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REPORT
No. 1401

DEDUCTION FOR INCOME TAX PURPOSES OF CERTAIN CONTRIBUTIONS WITH RESPECT TO PROPOSED CHANGES IN STATE CONSTITUTIONS

July 22, 1966.—Ordered to be printed

Mr. LONG of Louisiana, from the Committee on Finance, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 8188]

The Committee on Finance, to which was referred the bill (H.R. 8188) relating to the deduction for income tax purposes of contributions to certain organizations for judicial reform, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY OF THE BILL

The purpose of H.R. 8188 as referred to your committee was to provide income tax deductions for gifts in 1966 and 1967 to nonprofit organizations supporting, or opposing, the reorganization of the judicial branch of a State or local government through initiatives or referendums on constitutional amendments occurring in those years. Under the House version, foundations could make contributions to organizations set up for this purpose without jeopardizing their tax exempt status. The nonprofit organizations referred to under the House bill had to be created and operated exclusively to consider proposals for the reorganization of the judicial branch of a State or local government and to provide information, make recommendations, and seek public support for, or in opposition to, these proposals. No part of the earnings of these organizations may inure to the benefit of any private shareholder or individual and the organizations must not participate in any political campaign on behalf of any candidate for public office.

The bill as reported by your committee modifies the House version of the bill in several respects:

1. In addition to covering proposals for the reorganization of the judicial branch of a State or local government, your committee's version of the bill also covers proposals for the revision of the revenue provisions of the constitution of any State and for the alteration, or reformation, the entire constitution of any State.

2. The bill as amended by your committee covers not only contributions made in 1966 and 1967 for initatives and referendums occurring in those years, but also contributions in 1968 and initiatives and referendums occurring in that year.

3. As indicated above, the bill as passed by the House permits contributions to organizations set up for judicial reform to be made by tax-exempt foundations without this jeopardizing their tax exempt purpose. Your committee has removed this feature of the House bill, with the result that gifts by foundations to the types of organizations referred to in this bill will have to meet the test of present law which denies exemption where any substantial part of the activities of the foundation is carrying on propaganda or otherwise attempting to influence legislation.

4. The bill as passed the House makes no reference to how funds received as gifts by an organization for the purpose specified in this bill are to be used where some of these funds remain, in the organization after the initiative or referendum has occurred. The bill as amended by your committee provides that for contributions to one of the specified types of organizations to be deductible, provision must be made for these funds remaining after the initiative or referendum to be turned over to the State.

II. REASONS FOR THE BILL

Present law (sec. 170(c)(2)(D)) provides that a contribution to an organization may be deductible only if no substantial part of the activities of the organization is carrying on propaganda or otherwise attempting to influence legislation. In view of this provision, contributions to nonprofit organizations which devote their efforts toward reform of a State judicial system or revision of a State revenue system, or which are concerned with the revision of an entire State constitution are not deductible.

The attention of the House has been called to cases where initiatives and referendums on constitutional amendments for the reform of State or local judicial systems were being considered. The attention of your committee has also been called to cases where revisions of State revenue systems are under consideration and where referendums on revisions of State constitutions are to be held.

Your committee agrees with the House that the need for educating the public with respect to State constitutional amendments relating to judicial reform justifies a limited exception to the general rule of nondeductibility for contributions made to influence legislation. It also recognizes that a precedent for such legislation exists in the deduction allowed for similar contributions made in 1962 to organizations then engaged in State judicial reform movements. Your committee believes, however, that similar justification exists in the case of initiatives and referendums with respect to proposed revisions of State revenue systems and with respect to proposed revisions or

alterations of entire constitutions. Information with respect to issues of these types often is not disseminated broadly with the result that the electorate may not have all of the facts and material necessary in these cases for a considered judgment of the issues involved. Because of this, these types of initiative and referendums tend to differ from other types of legislative action where the issues are less complex and where there is less need to disseminate information broadly. As a result the committee does not believe that this bill constitutes a precedent for general deductibility for contributions intended to influence legislation.

III. GENERAL EXPLANATION

The bill provides that under certain conditions, contributions to nonprofit organizations will qualify as charitable contributions and hence be deductible. The conditions that must be met are as follows:

1. The contributions must be given to an organization created and operated exclusively for the purpose of considering proposals and providing information, making recommendations, and seeking public support for (or opposition to) proposals altering or reforming the entire constitution of a State, reorganizing the judicial branch of a State or local government or revising the revenue provisions of the constitution of a State. Although this provision covers the alteration, or reform, of an entire constitution of a State, it does not cover lesser revisions except those relating to the reorganization of the judicial branch of a State or local government or the revision of State constitutional provisions relating to revenue. (The House bill would have covered only the reorganization of the judicial branch of a State or local government; the other two types of proposals are added by your committee's amendments.)

2. The contributions must be made in the calendar years 1966, 1967, or 1968. (The bill as passed by the House would not have covered contributions made in the year 1968.)

3. The contributions must be made with respect to an initiative or referendum on amendments to, or on alterations or reformation of, the constitution of any State, and the initiative or referendum must be one which occurs in the years 1966, 1967, or 1968. (The House provision would not have included the year 1968.)

4. The contributions must be made to, or for the use of, a nonprofit organization created and operated exclusively for one of the purposes specified above, no part of its net earnings may inure to the benefit of any private shareholder or individual and all of the funds received by the organization as contributions or gifts (and also income from these contributions or gifts) which remain after the end of the year in which the initiative or referendum in question occurs (to the extent not necessary to satisfy outstanding obligations incurred by the organization in carrying out its purpose) are to be turned over to the State where the initiative or referendum occurs. "Funds" for this purpose is intended to include all property whether received in the form of cash or otherwise. (The requirement that these remaining funds be turned over to the State was not in the House-passed bill.)

5. The contributions to be deductible may not be made to an organization which participates or intervenes in any political campaign on behalf of any candidate for public office. Thus, a contribution to an organization campaigning for a particular candidate will not

be deductible even though the candidate identifies himself, or is identified, with a constitutional amendment relating to one of the three subject matters covered by this bill.

The House version of this bill would have provided that the making of a contribution to an organization provided for by this bill was not to be treated as "carrying on propaganda or otherwise attempting, to influence legislation." The effect of this would have been to provide that a foundation or other organization which is exempt from income taxes as an organization described in section 501(c)(3) of the code would not prejudice its exemption by making a contribution to an organization of the type referred to in this bill. Your committee's amendments specifically remove this feature of the House bill with the result that these tax-exempt foundations or organizations may prejudice their exemption if they make contributions to an organization of the type described in this bill.

The bill does not deal with the income tax status of the organizations described in the bill to which deductible contributions or gifts can be made. These organizations would not be eligible for a tax-exempt status under section 501(c)(3) of the code and would therefore be taxable unless they qualify under another provision of section 501(c) (e.g., as a civil league or organization described in section 501(c)(4)). However, it should be pointed out that contributions to these organizations which constitute bona fide gifts would, under section 102 of the code, not constitute income to the organization. In some cases, contributions to these organizations may constitute contributions to the capital of the organization, which likewise would not be included in its income.

MINORITY VIEWS OF SENATOR GORE

I am very much concerned about the precedent this bill will create in allowing tax-free lobbying. Generally, in the past, Congress has been quite careful to deny tax deductions for lobbying for legislation. This is particularly true of what is generally referred to as "grassroots" lobbying, that is, attempts to influence the electorate at large. The fact that Congress frowned upon tax deductions for this type of lobbying is evidenced by the fact that when it added a provision to the Internal Revenue Code providing deductions for appearances with respect to legislation, it very carefully excluded deductions for "grassroots" lobbying. The reason for this is that in a representative form of government no group or combination of groups should be given an advantage over another in swaying the electorate to one position or another. Certainly, allowing tax deductions which are clearly more advantageous to those in the higher income tax brackets would represent a substantial advantage in influencing the electorate for those with large financial resources. It is for this reason that we must be so careful to maintain a fair balance in this regard. This bill is a departure from that principle and will be used as a precedent for other departures from this principle. It is primarily for this reason that I strongly oppose this bill even though the particular reforms contemplated by this bill are generally believed to be desirable.

That this bill will be used as a precedent for further departures from the rule of no deduction for "grassroots" lobbying is evidenced by the very fact that this bill itself is justified, in part, on the grounds that a similar deduction for a temporary period of time was provided in the case of judicial reforms in 1962. Moreover, the addition of the deduction for overall constitutional revision, and revisions of tax systems—features of this bill added by the Finance Committee—also are justified on the grounds that the case for them is as good as for judicial reform. For how many other types of changes in the future will this same line of argumentation be used? This is a dangerous departure from the traditional neutrality of our tax laws in the case of "grassroots" lobbying.

Once started down this road of allowing deductions for lobbying, it is difficult to see where the trail ends. It is difficult, for example, to see why lobbying for revision of State revenue systems should be allowed on a tax-free basis while lobbying for conservation should not. This is a point made with respect to this bill in a recent editorial in the Washington Post, recommending that Congress review this whole subject rather than pass this piecemeal legislation. I think it is also important to note that the Treasury Department, in its letter to the Finance Committee on this bill, similarly has opposed the adoption of this amendment. I am appending a copy of this editorial and letter of opposition to my statement.

ALBERT GORE.

[From the Washington (D.C.) Post, July 17, 1966]

TAX-FREE LOBBYING

The Senate Finance Committee proposes income tax deductions for money given to certain lobbying groups deemed to be engaged in worthy causes. Among these causes is lobbying for better State courts, revenue laws, and changes in State constitutions. We agree that it is unfortunate to penalize groups seeking such improvements. Yet it seems incredible that Congress would attempt to single out a few worthy causes for which the tax-deduction privilege may be granted, while excluding all others.

This action by the Finance Committee comes as an interesting sequel to the decision of the Internal Revenue Service to investigate the tax-deductible status of the Sierra Club. The IRS was especially concerned by the club's advertisements seeking to defeat the pending legislation to authorize two dams in the Colorado River. Under the law contributions to such organizations are not deductible if the organization devotes a "substantial" part of its activities to the influencing of legislation.

We have previously noted that this is a vague and uncertain criteria that is open to arbitrary application. Instead of merely considering exemptions for some favored organizations or types of organizations, Congress would do better to resurvey the entire problem. Certainly conservation of our natural resources is a worthy objective no less vital to the national welfare than fiscal and judicial reform. But the larger question is whether Congress can rationally or constitutionally single out certain areas of public debate and agitation for this kind of favoritism. If these exemptions were granted, Congress would in effect be taxing lobbying for one purpose and freeing it from taxation for another.

The Finance Committee bill is broader than that passed by the House, but it still seems to set up a highly arbitrary classification for tax purposes. It is opposed by the Treasury. Congress ought to take a broader look before plunging into this kind of favoritism.

TREASURY DEPARTMENT LETTER OPPOSING THE ENACTMENT OF THIS BILL

TREASURY DEPARTMENT,
Washington, D.C., May 17, 1966.

Hon. RUSSELL B. LONG,
Chairman, Senate Committee on Finance,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This report responds to your request for the views of the Treasury Department on S. 3305 (89th Cong., 2d sess.), entitled "A bill relating to the deduction for Federal income tax purposes of contributions to certain organizations for revision of the revenue provisions of State constitutions."

The bill, if enacted, would permit charitable income-tax deductions for gifts made during the calendar year 1966 to certain nonprofit organizations supporting or opposing revision of the revenue provisions of the constitution of any State. To qualify for deduction, the gift

would have to be made with respect to an initiative or referendum occurring during the year 1966; the donee organization would have to be created and operated exclusively to consider proposals for the described type of constitutional revision and to provide information, make recommendations, and seek public support for, or opposition to, such proposals; the net earnings of the donee could not inure to the benefit of any private shareholder or individual; and the donee could not participate in any political campaign on behalf of any candidate for public office. The bill contains a provision specifically designed to insure that foundations and certain other tax-exempt entities making contributions of the described type will not thereby violate the present Internal Revenue Code restrictions upon such organizations' carrying on propaganda or attempting to influence legislation.

For several reasons, the Treasury Department opposes the enactment of S. 3305. With the present report, we are also transmitting to you our report on H.R. 8188, a bill which would extend identical tax benefits to a different class of contributions; and that report elaborates the grounds of our opposition to measures of this type. In brief, our objections are these:

(1) The longstanding policy of the tax laws has been that deductions should not be permitted for payments whose object is influencing the general public to support or oppose legislation. A single, restricted exception to that general policy, adopted in 1962, has not subsequently been repeated or extended.

(2) There are sound reasons for preserving the neutrality of the tax laws on this subject. The grant of income-tax deductions like those permitted by the present bill and H.R. 8188 would accord high-bracket taxpayers a very substantial advantage over other persons in attempting to influence or control legislation.

(3) The bills would permit the wealth of private foundations and other classes of charitable and educational organizations to be brought to bear upon the legislative process without quantitative restriction. In doing so, the bills would reverse the longstanding judgment of Congress that the role of such organizations in influencing legislation ought to be specifically and quite strictly limited; and they would go beyond the 1962 law, noted in paragraph (1), which left such organizations subject to the usual limitations upon legislative activities. The implications of such a departure from existing law are both far reaching and, in our view, exceedingly undesirable.

(4) Approval of either bill would provide strong precedent and substantial encouragement for a multitude of claims for tax support made by advocates of other types of social and economic changes. The present bill itself, which was introduced in the Senate after H.R. 8188 passed the House, affords an excellent illustration of the proliferation of proposals likely to arise from this precedent.

Upon these grounds, the Treasury Department urges that your committee disapprove S. 3305.

The Bureau of the Budget has advised the Treasury Department that there is no objection from the standpoint of the administration's program to the presentation of this report.

Sincerely yours,

STANLEY S. SURREY,
Assistant Secretary.

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