

## AMENDING SECTION 812 (e) (1) (D) OF THE INTERNAL REVENUE CODE OF 1939

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

### REPORT

[To accompany H. R. 5938]

The Committee on Finance, to whom was referred the bill (H. R. 5938) to amend section 812 (e) (1) (D) of the Internal Revenue Code of 1939 with respect to certain decedents who were adjudged incompetent before April 2, 1948, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### I. GENERAL STATEMENT

Section 812 (e) of the 1939 code provides a marital deduction for estate-tax purposes with respect to interests in property passing to a surviving husband or wife. However, where the spouse's interest in the property may terminate, or where the interest may fail to pass to the spouse, the marital deduction is available only if the termination of the interest or the failure of the interest in property to pass to the surviving spouse may occur only within the 6 months immediately after the decedent's death, or as the result of a common disaster resulting in the death of both the husband and wife. This bill adds another exception whereby another type of terminable interest will be eligible for the marital deduction. It provides that the marital deduction will be available in the case of terminable interests passing to a surviving spouse where the event which could terminate the interest becomes impossible of occurrence within 6 months of the decedent's death. However, this exception to the general rule will be available under the bill only in the case of decedents adjudged incompetent before April 2, 1948, the effective date of the act providing the marital deduction, who were not restored to competency before their death. This provision is effective with respect to decedents dying after April 2, 1948.

## II. REASONS FOR THE BILL

The Revenue Act of 1948 provided a marital deduction as a part of a program of equalizing taxes between community property and non-community property States. In general, an individual is allowed a deduction in computing his estate tax for property going to a surviving spouse. The deduction is limited, however, to 50 percent of his gross estate.

Before the passage of the Revenue Act of 1948, it was quite common for wills to provide that a spouse must survive the administration of the decedent's estate in order to receive some specified property. Under the Revenue Act of 1948, however, the marital deduction was made available in these cases only where the property would go to the surviving spouse within 6 months after the death of the decedent and only then if the transfer actually occurred. As a result, many wills were changed after the passage of the 1948 act to provide that property was to pass to the surviving spouse within 6 months after the decedent's death rather than upon the completion of the administration of the decedent's estate.

Cases have come to the attention of your committee, however, where individuals became mentally or otherwise incompetent before the passage of the 1948 act on April 2, 1948, and did not regain competency before their death. These individuals were not in a position to change their wills after the passage of the 1948 act and before their deaths. As a result their estates were denied the benefits of the marital deduction. Your committee believes that it is unfair to deny the benefits of the marital deduction in these cases where, although the instrument under which the property passed to the spouse did not require it, the property actually did pass to the surviving spouse within 6 months after the date of the decedent's death, the same period of time in which the property must pass to the surviving spouse under present law to qualify. In the absence of the incompetency on the part of the decedent, the provisions of the will would normally have been changed to qualify the estates for the marital deduction. Where there is this incompetency, your committee does not believe that it is desirable for the Government to impose a heavier estate tax than in the other situations.

## III. EXPLANATION OF THE BILL

Section 812 (e) (1) (A) of the 1939 code provides a marital deduction for estate-tax purposes with respect to the value of interest in property passing from the decedent to his surviving spouse to the extent that the interest is includible in determining the value of the decedent's gross estate. Subparagraph (B), however, provides an exception to the general rule in subparagraph (A). It provides that the marital deduction is not to be available if the interest in property passing to the surviving spouse will terminate or fail upon the lapse of a period of time or occurrence or nonoccurrence of an event or contingency.

Subparagraph (D) provides certain exceptions to the rule in subparagraph (B), or in other words provides that despite subparagraph (B) the marital deduction will be available in certain cases where an interest in property passing to a surviving spouse may terminate or

fail to occur. The exceptions presently provided in subparagraph (D) relate to terminations or failures of interests which may occur only within a period of not more than 6 months after the decedent's death or may occur only as the result of a common disaster resulting in the death of both the decedent and the surviving spouse (or in the case of either of these events). However, these exceptions are applicable only if the termination or failure of the interest to pass to the surviving spouse does not in fact occur.

The bill adds another exception in subparagraph (D) which will have the effect of making a marital deduction available in the case of another type of terminable interest in property passing to a surviving spouse. It provides that for purposes of subparagraph (B) (the subparagraph which generally denies a marital deduction for terminable interests or those which may fail), an event or contingency is not to be considered as one upon the occurrence of which an interest passing to a surviving spouse will terminate or fail if two specific conditions are met. It must become impossible for the event or contingency to occur within 6 months after the date of the decedent's death. Thus, in effect, the property must actually pass to the surviving spouse within that period of time. In addition, the decedent must have been adjudged incompetent before April 2, 1948, the date of the enactment of the Revenue Act of 1948 and must not have been restored to competency before his death. The determination of incompetency must, of course, have been made in conformity with applicable local law.

The amendment made to the 1939 Code by this act is to apply to decedents dying after April 2, 1948. No interest is to be paid or allowed with respect to refunds resulting from this bill.

It is estimated that this bill will result in a negligible revenue loss.

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 812 (e) (1) (D) OF THE INTERNAL REVENUE CODE OF 1939

SEC. 812. NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

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(e) BEQUEST, ETC., TO SURVIVING SPOUSE.—

(1) ALLOWANCE OF MARITAL DEDUCTION.—

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(D) INTEREST OF SPOUSE CONDITIONAL ON SURVIVAL FOR LIMITED PERIOD.—For the purpose of subparagraph (B) an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail upon the death of such spouse if—

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(i) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding six months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(ii) such termination or failure does not in fact occur.

*For the purposes of subparagraph (B), an event or contingency shall not be considered an event or contingency upon the occurrence of which an interest passing to the surviving spouse will terminate or fail if—*

*(iii) within six months after the date of the decedent's death, such event or contingency becomes impossible of occurrence; and*

*(iv) the decedent was adjudged incompetent before April 2, 1948, and was not restored to competency before his death.*

