[JOINT COMMITTEE PRINT]

DESCRIPTION OF TAX BILLS

RELATING TO

ELECTION OF ALTERNATE VALUATION DATE ON LATE RETURN (S. 1430) AND THE INDEPENDENT LOCAL NEWSPAPER ACT OF 1981 (S. 1487)

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON ESTATE AND GIFT TAXATION

OF THE

COMMITTEE ON FINANCE

ON NOVEMBER 18, 1981

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The Senate Finance Committee's Subcommittee on Estate and Gift Taxation has scheduled a hearing on November 18, 1981, regarding estate taxes.

There are two bills scheduled for the hearing: S. 1430 (Senators Baker and Sasser), relating to the election of the alternate valuation date on a late estate tax return, and S. 1487 (Senator Boren, et al.), relating to the Independent Local Newspaper Act of 1981.

The first part of the pamphlet is a summary of the bills. This is followed by a more detailed description of the bills, including present law, issues, explanation of the provisions of the bills, effective dates, and estimated revenue effects.

I. SUMMARY

1. S. 1430—Senators Baker and Sasser

Election of Alternate Valuation Date on Late Estate Tax Return

Under present law, an executor may elect to value assets for estate tax purposes as of the date of the decedent's death or the alternate valuation date, which is generally six months after the date of the decedent's death. Alternate valuation must be elected on an estate tax return that is timely filed.

The bill would permit an executor to elect alternate valuation on a timely filed estate tax return or, if no estate tax return is timely filed, on the first estate tax return filed.

Generally, the bill would apply with respect to estates of decedents dying after the date of the bill's enactment. For estates of decedents dying on or before that date, the bill would permit an effective election of alternate valuation date to be made within one year after enactment of the bill by filing a written notice with the Internal Revenue Service.

2. S. 1487—Senators Boren, Cohen, Kasten, Pressler, Stevens, Helms, Baucus, Lugar, Pell, Cochran, Williams, Goldwater, Schmitt, Dixon, Riegle, Symms, Bentsen, and Inouye

The Independent Local Newspaper Act of 1981

The bill would allow an independent local newspaper to establish a tax-exempt trust fund in order to pay the estate taxes of the owners of the newspaper. Contributions to the trusts by the newspaper would generally be deductible by the newspaper for income tax purposes and would not be includible in the income of its owners. Interests in the trust would be exempt from the estate tax. In addition, the bill would provide an extended payment period for estate taxes attributable to an interest in an independent local newspaper.

II. DESCRIPTION OF THE BILLS

1. S. 1430—Senators Baker and Sasser

Election of Alternate Valuation Date on Late Estate Tax Return

Present Law

Under present law, the executor of a decedent's estate may value the property in the gross estate as of the date of the decedent's death or the "alternate valuation date," which is generally six months after the date of the decedent's death (sec. 2032). Alternate valuation provides estate tax relief when property in a decedent's estate declines in value shortly after the decedent's death. Alternate valuation must be elected by the executor on an estate tax return filed within nine months of the date of death or any period of extension granted by the Internal Revenue Service (sec. 2032(c)).[1]

Under section 6081, the Internal Revenue Service may grant an extension of time to file an estate tax return. Except in the case of taxpayers who are abroad, the Internal Revenue Service has no discretionary authority to grant an extension exceeding six months.

Issue

The issue is whether an executor should be permitted to elect alternate valuation on an estate tax return that is not timely filed.

Explanation of the Bill

The bill would permit the election of alternate valuation on a timely filed estate tax return or the first late return filed. In the case of a timely filed return, an executor would not be permitted to change the election after the due date for the return had passed. In the case of a late return, the election could not be changed after the first return had been filed.

Effective Date

The provisions of the bill would apply to estates of decedents dying after the date of the bill's enactment.

The bill includes a transitional rule applicable to estates of decedents dying on or before the date of the bill's enactment. The transitional rule would permit an effective election of alternate valuation to be

[1] An executor may elect alternate valuation by checking a box on Form 706, United States Estate Tax Return. An executor's failure to check the appropriate box on a timely filed Form 706 may not prevent the use of alternative valuation where the entries on the form are otherwise consistent with an election of alternate valuation (Rev. Rul. 61–128, 1961–2 C. B. 150).

made within one year after enactment of the bill by filing a written notice with the Internal Revenue Service. If an election were made under the transitional rule, an assessment of a deficiency in tax could be made within two years of the election although such assessment would otherwise be barred.

Revenue Effect

The bill would reduce budget receipts by an insignificant amount each year.

Prior Congressional Action

During the 96th Congress, the House passed, on February 19, 1980, a similar provision in a bill (H.R. 2492), except that it contained no transitional rule for estates of decedents dying before 1981.

That bill, with the House version of the similar provision, was favorably reported by the Senate Finance Committee on May 6, 1980 (S. Rept. No. 96-664). However, a similar provision was removed from the bill by a Senate floor amendment. The bill, with the similar provision deleted, was then enacted (P.L. 96-605).

2. S. 1487—Senators Boren, Cohen, Kasten, Pressler, Stevens, Helms, Baucus, Lugar, Pell, Cochran, Williams, Goldwater, Schmitt, Dixon, Riegle, Symms, Bentsen, and Inouye

The Independent Local Newspaper Act of 1981

Present Law

With respect to a trust established for the purpose of paying estate taxes attributable to an interest in a business (including an independent local newspaper), no provision is presently made under the Code for (1) according tax-exempt status to such a trust, (2) allowing income tax deductions for payments by the newspaper to the trust, (3) excluding payments to the trust from the gross income of the individual for whose benefit the trust is established, or (4) excluding the corpus (and accumulated income) of the trust from taxation in the gross estate of the decedent for whose benefit the trust was established.

Present law contains provisions for installment payment of estate tax attributable to an interest in a closely held business. In the case of decedents dying after December 31, 1981, section 6166 provides a 14-year period for the payment of the estate tax attributable to the decedent's interest in a closely held business. Under this provision, the executor can elect to defer principal payments for up to 5 years from the due date of the estate tax return. Thereafter, pursuant to the executor's initial election, the principal amount of the estate tax liability may be paid in from 2 to 10 annual installments. In order to qualify for this installment payment treatment, the value of the closely held business (or businesses) in the decedent's estate must exceed 35 percent of the value of the gross estate reduced by allowance expenses, indebtedness, and losses.[1]

Under section 6166, an interest in a closely held business is defined as:

(1) an interest as a proprietor in a trade or business carried on as a proprietorship,

(2) an interest as a partner in a partnership carrying on a trade or business if the partnership has 15 or fewer partners or at least 20 percent of the partnership's capital interest is included in the decedent's gross estate, or

[1] In the case of estates of decedents dying before January 1, 1982, present law provides two overlapping installment payment provisions—sections 6166 and 6166A. Section 6166 provides for a 14-year payment period of estate tax attributable to a closely held business interest where the value of the closely held business interest exceeds 65 percent of the value of the gross estate reduced by the allowable expenses, indebtedness, and losses. Section 6166A provides a 10-year payment period of estate tax attributable to a closely held business interest where the value of the business interest is in excess of either 35 percent of the value of the gross estate or 50 percent of the taxable estate.

The Economic Recovery Tax Act of 1981 combined the two sections by broadening the application of section 6166 and repealing section 6166A, effective for estates of decedents dying after December 31, 1981.

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his bill.

The Economic Recovery Tax Act of 1981 reduced the maximum estate tax
from 70 percent to 50 percent in 5-percent reductions over a 4-year period
nning with decedents dying in 1982.

value of his interest in the business.[4] Under the bill, any interest a decedent in the trust would generally not be included in the decedent's gross estate.

If an owner of a newspaper which has established a trust for his benefit dispose of his interest in the newspaper, the amounts in the trust must be distributed and included in the owner's income and the deductions previously allowed the newspaper would be recaptured. In addition, if the newspaper is disposed of by an heir within 15 years after the death of the owner, an additional estate tax would be imposed. This tax is phased out between the tenth and fifteenth years following the owner's death.

An "independent local newspaper" is defined as a newspaper publication which is not a member of a chain of newspapers if it has all of its publishing offices in a single city, community, or metropolitan area, as of January 1, 1981, within one State. A "chain of newspaper publications" is defined as two or more newspaper publications under common control on January 1, 1981, and which are not published in a single city, community, or metropolitan area.

Under the bill, any estate tax attributable to the value of an independent local newspaper not paid by a trust established under the provisions of this bill could be paid in installments over a period of up to 14 years. This special provision for independent local newspapers would apply where the estate did not qualify under existing extended payment provisions of present law. Under this extended payment provision, the executor could elect to defer principal payments for up to 5 years from the due date of the estate tax return. However, interest for the first four years, payable at the rate of 4 percent, would be payable annually. Thereafter, the principal amount of the estate tax liability plus accrued interest could be paid in from 2 to 10 annual installments. If the business ceased to qualify as an independent local newspaper, the extension would terminate.

Effective Date

The income tax provisions of the bill would apply to taxable years beginning after December 31, 1980. The estate tax provisions of the bill would apply to the estates of decedents dying after December 31, 1980.

Revenue Effect

The bill would reduce budget receipts by less than $25 million annually.

Prior Congressional Action

96th Congress

In the 96th Congress, a bill (S. 555), containing substantially

(3) an interest in a corporation carrying on a trade or business if the corporation has 15 or fewer shareholders or at least 20 percent of the corporation's voting stock is included in the decedent's gross estate.[2]

In addition, present law provides that certain redemptions of stock in closely held corporations are to be treated as sales or exchanges (subject to capital gain treatment) instead of dividend income to the extent of any Federal estate taxes, State death taxes, funeral expenses, and administration expenses borne by the redeemed shareholders (sec. 303). To qualify for this treatment, the value of the stock of the redeeming corporation includable in the decedent's gross estate must be more than 35 percent of the "adjusted gross estate."[3]

Issues

The first issue is whether the provisions of present law that provide special relief for estates comprised largely of interests in closely held businesses from estate tax liquidity problems are inadequate to meet the needs of owners of independent local newspapers.

If the first issue is answered in the affirmative, the other issues are (1) whether an independent local newspaper should be permitted to establish a tax-exempt trust to pay estate taxes of any owner in the newspaper attributable to the value of his interest in the newspaper, (2) whether the funds contributed to the trust (within prescribed limits) should be deductible by the newspaper and excludable from income by the owner for income tax purposes, (3) whether the value of the trust assets should be excludable from the owner's gross estate in computing estate taxes, and (4) whether a special 15-year period should be provided for the payment of any estate tax attributable to the value of an interest in the newspaper to the extent the tax is not paid by the trust.

Explanation of the Bill

Under the bill, an independent local newspaper could establish a tax-exempt trust to receive payments to pay the estate tax liability of any owner of the newspaper. The newspaper would be allowed an income tax deduction in an amount not to exceed 50 percent of its taxable income for amounts paid to the trust. The trust assets would be required to be invested solely in obligations of the United States. The assets of the trust could be used only to pay the Federal estate taxes of any owner of the newspaper.

The trust would be limited to holding amounts necessary to pay the potential Federal estate tax liability of the newspaper owner. In determining this limitation, the potential estate tax liability of a living individual would be considered to be 70 percent (i.e., the maximum estate tax rate for estates of decendents dying before January 1, 1982) of

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[2] This definition applies under section 6166 regardless of whether the decedent dies before or after December 31, 1981. Section 6166A defines an interest in a closely held business in the same way except there can be no more than 10 partners or shareholders.

[3] The required percentage is 50 percent in the case of estates of decedents dying before January 1, 1982.

the value of his interest in the business.[4] Under the bill, any interest of a decedent in the trust would generally not be included in the decedent's gross estate.

If an owner of a newspaper which has established a trust for his benefit dispose of his interest in the newspaper, the amounts in the trust must be distributed and included in the owner's income and the deductions previously allowed the newspaper would be recaptured. In addition, if the newspaper is disposed of by an heir within 15 years after the death of the owner, an additional estate tax would be imposed. This tax is phased out between the tenth and fifteenth years following the owner's death.

An "independent local newspaper" is defined as a newspaper publication which is not a member of a chain of newspapers if it has all of its publishing offices in a single city, community, or metropolitan area or, as of January 1, 1981, within one State. A "chain of newspaper publications" is defined as two or more newspaper publications under common control on January 1, 1981, and which are not published in a single city, community, or metropolitan area.

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The bill would reduce budget receipts by less than $25 million annually.

Prior Congressional Action

95th Congress

In the 96th Congress, a bill (S. 555), containing substantially identical provisions, was the subject of hearings by the Subcommittee on Taxation and Debt Management Generally of the Committee on Finance on October 31, 1979. No further action was taken with respect to this bill.

[4] The Economic Recovery Tax Act of 1981 reduced the maximum estate tax rate from 70 percent to 50 percent in 5-percent reductions over a 4-year period beginning with decedents dying in 1982.

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