

DESCRIPTION OF S. 873 AND S. 1549

SCHEDULED FOR A HEARING
BEFORE THE
SUBCOMMITTEE ON TAXATION AND
DEBT MANAGEMENT GENERALLY
OF THE
SENATE COMMITTEE ON FINANCE
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PREPARED BY THE STAFF OF THE
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I. SUMMARY

1. S. 873--Senators Ribicoff, Bentsen, Tower, Hayakawa, Church, and Javits

Waiver of Time Limits in Foreign Residence or Presence Requirement for Americans Working Abroad

The bill would permit the waiver of the minimum time limits in the foreign residence or presence eligibility requirements for Americans working abroad to obtain the benefits of the deduction for excess foreign living costs or the exclusion for foreign earned income. The waiver generally would be available to Americans working abroad who could reasonably have been expected to meet those eligibility requirements, but who left the foreign country under conditions of war, civil unrest or similar conditions which precluded the normal conduct of business.

2. S. 1549 -- Senators Boren, Bellmon, Nelson, and Percy

Change of Time for Paying Excise Tax on Fishing Equipment

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

The bill would provide that the excise tax on fishing equipment sold during quarters ending on December 31, March 31, and June 30, would be payable, respectively, on March 31, June 30, and September 24. For the quarter ending September 30, the tax would be due by the date specified by Treasury regulations.

II. DESCRIPTION OF BILLS

1. S. 873--Senators Ribicoff, Bentsen, Tower, Hayakawa, Church, and Javits

Waiver of Time Limits in Foreign Residence or Presence Requirement for Americans Working Abroad

Present law

Prior to enactment of the Foreign Earned Income Act of 1978, an American who was present in a foreign country or countries for at least 510 full days during any period of 18 consecutive months, or who was a bona fide resident of a foreign country or countries for an uninterrupted period which included an entire taxable year, was entitled to exclude up to a flat amount (generally \$20,000) per year of his foreign earned income (sec. 911).

The 1978 Act retained these eligibility requirements but changed the special provisions for Americans working abroad. Generally, qualifying individuals are allowed a deduction for their excess foreign costs of living. The new excess living cost deduction (new sec. 913) consists of separate elements for the general cost of living, housing, education, and home leave costs. In addition, taxpayers living and working in certain hardship areas are allowed a special \$5,000 deduction in order to compensate them for the hardships involved and to encourage U.S. citizens to accept employment in these areas. As an exception to these new rules, the Act permits employees who reside in camps in hardship areas to elect to claim a \$20,000 earned income exclusion (under sec. 911) in lieu of the new excess living cost and hardship area deductions. As noted above, the foreign presence or residence criteria of prior law continue to determine whether or not Americans working abroad qualify for the special deduction or exclusion.

If a taxpayer working abroad is "temporarily" away from home in pursuit of a trade or business, the taxpayer may generally deduct traveling expenses (including amounts spent for meals and lodging) for himself but generally not for family members who accompany him. The taxpayer's "home" for this purpose is generally his principal place of employment. While a determination of whether the taxpayer is "temporarily" away from home depends on all the facts and circumstances, the Internal Revenue Service often holds that the taxpayer is "temporarily" away from home if his employment is not anticipated to, and does not actually, last more than a year. Otherwise, the Service ordinarily views the taxpayer as not being temporarily away from home and not entitled to these deductions.¹ A number of items

¹ Rev. Rul. 60-189, 1960-1 C.B. 60.

in the deduction for excess foreign living costs are measured with reference to the location of the individual's tax home.

Issue

The issue is whether, in a case where an individual goes abroad with the expectation of meeting the foreign residence or presence requirements, but fails to meet those requirements because of extraordinary circumstances beyond his control, relief should be afforded from the time limitations.

Because of the recent civil unrest in Iran, a number of Americans who were working there with the expectation of meeting the foreign residence or presence requirements returned to the United States prior to the time that those requirements actually were met.

Explanation of the bill

The bill would provide that, under certain circumstances, the time limits of the foreign residence or presence eligibility requirements for the deduction for excess foreign living costs or the exclusion for foreign earned income may be waived. Three conditions must be met for the waiver to apply. First, the individual must actually have been a bona fide resident of, or present in, a foreign country. Second, he must leave the foreign country during a period with respect to which the Treasury Department determines, after consultation with the State Department, that individuals were required to leave the foreign country because of war, civil unrest, or similar adverse conditions in the foreign country which precluded the normal conduct of business by those individuals. (These determinations may be made for any period after September 1, 1978.) Third, the individual must establish to the satisfaction of the Treasury that he could reasonably have been expected to meet the time limitation requirements. If these criteria are met, the taxpayer would be treated as having met the foreign residence or presence requirements with respect to the period during which he was a bona fide resident or was present in the foreign country even though the relevant time limitation under existing law had not been met. Moreover, an individual who can establish that he could reasonably have been expected to meet the time limitation requirements would ordinarily be able to establish that his tax home was abroad for the purposes of the deduction for excess foreign living costs.

Effective date

The provisions of the bill would apply to taxable years beginning after December 31, 1976, but only with respect to periods during which an individual was a bona fide resident of or present in a foreign country and did not meet the time limitation requirements of the foreign residence or presence tests with respect to those periods because he left the foreign country after September 1, 1978.

Revenue effect

This bill would have no effect upon budget receipts. It forgives an unanticipated one-time tax increase of \$10 million in fiscal 1980.



2. S. 1549 -- Senators Boren, Bellmon, Nelson, and Percy

Change of Time for Paying Excise Tax on Fishing Equipment

Present law

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

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

No special rules are provided to defer payments of the excise tax with respect to sales of taxable articles on credit except in the case of certain installment sales.

Issue

Retail sale of sport fishing equipment is seasonal in nature. However, manufacturers of such equipment produce throughout the year in order to make efficient use of capital and labor. To avoid inventory storage costs otherwise resulting from year-round production, manufacturers encourage wholesalers and retailers to make early purchases of fishing equipment stock by offering extended credit terms. The manufacturers excise tax on fishing equipment is payable relatively soon after the

fishing equipment is sold by the manufacturer, regardless of the fact that the deferred credit terms may result in sales' proceeds not being collected for several months.

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

Explanation of the bill

The bill provides that the manufacturers excise tax imposed on the sale of fishing equipment would be payable in accordance with the following schedule:

For articles sold during the quarter ending:	Payment of the tax is due by:
December 31	March 31
March 31	June 30
June 30	September 24
September 30	According to Treasury Regulations

In the case of sales of fishing equipment made during the first two quarters of the Federal fiscal year, the bill extends the due date for payment for up to 5 months and 1 week beyond that applicable under present law. In the case of sales made during the third such quarter (ending June 30), the extension is not as long (September 24), in order to insure that all payments for sales made through June 30 are included in Federal Government receipts for the fiscal year, which ends on September 30.

In the case of sales made during the fourth quarter of the fiscal year, the bill does not require any change from the payment schedule presently in effect under Treasury regulations (Treas. Reg. sec. 48.6302(c)-1). However, the bill does not preclude the Secretary of the Treasury from changing such regulations, to the extent the Secretary from time to time may deem appropriate, with respect to the due date for payment of excise taxes incurred on sales of fishing equipment made during the quarter ending September 30.

Effective date

The bill would apply to excise taxes payable on fishing equipment sold on or after October 1, 1979.

Revenue effect

This provision will not affect the aggregate fiscal year receipts of the manufacturers excise tax on fishing equipment.

Prior Congressional action

The provisions of S. 1549 are included as section 7 of H.R. 5505 as passed the House, except that the effective date of the House provision is for excise taxes payable on fishing equipment sold on or after the first day of the first calendar quarter beginning after the date of enactment.

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