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INCOME TAX TREATMENT OF CERTAIN DISTRIBUTIONS  
PURSUANT TO BANK HOLDING COMPANY ACT OF 1956

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DECEMBER 7, 1967.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 4765]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4765) relating to the income tax treatment of certain distributions pursuant to the Bank Holding Company Act of 1956, as amended, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

Restore the matter proposed to be stricken out, omit the matter proposed to be inserted, and on page 3 of the House engrossed bill, after line 6, insert the following:

*The amendment made by this section shall apply with respect to distributions made after the date of the enactment of this Act in taxable years ending after such date.*

*SEC. 2. (a) Section 46(b) of the Internal Revenue Code of 1954 (relating to carryback and carryover of unused investment credits) is amended by striking out paragraph (3) (relating to effect of net operating loss carryback).*

*(b) Section 6411(a) of such Code (relating to application for tentative carryback adjustment) is amended by inserting after "within a period of 12 months from the end of such taxable year" in the second sentence the following: "(or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year)".*

*(c) Section 6501(j) of such Code (relating to limitations on assessment in the case of investment credit carrybacks) is amended by inserting*

before the period at the end thereof the following: “, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed”.

(d) Section 6511(d)(4)(A) of such Code (relating to special period of limitation on refunds with respect to investment credit carrybacks) is amended by inserting after “which results in such carryback” in the first sentence the following: “(or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the end of such subsequent taxable year)”.

(e) Section 6601(e)(2) of such Code (relating to interest on underpayments, etc.) is amended by inserting before the period at the end thereof the following: “, or with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year”.

(f) Section 6611(f)(2) of such Code (relating to interest on overpayments) is amended by inserting before the period at the end thereof the following: “, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made prior to the close of such subsequent taxable year”.

(g) The amendments made by this section shall apply with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967.

SEC. 3. (a) Section 172(b) of the Internal Revenue Code of 1954 (relating to net operating loss carrybacks and carryovers) is amended—

(1) by striking out “subparagraph (D)” in paragraph (1)(A)(i) and inserting in lieu thereof “subparagraphs (D) and (E)”;

(2) by striking out “subparagraphs (C) and (D)” in paragraph (1)(B) and inserting in lieu thereof “subparagraphs (C), (D), and (E)”;

(3) by adding at the end of paragraph (1) the following new subparagraph:

“(E) In the case of a taxpayer which is a domestic corporation qualifying under paragraph (3) (E), a net operating loss for any taxable year ending after December 31, 1966, and prior to January 1, 1969, shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 3 taxable years following the taxable year of such loss.”; and

(4) by adding at the end of paragraph (3) the following new subparagraphs:

“(E) Paragraph (1)(E) shall apply only if—

“(i) the amount of the taxpayer’s net operating loss for the taxable year exceeds the sum of the taxable income (computed as provided in paragraph (2)) for each of the 3 preceding taxable years of the taxpayer,

“(ii) the amount of the taxpayer’s net operating loss for the taxable year, increased by the amount of the taxpayer’s net operating loss for the preceding taxable year or decreased

by the amount of the taxpayer's taxable income for such preceding year, exceeds 15 percent of the sum of the money and other property (in an amount equal to its adjusted basis for determining gain) of the taxpayer, determined as of the close of the taxable year of such loss without regard to any refund or credit of any overpayment of tax to which the taxpayer may be entitled under paragraph (1)(E),

“(iii) the aggregate unadjusted basis of property described in section 1231(b)(1) (without regard to any holding period therein provided), the basis for which was determined under section 1012, which was acquired by the taxpayer during the period beginning with the first day of its fifth taxable year preceding the taxable year of such loss and ending with the last day of the taxable year of such loss, equals or exceeds the aggregate adjusted basis of property of such description of the taxpayer on, and determined as of, the first day of the fifth preceding taxable year, and

“(iv) the taxpayer derived 50 percent or more of its gross receipts (other than gross receipts derived from the conduct of a lending or finance business), for the taxable year of such loss and for each of its 5 preceding taxable years, from the manufacture and production of units within the same single class of products, and 3 or fewer United States persons (including as one person an affiliated group as defined in section 1504(a)) other than the taxpayer manufactured and produced in the United States, in the calendar year ending in or with the taxable year of such loss, 85 percent or more of the total number of all units within such class of products manufactured and produced in the United States in such calendar year.

“(F) For purposes of subparagraph (E)(iv)—

“(i) the term ‘class of products’ means any of the categories designated and numbered as a ‘class of products’ in the 1963 Census of Manufactures compiled and published by the Secretary of Commerce under title 13 of the United States Code, and

“(ii) information compiled or published by the Secretary of Commerce, as part of or in connection with the Statistical Abstract of the United States or the census of manufactures, regarding the number of units of a class of products manufactured and produced in the United States during a calendar year, or, if such information should not be available, information so compiled or published regarding the number of such units shipped or sold by such manufacturers during a calendar year, shall constitute prima facie evidence of the total number of all units of such class of products manufactured and produced in the United States in such calendar year.”

(b) No interest shall be paid or allowed with respect to any overpayment of tax resulting from the application of the amendments made by subsection (a) for any period prior to the date of the enactment of this Act.

(c) The amendments made by subsection (a) shall apply with respect to net operating losses sustained in taxable years ending after December 31, 1966.

SEC. 4. (a) Section 815(f) of the Internal Revenue Code of 1954 (relating to definition of distribution) is amended—

(1) by striking out "or" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) any distribution after December 31, 1966, of the stock of a controlled corporation to which section 355 applies, if such distribution is made to a corporation which immediately after the distribution is in control (within the meaning of section 368(c)) of both the distributing corporation and such controlled corporation and if such controlled corporation is a life insurance company of which the distributing corporation has been in control at all times since December 31, 1957."

(b)(1) The next to last sentence of section 815(f) is amended—

(A) by striking out "Paragraph (3) shall not" and inserting in lieu thereof "Neither paragraph (3) nor paragraph (4) shall"; and

(B) by striking out "subparagraph (B) of such paragraph" and inserting in lieu thereof "paragraph (3)(B)".

(2) The last sentence of section 815(f) is amended by striking out "paragraph (3) also" and inserting in lieu thereof "paragraphs (3) and (4) also".

(c) The amendments made by this section shall apply to taxable years beginning after December 31, 1966.

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,  
 CECIL R. KING,  
 HALE BOGGS,  
 FRANK M. KARSTEN,  
 A. SYDNEY HERLONG, Jr.,  
 JOHN W. BYRNES,  
 JAMES B. UTT,  
 JACKSON E. BETTS,

*Managers on the Part of the House.*

RUSSELL LONG,  
 GEORGE SMATHERS,  
 CLINTON P. ANDERSON,  
 VANCE HARTKE,  
 EVERETT M. DIRKSEN,

*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. 4765) relating to the income tax treatment of certain distributions pursuant to the Bank Holding Company Act of 1956, as amended, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The bill as passed by the House related to the income tax treatment of certain distributions pursuant to the Bank Holding Company Act of 1956, as amended in 1966. The Senate amendment to the text of the bill strikes out all after the enacting clause and inserts new text in which the first section is a substitute for the bill as passed by the House and the remaining sections contain provisions not included in the bill as passed by the House.

### BANK HOLDING COMPANY DISTRIBUTIONS

The bill as passed by the House amended the provisions of the Internal Revenue Code of 1954 which relate to distributions pursuant to the Bank Holding Company Act of 1956 to provide rules for the application of these provisions in the case of any company which becomes a bank holding company as a result of the 1966 amendments to the Bank Holding Company Act. In substance, the rules provide tax treatment with respect to distributions required by the 1966 amendments similar to that which was applied with respect to distributions required by the original enactment of the Bank Holding Company Act of 1956, except that the tax-free treatment is provided only if the distributions made in kind are made on a pro rata basis to all shareholders. The effect is to provide (in general) that no gain or loss is recognized to any shareholder on a distribution required by the Bank Holding Company Act, and that the basis of the property received and of the stock with respect to which it is distributed is to be determined by allocating between such property and such stock the adjusted basis of such stock.

Under the Senate amendment, different rules would apply. In the case of individuals, capital gain would be recognized to the extent that the fair market value of the distributed divested stock exceeds the basis of the shareholder's stock in the bank holding company. Where the distribution of divested stock by a bank holding company is to a corporate shareholder, the Senate amendment also contained special rules applicable to the corporation and to its shareholders (where the divested stock is passed through the corporation to its shareholders), but only if the corporation elected to have the provisions of the Senate amendment apply.

Under the conference agreement, the provisions of the bill as passed the House are restored. These provisions are to apply to distributions made after the date of enactment of the bill in taxable years ending after such date.

#### MORTGAGE GUARANTY INSURANCE COMPANIES

The Senate amendment would have added a section to the bill (sec. 2 of the Senate amendment) containing provisions relating to the tax treatment of certain reserves for losses set up by mortgage guaranty insurance companies.

The bill recommended in the accompanying conference report does not include these provisions. While the conferees on the part of the House did not agree to the provisions of the Senate amendment relative to the special deduction for mortgage guaranty insurance reserves, they, as well as the conferees on the part of the Senate, recognize the need for a permanent solution to the special reserve problem of these companies.

#### UNFUNDED PENSION PLANS OF CERTAIN EDUCATIONAL AND OTHER TAX-EXEMPT ORGANIZATIONS

The Senate amendment would have added a section to the bill (sec. 3 of the Senate amendment) containing provisions relating to the tax treatment of unfunded pension plans of certain educational and other tax-exempt organizations. The proposed section 3 of the bill would also have amended section 403(b)(2) of the Internal Revenue Code of 1954 to revise the methods of computing the 20-percent-exclusion allowance in the case of retirement benefits for employees of certain tax-exempt organizations.

The bill recommended in the accompanying conference report does not include these provisions.

#### INVESTMENT CREDIT CARRYBACKS RESULTING FROM NET OPERATING LOSS CARRYBACKS

Present law (sec. 46(b) of the Internal Revenue Code of 1954) provides, in general, that an unused investment credit may be carried back 3 taxable years and then forward 7 taxable years to the extent it is not used in any of the earlier years to which it may be carried. However, if the unused investment credit arises by reason of a net operating loss carryback, present law (sec. 46(b)(3) of the 1954 code) provides that the unused investment credit may be carried forward only.

Section 4 of the bill, as passed by the Senate, strikes out this restriction so that an unused investment credit arising by reason of a net operating loss carryback will be subject to the 3-year carryback and 7-year carryforward rule. This section also makes necessary technical changes in other provisions of the Internal Revenue Code of 1954. These amendments apply with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967.

Under the conference agreement, this section is retained as section 2 of the bill.

FIVE-YEAR CARRYBACK OF NET OPERATING LOSSES SUSTAINED BY  
CERTAIN DOMESTIC CORPORATIONS

Under present law (sec. 172(b) of the Internal Revenue Code of 1954), a net operating loss sustained for any taxable year shall, in general, be carried back 3 taxable years and forward 5 taxable years, to the extent it is not used in computing the net operating loss deduction for any earlier taxable year.

Section 6 of the bill as passed by the Senate amends this section of the code to provide that in the case of a domestic corporation which meets certain qualifications set forth in new subparagraphs (E) and (F) of section 172(b)(3) of the code as added by the Senate amendment, a net operating loss for any taxable year ending after 1966 and before 1969, shall be carried back 5 taxable years and forward 3 taxable years. The amendments made by this section apply with respect to net operating losses sustained in taxable years ending after December 31, 1966, but no interest shall be paid or allowed with respect to any overpayment of tax resulting from the application of such amendments for any period before the date of enactment of the bill.

Under the conference agreement, this section is retained as section 3 of the bill.

The conferees on the part of the House agreed to the provisions of the Senate amendment relating to the application of a 5-year net operating loss carryback in the limited cases provided under the amendment since this will aid competition. The form of the relief which was in conference prevented the conferees on the part of the House from considering a broader version of the amendment. Nevertheless, they, as well as the conferees on the part of the Senate, believe it would be appropriate in the future to consider the broadening of the types of cases to which the 5-year net operating loss carryback is available.

DISTRIBUTION OF STOCK OF A CONTROLLED LIFE INSURANCE  
COMPANY IN A TAX FREE REORGANIZATION

Under present law (sec. 815 of the Internal Revenue Code of 1954), distributions by a life insurance company to its shareholders may result in an increase in the taxable income of the distributing company for the taxable year of the distribution (the so-called phase III tax). Section 815(f) of the code defines the term "distribution" for purposes of applying this provision.

Section 5 of the bill as passed by the Senate amends this definition so that a distribution (made after 1966) of stock of a controlled corporation to which section 355 of the code applies will not be treated as a distribution (for purposes of the phase III tax), if (1) such distribution is made to another corporation which immediately after the distribution is in control of both the distributing corporation and the controlled corporation, and (2) the controlled corporation is a life insurance company of which the distributing corporation has been in control at all times since December 31, 1957. This amendment applies to taxable years beginning after 1966.

Under the conference agreement, this section is retained as section 4 of the bill.

W. D. MILLS,  
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