90TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 518

INTEREST EQUALIZATION TAX EXTENSION ACT OF 1967

JULY 27, 1967.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 6098]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6098), to provide an extension of the interest equalization tax, and for other purposes, 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 amendments numbered 1, 4, 16, and 24.

That the House recede from its disagreement to the amendments of the Senate numbered 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 19, and 20, and agree to the same.

Amendment numbered 2:

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with the following amendments:

On page 2 of the Senate engrossed amendments, line 6, strike out "30" and insert: *22.5*

On page 2 of the Senate engrossed amendments, line 9, strike out "II (C)" and insert: *II (B)*

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 the following amendments:

On page 10 of the Senate engrossed amendments, beginning with line 16, strike out all through line 8 on page 11, and insert the following:

"*(e) SALES EFFECTED BY PARTICIPATING FIRMS IN CONNECTION WITH EXEMPT ACQUISITIONS.—A participating firm selling, or effecting*

the sale of, stock of a foreign issuer or a debt obligation of a foreign obligor may issue a written comparison or broker-dealer confirmation, which indicates the exemption for prior American ownership and compliance provided in subsection (a) applies to such acquisition, only if such participating firm has in its possession (except in the case of a sale for another participating firm or a participating custodian to which paragraph (4) applies) a statement, upon which such participating firm relies in good faith, executed under penalty of perjury by the person making the sale, establishing that such person is a United States person and is the owner of all stock of foreign issuers and debt obligations of foreign obligors carried in the records of such participating firm for the account of such person; and either—

On page 12 of the Senate engrossed amendments, in the last line, after "agent" insert: *or registrar*

On page 13 of the Senate engrossed amendments, line 1, strike out "from the seller".

On page 16 of the Senate engrossed amendments, line 12, after "records" insert: *(on a trade-date basis) as of the close of business*

On page 17 of the Senate engrossed amendments, strike out "that" in line 5, and strike out lines 6 and 7, and insert the following: , *by the person for whose account the delivery is being made, establishing that such person is a United States person and is the owner of all stock of foreign issuers and debt obligations of foreign obligors carried in its records for the account of such person,*

On page 18 of the Senate engrossed amendments, line 19, strike out "or".

On page 18 of the Senate engrossed amendments, in the last line, strike out "on" and insert: *in*

On page 21 of the Senate engrossed amendments, line 11, after "filed" insert: *on or*

On page 23 of the Senate engrossed amendments, line 17, strike out "(b) (1) (A)" and insert: *(b) (1)*

On page 24 of the Senate engrossed amendments, before the second line from the bottom of the page, insert the following:

(f) CONFORMING AMENDMENT.—Section 4920 (a) (5) is amended by striking out "execute a certificate of American ownership (within the meaning of section 4918)" and insert in lieu thereof "be considered a United States person".

On page 24 of the Senate engrossed amendments, in the second line from the bottom of the page, strike out "(f)" and insert: *(g)*

On page 25 of the Senate engrossed amendments, line 5, strike out "(g)" and insert: *(h)*

On page 25 of the Senate engrossed amendments, line 11, strike out "(h)" and insert: *(i)*

On page 25 of the Senate engrossed amendments, strike out the sixth line from the bottom of the page, and insert: *written comparisons, broker-dealer confirmations, and*

And the Senate agree to the same.

Amendment numbered 17:

That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment, as follows:

On page 30 of the Senate engrossed amendments, line 15, strike out "(h)" and insert: *(g)*; and the Senate agree to the same.

Amendment numbered 18:

That the House recede from its disagreement to the amendment of the Senate numbered 18, 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: (*h*); and the Senate agree to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, 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: (*i*); and the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, 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: (*j*); and the Senate agree to the same.

Amendment numbered 23:

That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with the following amendments:

On page 32 of the Senate engrossed amendments, line 19, strike out "(l)" and insert: (*k*)

On page 32 of the Senate engrossed amendments, line 21, strike out "(k)(2)" and insert: (*j*)(*2*)

On page 34 of the Senate engrossed amendments, line 13, after "dealers" insert: *or distributors*

On page 36 of the Senate engrossed amendments, line 2, after "corporation" insert: (*or such other domestic corporation*)

On page 36 of the Senate engrossed amendments, line 11, after "corporation" insert: (*or such other domestic corporation*)

On page 36 of the Senate engrossed amendments, line 17, strike out "stock or".

On page 38 of the Senate engrossed amendments, line 14, strike out "(k)(3)" and insert: (*j*)(*3*)

On page 39 of the Senate engrossed amendments, line 10, strike out "for which" and insert: *after the date of such notice during which*

And the Senate agree to the same.

WILBUR D. MILLS,
CECIL R. KING,
HALE BOGGS,
JOHN W. BYRNES,
Managers on the Part of the House.

RUSSELL B. LONG,
GEORGE A. SMATHERS,
CLINTON P. ANDERSON,
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. 6098) to provide an extension of the interest equalization tax, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendments Nos. 4, 8, 10, 12, 14, 18, 20, 21, and 22 are technical or clerical in nature. With respect to each of these amendments the House recedes or, in conformity with other action, either the Senate recedes or the House recedes with a conforming amendment.

Amendments Nos. 1, 2, 3, 5, and 6: The bill as passed by the House and Senate authorizes the President to raise or lower, by Executive order, the interest equalization tax rates. As passed by the House the minimum and maximum rates which may be prescribed in an Executive order are limited to the rates under existing law and rates closely approximating 50 percent higher. Under Senate amendments Nos. 1 and 2 there is no limit on minimum rates and the maximum rates are double the rates under existing law. Under the conference agreement with respect to Senate amendments Nos. 1 and 2 there is no limit on minimum rates and the maximum rates are the rates prescribed by the bill as passed by the House. In conformity with the authority to lower rates below the rates provided by existing law, Senate amendments Nos. 3, 5, and 6 provide that any such lower rates provided by Executive order shall apply to acquisitions pursuant to commitments held on January 25, 1967, pursuant to options or similar rights held on such date, or as the result of foreclosure by a creditor pursuant to an instrument held on such date. Under the conference agreement, the House recedes on Senate amendments Nos. 3, 5, and 6.

Amendment No. 7: Under existing section 4918 of the code, the interest equalization tax does not apply, in general, to an acquisition of stock or a debt obligation of a foreign issuer or obligor if acquired from a U.S. person. There are two principal ways of establishing entitlement to the exemption: (1) The receipt of a certificate of American ownership in connection with the acquisition, or (2) the receipt of a "clean confirmation" (a confirmation of purchase which does not indicate that the securities may be subject to tax) from a broker-dealer which is a member or member organization of a national securities exchange or a national association of securities dealers registered with the Securities and Exchange Commission.

Senate amendment No. 7 revises section 4918 and makes other related amendments to the code. Under the amendment, the interest equalization tax is not to apply if (1) the stock or debt obligation is acquired from a U.S. person, and (2) such person has either paid the tax with respect to his acquisition of the stock or debt obligation or

acquired it without liability for payment of the tax. Proof of this exemption for prior American ownership and compliance is evidenced by a validation certificate issued by the Secretary of the Treasury or his delegate and filed in accordance with regulations or by an "IET clean confirmation" (a written confirmation from a "participating firm" acting as a broker or dealer which contains no reference to liability for tax). In addition, provision is made for furnishing other evidence to establish to the satisfaction of the Secretary of the Treasury or his delegate that the exemption is applicable.

In general, a "participating firm" is a member or member organization of a national securities exchange or association registered with the Securities and Exchange Commission which notifies the Secretary of the Treasury or his delegate that it (1) agrees to comply with the provisions of the code relating to the tax and with the documentation, recordkeeping, reporting, and auditing requirements prescribed by the Secretary or his delegate to implement such provisions, and (2) if the notification is made after August 14, 1967, is complying with such provisions and requirements.

During a transition period commencing July 15, 1967, and ending August 14, 1967, the following firms are deemed to be participating firms: All members and member organizations of the New York and American Stock Exchanges and those members of the National Association of Securities Dealers, Inc., which reported a net capital of $750,000 in their latest financial statement filed before July 13, 1967, with the Securities and Exchange Commission or which effected at least 300 transactions in foreign securities during either the week commencing July 2, 1967, or July 9, 1967.

Status as a participating firm is required to be terminated if the firm requests termination or the Secretary of the Treasury or his delegate has reason to believe that the firm is failing to comply with the statutory provisions and procedural requirements and notifies the firm of such noncompliance.

A participating firm which acquires foreign securities for a customer may issue an IET clean confirmation to the customer primarily in two cases. First, an IET clean confirmation may be issued to the customer if the firm received a written comparison or broker-dealer confirmation, which indicates that the exemption for prior American ownership and compliance applies to the acquisition, from another participating firm which acted as the selling broker in the transaction. Second, an IET clean confirmation may be issued to the customer if the acquisition was effected by a participating firm on a national securities exchange and if the Secretary or his delegate has determined that the rules of the exchange require transactions in securities which are subject to the exemption for prior American ownership and compliance to be carried out in such a manner that the new procedures are satisfied. Similarly, an IET clean confirmation may be issued in the situation where the selling participating firm and the buying participating firm are both members of a national securities association and the association has been determined by the Secretary or his delegate to have the necessary rules.

The amendment also provides procedures under which foreign securities may be transferred between and among participating firms and participating custodians thereby enabling U.S. persons owning such transferred securities to sell them under the exemption without the necessity of obtaining a validation certificate.

A participating custodian is a trust company or bank insured by the Federal Deposit Insurance Corporation, which gives the Treasury Department notice similar to that required of participating firms. During a transition period from July 15 through August 14, 1967, all Federal Reserve member banks classified as reserve city banks are treated as participating custodians. Rules for the termination of this status similar to those applicable to participating firms are also provided.

The House recedes with clerical and technical amendments.

Amendment No. 9: Under existing law, a branch office of a domestic corporation or domestic partnership is treated as a foreign corporation or foreign partnership if there is in effect an election that it be so treated and the office is engaged in the foreign securities business. In general, if the corporation or partnership transfers money or other property to the branch office it is deemed to have acquired stock of a foreign corporation or partnership in an amount equal to the value of the money or property transferred. Under the Senate amendment, this rule is not to apply to the extent the transfer is in payment of a commission on a transaction initiated by the branch office and the commission is not in excess of the commission the corporation or partnership would pay to another domestic corporation or partnership in a similar transaction entered into at arm's length. The House recedes.

Amendment No. 11: Under the bill as passed by the House, the interest equalization tax is not to apply to the acquisition of debt obligations arising from the sale of real property located outside the United States and owned, on July 18, 1963, by the person acquiring such obligation. Under the Senate amendment, the exemption will also apply where the real property was owned on such date (1) by a decedent who was a U.S. person on the date of his death, if the real property was transferred to the person acquiring such obligation by reason of the death of the decedent, or (2) by a U.S. person who after July 18, 1963, transferred the real property to a trust created by him for the benefit of members of his family, if such trust is the person acquiring such obligation. The House recedes.

Amendment No. 13: Under existing law, the interest equalization tax does not apply to the acquisition from a foreign obligor of a debt obligation arising out of the sale of tangible personal property or services to such obligor by a U.S. person if an agency or wholly owned instrumentality of the United States guarantees or insures payment of the obligation. The effect of the Senate amendment is to remove the requirement that the purchaser of the property or services must be the obligor. The House recedes.

Amendment No. 15: Under existing law, the interest equalization tax does not apply to the acquisition of a foreign debt obligation where, in general, the obligation arises out of the sale of American goods or services. If the debt obligation is transferred to a person other than a U.S. person and is reacquired the tax applies. Under the Senate amendment, the tax is not to apply on reacquisition by the U.S. person from the person to whom the debt obligation was transferred if tax liability would not have been imposed by reason of section 4914(j)(1)(A)(iii) if the transfer had been made to a U.S. person. The House recedes.

Amendment No. 16: This amendment provided that the interest equalization tax shall not apply to an acquisition made before Septem-

ber 2, 1964, by a U.S. person of stock of a Canadian corporation or a debt obligation of a Canadian obligor if such acquisition was made, in general, with funds held in Canada on July 18, 1963. The Senate recedes.

Amendment No. 17: Under existing law, the interest equalization tax does not apply to the acquisition of stock or a debt obligation of a less developed country corporation. The definition of a less developed country corporation includes a corporation 80 percent or more of the income of which is derived from the use in foreign commerce of aircraft or ships registered under the laws of a less developed country and 80 percent or more of the assets of which are used in the shipping or air transport business. The effect of the Senate amendment is to add the requirement that such a corporation be owned, to the extent of at least 80 percent of each class of its stock, by U.S. persons or by residents of one or more less developed countries. The House recedes with a clerical amendment.

Amendment No. 19: Under existing law, the President may exclude from the interest equalization tax acquisitions of original or new issues of stock or debt obligations of a foreign person if he determines that the interest equalization tax will have such consequences for a foreign country as to imperil or threaten to imperil the stability of the international monetary system. The exclusion applies to an acquisition only if a notice of such acquisition is filed with the Treasury Department. With respect to such an acquisition before the Interest Equalization Tax Extension Act of 1965, failure to file such notice within the time prescribed by regulations resulted in a loss of the exclusion and thus, in effect, imposed a 100-percent penalty. In the case of such an acquisition after the Interest Equalization Tax Extension Act of 1965, failure to file a timely notice does not result in the loss of the exclusion, but there is, in effect, a penalty imposed equal to 5 percent of the tax which would otherwise be applicable for each 30-day period or fraction thereof during which the failure to file continues, with a maximum penalty of 25 percent of such tax.

Under the bill, as passed by the House, the penalty applicable to acquisitions after the enactment of the 1965 Act is made applicable to acquisitions before the enactment of such Act. The Senate amendment retains this provision and, in addition, reduces the 5-percent penalty to 1 percent, and the maximum 25-percent penalty to 5 percent, with respect to acquisitions before and after the enactment of the 1965 Act.

The House recedes with a clerical amendment.

Amendment No. 23: The bill, as passed by the House, permitted a domestic corporation to elect to be treated as a foreign issuer or obligor if (1) substantially all of the business of the corporation consisted of financing sales abroad by its domestic affiliates (80 percent directly or indirectly owned), (2) 15 percent of the sales price of each sale was attributable to sales or the performance of services by such affiliates, and (3) none of the funds which the corporation lent in its financing operations was obtained from U.S. persons.

The Senate amendment modified the House provision, chiefly to allow the corporation to finance sales of products of affiliated companies, both domestic and foreign. Under the Senate amendment the corporation may acquire debt obligations—

(1) arising out of the sale of tangible personal property—
(A) produced by a domestic or foreign affiliate of such corporation (50 percent directly or indirectly owned),
(B) received as consideration in the sale of property described in (A) above,
(C) received as consideration in the sale of property described in (B) above.

(2) arising out of the sale of tangible property, certain intangible property or services by a domestic affiliate, if 15 percent of the sales price is attributable to sales or the performance of services by such an affiliate, or (3) arising out of loans to dealers or distributors of property described in (1) above for use in their business.

The Senate amendment also provided that 90 percent of the debt obligations acquired by the corporation must be debt obligations of the specified types.

The Senate amendment modified the requirement in the House bill that none of the funds which the corporation lends in its financing operations can be raised from U.S. persons by providing in addition that the funds generally cannot be borrowed from a foreign partnership or foreign corporation in which a tax-free direct investment could otherwise be made. In addition, if the corporation borrows short-term (less than 1-year maturity) funds, other than pursuant to an overdraft arrangement, the company must lend at least an equal amount on a short-term basis.

Under the House bill, only a domestic corporation was allowed to make the financing company election. The Senate amendment added a provision to the bill which provides similar treatment for a foreign corporation which is at least 50-percent owned (directly or indirectly) by a domestic corporation (or affiliated corporations) and which would be entitled to make the domestic financing company election except for the fact that it is a foreign corporation. In the absence of such a provision, the foreign corporation would be treated as "formed or availed of" to make otherwise taxable acquisitions of foreign securities, and, accordingly, the exclusion for direct investments in the corporation would be denied.

The House recedes with technical amendments.

Amendment No. 24: Under existing law, a foreign corporation is not considered a foreign issuer with respect to a class of stock if more than 65 percent (50 percent if traded on a national securities exchange) of such class was owned by U.S. persons prior to July 19, 1963. Only those shares which possess identical rights in the control, profits, and assets of the corporation are considered to constitute a single class of stock. The Senate amendment provided that shares which would qualify except for a restriction as to the right to receive dividends for a specified period shall (upon the expiration of such period) be treated as identical. The Senate recedes.

WILBUR D. MILLS,
CECIL R. KING,
HALE BOGGS,
JOHN W. BYRNES,
Managers on the Part of the House.

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