

ESTATE TAX DEDUCTION FOR CHARITABLE TRANSFERS SUBJECTED TO FOREIGN DEATH TAXES

JULY 8, 1959.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 137]

The Committee on Finance, to whom was referred the bill (H.R. 137) to allow a deduction, for Federal estate tax purposes, in the case of certain transfers to charities which are subjected to foreign death taxes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment made by your committee makes the provisions of the bill apply with respect to the estates of decedents dying on or after July 1, 1955, instead of only with respect to the estates of decedents dying after the date of enactment of the bill, as provided by the bill as it passed the House.

I. SUMMARY

This bill prevents a pyramiding of Federal estate taxes where foreign death taxes are imposed on charitable bequests. This is accomplished by allowing a deduction for estate tax purposes for foreign death taxes imposed (and paid) on charitable bequests if (1) the property on which the tax is imposed is situated in the foreign country and included in the gross estate of a citizen or resident of the United States, and (2) if the decrease in tax resulting from the deduction is to go to charities (or the entire Federal estate tax is to be equitably apportioned among all of the transferees of the estate). Where this deduction is allowed, no credit against the estate tax is to be available for the foreign taxes which are deducted. This provision as amended by your committee is effective with respect to the estates of decedents dying on or after July 1, 1955.

The deduction provided by this bill for foreign death taxes is the same as that provided by present law for State death taxes.

2 ESTATE TAX DEDUCTION FOR CERTAIN CHARITABLE TRANSFERS

II. GENERAL STATEMENT

Under present law a deduction from the Federal estate tax is granted for bequests for charity (sec. 2055). However, States, and also foreign countries, do not always follow the same rules as the Federal Government in determining what constitute deductible, charitable bequests. As a result, even though a decedent leaves a residuary interest in his estate to what for Federal tax purposes would be considered a deductible, charitable purpose, a State or foreign government may impose a tax with respect to this amount. Before the enactment of Public Law 414 in the 84th Congress (1956) where such a State death tax was imposed in the case of a residuary interest, this reduced the size of the charitable bequest which could be taken as a deduction for Federal estate-tax purposes, since the State death taxes were paid out of the residuary interest thus reducing the charitable bequest. This increase in tax again decreased the net charitable bequest which still further increased the Federal tax. By this pyramiding of tax on tax, the Federal estate tax could be increased by much more than the estate tax on the bequest, and the combination of these two taxes could result in the actual transfer to charity of an amount considerably less than the original bequest. In Public Law 414 Congress recognized the hardship in such cases and prevented the pyramiding of the Federal estate tax by granting a deduction to the estate for the amount of the State death taxes imposed upon a charitable transfer, if the decrease in Federal estate tax resulting from this deduction inures solely to the benefit of a charitable transferee (or the entire Federal estate tax is equitably apportioned among all of the transferees).

The action taken in 1956, however, related only to death taxes imposed on charitable bequests by States, Territories, the District of Columbia, and possessions of the United States. It did not relate to death taxes imposed by foreign countries. Your committee agrees that since the same pyramiding of Federal estate tax can occur where foreign death taxes are imposed with respect to charitable bequests as where State death taxes are involved, the deduction presently granted for the State death taxes imposed on charitable bequests should also be available for foreign death taxes imposed on charitable bequests.

As a result the first section of this bill amends section 2053(d) of the code to provide that an executor may elect to take a deduction for an estate, succession, legacy, or inheritance tax imposed by, and actually paid to, any foreign country with respect to property situated within that foreign country if the property is included in the gross estate of a citizen or resident of the United States and is property which would otherwise be transferred for public, charitable, or religious uses (as described in sec. 2055). As is presently true in the case of the deduction for State death taxes, the deduction for foreign death taxes is to be allowed only if the decrease in tax resulting from the additional deduction provided from the Federal estate tax inures solely to the benefit of public, charitable or religious transferees (or where the entire Federal estate tax is equitably apportioned among all of the transferees of the property included in the gross estate). The election to take this deduction must be made within the period of limitations for assessment.

Where a deduction is taken (under sec. 2053(d)) for any death tax imposed by, and actually paid to, a foreign country upon a transfer which would otherwise inure to public, charitable, or religious purposes, no foreign tax credit (sec. 2014) is allowed for the foreign taxes so deducted. An election to take the deduction for the foreign taxes is to be deemed to be a waiver of the right to claim any credit for the foreign death taxes under a treaty. It is also provided that for purposes of determining the limitation applicable with respect to the credit for foreign death taxes (sec. 2014(b)), the property with respect to which the deduction is taken is not, for this purpose, treated as property taxed by the foreign country.

The deduction for foreign death taxes in the case of transfers for charitable, etc., purposes is to be available in the case of decedents dying on or after July 1, 1955, rather than only in the case of decedents dying after the date of enactment of the bill, as provided by the House.

III. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIV 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

Subtitle B—Estate And Gift Tax

* * * * *

CHAPTER 11—ESTATE TAX

* * * * *

Subchapter A—Estates of Citizens or Residents

* * * * *

PART II—CREDITS AGAINST TAX

* * * * *

SEC. 2011. CREDIT FOR STATE DEATH TAXES.

* * * * *

(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] by a State or Territory or the District of Columbia 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] such deduction is allowed under section 2053(d).

4 ESTATE TAX DEDUCTION FOR CERTAIN CHARITABLE TRANSFERS

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

(A) the amount stated in subsection (b) on a taxable estate determined by allowing [the] *such* 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] *such* 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 lessees amount shall be the maximum credit provided by subsection (b).

* * * * *

SEC. 2014. CREDIT FOR FOREIGN DEATH TAXES.

(a) **IN GENERAL.**—The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property situated within such foreign country and included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). If the decedent at the time of his death was not a citizen of the United States, credit shall not be allowed under this section unless the foreign country of which such decedent was a citizen or subject, in imposing such taxes, allows a similar credit in the case of a citizen of the United States resident in such country. The determination of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States.

(b) **LIMITATIONS ON CREDIT.**—The credit provided in this section with respect to such taxes paid to any foreign country—

(1) shall not, with respect to any such tax, exceed an amount which bears the same ratio to the amount of such tax actually paid to such foreign country as the value of property which is—

- (A) situated within such foreign country,
- (B) subjected to such tax, and
- (C) included in the gross estate

bears to the value of all property subjected to such tax; and

(2) shall not, with respect to all such taxes, exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the credits provided by sections 2011 and 2012) as the value of property which is—

- (A) situated within such foreign country,
- (B) subjected to the taxes of such foreign country, and
- (C) included in the gross estate

bears to the value of the entire gross estate reduced by the

aggregate amount of the deductions allowed under sections 2055 and 2056.

(c) VALUATION OF PROPERTY.—

(1) The values referred to in the ratio stated in subsection (b)(1) are the values determined for purposes of the tax imposed by such foreign country.

(2) The values referred to in the ratio stated in subsection (b) (2) are the values determined under this chapter; but, in applying such ratio, the value of any property described in subparagraphs (A), (B), and (C) thereof shall be reduced by such amount as will properly reflect, in accordance with regulations prescribed by the Secretary or his delegate, the deductions allowed in respect of such property under sections 2055 and 2056 (relating to charitable and marital deductions).

(d) PROOF OF CREDIT.—The credit provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary or his delegate—

(1) the amount of taxes actually paid to the foreign country,

(2) the amount and date of each payment thereof,

(3) the description and value of the property in respect of which such taxes are imposed, and

(4) all other information necessary for the verification and computation of the credit.

(e) PERIOD OF LIMITATION.—The credit provided in this section shall be allowed only for such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

Refund based on such credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(f) *ADDITIONAL LIMITATION IN CASES INVOLVING A 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 by and actually paid to any foreign country upon a transfer by the decedent for public, charitable, or religious uses described in section 2055, the property described in subparagraphs (A), (B), and (C) of paragraphs (1) and (2) of subsection (b) of this section shall not include any property in respect of which such deduction is allowed under section 2053(d).*

[(f)] (g) POSSESSION OF UNITED STATES DEEMED A FOREIGN COUNTRY.—For purposes of the credits authorized by this section, each possession of the United States shall be deemed to be a foreign country.

* * * * *

PART IV—TAXABLE ESTATE

* * * * *

SEC. 2053. EXPENSES, INDEBTEDNESS, AND TAXES.

* * * * *

[(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, 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.]

(d) CERTAIN STATE AND FOREIGN 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—*

(A) any estate, succession, legacy, or inheritance tax imposed by a State or Territory or the District of Columbia upon a transfer by the decedent for public, charitable, or religious uses described in section 2055 or 2106(a)(2), and

(B) any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon transfer by the decedent for public, charitable, or religious uses described in section 2055.

The determination under subparagraph (B) of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States. Any election under this paragraph 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 or a foreign 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.]

(3) EFFECT ON CREDITS FOR STATE AND FOREIGN DEATH TAXES OF DEDUCTION UNDER THIS SUBSECTION.—

(A) ELECTION.—*An election under this subsection shall be deemed a waiver of the right to claim a credit, against the Federal estate tax, under a death tax convention with any foreign country for any tax or portion thereof in respect of which a deduction is taken under this subsection.*

(B) CROSS REFERENCES.—

See section 2011(e) for the effect of a deduction taken under this subsection on the credit for State death taxes, and see section 2014(f) for the effect of a deduction taken under this subsection on the credit for foreign death taxes.

