[COMMITTEE PRINT]

SUMMARY OF SENATE AMENDMENTS TO H.R. 7577

PREPARED FOR THE USE OF

THE HOUSE AND SENATE CONFEREES ON H.R. 7577

BY THE STAFF OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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SUMMARY OF SENATE AMENDMENTS TO H.R. 7577

H.R. 7577, as passed by the House, provides that the exclusion from the definition of the term "employment" under the Federal Unemployment Tax Act of the services of insurance agents and solicitors who are compensated on a commission basis will be applied on a calendar quarter basis rather than an annual basis or an individual pay period basis. The Senate has accepted this House-passed provision without change.

The following is a summary of the amendments made to H.R. 7577:

(1) Withholding of City Income Taxes on Federal Employees

The first amendment (a committee amendment) relates to withholding, for purposes of the income tax imposed by certain cities, on the compensation of Federal employees. Present law (5 U.S.C. 5517) provides that where State laws require the withholding by employers of a tax from the compensation of employees, the Federal Government where certain conditions are met is, upon request, to enter into an agreement to withhold the State tax from compensation paid Federal employees who are employed in the State. This provision amends this statute to provide also for the withholding of city taxes by the Federal Government under certain conditions with respect to its employees who are employed in a city with such a tax if the city has a population of 60,000 or more. This amendment was modified on the Senate floor by Senator Case to apply the provision to nonresidents only upon their consent.

This amendment is identical to a bill previously reported by the Committee on Ways and Means, except for the modification made on the Senate floor relating to nonresidents.

This amendment is estimated to have no effect on the revenues.

(2) Deduction of Portion of State Tax on Motor Vehicles Where General Sales Tax Rate Is Less

The second amendment (a committee amendment) relates to the deduction of a portion of a State tax on motor vehicles in the case where that tax rate is higher than the general sales tax rate. Under present law, State taxes on motor vehicles are deductible where that tax is at the same rate as the State's general sales tax. However, where the State tax on motor vehicles is imposed at a higher rate than the general sales tax rate, the entire tax is nondeductible. This amendment permits a deduction of the portion of the taxes on motor vehicles which is equal to the general sales tax rate.

This amendment is estimated to result in a decrease in 1972 Federal individual income tax liability of about $1.5 million.

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(3) Relief of Liability for Interest on Failure To Make Timely Deposit of Withholding Taxes in Certain Cases

The third amendment (a floor amendment by Senator Bennett) deals with the payment of interest by a taxpayer as a result of his failure to deduct and withhold taxes on wages as required under the tax law. Under present law, a taxpayer who fails to deduct and make timely deposits of withholding taxes which he is required to do under the tax laws is subject to the payment of 6 percent interest on the taxes otherwise due. There is no discretion on the part of the Internal Revenue Service to waive this requirement to pay interest. The amendment resolves a problem occurring for periods beginning July 1, 1966, and ending June 30, 1968, by providing that in certain cases interest is not to be paid by a taxpayer required to deduct and withhold taxes on wages for that period if he was a chief officer of a certain type of tax-exempt organization, such as churches.

This amendment is estimated to reduce revenues by less than $100,000.

(4) Devices Other Than Stamps on Distilled Spirits Containers to Evidence Tax Payment

The fourth amendment (a floor amendment by Senator Hartke) relates to the means used as evidence of tax payment for containers of distilled spirits. Under present law, containers of distilled spirits must have a stamp as evidence of the payment of the Federal excise tax. The amendment permits the authorization by the Treasury Department of means other than stamps to evidence this tax payment. The amendment also allows the Secretary of the Treasury to authorize persons outside the Treasury Department to prepare and distribute the stamps or other devices that may be used, which will be done only under the controls necessary to protect the revenue.

This amendment is identical to H.R. 16022, as reported by the Committee on Ways and Means.

This amendment is estimated to have no effect on revenues.

(5) Deduction of Interest on Acquisition Indebtedness in Certain Cases

The fifth amendment (a floor amendment by Senator Hartke) deals with the deduction of interest on certain debt issued in connection with corporate acquisitions. The Tax Reform Act of 1969 enacted a provision which, in general, disallows a deduction for interest on debt obligations which a corporation issues in order to acquire another corporation. However, if the acquiring corporation had effective control of the acquired corporation (50 percent or more of the stock) on October 9, 1969, it may deduct the interest on debt issued subsequent to that date to acquire control of that corporation for tax purposes (80 percent of the stock of that corporation). Any interest paid on debt issued to acquire stock of the corporation above this amount is not deductible by the taxpayer. This provision was adopted in the 1969 Act in order to deny a taxpayer a deduction for interest on debt issued simply to acquire stock of another corporation beyond the amount necessary for control (e.g., in excess of 80 percent). However, in those cases where a corporation already had control of a corporation on January 29, 1969, debt issued to acquire the remaining shares

was not issued in order to acquire the corporation. For this reason, this amendment provides that in certain cases where corporations had control of another corporation on January 29, 1969, the interest on debt obligations issued before 1980 to obtain additional stock in the corporation may be deducted.

This amendment is estimated to result in an annual revenue loss of about $500,000.

(6) Elimination of Advance Approval for Certain Liquidations of Second Tier Foreign Subsidiaries

The sixth amendment (a floor amendment by Senator Hartke) relates to the elimination of the advanced approval requirement for certain liquidations of second tier foreign subsidiaries. Present law provides that, where a foreign corporation is involved in an exchange which otherwise would be a tax-free transaction, tax-free treatment is not available unless prior to the transaction the Internal Revenue Service has made a determination to the effect that the transaction is not being made to avoid Federal income taxes. Under current practice, the determination is made by the issuance of a ruling. Present law provides that the required determination may be obtained after (as well as before) the transaction in the case of a transaction which involves only a change in the form of organization of a second (or lower) tier foreign subsidiary when there is no change in ownership. This amendment provides a second situation under which the required determination may be obtained after (as well as before) the transaction. Under this amendment a taxpayer may also obtain a determination after the transaction in the case where an exchange is incident to a complete liquidation of a second tier foreign corporation into the first tier foreign corporation, which is wholly owned by a U.S. corporation, if both foreign corporations are incorporated under the laws of the same country.

This amendment is estimated to result in a one-time revenue loss of less than $1 million.

(7) Requirements of Showing Total Cost on Airline Tickets

The seventh amendment (a floor amendment by Senator Hartke) removes the requirement that the airline ticket show in the case of each segment of a trip the total amount (including the tax) paid with respect to the segment. However, the amendment continues the rule of existing law which requires the ticket to show the total amount (including the tax) paid by the passenger. This means that on a ticket showing separate segments of a trip there needs to be shown only the basic fare for each segment. However, all tickets must continue to show the total amount paid (including the tax) by the purchaser. As under present law, the tax may be shown separately on the ticket.

This amendment is identical to H.R. 10837, as reported by the Committee on Ways and Means.

This amendment has no revenue effect.

(8) Election As To Possessions-Exclusion Treatment

The eighth amendment (a floor amendment by Senator Hartke) deals with the exclusion in present law for income derived by domestic corporations from other than U.S. sources where most of their income is from sources within U.S. possessions. Under present law, a

corporation entitled to the benefits of this exclusion may not file a consolidated return with other corporations. Because of this latter provision, the Internal Revenue Service has held that a corporation automatically is disqualified from filing a consolidated return with other corporations if it meets the two gross income tests of the present statute for this possessions-exclusion treatment, even where this results in no reduction in the tax liability for the corporation. The Tax Court, on the other hand, has held that a consolidated return may be filed in such a case because the corporation derived no "benefit" from the possessions-exclusion treatment. This amendment resolves this conflict by making the possessions-exclusion treatment elective. However, this amendment also provides that once a corporation elects the benefits of the possessions-exclusion treatment it may not file a consolidated return until 10 years after it so elects under this provision.

This amendment also eliminates an unintended benefit in existing law by providing that the dividends received deduction is not to be available with respect to dividends received from a corporation which excluded this income from its tax base in a prior year when it was eligible for the possessions-exclusion treatment even though it is not eligible for this treatment in the year the dividend is paid.

This amendment is substantially the same as H.R. 11158, as reported by the Committee on Ways and Means, except for the length of time the election is in effect, and the effective dates which are generally moved forward.

This amendment is estimated to increase revenues, probably by less than $100,000 a year.

(9) Election by Foreign Investment Companies to Distribute Income Currently

The ninth amendment (a floor amendment by Senator Hartke) relates to the election by foreign investment companies to distribute income currently. Present law provides that foreign investment companies registered with the Securities and Exchange Commission which made an election before 1963 to distribute income currently are treated similarly to a domestic mutual fund if they (1) distribute 90 percent of their taxable income, (2) allocate to their shareholders on a pro rata basis, the excess of net long-term capital gain over net short-term capital loss; and (3) satisfy certain reporting requirements. This amendment would give foreign investment companies that were eligible to make the election in 1962 but were unable to do so, the opportunity to make the election on or before December 31, 1973. If a foreign investment company avails itself of the opportunity to make the election, the rules treating it similarly to a domestic mutual fund would apply to taxable years beginning after the date of the election.

This amendment is estimated to result in a revenue gain of about $300,000 annually for the next few years. In the longer run, however, it is expected that there will be a slight revenue loss.

(10) Use of Appreciated Property by Corporations to Redeem Their Own Stock

The tenth amendment (a floor amendment by Senator Hartke) makes a technical change in the rules determining whether a share-

holder owns at least 10 percent in value of the stock of a corporation which makes a distribution of appreciated property in complete redemption of all the shareholder's stock. Present law provides, in general, that a corporation will recognize gain where it distributes appreciated property in redemption of its stock. An exception to this rule is provided if a stockholder owning at least 10 percent in value of a corporation's shares completely terminates his interest in the corporation. For purposes of determining whether a redemption of a shareholder's stock is in complete termination of his interest, the constructive stock ownership rules of section 318 of the code apply, but these constructive ownership rules do not apply in determining whether the shareholder meets the 10-percent ownership test. This amendment makes a technical change to apply the constructive ownership rules also for purposes of the 10-percent ownership test.

This amendment is estimated to have no revenue effect.

(11) Estate Taxation of Debt Held by Foreign Persons Where Interest Equalization Tax Applies

This amendment (a floor amendment by Senator Hartke) relates to estate taxation of debt held by foreign persons where the interest equalization tax applies. Present law contains a procedure which enables domestic corporations and partnerships to obtain foreign funds for use of their foreign affiliates in a manner which complies with the restrictions on foreign investment imposed by the Office of Foreign Direct Investment in the Commerce Department. Under the procedure, the domestic company or partnership elects to treat such an issue of debt as subject to the interest equalization tax. Where this procedure is elected under present law, the flat 30 percent (or a lower rate imposed by treaty) U.S. tax (generally imposed on interest and certain other payments by U.S. persons to foreign persons) does not apply to interest payments on debt where the election referred to above has been made and certain other conditions have been satisfied. This amendment provides that in the case of debt where this election has been made, the value of the debt is not to be included in the U.S. estate tax base of the nonresident alien holder of the debt.

This amendment is identical to H.R. 9040, as reported by the Committee on Ways and Means.

This amendment is estimated to involve a revenue gain or loss of less than $100,000 annually.

(12) Extended Unemployment Compensation

This amendment (a floor amendment by Senators Javits and Magnuson) relates to the extension of unemployment insurance benefits to those workers who have exhausted their 26 weeks of benefits. Under present law, extended unemployment benefits (generally payable between the 27th and 39th week of benefits) are only payable (a) if the National insured unemployment rate exceeds 4.5 percent, or (b) in a State (1) whose insured unemployment rate exceeds 4.0 percent and (2) whose unemployment rate exceeds 120 percent of the rate during the same period in the prior 2 years. The amendment deletes this second requirement until July 1, 1973, if a State makes an appropriate modification in State law.

This amendment is estimated to increase Federal unemployment insurance outlays by between $175 to $230 million.

(13) Tax Treatment Relating to Certain Consents by Collapsible Corporations

The amendment (a floor amendment by Senator Beall) deals with the disposition of stock by certain shareholders in a collapsible corporation. Under present law, a collapsible corporation may consent to recognize gain on a future disposition of certain of its assets, so-called "subsection (f) assets" (in general, assets other than certain capital assets). If the corporation consents, its shareholders may realize capital gain instead of ordinary income on the sale of their stock if they sell within six months after the consent by the corporation. However, if the shareholders take advantage of this provision, they may not do so again for five years. The amendment provides that this five year restriction does not apply to a shareholder who is exempt from the collapsible corporation provision because he owns less than five percent of the stock of the corporation or who is exempt because the stock he owns was inventory or other property held primarily for sale to customers.

The amendment also provides that a foreign collapsible corporation cannot make the consent to recognize gain on future dispositions of its "subsection (f) assets." This prevents a foreign collapsible corporation's shareholders from realizing capital gains instead of ordinary income (under the collapsible corporation provisions) while the foreign corporation itself will not be taxable by the United States on the sale of its assets.

The amendment also covers the situation where a domestic collapsible corporation owns at least 5 percent of the stock of a foreign collapsible corporation. In this situation, consents must be made by both corporations. The amendment also provides that the stock of a collapsible corporation is a subsection (f) asset in the hands of another corporation.

This amendment is not expected to result in any revenue loss.

(14) Increase in Amount of Carbon Dioxide That May Be Contained in Wines

This amendment (a floor amendment by Senator Tunney) increases the amount of carbon dioxide that may be contained in still wines. Present law imposes a tax on wines at different rates depending on the alcoholic content of the wine and whether it is a still wine or a sparkling wine. Still wines are defined as those which contain not more than 0.277 gram of carbon dioxide per 100 milliliters of wine. This amendment increases the amount of carbon dioxide that may be contained in still wines from 0.277 to 0.392 gram per 100 milliliters of wine. This increase is intended to improve the shelf life of wines with low alcoholic content by adding carbon dioxide. This is because as the alcoholic content of a wine decreases, the wine tends to deteriorate more quickly since there is less alcohol to act as a preservative. This amendment does not change the tax rates of these wines nor is it expected to result in reduced sales in carbonated and sparkling wines or champagne.

It is expected that this provision will have no revenue effect.

(15) Sale of Certain State or Local Housing Projects

The amendment (a floor amendment by Senator Javits) relates to the nonrecognition of gain on the sale of certain State or local housing projects. Under present law, gain is not recognized on the sale of qualified Federal housing projects if the proceeds are reinvested in another qualified Federal housing project. To qualify under present law, the project must be one in which a mortgage is insured under section 221(d)(3) or section 236 of the National Housing Act. The amendment extends this nonrecognition treatment to State or local housing projects where a mortgage is insured or housing is financed by direct loans or tax abatement under State or local laws. In addition, the State or local housing projects must be administered under standards which have been certified by the Secretary of HUD as being comparable to the standards used in approving the sale of qualified housing projects under Federal programs.

It is estimated that this amendment will result in a revenue loss of $100,000 or less.

(16) Establishment of a Federal Financing Bank to Facilitate Federal and Federally Assisted Borrowings From the Public

The amendment (a floor amendment by Senator Proxmire) assures coordination of Federal and federally assisted borrowing programs with the overall economic and fiscal policies of the Government, reduces the cost of Federal and federally assisted borrowing from the public, and assures that such borrowings are financed in a manner least disruptive to private financial markets and institutions.

The amendment contains the following key provisions:

1. It provides for a Federal Financing Bank through which the marketing of Federal and federally assisted borrowing activities can be centralized.

2. It provides for advance submission of financing plans to the Secretary of the Treasury and for Treasury approval of the method and source of financing, timing, rates of interest, maturities, and all other financing terms and conditions of issues or sales of obligations by most Federal agencies.

This amendment is identical to S. 3001, as passed by the Senate and reported by the Committee on Ways and Means.

This amendment is estimated to have no effect on revenues.

(17) Charitable Deductions for Contributions of Certain Types of Property

The amendment (a floor amendment by Senator Church) relates to the allowance of a charitable deduction for contributions of certain types of ordinary income property. Under present law, a donor is only entitled to a charitable contribution deduction equal to his basis (i.e., cost) in the property. This amendment allows a deduction in certain cases equal to the donor's basis in the contributed property plus 50 percent of the amount of gain which would have been ordinary income if the donor sold the property at the time of the contribution. The amendment requires that the use by the donee of the property be related to its exempt purpose or function. The amendment, however, does

not apply to a contribution of property to a private foundation (other than a private operating foundation, a community foundation, or a private nonoperating foundation which distributes the contributions it receives to public charities or private operating foundations within 2½ months following the year of receipt). It also does not apply to a contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for a Government official while he was in office or which was related to the performance of his duties while he was in office.

It is estimated that this amendment will reduce revenues by $60 million annually.

(18) Reallotment of Unused Social Services Funds for 1973

The amendment (a floor amendment by Senator Stevens) provides that the amount of any State's share of the $2.5 billion limit on Federal funding for social services for the last 2 quarters of fiscal year 1973 which exceeds the amount of Federal funding which will actually be needed for that State's social services program can be reallocated to States which require more Federal funding than is available to them under their share of the $2.5 billion national limit. No State can have its limit for fiscal 1973 increased under this provision by more than $10 million, and any Federal funding which a State does receive as a result of this provision will be available only for matching expenditures for social services provided to recipients of assistance.