[JOINT COMMITTEE PRINT]

DESCRIPTION OF MISCELLANEOUS TAX BILLS

LISTED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

OF THE

COMMITTEE ON FINANCE

ON SEPTEMBER 10, 1980

PREPARED FOR THE USE OF THE

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CONTENTS

INTRODUCTION

The bills described in this pamphlet have been scheduled for a public hearing on September 10, 1980, by the Senate Finance Subcommittee on Taxation and Debt Management Generally.

This first part of the pamphlet is a summary of the bills, presented generally in bill numerical order. (Two bills which relate to foreign tax credit treatment of gain from sale of personal property, S. 2915 and S. 3070, are presented together.) This is followed by a more detailed description of each bill, setting forth present law, issues involved, an explanation of the bill, effective date, and estimated revenue effects.

I. SUMMARY OF BILLS

1. S. 2512—Senator Mathias

Deduction for Self-insurance Set-asides for Liabilities of Design Professionals

Present law generally does not permit a taxpayer to deduct currently amounts set aside in a self-insurance fund or trust to satisfy contingent liabilities, such as future claims based on negligence or malpractice in furnishing services. Under the bill, architects, engineers, and other design professionals could elect to deduct currently amounts paid into a trust established by the taxpayer or to a "captive insurer" for the purpose of funding liabilities attributable to negligence or breach of warranty in the taxpayer's work. The deduction for any one year could not exceed $100,000 in the case of a taxpayer with a "severe service liability insurance problem" or $25,000 in the case of other eligible taxpayers.

Under present law, a trust established to provide funds to satisfy contingent liabilities generally does not qualify for tax-exempt status. The bill would provide that a self-insurance trust or captive insurer to which payments would be deductible would be exempt from income tax.

2. S. 2900—Senator Mathias

FUTA Exemption for Services Performed on Certain Fishing Vessels

Under present law, fishing services performed by individuals on vessels of ten net tons or less are generally exempt from coverage under the Federal Unemployment Tax Act (FUTA). The bill would expand the FUTA exemption to services performed on a vessel of up to 15 net tons if the vessel operates in an area that has the same fishing management regulations and catch limitations for all vessels of 15 net tons or less.

3. S. 2915—Senator Roth and S. 3070—Senator Durenberger

Foreign Tax Credit Treatment of Gain from Sale of Personal Property

Under the Tax Reform Act of 1976, certain gains from the disposition abroad of personal property are treated as U.S. (rather than foreign) source income, thereby generally reducing the foreign tax credit available to the taxpayer and thus increasing his U.S. tax liability.

S. 2915 would provide an exception to this U.S. source treatment for gains from the disposition of patents and similar property.

S. 3070 would provide an exception in the case of a sale of 80 percent or more of the stock of a corporation.

4. S. 2916—Senators Dole and Talmadge

Investment Credit Offset of Alternative Minimum Tax

The bill would allow the investment tax credit to offset the amount of the alternative minimum tax which is in excess of regular taxes if the credit is attributable to the active conduct of a trade or business by the taxpayer.

5. S. 3076—Senator Durkin

Exemption from Minimum Distribution and Excess Business Holding Requirements for Belle Peabody Brown Foundation

The bill would exempt the Belle Peabody Brown Foundation of New Hampshire from the minimum distribution and business holding requirements imposed on private foundations by the Tax Reform Act of 1969.

6. S. 3080—Senator Byrd (of Virginia)

Annual Payment of Gift Tax

Under present law, a gift tax return generally is required to be filed, and any gift tax paid, on a calendar quarter basis if the sum of (1) the taxable gifts made during the calendar quarter plus (2) all other taxable gifts made during the calendar year (and for which a return has not yet been required to be filed) exceeds $25,000. However, if all transfers made in a calendar year that are subject to the gift tax filing requirements do not exceed $25,000 in taxable gifts, a return must be filed, and the gift tax paid, by April 15 of the following year.

The bill would provide that gift tax returns are to be filed, and any gift tax paid, on an annual basis.

II. DESCRIPTION OF BILLS

1. S. 2512—Senator Mathias

Deduction for Self-insurance Set-asides for Liabilities of Design Professionals

Present law

Under present law, deductions by an accrual-basis taxpaper are allowable for the taxable year in which all the events have occurred which establish the fact of the liability giving rise to such deduction and the amount thereof can be determined with reasonable accuracy (Treas. Reg. § 1.446–1(c)(1)(ii)). Accordingly, the income tax law generally does not permit a taxpayer to deduct currently amounts set aside in a self-insurance fund or trust to satisfy contingent liabilities, such as future claims based on negligent furnishing of architectural, engineering, or similar services.

Instead, deductions are allowed when liability for a particular act or omission and the amount of the liability have become fixed by litigation or settlement of a claim. Such losses that have been incurred in a trade or business, to the extent not used in the year first deductible, may be carried back for 3 years and carried forward for 7 years. The amount of premiums paid during the year for insurance against future claims generally is currently deductible as a business expense.

Also, under present law, a trust established to provide funds to satisfy contingent liabilities generally does not qualify for tax-exempt status.[1] For example, the tax law does not provide an exemption for income earned on assets set aside by an architect or engineer to satisfy liabilities from professional malpractice. Instead, the Internal Revenue Service takes the position that the income of such a trust is taxed directly to the grantor of the trust under the "grantor trust" rules of the Code.

In the case of product liability losses, the amount of a net operating loss attributable to the product liability can be carried back ten years (Code sec. 172(b)(1)(H)). This special rule does not apply to liabilities based on services performed by the taxpayer or to liabilities arising under warranty.

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[1] However, Code section 501(c)(21) provides an income tax exemption for a qualified, irrevocable trust used by a coal mine operator to self-insure for liabilities, imposed on the operator by statute, to pay benefits to miners disabled with black lung disease. This provision requires as a condition of exemption that there be no right or possibility that either corpus or income of the trust can revert to the coal mine operator which established and funded the trust. Also, a black lung liability self-insurance trust is subject to strict self-dealing prohibitions, prohibitions on improper expenditures, and investment limitations. Contributions by the coal mine operator to fund an exempt section 501(c)(21) trust are deductible, within certain limitations (Code sec. 192).

Issues

The principal issues are whether, as an exception to the general tax rule disallowing deductions for anticipated liabilities, there should be a deduction for amounts set aside to self-insure losses resulting from the furnishing of services by design professionals, such as architects and engineers; and if so, whether the earnings on amounts set aside to fund such liabilities should be exempt from income tax.

Other issues for consideration in connection with the bill include: (1) whether any deduction allowed for anticipated malpractice or warranty claims against design professionals should also be provided to other professionals subject to similar liabilities, such as contractors, lawyers, doctors, nurses, and accountants; (2) whether, as a condition for exemption of income earned on set-aside funds, there should be a requirement that the corpus or income of such funds could not revert to the taxpayer (other than for payment of the taxpayer's service liabilities); and (3) what limitations on investments should apply to assets of exempt set-aside trusts, and what prohibitions should be imposed on improper expenditures and "self-dealing".

Explanation of the bill

In general

Under the bill, an eligible taxpayer could elect to deduct the amount of cash transferred during the year to a trust established by the taxpayer or to a "captive insurer" for the purpose of funding the taxpayer's service liability. The deduction would be available to persons engaged in the trade or business of furnishing services in the professional design, surveying, planning, evaluation, preparation of studies or specifications, or administration of a contract for the construction or modification of a building or other structure.

The funds could be either transferred to a trust established exclusively to satisfy service liability losses of the taxpayer, or paid to a captive insurer the exclusive purpose of which is to insure service liability losses. (To qualify, the insurer would have to be wholly owned by a taxpayer or by a trade association to which the taxpayer belongs.) The term "service liability" would refer to the taxpayer's liability for personal or property damage attributable to negligence or defects in, or breach of warranty regarding, the design, etc. for the construction or modification of buildings or other structures.

The bill would impose various restrictions on a service liability trust or captive insurer eligible to receive deductible amounts. For example, the assets of the trust or insurer could not be borrowed, used as security for a loan, or otherwise used by the taxpayer except for payment of service liability losses,[2] and limits would be imposed on investment of such assets. In the case of a self-insurance trust, the trustee generally would have to be a bank, and trust funds could not be commingled with other assets.

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[2] The term "service liability loss" would mean any loss attributable to the taxpayer's service liability, including payment on claims against the taxpayer for service liability; expenses incurred in the investigation, settlement, and defense of any such claims; and administrative and other incidental expenses of a service liability account in connection with the operation of the account and the processing of claims against the taxpayer.

Limitation on deduction

The amount of the deduction for the year would be subject to a limitation. The amount of limitation would depend on whether the taxpayer has a "severe service liability insurance problem." [3]

Severe problem.—If the taxpayer has a severe service liability insurance problem for the taxable year, the deduction would be limited to the lesser of: (1) five percent of gross receipts derived from the trade or business of furnishing qualified services; (2) 15 percent of average yearly gross receipts from the furnishing of qualified services during the base period,[4] reduced by the sum of the balance of the taxpayer's service liability trust and the net contributions to a captive insurer;[5] or (3) $100,000.

No severe problem.—In the case of a taxpayer who elects this provision and who does not have a severe service liability insurance problem, the deduction could not exceed the lesser of (1) two percent of gross receipts derived from the trade or business of furnishing qualified services; (2) ten percent of average yearly gross receipts from the furnishing of qualified services during the base period, reduced by the sum of the balance of the taxpayer's service liability trust and the contributions to a captive insurer; or (3) $25,000.

Distributions

Authorized distributions from a service liability account would be included in the gross income of the taxpayer for the taxable year in which such authorized distributions are made.

In the case of an unauthorized distribution, the tax liability of the taxpayer would be increased by an amount equal to ten percent of the distribution reduced by the allowable deduction for the taxable year for service liability losses. Generally, the ten-percent penalty would not apply if (1) a corrective withdrawal of an excess contribution is made prior to the last day (including extensions) for filing the taxpayer's return; (2) the taxpayer establishes to the satisfaction of the Internal Revenue Service that there was reasonable cause to create a service liability account but that a change in circumstance has occurred which obviated the need for continuing the account; (3) the distributed amount is, within 90 days of distribution, transferred to another service liability account; (4) the taxpayer's trade or business is liquidated;

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[3] A taxpayer would have a "severe service liability insurance problem" if the taxpayer is unable to obtain a premium quotation for service liability insurance, with coverage of up to $1 million with a reasonable deductible amount (the deductible amount not exceeding the premium, in any case) from any insurer other than a captive insurer, or the lowest insurance premium quotation for service liability insurance coverage of up to $1 million with a reasonable deductible amount (but not in excess of the premium) obtained by the taxpayer was equal to more than two percent of the gross receipts of the taxpayer for the taxable year.

[4] The base period would be the shorter of the period beginning with the earliest preceding taxable year for which the taxpayer elected this provision and ending with the current taxable year or a five-year period which includes the taxpayer's current and four preceding taxable years.

[5] The term "net contributions of a taxpayer to a captive insurer" would mean the sum of all premiums paid by the taxpayer to a captive insurer, less all amounts paid by the captive insurer for service liability losses of the taxpayer.

or (5) under Treasury regulations, the amount in the service liability account is deemed to be distributed.[6]

Accumulations deemed reasonable

The bill also provides that, in the case of a corporation, amounts accumulated in the taxpayer's service liability account would be deemed accumulated for the reasonable needs of the trade or business and thus not subject to the accumulated earnings tax (Code secs. 531–537).

Exempt status

Under the bill, the service liability trust or captive insurer of the taxpayer would be exempt from Federal income tax.

Effective date

The provisions of the bill would be effective with respect to taxable years beginning after the date of enactment.

Revenue effect

It is estimated that the bill would reduce budget receipts by $0.1 billion in fiscal year 1981; $0.3 billion in fiscal year 1982; and $0.4 billion in fiscal year 1985.

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[6] In general, the funds in the service liability account would be deemed to be distributed only if there is a transfer of more than 50 percent of the control of the taxpayer's trade or business.

2. S. 2900—Senator Mathias

FUTA Exemption for Services Performed on Certain Fishing Vessels

Present law

Under present law, fishing services performed by individuals on vessels of ten net tons or less are exempt from coverage under the Federal Unemployment Tax Act (FUTA), unless the services are performed in connection with the catching or taking of salmon or halibut for commercial purposes (Code sec. 3306(c)(17)). The fishing services covered by the exemption are services performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweed, or other acquatic forms of animal and vegetable life, including services performed by any such individual as an ordinary incident to any such activity.

Issue

The issue is whether fishing services performed on vessels of more than ten but not more than 15 net tons should be exempt, under certain circumstances, from FUTA coverage.

Explanation of the bill

Under the bill, if certain conditions are met, the FUTA exemption based on tonnage of the fishing vessel would be expanded to cover certain vessels of up to 15 net tons. The FUTA exemption would apply to services performed on a vessel of up to 15 net tons if the vessel operates in an area that has the same fishing management regulations and catch limitations for all vessels of 15 net tons or less.[1]

Effective date

The bill would apply to services performed after the date of enactment.

Revenue effect

It is estimated that the bill would reduce Federal budget receipts by approximately $1 million annually.

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[1] The bill would not change the exception to the exemption with respect to services performed in connection with the catching or taking of salmon or halibut for commercial purposes. That is, those services would continue to be subject to FUTA without regard to the tonnage of the vessel on which performed.

3. S. 2915—Senator Roth
and
S. 3070—Senator Durenberger

Foreign Tax Credit Treatment of Gain from Sale of Personal Property

Present law

United States taxpayers generally are taxed by the United States on their worldwide income, with the allowance of a credit for foreign income taxes paid. However, the credit is limited to insure that it offsets U.S. tax only on the taxpayer's overall foreign source income.

The limitation operates by prorating the taxpayer's total U.S. tax liability before tax credits ("pre-credit U.S. tax") between his U.S. and foreign source taxable income. Thus, the limitation is computed by using a ratio of foreign source taxable income divided by total taxable income. The resulting fraction is multiplied by the total pre-credit U.S. tax to establish the amount of U.S. taxes paid on the foreign income and, thus, the upper limit on the foreign tax credit.

If a given item of income is treated as foreign source, it will increase the limitation. If that item is instead treated as domestic source, it will decrease the limitation. This will, if the taxpayer's foreign income taxes are in excess of the limit, increase his foreign tax credit (decreasing his U.S. tax liability) or decrease it (increasing his U.S. tax liability), respectively.

As a general rule, income from the sale or exchange of personal property is foreign source if the property is sold or exchanged outside the United States. Similarly, the source of rentals or royalties for the use of, or the privilege of using, intangible property depends on where the property is used.

The Tax Reform Act of 1976 provided a special foreign tax credit source rule for capital gains from the sale outside the United States of personal property. The rule generally provides that such gains, if they are not subject to a foreign tax of at least ten percent, are to be treated as U.S. source income.

The 1976 Act rules were added because taxpayers formerly could arrange the sale of personal property in a low-tax foreign country in order to maximize the benefits of the foreign tax credit. Although little or no additional tax would be paid on that gain, it would increase the amount of the foreign tax credit limitation since it was foreign source income. Therefore, they could credit taxes paid on other foreign income which otherwise would have exceeded the limitation. By generally treating the gains as U.S. source, the 1976 Act prevents an increase in the limitation unless a significant foreign tax is imposed.

The rules treating foreign source capital gain as U.S. source income do not apply in three situations, even though no foreign tax is paid on the gain. These cases involve situations where the sale is not made in a country purely for tax purposes.

The three cases are: first, in the case of a sale by an individual, if the property is sold or exchanged within the individual's country of residence; second, in the case of a sale by a corporation of stock in a second corporation, if the stock is sold in a country in which the second corporation derived more than 50 percent of its gross income for the three-year period ending with the close of the second corporation's taxable year immediately preceding the year during which the sale took place; and third, in the case of a sale by a corporation or an individual of personal property (other than stock in a corporation), if the property is sold in a country in which such property was used in a trade or business of the taxpayer or in which the taxpayer derived more than 50 percent of its gross income for the three-year period ending with the close of its taxable year immediately preceding the year during which the sale took place.

The changes in capital gains income generally apply both to capital assets and to business assets if such assets are treated as capital assets under the applicable Code provision.

The Revenue Act of 1978 included a technical correction to the special source rules. The Act provided that the source of income received by a corporation on the liquidation of a foreign corporation will be treated as foreign source income in all cases, except where the foreign corporation derived 50 percent or more of its gross income from U.S. sources for the three-year period ending with the close of its taxable year immediately preceding the year in which the liquidation occurs.

This change was made because the potential for artificially arranging a sale in a low-tax country does not exist in the case of liquidations. Under the normal source rules, any gain from a liquidation has its source in the country of incorporation. Consequently, the need to recharacterize any income resulting from a liquidation as domestic source income is limited to cases where the corporation is incorporated abroad but doing most of its business within the United States.

S. 2915—Senator Roth

Issue

The issue is whether gain from the disposition abroad of a patent or similar property should be subject to the rule generally treating the income as U.S. source unless a foreign country imposes a tax of at least ten percent, or whether an exception to that rule should be created for such transfers.

Explanation of the bill

Under the bill, gain from the sale, exchange, or other disposition of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right used in a business which is treated as capital gain (under Code sec. 1231) would not be subject to the special capital gain source rule added by the 1976 Act.[1]

A principal beneficiary of this bill would be Hercules Inc.

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[1] It is understood that the bill is not intended to provide any exception from the rules requiring adjustments of the foreign tax credit limitation formula in the case of foreign-source capital gains.

Effective date

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

Revenue effect

It is estimated that the bill will reduce budget receipts by less than $5 million annually.

S. 3070—Senator Durenberger

Issue

The issue is whether to treat a sale of 80 percent or more of the stock of a foreign corporation in the same manner as a liquidation under the special source rules.

Explanation of the bill

The bill provides that the source of income received by a corporation on the sale of at least 80 percent of the total number of shares of all classes of stock of a foreign corporation would be treated as foreign source income in all cases where the stock is sold abroad, except where the foreign corporation derived 50 percent or more of its gross income from U.S. sources for the three-year period ending with the close of its taxable year immediately preceding the year in which the sale occurs.

A principal beneficiary of this bill would be U.S. Industries.

Effective date

The bill would apply to taxable years beginning after December 31, 1975, the effective date of the special source rule in the 1976 Act.

Revenue effect

It is estimated that the bill will reduce budget receipts by less than $5 million annually.

4. S. 2916—Senators Dole and Talmadge

Investment Credit Offset of Alternative Minimum Tax

Present law

Under present law, an alternative minimum tax is payable by noncorporate taxpayers to the extent that it exceeds their regular income tax, including the "add-on" minimum tax (Code sec. 55). If the alternative minimum tax is greater than the taxpayer's regular taxes, the excess amount is payable together with the amount of the regular taxes.

In general, the alternative minimum tax is based on the sum of the taxpayer's gross income, reduced by certain allowed deductions, and increased by tax preference items, i.e., "excess" itemized deductions and the section 1202 capital gains deduction. The alternative minimum tax rate is 10 percent for amounts from $20,000 to $60,000; 20 percent for amounts from $60,000 to $100,000; and 25 percent for amounts over $100,000.

Present law provides several credits which ordinarily may be used to offset income tax liability. Some of these credits are intended to take into consideration previously paid taxes, and others are intended to encourage particular activities. The regular investment credit, for example, is equal to 10 percent of the cost of investments in certain tangible business property. (Code secs. 38, 46–48).

Tax credits generally are nonrefundable, but excess credits may be carried over to other years. For example, the regular investment credit may be used to offset the first $25,000 of tax liability plus a percentage of tax liability in excess of $25,000. This percentage is 70 percent in 1980 and will increase to 80 percent in 1981 and 90 percent for 1982 and later years. Excess regular and energy investment credits from a taxable year may be carried over to apply against tax liability for the three preceding and seven succeeding years on a first in, first out basis.

As a general rule, only refundable tax credits may be claimed against the amount of the alternative minimum tax which exceeds regular taxes. The only nonrefundable tax credit that may offset this excess amount is the foreign tax credit. Refundable credits are allowed to reduce the alternative minimum tax because such credits would be available to taxpayers in any event. In addition, refundable credits (with the exception of the earned income credit) and the foreign tax credit represent taxes actually paid. As such, these credits for previously paid taxes are taken into consideration in determining a minimum level of tax liability under the alternative minimum tax.

If the alternative minimum tax applies, present law provides that nonrefundable credits may continue to offset so much of a taxpayer's overall tax liability as does not exceed the applicable percentage of the taxpayer's regular taxes. Nonrefundable credits, therefore, are inapplicable only to the extent that regular taxes are exceeded by the alternative minimum tax. In such a case, the amount and duration of any otherwise available credit carryovers are not reduced to the extent of the amount of the alternative minimum tax which is in excess of regular taxes.

Issue

The issue is whether the investment tax credit should be allowed to offset the amount of alternative minimum tax which is in excess of regular taxes if the credit is attributable to the active conduct of a trade or business by the taxpayer.

Explanation of the bill

The bill would allow the investment tax credit to offset the amount of the alternative minimum tax which is in excess of regular taxes if the credit is attributable to the active conduct of a trade or business by the taxpayer.

Effective date

The bill would apply with respect to taxable years beginning after December 31, 1978.

Revenue effect

It is estimated that the bill will reduce budget receipts by $24 million in fiscal year 1981; $59 million in 1982; $47 million in 1983; $32 million in 1984; and $18 million in fiscal year 1985.

5. S. 3076—Senator Durkin

Exemption from Minimum Distribution and Excess Business Holding Requirements for Belle Peabody Brown Foundation

Present law

Distribution requirements

The Tax Reform Act of 1969 imposed a series of restrictions on private foundations. Under one of these restrictions (Code sec. 4942), a private foundation is required to distribute currently for its charitable or other exempt purposes the greater of its net income or five percent of the value of its investment assets. This minimum distribution requirement generally must be met for a year by making the required amount of charitable distributions in that year or in the following year. Graduated sanctions are imposed in the event of failure to distribute the required amount.

Limitations on business holdings

The Tax Reform Act of 1969 also imposed limitations on the business holdings of a private foundation (Code sec. 4943). Under this limitation, the combined ownership of a business by a private foundation and all disqualified persons generally cannot exceed 20 percent of the voting stock of the business (35 percent if other persons have effective control of the business).

The 1969 Act provided that if a private foundation and disqualified persons together had holdings on May 26, 1969 in excess of the permitted amounts under the general rules, then those holdings could be retained if they consisted of not more than 50 percent of the business. If the combined holdings exceeded 50 percent of the business on that date, then over a transitional period the combined holdings have to be reduced to 50 percent (ultimately to 35 percent if the disqualified persons hold, in the aggregate, no more than two percent of the business; if they hold more than two percent, then the combined holdings may continue to be as much as 50 percent, of which the foundation itself may hold no more than 25 percent).

Issue

The issue is whether the Belle Peabody Brown Foundation should be exempt from the minimum distribution and business holding requirements of the Tax Reform Act of 1969.

Explanation of the bill

The bill provides that the minimum distribution rules of Code section 4942 and the business holding rules of Code section 4943 would not apply to a private foundation which meets the following tests:

(1) the foundation was organized before January 1, 1950;

(2) the foundation received by bequest before January 1, 1958, all of the outstanding stock of a manufacturing corporation (subject to intervening life estates which terminated before January 1, 1972);

(3) the foundation is located in a community which, as of the 1980 decennial census, had a population of fewer than 10,000 persons;

(4) the foundation employed, as of January 1, 1980, fewer than 200 employees; and

(5) the corporation described above pays dividends for the calendar year with or within which the taxable year of the foundation ends in an amount equal to at least 30 percent of the average annual earnings of that corporation for the three-year period ending with the calendar year.

The only foundation known to meet the above tests is the Belle Peabody Brown Foundation of New Hamsphire.

Effective date

The bill would be effective for taxable years beginning after December 31, 1979.

Revenue effect

It is estimated that the bill will reduce budget receipts by less than $100,000 in fiscal year 1981 if its provisions apply only to the one private foundation known to meet the above tests. If there are other foundations that meet these tests, the revenue loss from the bill could be substantially higher than the above figure.

6. S. 3080—Senator Byrd (of Virginia)

Annual Payment of Gift Tax

Present law

Prior to 1971, gift tax returns were required to be filed, and any gift tax liability paid, on an annual basis.[1] For gifts between 1971 and 1976, gift tax returns were required to be filed, and any gift tax liability paid, on a calendar quarter basis. For gifts made after December 31, 1976, a gift tax return is required to be filed, and any gift tax paid, on a quarterly basis if the sum of (1) the taxable gifts made during the calendar quarter plus (2) all other taxable gifts made during the calendar year (and for which a return has not yet been required to be filed) exceeds $25,000.[2] If a gift tax return is required to be filed on a quarterly basis, the gift tax return is due, and any gift tax payable, on or before the 15th day of the second month following the close of the calendar quarter.

If all transfers made in a calendar year that are subject to the gift tax filing requirements do not exceed $25,000 in taxable gifts, a return must be filed, and any gift tax paid, by the filing date for gifts made during the fourth calendar quarter of the calendar year. In 1979 (P.L. 96–167), the due date for an annual return or a return for the fourth calendar quarter was conformed to the due date for filing individual income tax returns, i.e., April 15 of the following year.

Issue

The issue is whether gift tax returns should be filed, and any gift tax paid, on an annual basis.

Explanation of the bill

The bill would provide that gift tax returns are to be filed, and any gift tax paid, on an annual basis.

Effective date

The provisions of the bill would apply with respect to gifts made after the date of enactment.

Revenue effect

It is estimated that the bill would reduce budget receipts by $85 million in fiscal year 1981 and by less than $5 million each fiscal year thereafter.

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[1] Prior to the enactment of the Excise, Estate and Gift Tax Adjustment Act of 1970 (Public Law 91–614), the due date for filing a gift tax return was April 15 following the calendar year in which a gift was made. In general, the 1970 Act enacted a requirement for the quarterly filing of gift tax returns (by the 15th day of the second month following the close of the calendar quarter) to provide for the more current payment of gift tax liabilities.

[2] In the case of nonresidents who are not citizens of the United States, the same rule applies except that $12,500 is substituted for $25,000.