

AMENDING THE INTERNAL REVENUE CODE OF 1954 WITH RESPECT TO DEDUCTIONS FROM GROSS INCOME OF AMOUNTS CONTRIBUTED TO EMPLOYEES TRUSTS

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

R E P O R T

[To accompany H. R. 4582]

The Committee on Finance, to whom was referred the bill (H. R. 4582) to amend the Internal Revenue Code of 1954 with respect to deductions from gross income of amounts contributed to employees trusts, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this action, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

PURPOSE OF BILL

The purpose of H. R. 4582 is to permit, under certain circumstances, a corporation which has acquired the properties and assumed the liabilities of a wholly owned subsidiary in a tax-free liquidation under section 112 (b) (6) of the 1939 code, to utilize any excess contributions made by the subsidiary to a qualified pension plan as though it were the subsidiary corporation for this purpose. These excess contributions are to be available as deductions in years beginning after December 31, 1953, and ending after August 16, 1954.

GENERAL STATEMENT

Under the 1939 code whether tax benefits and elective rights were available to a successor corporation when the assets of two or more predecessor corporations were combined in a tax-free reorganization or liquidation depended upon the legal form in which the combination was effectuated.

The 1954 code prescribes a series of definite rules under which specified tax benefits, elective rights, and obligations will carry over to successor corporations in certain tax-free liquidations and reorganizations. Included in this list of items is the right to treat the successor corporation as though it were the predecessor corporation for purposes of determining amounts deductible for contributions of an employer corporation to an employees' pension, profit-sharing, and stock bonus trust or annuity plan. This provision in the 1954 code applies, however, only to qualifying tax-free liquidations and reorganizations. The tax treatment of which is determined under the 1954 code.

Cases have been called to the attention of the committee in which a tax-free merger of a subsidiary corporation under the 1939 code was prevented because the corporate laws of the State of incorporation of the subsidiary required that the surviving corporation be incorporated in that State. In these instances the parent corporation (which was incorporated in a different State than the subsidiary) liquidated the subsidiary and acquired its properties in a tax-free liquidation under section 112 (b) (6) of the 1939 code. It was therefore not entitled to utilize the unused excess contributions made by the subsidiary corporation to the employees' pension plan of the subsidiary even though these excess contributions would have been allowable as a carryover to the subsidiary if its corporate existence had not been terminated. Since the successor corporation would have been entitled to the carryover of the unused pension trust contributions of the subsidiary if the tax consequences of liquidation of the subsidiary had been determined under the applicable provisions of the 1954 code, your committee believes that the successor corporation should not be denied this carryover because the liquidation came under the 1939 code.

The bill thus makes the carryover available to the successor corporation in such cases if (1) the corporate laws of the State of incorporation of the subsidiary required the surviving corporation in the case of a merger to be incorporated under the laws of the State of incorporation of the subsidiary and (2) the properties were acquired in a tax-free liquidation of the subsidiary under section 112 (b) (6) of the 1939 code.

Under the bill the successor corporation will therefore be entitled to utilize any unused excess pension contributions of the predecessor in any taxable year beginning after December 31, 1953, and ending after August 16, 1954.

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 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):

SECTION 381 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 381. CARRYOVERS IN CERTAIN CORPORATE ACQUISITIONS.

(a) **GENERAL RULE.**—In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies, except in a case in which the basis of the assets distributed is determined under section 334 (b) (2); or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354 (b) (1) are met), or (F) of section 368 (a) (1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c).

(b) **OPERATING RULES.**—Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368 (a) (1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary or his delegate, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(e) ITEMS OF THE DISTRIBUTOR OR TRANSFEROR CORPORATION.—The items referred to in subsection (a) are:

(1) NET OPERATING LOSS CARRYOVERS.—* * *

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(20) CARRY-OVER OF UNUSED PENSION TRUST DEDUCTIONS IN CERTAIN CASES.—Notwithstanding the other provisions of this section, or section 394 (a), a corporation which has acquired the properties and assumed the liabilities of a wholly owned subsidiary shall be considered to have succeeded to and to be entitled to take into account contributions of the subsidiary to a pension plan, and shall be considered to be the distributor or transferor corporation after the date of distribution or transfer (but not for taxable years with respect to which this paragraph does not apply) for the purpose of determining the amounts deductible under section 404 with respect to contributions to a pension plan if—

(A) the corporate laws of the State of incorporation of the subsidiary required the surviving corporation in the case of merger to be incorporated under the laws of the State of incorporation of the subsidiary; and

(B) the properties were acquired in a liquidation of the subsidiary in a transaction subject to section 112 (b) (8) of the Internal Revenue Code of 1939.

