

CHARITABLE DEDUCTION FOR CERTAIN BEQUESTS

JULY 25 (legislative, day JULY 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. 11834]

The Committee on Finance, to whom was referred the bill (H. R. 11834) to allow a charitable deduction for certain bequests, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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

I. PURPOSE OF BILL

The purpose of this bill is to allow a deduction for estate-tax purposes in the case of certain bequests in trust with respect to which no deduction is presently allowable. Under this bill, a deduction will be allowed to the extent that the donee of a testamentary power of appointment over the corpus of the trust declares by affidavit his intention, within 1 year of the decedent's death, to exercise the power in favor of specified charitable organizations and the power is exercised in the manner stated in the affidavit. This bill will apply only if the donee of the power is over 80 years of age at the time of the decedent's death.

II. REASONS FOR BILL

Under present law, a deduction is allowed for estate-tax purposes for the amount of a bequest to a corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying

on propaganda, or otherwise attempting, to influence legislation. This deduction also is allowed if an interest passes to such an organization by reason of a disclaimer made before the date prescribed for the filing of the estate-tax return. In some instances, however, it is not feasible for a legatee to allow a bequest to pass to charity by disclaiming it. For example, in the case of a bequest in trust where the income is payable to the surviving spouse of the decedent for life and the remainder to whomever the surviving spouse may appoint, the holder of the power of appointment could allow the property to pass to charity by disclaiming the power only if a charitable organization was named as the taker in default. This would be the result even if the donee is over 80 years old and has a relatively short life expectancy.

Under this bill, such a donee, if over 80 at the time of the decedent's death, may specify within 1 year after the death of the decedent a charitable organization that will receive a portion of the corpus, and if the power of appointment is actually exercised in the manner specified, the estate of the decedent will receive a deduction for the portion of the bequest which is transferred to the charitable organization in this manner.

III. EXPLANATION OF BILL

Section 1 of this bill adds a new paragraph (2) to subsection (b) (powers of appointment of section 2055 (transfers for public, charitable, and religious uses) of the 1954 Code. The provision of section 2055 (b) of present law is designated as paragraph (1). The new provision, subsection (b) (2), will apply in certain cases where the surviving spouse of the decedent is entitled for life to all of the net income from a bequest in trust and has a power of appointment over the corpus of the trust exercisable by will in favor of organizations described in subsection (a) (2) (corporations organized and operated exclusively for religious, charitable, etc., purposes). Under this provision, the exercise of the power of appointment in favor of organizations described in subsection (a) (2) shall be deemed a transfer to such organizations by the decedent if:

(A) No part of the corpus of the trust is distributed to a beneficiary during the life of the surviving spouse. Thus, if there is any right to invade the corpus of the trust during the life of the surviving spouse, such right cannot be exercised if this provision is to be applicable.

(B) The surviving spouse must be over 80 years of age at the date of the decedent's death.

(C) The surviving spouse by affidavit executed within 1 year after the death of the decedent specified the organizations described in subsection (a) (2) in favor of which he intends to exercise the power of appointment and indicates the amount or proportion each such organization is to receive. Under this requirement the surviving spouse must specify the organizations in whose favor he intends to exercise the power of appointment and, to the extent that he fails to so specify or

that he specifies an organization that is not described under the provisions of subsection (a) (2) in effect at the time of the decedent's death, no deduction will be allowed the estate of the decedent under this paragraph. However, the affidavit may be conditional, for example, it would be appropriate to specify that one-third of the corpus of the trust will be distributed to X corporation, but if such corporation does not meet certain conditions, such interest shall pass to Z university. The affidavit would meet the requirements of this provision if X and Z were organizations described in subsection (a) (2).

(D) The power of appointment is exercised in favor of the organizations named in the affidavit and in the amount or proportions specified in the affidavit.

The affidavit referred to will be attached to the estate-tax return of the decedent. Any deduction claimed pursuant to this paragraph is not subject to disallowance by the Secretary or his delegate until the occurrence of some event which makes it certain that the deduction is not allowable.

In determining the amount of the deduction allowable to the estate of the decedent, the amount deductible cannot exceed the value of the amount of the transfer in trust less the value of the life estate in the surviving spouse. If, for example, 90 percent of the corpus is transferred to charity in accord with the terms of the affidavit described above and the other conditions in the paragraph are satisfied, the estate of the decedent will receive a deduction for 90 percent of the difference between the value of the bequest and the value of the life estate. If the affidavit specifies amounts rather than proportions, the deduction will be the amount so specified less the value of the life estate, but in no case can the sum of the amounts exceed the value of the corpus that would pass to charity if the corpus had been so distributed on the date the transfer is valued for estate-tax purposes.

Section 2 of this bill provides that the period of limitations for assessment or collection of the estate tax in respect of the estate of the decedent will not expire until 30 days after the expiration of the period for assessment or collection of the tax imposed on the estate of the surviving spouse if the decedent claims a deduction for a bequest described in section 2055 (b) (2).

Section 3 of the bill provides that the amendments made by this act will apply in the case of decedents dying after August 16, 1954, which was the effective date for the estate-tax chapter 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 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 2055 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 2055. TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES.

(a) IN GENERAL.—* * *

(b) POWERS OF APPOINTMENT.—

(1) GENERAL RULE.—Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

(2) SPECIAL RULE FOR CERTAIN REQUESTS SUBJECT TO POWER OF APPOINTMENT.—For the purposes of this section, in the case of a bequest in trust if the surviving spouse of the decedent is entitled for life to all of the net income from the trust and such surviving spouse has a power of appointment over the corpus of such trust exercisable by will in favor of, among others, organizations described in subsection (a) (2) such bequest in trust, reduced by the value of the life estate, shall, to the extent such power is exercised in favor of such organizations, be deemed a transfer to such organizations by the decedent if—

(A) no part of the corpus of such trust is distributed to a beneficiary during the life of the surviving spouse;

(B) such surviving spouse was over 80 years of age at the date of the decedent's death;

(C) such surviving spouse by affidavit executed within one year after the death of the decedent specifies the organizations described in subsection (a) (2) in favor of which he intends to exercise the power of appointment and indicates the amount or proportion each such organization is to receive; and

(D) the power of appointment is exercised in favor of such organizations and in the amounts or proportions specified in the affidavit required under subparagraph (C).

The affidavit referred to in subparagraph (C) shall be attached to the estate tax return of the decedent and shall constitute a sufficient basis for the allowance of the deduction under this paragraph in the first instance subject to a later disallowance of the deduction if the conditions herein specified are not complied with.

* * * * *

SEC. 6503. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION

* * * * *

(e) [CROSS REFERENCES.—] CERTAIN POWERS OF APPOINTMENT.—The running of the period of limitations for assessment or collection of any tax imposed by chapter 11 shall be suspended in respect of the estate of a decedent claiming a deduction under section 2055 (b) (2) until 30 days after the expiration of the period for assessment or collection of the tax imposed by chapter 11 on the estate of the surviving spouse.

(f) CROSS REFERENCES.—* * *