

ADMISSIONS TO CERTAIN MUSICAL PERFORMANCES AND ATHLETIC EVENTS

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

R E P O R T

[To accompany H. R. 8794]

The Committee on Finance, to whom was referred the bill (H. R. 8794) to provide an exemption from the tax imposed on admissions for admissions to certain musical performances, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

In general, the amendments made to the bill provide exemptions from the admissions tax for athletic games between teams composed of students from elementary or secondary schools or colleges: (1) where the gross proceeds are divided between the schools or colleges involved and hospitals for crippled children and (2) where the proceeds inure to an exempt educational, charitable or religious organization operated exclusively for the purpose of aiding and advancing retarded children.

I. GENERAL STATEMENT

This bill makes three changes in the exemptions from the excise tax on admissions. These are as follows:

(1) Present law provides an exemption for "concerts" conducted by nonprofit, civic or community membership associations. This bill, as passed by the House, substitutes the words "musical performances" for the word "concerts." Thus, an exemption will be available to nonprofit civic or community membership associations not only in the case of ballets, operas, operettas, symphonic orchestra concerts, and concerts and performances by local groups, but also in the case of musical comedies and reviews.

(2) In the case of athletic games or exhibitions between teams composed of students from elementary or secondary schools or colleges, present law provides an exemption from the admissions tax if the proceeds inure to the benefit of a hospital for crippled children. Present law also provides an exemption in such cases where

the proceeds inure exclusively to the benefit of the educational institutions involved in the athletic event. The bill, as amended by your committee, provides an exemption in the case of these athletic games or exhibitions where the proceeds are divided between the educational institutions involved and hospitals for crippled children.

(3) As indicated above, present law provides an exemption from the admissions tax in the case of athletic games or exhibitions between teams composed of students from elementary or secondary schools or colleges if the proceeds inure to the benefit of a hospital for crippled children. The bill, as amended by your committee, extends this exemption to tax-exempt educational, charitable, or religious organizations operated exclusively for the purpose of benefiting retarded children.

II. REASONS FOR BILL

A number of exemptions are provided under present law in the case of the excise tax of 1 cent for each 10 cents charged for general admissions (if the charge is in excess of 90 cents). Three changes will be made to this list by H. R. 8794 as amended by your committee.

A. Musical performances

Section 4233 (a) (3) of present law exempts certain concerts from the admissions tax. This exemption is for any admissions to concerts conducted by a civic or community membership association if no part of the net earnings inures to the benefit of stockholders or members of the association.

A number of nonprofit civic or community associations have assumed that this exemption applied to all of the musical performances they conducted, and as a result they have sold tickets tax free on this assumption. Moreover, the Internal Revenue Service has held a substantial list of musical performances, when conducted by one of these associations, to be exempt from the admissions tax as "concerts." These include performances by symphony orchestras, bands, and vocal groups, and also such performances as ballets, classical dances, operas, and light operas. Despite this, the Internal Revenue Service recently held that the term "concerts" does not include musical comedies or reviews put on by these associations and that, as a result, such performances when conducted by these organizations are subject to the admissions tax.

Your committee believes that the present definition of the Service as to what constitutes a "concert" and therefore, what results in an exemption from the admissions tax when conducted by one of these nonprofit civic or community membership associations, is arbitrary and should be changed. Your committee sees no reason, for example, to exempt "light operas" when conducted by such an association and not to exempt a musical comedy or review which may be presented by the same organization at its next performance.

The first section of the bill, therefore, substitutes the words "musical performances" for the word "concerts" in the exemption from the admissions tax presently provided for nonprofit civic or community membership associations. In the case of these organizations this will provide an exemption not only in the case of all performances previously classified as "concerts" but also in the case of musical comedies and reviews.

This change will be effective with respect to amounts paid on or after the first day of the first month which begins more than 10 days after the date of enactment of this bill.

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

B. Athletic games where proceeds are divided between hospitals for crippled children and the schools involved

The attention of your committee has been directed to cases where athletic games are played between college teams where the colleges involved are paid a flat guaranty and the proceeds remaining are turned over to hospitals for crippled children. Since the proceeds do not inure exclusively to the schools, or exclusively to the hospitals for crippled children, the Internal Revenue Service has held that no exemption is available with respect to the admissions charged for these games. This holding appears to be in accord with the specific words of the statute but has an arbitrary effect. Since an exemption is provided under present law in the case of these athletic games where all of the proceeds inure to the colleges involved, or to hospitals for crippled children, your committee believes that an exemption should also be available where the proceeds are divided between the hospitals for crippled children and the schools or colleges involved. Section 2 of the bill as amended by your committee amends the sentence at the end of section 4233 (a) (1) (C) of the code to accomplish this result.

This change will be effective with respect to amounts paid on or after the first day of the first month which begins more than 10 days after the date of enactment of this bill.

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

C. Athletic games for benefit of retarded children

Instances have also come to the attention of your committee where all-star athletic games are played between teams composed of students from various schools or colleges where the proceeds from the game are turned over to tax-exempt educational, charitable, and religious organizations which are operated exclusively for the purpose of aiding and advancing retarded children. Present law would exempt admissions to such athletic games if the proceeds were turned over to hospitals for crippled children but not where the funds are used to benefit retarded children. Cases where the proceeds are used for the purpose of aiding and advancing retarded children appears to be a purpose quite similar to that of benefiting hospitals for crippled children and equally to merit exemption from the admissions tax. Therefore, section 3 of the bill, as amended by your committee, adds a new paragraph (11) to section 4233 (a) of the Code to accomplish this result.

This new exemption will be effective with respect to amounts paid on or after the first day of the first month which begins more than 10 days after the date of enactment of this bill.

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

III. 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 *italic*, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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SEC. 4233. EXEMPTIONS.

(a) ALLOWANCE.—No tax shall be imposed under section 4231 in respect of:

(1) CERTAIN RELIGIOUS, EDUCATIONAL, OR CHARITABLE ENTERTAINMENTS, ETC.—

(A) IN GENERAL.—Except as provided in subparagraph (C), any admissions all the proceeds of which inure exclusively to the benefit of—

(i) a church or a convention or association of churches;

(ii) an educational institution described in section 501

(c) (3) which is exempt from tax under section 501 (a) or which is an educational institution of a government or political subdivision thereof, if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on;

(iii) a corporation or any community chest, fund, or foundation organized and operated exclusively for charitable purposes, described in section 501 (c) (3) which is exempt from tax under section 501 (a), if such corporation or organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions from the general public;

(iv) a society or organization conducted for the sole purpose of maintaining symphony orchestras or operas and receiving substantial support from voluntary contributions;

(v) an organization (organized prior to October 1, 1951) described in section 501 (c) (3) which is exempt from tax under section 501 (a) and which is operated for the purpose of conducting an annual chautauqua program of educational, cultural, and religious activities at a permanent location;

(vi) National Guard organizations, Reserve officers' associations or organizations, posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions—

if no part of the net earnings thereof inures to the benefit of any private stockholder or individual.

(B) POLICEMEN'S AND FIREMEN'S DISABILITY FUNDS.—Except as provided in subparagraph (C), any admissions all the proceeds of which inure exclusively to the benefit of a police or fire department of any city, town, village, or

any municipality or exclusively to a retirement, pension, or disability fund for the sole benefit of members of such a police or fire department or to a fund for the heirs of such members.

(C) NONEXEMPT ADMISSIONS.—The exemption provided under subparagraph (A) or (B) shall not apply in the case of admissions to—

(i) any athletic game or exhibition unless the proceeds inure exclusively to the benefit of an elementary or secondary school or unless in the case of an athletic game between teams composed of students from elementary or secondary schools, or colleges, the entire gross proceeds from such game inure to the benefit of a hospital for crippled children,

(ii) wrestling matches, prize fights, or boxing, sparring, or other pugilistic matches or exhibitions,

(iii) carnivals, rodeos (except as provided in paragraph (9)), or circuses in which any professional performer or operator participates for compensation, or

(iv) any motion picture exhibition.

Clauses (i) and (ii) shall not apply in the case of any athletic event between educational institutions held during the regular athletic season for such event, if the proceeds therefrom inure exclusively to the benefit of such institutions or to the benefit of hospitals for crippled children, or both.

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(3) CERTAIN [CONCERTS] MUSICAL PERFORMANCES.—Any admissions to [concerts] musical performances conducted by a civic or community membership association if no part of the net earnings thereof inures to the benefit of any stockholders or members of such association.

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(11) ATHLETIC GAMES FOR BENEFIT OF RETARDED CHILDREN.—Any admissions to an athletic game between teams composed of students from elementary or secondary schools, or colleges, if the proceeds from such game inure exclusively to the benefit of an organization described in section 501 (c) (3) which is exempt from tax under section 501 (a) and which is operated exclusively for the purpose of aiding and advancing retarded children.

