Calendar No. 473

90TH CONGRESS
1st Session

SENATE

REPORT
No. 488

INCOME TAX SUPPORT TEST IN CASE OF CHILDREN OF DIVORCED PARENTS

AUGUST 3, 1967.—Ordered to be printed

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

REPORT

[To accompany H.R. 6056]

The Committee on Finance, to which was referred the bill (H.R. 6056) to provide rules relating to the deduction for personal exemptions with respect to the children of divorced parents and to make related amendments, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. SUMMARY

H.R. 6056 would amend the provision of the Internal Revenue Code of 1954 relating to the $600 deduction for dependents as it applies with respect to the children of divorced or separated parents. With the exception of a technical amendment, your committee has accepted the House bill without change. The determination of which parent is entitled to the deduction in these cases has become a source of constant irritation to taxpayers and an acute administrative problem for the Internal Revenue Service. The bill provides rules designed to facilitate the determination of which parent is entitled to the deduction in these cases.

The new rules apply only if the combined support furnished by the parents amounts to more than one-half of the total support of the child for the year, and only if the child is in the custody of either or both of his parents for more than one-half of the year. In these cases the bill provides as a general rule that the parent having custody of a child for the longer period of time during the year is entitled to the $600 deduction for personal exemption.

The bill contains exceptions to this general rule under which the parent not having custody (or having custody for the shorter period)

becomes entitled to the deduction. Under these exceptions that parent is entitled to the deduction—

(1) If he contributes at least $600 toward the support of the child and the decree of divorce or separate maintenance, or a written agreement between the parents, provides that he is to receive the deduction; or

(2) If he provides more than $1,200 of child support (regardless of the number of children) and the parent having custody for the longer period does not clearly establish that he provided a greater amount of support.

In determining the amount of support provided by each parent for purposes of these exceptions, amounts expended for child support are to be considered as received from the parent not having custody to the extent he provides amounts for this purpose.

In cases where the parent not having custody contributes more than $1,200 of support and claims the deduction with respect to the child, or children, and the parent having custody claims to have provided a greater amount of support, the bill provides that each parent is entitled to receive an itemized statement of the expenditures upon which the other bases his claim.

The new rules are to be applicable for years after 1966.

II. REASONS FOR THE BILL

One of the problems which arises most frequently under the individual income tax provisions of the Internal Revenue Code of 1954 is the question of which of divorced or separated parents is entitled to the deduction for personal exemption with respect to their children. The solution of this problem under present law has been unsatisfactory both from the standpoint of the parents and from the standpoint of the administration of the tax laws by the Internal Revenue Service. Under present law the parent who contributes more than one-half of the support of the child for a year is entitled to the deduction. The problem arises from the difficulties encountered in establishing which parent meets this requirement.

In many cases each parent honestly believes that he has contributed more than one-half of the support. The problem is compounded because of the ill will which sometimes exists between divorced or separated parents. In these cases the Internal Revenue Service finds itself in the position of an unwilling arbiter between the contending parents. In addition, in discharging its duties in administering this provision, the Service is hampered by the provisions of existing law which prohibit disclosure to either parent by the Service of information concerning the nature and amount of support which the other claims to have contributed.

The number of disputes involving this issue is so great that it has cast a serious administrative burden on the Service and has tended to clog the administrative machinery involved in bringing them to a conclusion. In fact, a disproportionate number of these cases are taken to the Tax Court for resolution. It has been estimated by the Service that during a recent year 5 percent of all income tax cases handled at the informal conference level of the administrative process involved this issue as the principal issue. The amounts involved in these cases, although significant to the taxpayers, are quite small. The costs to the taxpayers and the Government of resolving this issue

in the administrative process and in the Tax Court are inordinate when compared with the amounts involved.

For these reasons the bill would amend present law to provide a set of rules under which this issue may be resolved on a basis that is more satisfactory to the parents and which will alleviate the current administrative burden. The above rules are to be applicable for years after 1966.

III. GENERAL EXPLANATION OF THE BILL

The bill provides specific rules for determining which of separated parents is to be entitled to the deduction for personal exemption with respect to their children. These new rules apply where the parents are divorced or legally separated under a decree of divorce or of separate maintenance or are separated under a written separation agreement. (In this respect, your committee made a technical amendment to the bill to make it clear that the new rules are to be applicable in all situations involving parents who are separated under a written separation agreement. Under the language used to accomplish this result in the bill as passed by the House, it seems likely that some of these situations would not have been covered.) The new rules apply with respect to a child only if the parents together furnish more than one-half of his support for a year, and only if the child is in the custody of his parents for more than one-half of the year. Thus, the new rules do not apply where a third person contributes one-half or more of the support of the child or where the child is in the custody of a person other than his parents for one-half of the year or more.

In the case of parents who are separated under a written separation agreement, the new rules do not apply if the parents file a joint return for the year.

As the general rule, the bill provides that the parent who has custody of a child for the greater portion of the year is entitled to the deduction.

The bill also contains exceptions to this general rule under which the parent not having custody (or having it for the lesser period of time) may be entitled to the deduction. The first of these exceptions grants the deduction to the parent not having custody if the decree of divorce or of separate maintenance or a written agreement between the parents specifies that he is to be entitled to the deduction with respect to a child, and he has contributed at least $600 for the support of the child during the year. Where one of the parents claims the deduction with respect to a child pursuant to a written agreement between them, the Treasury Department may require that reasonable substantiation of the existence of the written agreement be submitted with his tax return.

Under this exception it will be possible for the courts hearing divorce and separation suits to resolve this issue in many cases at the time they are considering the financial arrangements which are to apply between the parents and to take the income tax deduction directly into account in this connection. It also provides a means whereby parents who can reach an amicable agreement may resolve the issue with certainty. Your committee concurs with the Committee on Ways and Means in its belief that this exception provides fair and practical alternatives for the resolution of this problem which will be utilized in many divorces and separations which occur in the future.

Under the second exception, the parent not having custody of a child would be entitled to the deduction if he contributes more than $1,200 of support for the child (or children) for the year and the other parent does not clearly establish that he provided a greater share of their support for the year. This exception does not apply, and the parent having custody remains entitled to the deduction with respect to a particular child, if he establishes that he, in fact, furnished a greater portion of that child's support than did the parent not having custody, but only if he establishes this fact by clear and convincing evidence.

In determining the amount of support furnished by each of the parents for purposes of these exceptions, the bill provides that the amounts spent for the support of a child, or children, is to be treated as having been received from the parent not having custody to the extent he provided amounts for their support. In cases involving the second exception referred to above, that is, where the parent not having custody claims to have furnished more than $1,200 of support and the parent having custody claims that such amount was not furnished or claims to have furnished the greater amount of support, the bill provides an additional special rule. Under this special rule, each parent is entitled to receive an itemized statement of the expenditures upon which the other's claim of support is based. Normally, these statements are to be provided by each parent and furnished to the other parent in conformity with the regulations in this regard that are prescribed by the Secretary of the Treasury or his delegate. However, when circumstances so require, the statement of the expenditures upon which a parent's claim of support is based may be provided and furnished to the other parent by the Secretary of the Treasury or his delegate in conformity with such regulations.

The bill also provides that the Secretary of the Treasury or his delegate is to prescribe such regulations as are deemed necessary to carry out the purposes of these new provisions.

A determination of dependency of a child under the provisions of the bill is to be applicable with respect to other provisions of the Internal Revenue Code that are dependent upon such a determination for their operation. For example, a child who is determined to be a dependent of one of his parents under the provisions of this bill is also to be considered a dependent of that parent for purposes of the provision of existing law which provides a deduction for medical and dental expenses.

These new rules are to apply with respect to taxable years beginning after December 31, 1966.

IV. CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX 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):

SECTION 152 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 152. DEPENDENT DEFINED.

(a) GENERAL DEFINITION.—For purposes of this subtitle, the term "dependent" means any of the following individuals over half

of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (*c*) *or* (*e*) as received from the taxpayer):

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer) who for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

(10) An individual who—

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

(C) before receiving—such institutional care, was a member of the same household as the taxpayer.

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(*e*) *SUPPORT TEST IN CASE OF CHILD OF DIVORCED PARENTS, ET CETERA.*—

(*1*) *GENERAL RULE.—If*—

(*A*) *a child (as defined in section 151(e)(3)) receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, and*

(*B*) *such child is in the custody of one or both of his parents for more than one-half of the calendar year,*

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year unless he is treated, under the provisions of paragraph (2), as having received over half of his support for such year from the other parent (referred to in this subsection as the parent not having custody).

(*2*) *SPECIAL RULE.—The child of parents described in paragraph (1) shall be treated as having received over half of his support during the calendar year from the parent not having custody if—*

(*A*)(*i*) *the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and*

(ii) such parent not having custody provides at least $600 for the support of such child during the calendar year, or

(B)(i) the parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for all of such children) for the calendar year, and

(ii) the parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

(3) ITEMIZED STATEMENT REQUIRED.—If a taxpayer claims that paragraph (2)(B) applies with respect to a child for a calendar year and the other parent claims that paragraph (2)(B)(i) is not satisfied or claims to have provided more for the support of such child during such calendar year than the taxpayer, each parent shall be entitled to receive, under regulations to be prescribed by the Secretary or his delegate, an itemized statement of the expenditures upon which the other parent's claim of support is based.

(4) EXCEPTION FOR MULTI-SUPPORT AGREEMENT.—The provisions of this subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(5) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

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