

DETERMINATION OF RETAIL PRICE FOR PURPOSES OF
EXCISE TAX ON CIGARS

AUGUST 30, 1960.—Ordered to be printed

Mr. MILLS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 10960]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10960) to amend section 5701 of the Internal Revenue Code of 1954 with respect to the excise tax upon cigars, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 2.

That the House recede from its disagreement to the amendment of the Senate numbered 1 and agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment as follows:

On page 3 of the Senate engrossed amendments, line 17, strike out "SEC. 5" and insert *SEC. 4*; and the Senate agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment as follows:

On page 9 of the Senate engrossed amendments, line 5, strike out "SEC. 6" and insert *SEC. 5*; and the Senate agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with the following amendments:

On page 11 of the Senate engrossed amendments, line 2, strike out "SEC. 7" and insert the following: *Sec. 6*

On page 11 of the Senate engrossed amendments, line 12, strike out "marle" and insert the following: *marl*

On page 11 of the Senate engrossed amendments, strike out lines 16, 17, and 18, and insert the following:

"(b) *LAND USED IN FARMING.*—For purposes of subsection (a), the term 'land used in farming' means land used (before or simultaneously with the expenditures described in subsection (a)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

And the Senate agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment as follows:

On page 12 of the Senate engrossed amendments, line 20, strike out "SEC. 8" and insert *SEC. 7*; and the Senate agree to the same.

Amendment numbered 7:

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment as follows:

On page 15 of the Senate engrossed amendments, line 18, strike out "SEC. 9" and insert *SEC. 8*; and the Senate agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment as follows:

On page 17 of the Senate engrossed amendments, line 7, strike out "SEC. 10" and insert *SEC. 9*; and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment as follows:

On page 18 of the Senate engrossed amendments, line 5, strike out "SEC. 11" and insert *SEC. 10*; and the Senate agree to the same.

Amendment numbered 10:

That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 11. The Pension Fund, Plumbers' Local Union Numbered 775, which was created May 1, 1957, as a result of an agreement between Plumbers' Local Union Numbered 775, of Suffolk County, New York, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the Suffolk County Plumbing and Heating Contractors Association, Inc., and which has been held by the Internal Revenue Service to constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1954, and to be exempt from taxation under section 501(a) of such Code, shall be held and considered to have been a qualified trust under

such section 401(a), and to have been exempt from taxation under such section 501(a), for the period beginning May 1, 1957, and ending May 11, 1959, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not in this period been operated in a manner which would jeopardize the interests of its beneficiaries.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

W. D. MILLS,
AIME J. FORAND,
CECIL R. KING,
NOAH M. MASON,
JOHN W. BYRNES,

Managers on the Part of the House.

HARRY F. BYRD,
ROBT. S. KERR,
J. ALLEN FREAR, JR.,
RUSSELL B. LONG,

By HARRY F. BYRD,

JOHN J. WILLIAMS,
FRANK CARLSON,

Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10960) to amend section 5701 of the Internal Revenue Code of 1954 with respect to the excise tax upon cigars, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

CERTAIN DIVIDENDS FROM FOREIGN CORPORATIONS

Amendment No. 1: This amendment adds a new section to the bill as passed by the House which amends section 243 of the Internal Revenue Code of 1954 by adding a new subsection (d). Under the new subsection (d), the 85-percent intercorporate dividends received deduction is to apply with respect to dividends paid by a foreign corporation out of its earnings and profits if such earnings and profits were accumulated by a predecessor domestic corporation which was subject to the income tax under chapter 1 of the 1954 Code (or corresponding provisions of prior law). The new section of the bill also contains a technical amendment to section 861(a)(2) of the 1954 Code. These amendments apply to dividends received after December 31, 1959, in taxable years ending after such date.

This new section added by Senate amendment No. 1 is substantially the same as H.R. 12036 as passed by the House.

The House recesses.

DEFINITION OF BUSINESS LEASE

Amendment No. 2: Senate amendment No. 2 would add a new section to the bill, relating to exceptions to the definition of business lease.

The new section would add a sentence at the end of section 514(b)(3)(A). This sentence provides that a lease to a medical clinic by a scientific organization engaged in medical research of premises adjacent to those occupied by such scientific organization shall be considered a lease entered into primarily for purposes substantially related to the organization's exempt purposes and functions (and thus shall not be considered a business lease), if the treatment of patients of the medical clinic, their medical histories, and donated services of doctors of the medical clinic are utilized by the scientific organization for medical research purposes.

The Senate recesses.

PROVISIONS RELATING TO POSSESSIONS OF THE UNITED STATES

Amendment No. 3: This amendment adds a new section 5 to the bill, relating to limitation on reduction in income tax liability incurred to the Virgin Islands and to the estate and gift tax treatment of certain citizen residents of possessions. Except as noted below (and except for technical clarifying amendments), the text of Senate amendment No. 3 is the same as H.R. 5547, as passed by the House.

Both H.R. 5547 and the Senate amendment, with two exceptions, provide that tax liability incurred to the Virgin Islands pursuant to the income tax provisions equivalent to those of the United States, as made applicable in the Virgin Islands by the Naval Appropriations Act, approved July 12, 1921, or pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, is not to be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands.

The first exception relates to United States and Virgin Islands corporations and, in general, provides that subsidies can be paid to these corporations under much the same conditions as those under which income tax exemptions are presently available in the case of U.S. corporations carrying on a trade or business in most other U.S. possessions (sec. 931 of the code). The second exception relates to citizens of the United States (both those who are citizens by reason of the special act of Congress relating to the possession, and those who are citizens by reason of birth in the continental United States, naturalization, etc.) who are bona fide residents of the Virgin Islands and permits the granting of subsidies in much the same manner as bona fide residents of Puerto Rico may claim an exemption from U.S. income tax with respect to their income derived from sources within Puerto Rico (sec. 933 of the code). With respect to this second exception, the Senate amendment contains a provision (not in the House bill) under which gain or loss from the sale or exchange of any security (as defined in section 165(g)(2) of the code) shall not be treated as derived from sources within the Virgin Islands.

Both H.R. 5547 and the Senate amendment provide (in effect) that U.S. citizens who are residents of a possession, and whose citizenship is derived from citizenship of that possession, are to be subject to the estate and gift tax imposed by the United States, in general, to the same extent as in the case of nonresidents not citizens of the United States.

The effect of this, in the case of the estate tax, is to impose the U.S. estate tax with respect to the portion of the gross estate of these citizens of U.S. possessions who are residents of the possessions at the time of their death, only with respect to that part of their gross estate which at the time of their death is situated in the United States. The effect, in the case of the gift tax, is that one of these citizens and residents of a U.S. possession at the time he makes a gift will be subject to the gift tax if, but only if, the property transferred is situated within the United States. For this purpose stock issued by a corporation is considered property situated within the United States only in the case of domestic corporations, but the making of a gift of stock

of a domestic corporation, or any other intangible property with a situs within the United States is subject to the gift tax only if the donor resident of the possession is engaged in business in the United States at any time during the year in which the gift of the stock is made.

The House recedes with a clerical amendment.

MODIFICATION OF FILING REQUIREMENTS FOR DECLARATIONS OF ESTIMATED TAX BY INDIVIDUALS

Amendment No. 4: Senate amendment No. 4 adds a new section to the bill, relating to requirement of declaration of estimated tax by individuals.

Present law (sec. 6015 of the code) provides that, for an individual with no more than \$100 of gross income from sources other than wages or salaries, a declaration is required if his gross income is expected to be more than \$5,000; however, no declaration is required by a married person if the gross income of the married person and his spouse is expected to be not more than \$10,000 (nor from a head of a household or a surviving spouse if his gross income is expected to be not more than \$10,000). For an individual with more than \$100 of income not subject to withholding, a declaration is required if his gross income from all sources is expected to be more than \$600 per exemption plus \$400.

Under Senate amendment No. 4, section 6015(a) is amended so as to (1) provide that no declaration is to be required if the estimated tax can reasonably be expected to be less than \$40, (2) eliminate the gross income test of \$400 plus \$600 times the number of exemptions, and (3) increase from \$100 to \$200 the minimum gross income which can reasonably be expected to be received from sources other than wages without becoming liable to file a declaration.

The House recedes with a clerical amendment.

EXPENDITURES BY FARMERS FOR FERTILIZER

Amendment No. 5: This amendment adds a new section to the bill as passed by the House which adds a new section 180 to the Internal Revenue Code of 1954. Under the new section 180 a taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated are to be allowed as a deduction. For this purpose, "land used in farming" means land used (before or simultaneously with the expenditures described in the preceding sentence) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

The House recedes with clerical amendments and with a technical amendment clarifying the definition of the term "land used in farming".

CHARITABLE CONTRIBUTIONS FOR CERTAIN STUDENTS MAINTAINED IN
TAXPAYER'S HOME

Amendment No. 6: This amendment adds a new section to the bill as passed by the House amending section 170 of the Internal Revenue Code of 1954 (relating to charitable contributions and gifts). Subsection (a)(1) of the new section of the bill amends section 170(c) of the 1954 Code so as to include within the definition of "charitable contribution" amounts treated as paid under the new subsection (d) (described below) for the use of organizations described in section 170(c) (2), (3), or (4), i.e., religious, charitable, scientific, literary, educational, veterans, fraternal, etc., organizations.

Subsection (a)(2) of the new section of the bill inserts a new subsection (d) in section 170 of the 1954 Code and redesignates the present subsections (d) and (e) as (e) and (f), respectively. Under paragraph (1) of the new subsection (d), amounts paid by a taxpayer to maintain an individual (other than a dependent or a relative) as a member of his household during the period that the individual is a full-time student in the 12th or any lower grade at an educational institution located in the United States and is a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of section 170(c) of the 1954 Code to implement a program of the organization to provide educational opportunities for students in private homes, are to be treated as amounts paid for the use of the organization (and thus will be treated as charitable contributions).

Paragraph (2) of the new subsection (d) contains two limitations on the amounts paid within the taxable year to which paragraph (1) applies. First, the amounts to which paragraph (1) applies are limited, for each taxable year, to an amount equal to \$50 times the number of calendar months during the taxable year which fall within the period in which the student is a member of the taxpayer's household under the agreement described above. Second, paragraph (1) does not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the student in his household during such period.

Under the Senate amendment these new provisions apply with respect to taxable years beginning after December 31, 1959.

The House recedes with a clerical amendment.

CAPITAL CONTRIBUTIONS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION

Amendment No. 7: This amendment inserts in section 162 of the Internal Revenue Code of 1954 (relating to trade or business expenses) a new subsection (d), relating to capital contributions to the Federal National Mortgage Association. The new subsection provides that, for purposes of subtitle A of the 1954 Code, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock is to treat the excess as ordi-

nary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

Amendment No. 7 also amends the 1954 Code to insert a new section 1054 in the provisions of such code relating to special rules as to the basis of property. The new section 1054 provides that, in the case of any share of stock described above, the basis of such share in the hands of the initial holder is to be an amount equal to the capital contributions evidenced by such share, reduced by the amount (if any) required by the new section 162(d) to be treated (with respect to such share) as ordinary and necessary expenses paid or incurred in carrying on a trade or business.

These amendments are to apply with respect to taxable years beginning after December 31, 1959.

The substance of this amendment is the same as the substance of H.R. 7885, which passed the House of Representatives on June 27, 1960.

The House recedes with a clerical amendment.

MECHANICAL LIGHTERS FOR CIGARETTES, CIGARS, AND PIPES

Amendment No. 8: Section 4201 of the Internal Revenue Code of 1954 (relating to tax on pens and mechanical pencils and lighters) imposes, upon the sale by the manufacturer, producer, or importer of mechanical lighters for cigarettes, cigars, and pipes, a tax equal to 10 percent of the price for which so sold.

This amendment provides that the tax on the sale by the manufacturer, producer, or importer of the mechanical lighters described above is to be 10 cents for each lighter but not more than 10 percent of the price for which so sold.

This change in tax is to apply only with respect to articles sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after the date of the enactment of this act.

The House recedes with a clerical amendment.

REAL ESTATE INVESTMENT TRUSTS

Amendment No. 9: This amendment amends the Internal Revenue Code of 1954 to provide substantially the same tax treatment for real estate investment trusts as present law provides for regulated investment companies. Real estate trusts are organizations specializing in investments in real estate and real estate mortgages, while the regulated investment companies specialize in investments in stock and securities.

Under present law, regulated investment companies which distribute 90 percent or more of their ordinary income are taxed only on their retained earnings. Thus, the distributed earnings are taxed only to the shareholders. This same general type of tax treatment is accorded by amendment No. 9 to real estate investment trusts, effective with respect to taxable years of real estate investment trusts beginning after December 31, 1960.

The substance of this amendment is the same as the substance of H.R. 12559, which passed the House of Representatives on June 29, 1960.

The House recedes with a clerical amendment.

PENSION FUND, PLUMBERS' LOCAL UNION NUMBERED 775

Amendment No. 10: This amendment adds a new section to the bill as passed by the House which provides that the pension fund, Plumbers' Local Union No. 775, shall be held and considered to have been a qualified trust under section 401(a) of the Internal Revenue Code of 1954, and to have been exempt from taxation under section 501(a) of such code, for the period beginning May 1, 1957, and ending May 11, 1959.

The House recedes with an amendment. Under the conference agreement, the trust is to be deemed to constitute a qualified trust (and to be exempt from tax) for the period specified, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not in this period been operated in a manner which would jeopardize the interests of its beneficiaries.

W. D. MILLS,
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JOHN W. BYRNES,

Managers on the Part of the House.

