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84TH CONGRESS, 2d Session | SENATE | REPORT No. 1401

AMENDING SECTION 208 (b) OF THE TECHNICAL CHANGES ACT OF 1953 AND FOR OTHER PURPOSES

JANUARY 19 (legislative day, JANUARY 16), 1956.—Ordered to be printed

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

REPORT

[To accompany H. R. 2667]

The Committee on Finance, to whom was referred the bill (H. R. 2667) to amend section 208 (b) of the Technical Changes Act of 1953 (Public Law 287, 83d Cong.), having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

At the end of the bill add the following:

SEC. 2. Section 2053 of the Internal Revenue Code of 1954 (relating to deductions from the gross estate for expenses, indebtedness, and taxes) is hereby amended by redesignating subsection (d) to be subsection (e) and by adding after subsection (c) a new subsection as follows:

"(d) CERTAIN STATE DEATH TAXES.—

"(1) GENERAL RULE.—Notwithstanding the provisions of subsection (c) (1) (B) of this section, for purposes of the tax imposed by section 2001 the value of the taxable estate may he determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary or his delegate) of any estate, succession, legacy or inheritance tax imposed by a State or Territory or the District of Columbia, or any possession of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055 or 2106 (a) (2). The election shall be exercised in accordance with regulations prescribed by the Secretary or his delegate.

"(2) CONDITION FOR ALLOWANCE OF DEDUCTION.—No deduction shall be allowed under paragraph (1) for a State death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided for in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106 (a) (2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106 (a) (2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106 (a) (2) are required to pay.

"(3) EFFECT OF DEDUCTION ON CREDIT FOR STATE DEATH TAXES.—See section 2011 (e) for the effect of a deduction taken under this subsection on the credit for State death taxes."

SEC. 3. Section 2011 of the Internal Revenue Code of 1954 is amended by adding after subsection (d) a new subsection as follows:

"(e) LIMITATION IN CASES INVOLVING DEDUCTION UNDER SECTION 2053 (d).—In any case where a deduction is allowed under section 2053 (d) for an estate, succession, legacy, or inheritance tax imposed upon a transfer for public, charitable, or religious uses described in section 2055 or 2106 (a) (2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

"(1) The taxes described in subsection (a) shall not include any estate, succession, legacy, or inheritance tax for which a deduction is allowed under section 2053 (d).

"(2) The credit shall not exceed the lesser of—

"(A) the amount stated in subsection (b) on a taxable estate determined by allowing the deduction authorized by section 2053 (d), or

"(B) that proportion of the amount stated in subsection (b) on a taxable estate determined without regard to the deduction authorized by section 2053 (d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) of this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) of this subsection.

"(3) If the amount determined under subparagraph (B) of paragraph (2) is less than the amount determined under subparagraph (A) of that paragraph, then for purposes of subsection (d) such lesser amount shall be the maximum credit provided by subsection (b)."

SEC. 4. The amendments to the Internal Revenue Code of 1954 made by sections 2 and 3 of this Act, and provisions having the same effect as this amendment, which shall be considered to be included in chapter 3 of the Internal Revenue Code of 1939, shall apply to the estates of all decedents dying after December 31, 1953.

Amend the title so as to read:

An Act to amend section 208 (b) of the Technical Changes Act of 1953, and for other purposes.

SECTION 1. AMENDMENT OF SECTION 208 (B) OF THE TECHNICAL CHANGES ACT OF 1953

A. PURPOSE OF SECTION 1

Section 1 of this bill amends section 208 (b) of the Technical Changes Act of 1953 by making that provision applicable to estates of decedents dying after December 31, 1947, instead of to estates of decedents dying after December 31, 1950, as provided in the Technical Changes Act.

B. GENERAL STATEMENT

Section 208 of the Technical Changes Act of 1953 permitted for estate-tax purposes the tax-free release of certain powers over a discretionary trust described in section 1000 (e) of the Internal Revenue Code of 1939, if the grantor was under a mental disability for a continuous period of not less than 3 months beginning before December 31, 1947, and ending with his death. The Technical Changes Act did not extend relief to a grantor under such a disability who died after December 31, 1947, and before January 1, 1951. This amendment would grant relief in such cases. The amendment is effective as if enacted as a part of section 208 (b) of the Technical Changes Act of 1953.

It is estimated that the revenue effect of this provision is negligible.

SECTIONS 2, 3, AND 4. AMENDMENT TO SECTIONS 2011 AND 2053 OF THE INTERNAL REVENUE CODE OF 1954

A. PURPOSE OF SECTIONS 2, 3, AND 4

Your committee has added another provision to this bill. Under present law, a deduction from the Federal estate tax is granted for bequests to charity. Under the provision added by your committee, a deduction would also be granted (subject to certain conditions and limitations) for the amount of any estate, succession, legacy, or inheritance tax imposed by a State upon the transfer by the decedent for public, charitable, or religious uses as described in section 2055 or, in the case of nonresident aliens, section 2106 (a) (2).

Last year a similar provision was reported by your committee as an amendment to H. R. 6887. That bill, as amended, was passed but was not approved by the President. In the statement announcing that he had withheld his approval, the President stated that he was sympathetic with the objectives of the bill but that there were defects in the legislation that caused him to reluctantly withhold his approval from the bill. The provisions of sections 2, 3, and 4 are designed to accomplish the same purpose as the amendment added to H. R. 6887, and your committee has been advised by the Treasury Department that the provisions of this bill meet the objections raised in the President's statement.

In the determination of taxable estates for purposes of the Federal estate tax, deductions are granted by section 2055 (and 2106 (a) (2) in cases of nonresident aliens) for bequests to charity. However, the amount of the deduction is measured by the amount the charity actually receives and not by the gross amount of the bequest. For example, if a State imposes a tax on the charitable bequest and the State tax must be paid from the charitable bequest, the estate tax charitable deduction would be limited to the amount of the bequest less the State tax paid from the bequest, and the Federal estate tax would be increased by the corresponding increase in the taxable estate of the decedent. If the additional Federal estate tax thus arising must also be paid out of the charitable bequest, the charitable deduction will, in turn, be reduced and the estate tax correspondingly increased. By this pyramiding of tax on tax, the Federal estate tax can be increased by much more than the State tax on the bequest, and the combination of these two taxes can result in the actual transfer to charity of an amount considerably less than the original bequest. Your committee's bill will prevent the pyramiding of the Federal estate tax in this manner by granting a deduction to the estate for the amount of the State death tax imposed upon a transfer for charitable purposes if the decrease in the Federal estate tax resulting from this deduction will inure solely to the benefit of a charitable transferee (but not necessarily the same charity that paid the State death tax).

B. EXPLANATION OF SECTIONS 2 AND 3

Section 2 of the bill adds a new subsection (d) to section 2053 of the Internal Revenue Code of 1954. Under subsection (d) (1), the value of the taxable estate may be determined by deducting from the value of the gross estate the amount of any State death taxes upon a transfer

(or transfers) by the decedent for public, charitable, or religious uses described in section 2055 or, in the case of nonresident aliens, section 2106 (a) (2).

Since the deduction which would be authorized by section 2053 (d) might increase the tax payable by some estates, it is provided that the decedent's personal representative must make an election to claim the deduction. The election may be made at any time prior to the time any further assessment of tax against the estate is barred by section 6501 (statute of limitations). The election would be made in accordance with regulations to be prescribed by the Secretary or his delegate. No deduction would be allowed for a State death tax imposed on a bequest to noncharitable beneficiaries.

In order to eliminate any confusion as to the amount of a State estate tax (as distinguished from inheritance, legacy, and succession taxes) which is in effect imposed upon transfers to charity, a provision in subsection (d) (1) authorizes the Secretary or his delegate to prescribe by regulations the method to be followed in allocating the portion of the State estate tax to the charitable transfers.

Under subsection (d) (2), the benefit of the deduction will inure solely to charity where the entire Federal estate tax is payable out of bequests to charity and also in cases where the State death tax is paid by charity and the Federal estate tax is equitably apportioned among all of the beneficiaries (including charity) of property included in the gross estate. The Federal estate tax is equitably apportioned among all the beneficiaries where each beneficiary is required to pay the portion of the tax which is attributable to his bequest, after taking into account any deduction or credit allowed (by the estate tax chapter of the code) with respect to that bequest in the determination of the estate tax payable. The amendment to section 2053 (d) would eliminate this pyramiding of the Federal estate tax at the expense of charity in these two types of cases.

For example, assume that the testator bequeaths $100,000 to A, $100,000 to B, and $100,000 to C, a charity, and directs that each legatee bear his proportionate share of the Federal estate tax based on the net amount of his bequest includible in the taxable estate. Assume also that State X imposes a 15-percent inheritance tax on charitable bequests. On the basis of these facts, the estate would be entitled to a deduction under this section of $15,000 and a charitable deduction of $85,000. Under the provisions of the will, the charity would pay no Federal estate tax because deductions totaling $100,000 allowed in connection with the charitable bequest have the effect of reducing the amount of the charitable bequest includible in the taxable estate to zero. A and B would each, therefore, be required to pay one-half of the Federal estate taxes. In the absence of the deduction of $15,000 allowed under this section, the charity would have been required to bear the Federal estate tax attributable to the inclusion of such amount in the taxable estate. If, on the other hand, the testator directed that A, B, and C each bear one-third of the Federal estate tax, the deduction provided for in this bill would not be allowed. In such case, the charitable deduction is not taken into account and the charity would be required to bear Federal estate tax imposed on the bequests to A and B. Thus, the requirement of the bill that the benefit inure solely to charity would not be satisfied.

Where charity pays the entire Federal estate tax, it naturally would receive all of the benefit of the deduction allowed by subsection (d) (1). It will also receive the benefit of the deduction where charity must pay the portion of the Federal estate tax attributable to the State death tax borne by it since the primary result of the deduction is the elimination of this portion of the Federal estate tax.

In the apportionment cases referred to, the noncharitable beneficiaries receive an incidental benefit by reason of the fact that the average rate of tax imposed on the taxable estate determined by allowing the deduction is lower than the average rate of tax imposed on the taxable estate determined without allowance of the deduction. This incidental benefit resulting from the lowering of the average tax rate would be disregarded in determining whether charity receives the entire benefit of the deduction.

Section 3 of this bill amends section 2011 of the 1954 code, relating to credit for State death taxes. The allowance of this deduction under section 2053 (d) makes certain changes necessary in section 2011 in order that (1) the estate does not receive a credit as well as a deduction for the same payment to a State, (2) the bequest that bears the Federal estate tax attributable to the State death tax on noncharitable transfers will receive the same benefit as under present law, and (3) the change in the method of determining the Federal estate tax will not change the application of State pickup tax laws.

Section 2011 (e) (a new subsection added by sec. 3 of this bill) provides the general rule in paragraph (1) that no credit shall be allowed for any State death tax for which a deduction has been allowed.

Section 2011 (e) (2) provides that the maximum amount allowable as a credit for State death taxes shall not exceed the amount of the credit computed without regard to section 2053 (d) which is attributable to the State death tax on the transfers other than those described in sections 2055 or 2106 (a) (2). This paragraph also provides that the credit for State death taxes shall not exceed the maximum amount that would be allowable for a taxable estate determined by allowing the deduction provided for in section 2053 (d).

Under paragraph (3) of section 2011 (e), the basic estate tax will be determined by reference to the maximum credit allowable under paragraph (2) (B) when the maximum credit allowable is the amount provided under that provision. In a case where the deduction under section 2053 (d) is allowed, the basic estate tax, which forms the basis for the application of State pickup tax laws, would be 125 percent of the maximum credit allowable as described in paragraph (2).

C. EXPLANATION OF SECTION 4

Under section 4 of this bill, the deduction allowed by section 2, together with the provisions in section 3, are considered to be included in the estate tax imposed by the Internal Revenue Code of 1939. Therefore, in the case of decedents dying after December 31, 1953, a deduction may be allowed (at the election of the executor) for the State tax imposed on bequests to charity under the same conditions and limitations that would be available in the case of a decedent dying after the enactment of the 1954 code.

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 changes is proposed is shown in roman):

SECTION 208 OF THE TECHNICAL CHANGES ACT OF 1953

SEC. 208. FAILURE TO RELINQUISH A POWER IN CERTAIN DISABILITY CASES.

(a) AMENDMENT OF SECTION 811 (d).—Section 811 (d) (relating to revocable transfers) is hereby amended by inserting after paragraph (3) thereof the following new paragraph:

"(4) EFFECT OF DISABILITY IN CERTAIN CASES.—For the purposes of this subsection, in the case of a decedent who was (for a continuous period beginning not less than three months before December 31, 1947, and ending with his death) under a mental disability to relinquish a power, the term 'power' shall not include a power the relinquishment of which on or after January 1, 1940, and on or before December 31, 1947, would, by reason of section 1000 (e), be deemed not to be a transfer of property for the purposes of chapter 4."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only with respect to estates of decedents dying after December 31, [1950] *1947.*

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INTERNAL REVENUE CODE OF 1954

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SEC. 2011. CREDIT FOR STATE DEATH TAXES.

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(c) LIMITATION IN CASES INVOLVING DEDUCTION UNDER SECTION 2053 (d).—In any case where a deduction is allowed under section 2053 (d) for an estate, succession, legacy, or inheritance tax imposed upon a transfer for public, charitable, or religious uses described in section 2055 or 2106 (a) (2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

(1) The taxes described in subsection (a) shall not include any estate, succession, legacy, or inheritance tax for which a deduction is allowed under section 2053 (d).

(2) The credit shall not exceed the lesser of—

(A) the amount stated in subsection (b) on a taxable estate determined by allowing the deduction authorized by section 2053 (d), or

(B) that proportion of the amount stated in subsection (b) on a taxable estate determined without regard to the deduction authorized by section 2053 (d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) of this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) of this subsection.

(3) If the amount determined under subparagraph (B) of paragraph (2) is less than the amount determined under subparagraph (A) of that paragraph, then for purposes of subsection (d) such lesser amount shall be the maximum credit provided by subsection (b).

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SEC. 2053. EXPENSES, INDEBTEDNESS, AND TAXES

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(d) CERTAIN STATE DEATH TAXES.—

(1) GENERAL RULE.—Notwithstanding the provisions of subsection (c) (1) (B) of this section, for purposes of the tax imposed by section 2001 the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary or his delegate) of any estate, succession, legacy or inheritance tax imposed by a State or Territory or the District of Columbia, or any possession of the United States, upon a transfer by the decedent for public, charitable, or religious

uses described in section 2055 or 2106 (a) (2). The election shall be exercised in accordance with regulations prescribed by the Secretary or his delegate.

(2) CONDITION FOR ALLOWANCE OF DEDUCTION.—No deduction shall be allowed under paragraph (1) for a State death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided for in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106 (a) (2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106 (a) (2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106 (a) (2) are required to pay.

(3) EFFECT OF DEDUCTION ON CREDIT FOR STATE DEATH TAXES.—See section 2011 (a) for the effect of a deduction taken under this subsection on the credit for State death taxes.

[(d)] (e) MARITAL RIGHTS.—

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