

AMENDING THE INTERNAL REVENUE CODE OF 1954

SEPTEMBER 8 (legislative day, SEPTEMBER 5), 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. 47]

The Committee on Finance, to whom was referred the bill (H.R. 47), an act to amend the Internal Revenue Code of 1954 to provide a personal exemption for children placed for adoption, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

For 1959 and subsequent years, section 1 of this bill would amend the definition of a dependent for purposes of claiming a \$600 dependency exemption to treat in the same manner as a natural-born child of an individual not only a legally adopted child, as is provided by present law, but also a child placed with him by an authorized placement agency for legal adoption by him if the child is a member of the individual's household. An exemption could already be claimed for such a child under present law (assuming other required tests are met) but generally only after he has been in the home of the taxpayer for an entire year. The effect of the bill is to waive this "entire year" requirement where the child is placed in the home by an authorized placement agency.

The requirement that this treatment be available only where the child is placed in the individual's home by an authorized placement agency is provided so that the Internal Revenue Service will have a means of distinguishing between cases where the child is placed in a home for adoption from those cases where the custody of the child is temporary and the individual has no intention of adopting the child. It is believed that this limitation will prevent abuse of the provision.

Section 1 of the bill will be effective for taxable years beginning after December 31, 1958.

Section 2 of the bill, added by your committee, relates to the election of certain small business corporations as to their taxable status.

Subsection (a) of section 2 makes it clear that, in determining the number of shareholders of a small business corporation, a husband

and wife owning stock jointly or as community property shall be counted as only one shareholder. This amendment would apply to taxable years beginning after December 31, 1959. Under existing law a small business corporation may not have more than 10 shareholders. It is clear from the manner in which the word "shareholder" is used in connection with small business corporations that each person having a community or common interest in stock must be counted as a shareholder.

Subsection (b) of section 2 makes it clear that a deceased shareholder will not be denied his pro rata share of the small business corporation's net operating loss. This amendment would take effect on the day after the date of enactment of this act. Section 1374 of present law allows shareholders of an electing small business corporation to deduct their pro rata share of the corporation's net operating loss. However, a shareholder who dies before the end of the corporation's taxable year may be deprived of his share of the net operating loss which occurs in the corporation's taxable year in which he dies.

Subsection (c) of section 2 strikes out paragraph 8 of section 1504(b), relating to definition of "includible corporation," thereby clarifying the definition of a small business corporation. This amendment would take effect on the day after the date of enactment of this act. Section 1371(a) of present law defines a small business corporation to mean a domestic corporation which, among other requirements, is not a member of an affiliated group of corporations. This requirement prevents an electing small business corporation from having an 80-percent owned subsidiary. However, paragraph 8 of section 1504(b) of the Internal Revenue Code, which was designed to insure this result, actually has the opposite effect by permitting the acquisition of a subsidiary by a small business corporation after the election has been made.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

