understatement of tax liability, since it lacks jurisdiction to hear the likely counterclaim of the Government for an injunction.

(b) Provide that, for purposes of computing interest on refunds arising from NOL carrybacks where a "quickie refund" is filed, the refund would not be treated as claimed earlier than the time the "quickie refund" is claimed. If a quickie refund is not claimed, interest would be computed under the present law rules. Also, a "quickie refund" under sec. 6411 will be treated as a claim for refund for interest purposes and as a reduction in tax shown on the return for section 6661 purposes.

(c) Apply the exceptions from interest reporting (sec. 6049) for payments to certain specified persons to dividend reporting (sec. 6042). Substitute dividends to corporations would be reported under sec. 6045.

(d) Restore a technical amendment relating to trusts which was inadvertently repealed by the Interest and Dividends Tax Compliance Act of 1983.

(e) Require that trusts or estates furnish copies of returns to their beneficiaries require that S corporations furnish copies to shareholders, and provide a \$50 penalty on trustees, partnerships, and S corporations for failures to

provide copies of their return to beneficiaries, partners, or shareholders.

(f) Amend the broker reporting rules (sec. 6045) to include government agencies in the definition of a person.

(g) Conform backup withholding to the regulations relating to notification from a broker to a payor concerning backup withholding.

(h) Amend backup withholding to permit the IRS to tell payors enough of the reasons for a taxpayer being placed on backup withholding to enable the taxpayer and payor to know how withholding can be stopped.

(i) Clarify that backup withholding does not apply in the pension area. If a payee has not provided a proper social security number, payments are subject to pension withholding on the basis that, above the \$5,400 threshold, a proper election out of pension withholding has not been made, or, below the \$5,400 threshold, an election in has been made by not supplying a number.

#### 4. Energy.--

(a) The Senate proposal would amend the rules for the \$3 per barrel production credit for nonconventional fuels to provide that a fiscal year taxpayer's credit is to be computed on the basis of the reference price for the calendar year in which a sale occurs rather than the price for the calendar year in which the taxpayer's fiscal year began.

(b) The Senate proposal would provide that in the case of certain agreements under which a government unit owns a net profit interest in oil production, Windfall Profit Tax refunds due to partners who own the working interest by reason of changes made in the Technical Corrections Act of 1982 may be made to the partnership rather than the partners.

#### 5. Subchapter S.--

(a) Present law imposes a tax on subchapter S corporations with passive income and subchapter C earnings and profits. Under the Senate modification, this tax could be waived if the corporation had determined, in good faith, that it had no such earnings and profits; and the earnings are distributed after their discovery.

(b) The subchapter S Act requires the basis of debt which is reduced by losses to be restored by subsequent income. The Senate modification would clarify that this applies only to the extent the basis in the debt was reduced in taxable years beginning after 1982.

6. P.L. 98-259.--The Senate proposal would make the following modifications to P.L. 98-259, which forgives certain Federal income tax liabilities for U.S. military or civilian employees who die as a result of injuries sustained overseas in either a military action involving U.S. Armed Forces or in a terroristic activity directed against the U.S. or any of its allies (including a multinational force in which the U.S. participates).

(a) The effective date would be changed from individuals dying after December 31, 1979, to individuals dying after November 17, 1978 (making the provision applicable with respect to Congressman Leo J. Ryan, and other individuals), and is further modified so that the statute applies to Ray Hunt, killed while U.S. Administrator of the Sinai peacekeeping forces.

(b) The determination of whether terroristic action would be directed against the U.S. is to be based on a preponderance of the evidence.

(c) The required relationship between the overseas wound and the individual's death would be clarified by providing that the individual must be a U.S. employee both at the date of incurring the wound and at the date of death.

#### 7. Partnerships.--

(a) Present law provides that gain is recognized when property is contributed to a partnership which is an investment company. It would be clarified that the basis of the property contributed to the partnership and the basis of the partnership interest would be increased by this gain (and only by this gain).

(b) The basis of a partnership interest is generally decreased by all depletion deductions and then increased by depletion deductions in excess of basis. It would be clarified that these rules would apply in the case of oil and gas depletion which is computed at the partner, rather than partnership, level. A similar rule would apply to S corporations.

8. Straddles.--The Senate proposal would amend section 1234A requiring capital gain or loss treatment for proceeds from the termination of rights or obligations as to personal property, to exclude its application to the retirement of a debt instrument, whether or not through a trust or other participation arrangement.

#### 9. Highway Revenue Act.--

(a) Section 518 of the Highway Revenue Act permits certain "small" taxpayers to pay the gasoline tax 14 days

after each semimonthly period (rather than the generally applicable 9 days). If the 14-day rule is used, payment must be by wire transfer to a government depository. It would be clarified that the wire transfer must be to a Federal Reserve Bank.

(b) Present law allows a refund or credit of manufacturers excise taxes if adjustments to the price of an article are made after tax is paid. The Highway Revenue Act changed the truck and trailer excise tax from a manufacturers into a retail excise tax. It would be clarified that refunds or credits for price readjustments will continue to be available against the truck and trailer excise tax.

10. Clerical amendments.--Several nonsubstantive amendments of a clerical or similar nature would be made.

### C. Open Issues

The Senate would agree to the Technical Corrections title with the following exceptions which are open issues:

1. Effective date of minimum tax provision (sec. 611(a)(1)).
2. TRAC leasing (sec. 612(d)(1)).
3. The effective dates for sections 304 and 338 (secs. 612(k) and (1)).
4. Foreign currency contracts (sec. 622(a)(4)).

