

## AMENDING SECTION 165 (B) OF THE INTERNAL REVENUE CODE (RELATING TO EMPLOYEE STOCK PURCHASE PLANS)

JUNE 26 (legislative day, JUNE 21), 1952.—Ordered to be printed

Mr. GEORGE, from the Committee on Finance, submitted the following

### REPORT

[To accompany H. R. 7255]

The Committee on Finance, to whom was referred the bill (H. R. 7255) to amend section 165 (b) of the Internal Revenue Code (relating to employee stock purchase plans), having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of H. R. 7255 is to eliminate an inequity arising under section 165 (b) of the Internal Revenue Code.

Section 165 (b) of the code deals with the tax treatment of amounts distributed by trusts under a stock bonus, pension, or profit-sharing plan which meets the qualifications of section 165 (a).

Under the law prior to the amendment made by section 335 of the Revenue Act of 1951 appreciation in value during the period employer or other securities were held by qualified trusts was taxed at the time of distribution regardless of the source of the funds used to purchase the securities. Section 335 of the Revenue Act of 1951 provided an exception for distributions of securities of the employer in instances where the total distributions payable with respect to an employee are payable within one taxable year of the distributee as a result of the employee's separation from the employer's service. In such instances the appreciation is now excluded in determining the distributive value of securities of the employer purchased with employee and/or employer contributions; however, since such exclusions are reflected in the distributee's basis for determining gain or loss, such appreciation may be taxed on the subsequent disposition of the securities.

The purpose of H. R. 7255 is to extend the exception to any distribution of employer securities purchased with employee contributions only and, thereby, place employees purchasing such securities by participation in qualified trust plans in the same tax light as those acquiring securities directly.

**2 AMEND SECTION 165 (B) OF INTERNAL REVENUE CODE**

The principal difference between direct acquisition of securities and the purchase of securities through a qualified trust plan relates to delivery. Direct acquisition results in immediate delivery while under the trust plan the securities are purchased in the name of the trustees and held for delivery to the employee at a future date. Despite the element of delayed delivery, equitable ownership of securities purchased by a trustee for an employee from the employee's contributions to a qualified trust is vested in the employee from the date the securities are purchased by the trustee. Your committee believes therefore that the employee should be in the same position taxwise as if he had purchased such securities directly.

Under the amendment, any net unrealized appreciation which is excluded from income in the year of distribution is subject to tax when the securities are later sold (or otherwise disposed of in a taxable transaction). The amount of such excluded appreciation in the hands of the recipient shall not be included in the basis of the stock or other securities distributed.

The Treasury Department has no objection to the enactment of the proposed legislation.

**CHANGES IN EXISTING LAW**

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SEC. 165. EMPLOYEES' TRUSTS.**

(b) **TAXABILITY OF BENEFICIARY.** The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under section 22 (b) (2) as if it were an annuity the consideration for which is the amount contributed by the employee, except that if the total distributions payable with respect to any employee are paid to the distributee within one taxable year of the distributee on account of the employee's separation from the service, the amount of such distribution to the extent exceeding the amounts contributed by the employee, shall be considered a gain from the sale or exchange of a capital asset held for more than six months. Where such total distributions include securities of the employer corporation, there shall be excluded from such excess the net unrealized appreciation attributable to that part of the total distributions which consists of the securities of the employer corporation so distributed. The amount of such net unrealized appreciation and the resulting adjustments to basis of the securities of the employer corporation so distributed shall be determined in accordance with regulations which shall be prescribed by the Secretary. For purposes of this subsection, the term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form, and the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in section 130A (d) (2) and (3) of the employer corporation. *In no event shall the amount actually distributed or made available to any distributee include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall also be determined in accordance with regulations which shall be prescribed by the Secretary.*