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CREDIT AGAINST ESTATE TAX FOR TAX ON CERTAIN PRIOR TRANSFERS

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

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

R E P O R T

[To accompany H. R. 7054]

The Committee on Finance, to whom was referred the bill (H. R. 7054) to amend the Internal Revenue Code of 1939 to provide a credit against the estate tax for Federal estate taxes paid on certain prior transfers, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 8, after "transferor)", insert "who was the spouse of the decedent at the time of such person's death and".

Page 2, line 8, strike out "six months" and insert "2 years".

Page 3, line 3, strike out "6 months" and insert "2 years".

PURPOSE OF BILL

This bill adds a new section 814 to the Internal Revenue Code of 1939 providing that an executor of an estate may elect to take a credit against the estate tax for the amount of tax paid on property passing to the decedent from a person who was the spouse of the decedent at the time of such person's death and who died within 2 years prior to decedent's death. Those who claim such a credit must forego any deduction for previously taxed property allowed by section 812 (c) of the 1939 code. This new election is to be available with respect to estates of decedents dying after December 31, 1951, and before August 16, 1954.

GENERAL STATEMENT

Section 812 (c) of the 1939 code provided a deduction from the gross estate for the value of property included in the decedent's gross estate which had previously been taxed as part of the estate of an individual who died within 5 years prior to the death of the decedent.

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The deduction was also available with respect to taxable gifts received by the decedent within 5 years prior to his death. To qualify for the deduction it had to be possible to trace the property in the decedent's estate to the prior decedent or donor. Moreover, no deduction for previously taxed property was allowed if the property was received from a prior decedent who was the decedent's spouse. While section 812 (e) allowed a marital deduction for an amount equal to the value of property passing from a decedent to his surviving spouse, this deduction was limited to 50 percent of the value of the adjusted gross estate of the decedent.

Numerous objections were raised to the deduction for previously taxed property under the 1939 code. These include the fact that a deduction for property taxed in a prior estate is an unsatisfactory measure of the tax previously borne by that property, the difficulties faced in attempting to comply with the "tracing" rule, and the inequity in denying any tax relief in the case of property passing to a spouse in excess of amounts for which a marital deduction can be taken. As a result Congress in the Internal Revenue Code of 1954 (sec. 2013) allowed as a credit against the decedent's tax all, or a portion, of an estate tax previously paid with respect to property transferred to the decedent within 10 years prior to (or 2 years after) his death. Moreover, account was taken of tax previously paid where property was included in the estate of the spouse and where the transfer to the decedent was in excess of the amount for which a marital deduction could be taken.

The credit provided in the 1954 code only applies, however, in the case of decedents dying after the effective date of the 1954 code, namely, August 16, 1954. Cases of hardship under the 1939 code have been called to your committee's attention which deserve the relief provided under the 1954 code. These are cases where a husband and wife, for example, have died within a short time of each other and where most of the estate of the first decedent passed to the spouse. In such cases, to the extent the property passing to the spouse exceeded the amount which could be taken as a marital deduction, there has been a substantial diminution of estates by the successive levying of death taxes within a brief period of time. Therefore, your committee has made the credit for estate taxes paid on prior transfers available in certain cases under the 1939 code.

Your committee has made two amendments to the bill. First, the bill has been extended to cover cases in which the decedent dies within 2 years of the death of the transferor rather than within 6 months as provided in the House bill. This extension of the period to 2 years corresponds with the period for which a full credit is given under section 2039 of the 1954 code. Second, the bill has been restricted to instances in which the transferor of the property was the spouse of the decedent at the time of the transferor's death. Section 812 (c) of the 1939 code denied the deduction to property previously taxed in the case of certain transfers between spouses and this restriction imposed the hardship from which your committee believes relief should be granted.

EXPLANATION OF BILL

Subsection (a) of the new section 814 of the 1939 code provides that executors may elect to claim a credit for the Federal estate tax

paid with respect to the transfer of property to the decedent by another person who was the spouse of the decedent at the time of such person's death and who died within 2 years before the decedent's death. This is to be available only with respect to decedents dying after December 31, 1951, where the 1939 code applies. The transfer of property in this case includes property passing as the result of the exercise or non-exercise of a power of appointment. There is no need to provide for reductions in the credit (as under the 1954 code) where the prior decedent predeceased the decedent by more than 2 years, since the new section 814 of the 1939 code only applies where the prior decedent died within 2 years before the decedent.

Subsections (b), (c), (d), and (e) of the new section 814 as reported by your committee are the same in substance as the corresponding subsections of section 2013 of the 1954 code. Subsection (b) deals with the computation of the credit and in general determines the tax paid by the prior decedent which is attributable to property transferred to the decedent. Subsection (c) in general provides that the credit allowed is not to exceed the benefit the decedent would have derived from the omission of the property previously taxed from the base for his estate tax. Subsection (d) relates to the valuation of the property transferred to determine the proportion of the decedent's estate it represents. In general its value is to be its value for purposes of determining the Federal estate tax of the prior decedent reduced by any death tax paid out of this property, any obligations imposed with respect to the property transferred to the decedent, and any marital deduction claimed by the prior decedent with respect to the property transferred to the decedent. Subsection (e) provides that the term "property" includes a beneficial interest in property, including a general power of appointment.

Subsection (f), which does not correspond to any provision in the 1954 code, provides that if the executor claims the credit provided by the new section 814 of the 1939 code he may not take a deduction (under sec. 812 (c)) for property previously taxed. No such deduction is available under the 1954 code.

This bill has been reported unanimously by your committee.

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):

INTERNAL REVENUE CODE OF 1939
* * * * *
CHAPTER 3—ESTATE TAX
* * * * *
Subchapter A—Basic Estate Tax
* * * * *
PART II—ESTATES OF CITIZENS OR RESIDENTS OF THE UNITED STATES
* * * * *
Subpart I—Computation of Tax
* * * * *

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SEC. 814. CREDIT FOR TAX ON CERTAIN PRIOR TRANSFERS.

(a) **GENERAL RULE.**—If the executor so elects, the tax imposed by sections 810 and 935 in the case of a decedent (but only if the decedent was a citizen or resident of the United States at the time of his death) dying after December 31, 1951, shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of property (including property passing as a result of the exercise or nonexercise of a power of appointment) to the decedent by or from a person (herein designated as a "transferor") who was the spouse of the decedent at the time of such person's death and who died within 2 years before the decedent's death. The credit shall be the amount determined under subsections (b) and (c).

(b) **COMPUTATION OF CREDIT.**—Subject to the limitation prescribed in subsection (c), the credit provided by this section shall be an amount which bears the same ratio to the estate tax paid (adjusted as indicated hereinafter) with respect to the estate of the transferor as the value of the property transferred bears to the net estate of the transferor (determined for purposes of the tax imposed by section 935) decreased by any death taxes paid with respect to such estate and increased by the exemption provided for by section 935 (c) in determining the net estate of the transferor for purposes of the estate tax. For purposes of the preceding sentence, the estate tax paid shall be the Federal estate tax paid increased by any credits allowed against such estate tax under sections 813 (a) and 936 (b) on account of gift tax, and for any credits allowed against such estate tax under this section on account of prior transfers where the transferor acquired property from a person who died within 2 years before the death of the decedent.

(c) **LIMITATION ON CREDIT.**—

(1) **IN GENERAL.**—The credit provided in this section shall not exceed the amount by which—

(A) the estate tax imposed by sections 810 and 935 (after deducting the credits for State death taxes, gift tax, and foreign death taxes provided for in sections 810, 813, and 936) computed without regard to this section, exceeds

(B) such tax computed by excluding from the decedent's gross estate the value of such property transferred and, if applicable, by making the adjustment hereinafter indicated.

If any deduction is otherwise allowable under section 812 (d) (relating to charitable deduction) then, for the purpose of the computation indicated in subparagraph (B), the amount of such deduction shall be reduced by that part of such deduction which the value of such property transferred bears to the decedent's entire gross estate reduced by the deductions allowed under section 812 (b) (relating to deduction for expenses, losses, etc.). For purposes of this section, the value of such property transferred shall be the value as provided for in subsection (d) of this section.

(2) **TWO OR MORE TRANSFERORS.**—If the credit provided in this section relates to property received from two or more transferors, the limitation provided in paragraph (1) of this subsection shall be computed by aggregating the value of the property so transferred to the decedent. The aggregate limitation so determined shall be apportioned in accordance with the value of the property transferred to the decedent by each transferor.

(d) **VALUATION OF PROPERTY TRANSFERRED.**—The value of property transferred to the decedent shall be the value used for the purpose of determining the Federal estate tax liability of the estate of the transferor but—

(1) there shall be taken into account the effect of the tax imposed by sections 810 and 935, or any estate, succession, legacy, or inheritance tax, on the net value to the decedent of such property;

(2) where such property is encumbered in any manner, or where the decedent incurs any obligation imposed by the transferor with respect to such property, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to the decedent of such property was being determined; and

(3) if the decedent was the spouse of the transferor at the time of the transferor's death, the net value of the property transferred to the decedent shall be reduced by the amount allowed under section 812 (e) (relating to marital deductions) as a deduction from the gross estate of the transferor.

(e) **PROPERTY DEFINED.**—For purposes of this section, the term "property" includes any beneficial interest in property, including a general power of appointment (as defined in section 811 (f)).

(f) **DENIAL OF DEDUCTION FOR PROPERTY PREVIOUSLY TAXED.**—If the executor elects the credit provided by this section, the deduction provided by section 812 (c) shall not be allowed.

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