Calendar No. 1455

91st Congress, 2d Session | SENATE | Report No. 91-1444

EXCISE, ESTATE, AND GIFT TAX ADJUSTMENT ACT OF 1970 AND TREASURY WORKING CAPITAL FUND

December 15, 1970.—Ordered to be printed

Mr. Fulbright (for Mr. Long) from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 16199]

The Committee on Finance to which was referred the bill (H.R. 16199) to establish a working capital fund for the Department of the Treasury, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

I. SUMMARY

H.R. 16199, as passed by the House, establishes a working capital fund for the Treasury Department. The committee has accepted this provision without substantive change but has amended this bill to add to it, with relatively few changes, the provisions of H.R. 19868, the Excise, Estate, and Gift Tax Adjustment Act of 1970 as passed by the House. The committee offered this bill as an amendment to H.R. 16199 because the House bill H.R. 19868 has not been referred to the committee and the committee believed that tax provisions of this importance should be studied by the committee. These provisions represent the first three titles of this bill as amended by the committee. The working capital fund provision as passed by the House represents the fourth title in this bill as amended.

The first 3 titles of this bill as amended by the committee, the Excise, Estate, and Gift Tax Adjustment Act of 1970, contain two administration proposals designed, in part, to raise revenue in the period immediately ahead. These titles are expected to increase receipts in the fiscal year 1971 by over $700 million and in the fiscal year 1972 by nearly $3.4 billion.

The principal features of the first 3 titles accounting for these revenue increases are the continuation of the present excise tax rates on passenger cars and communications services for the calendar years 1971

48-010—70——1

and 1972 and a series of provisions designed to speed up collections of estate and gift taxes .This latter change also has as a principal objective the shortening of the period for the administration of an estate and the more rapid distribution of the estate assets to the beneficiaries.

The principal change accounting for the speedup in estate taxes is the shortening of the period for filing the return and paying the tax from 15 months after the decedent's death to 9 months after his death. In the case of the gift tax, the speedup in collections occurs because provision is made for the filing of returns and the payments of the tax on a quarterly basis, rather than an annual basis. However, in this case, an exception is made for fully charitable transfers.

In the case of the excise taxes on passenger automobiles and communications services, the present rates of 7 percent of the manufacturer's price or 10 percent of the charge, respectively, are retained for the calendar years 1971 and 1972. Thereafter, scheduled reductions are provided amounting to no more than one percentage point a year with the taxes scheduled to expire as of the beginning of the calendar year 1982. Scheduling the reductions on this gradual a basis minimizes the revenue impact of the reductions in any one year and, therefore, provides greater assurance that the scheduled reductions will actually be allowed to occur.

Other technical excise tax changes provide a special constructive sale price rule in the case of automobiles and trucks where sales are made to affiliated distributors which, in turn, sell to retailers. In this industry, the constructive sale price rule is to permit a reduction in price from that at which the distributor sells to retailers to 98.5 percent rather than the 90 percent allowed by present law. In the case of manufacturers excise taxes where the article is subject to tax upon the sale by one manufacturer and then further manufacturing is performed with respect to the article, changes are made so that no portion of the price is included more than once in the computation of manufacturers' excise tax and that the distributor's or retailer's markup in the case of the further manufacturer is not included in the base on which his tax is imposed. A third change provides that "camper caps" placed on pickup trucks and sold primarily as camping facilities are not to be subject to the tax on truck parts. Finally, the label which a manufacturer of a new automobile is required to affix to the windshield or side window of the automobile, showing among other things the suggested retail price of the vehicle, is also to show that the passenger automobile is subject to a manufacturers excise tax and the rate of such tax.

The fourth title of H.R. 16199 establishes a working capital fund to provide an improved method of financing, managing, and accounting for certain administrative service operations provided by the Department of the Treasury to its bureaus and offices.

II. REVENUE EFFECTS OF EXCISE, ESTATE, AND GIFT TAX PROVISIONS

It is estimated that this bill, as amended, will result in a revenue increase of $730 million in the fiscal year 1971 and $3,365 million in the fiscal year 1972. This revenue increase is all attributable to the estate and gift and excise provisions.

In the fiscal year 1971, most of the revenue increase, $630 million, is attributable to the extension of the excise taxes on passenger automobiles and communications services. This represents the gain in collections anticipated from the continuation of present rates for the period from January through June 1971. This is not the full increase in liability, however, since some of the collections attributable to this extension will occur in the next fiscal year. The remaining $100 million of revenue in the fiscal year 1971 is attributable to the increase in gift tax collections expected as a result of the enactment of this bill. This represents approximately one quarter's collection of gift tax liability. The shifting to a system providing for a calendar quarter collection of gift tax liability has the effect of transferring approximately one additional quarter of gift tax collections into the fiscal year 1971.

In the fiscal year 1972, the provisions of this bill extending the present excise tax rates on passenger cars and telephone services will be fully reflected in receipts. These provisions are anticipated to increase tax collections by $1,865 million over the amount which would be collected under the existing law during that fiscal year. In addition, it is expected that the shortening of the period for the payment of the estate tax will result in an increase in tax collections in the fiscal year 1972 of $1,500 million. The shortening of the filing and payment periods for estate tax are expected to increase receipts in fiscal year 1972 by 6 months' estate tax collections.

In addition, there will be revenue savings with respect to both the estate and gift tax acceleration provided by the bill attributable to the decreased interest costs from having these funds available earlier in each year from now on.

A breakdown of the anticipated collections for the fiscal years 1971 and 1972 from continuation of the existing excise taxes between passenger automobile and communications service receipts is shown in table 1. This shows the revenue anticipated under the present law and under the committee bill, together with the gain attributable to the committee bill.

Table 2 shows the anticipated increase in liabilities from the excise taxes on passenger automobiles and communications services through 1981 when these taxes are scheduled under the bill for expiration. This table assumes current levels of production and prices.

TABLE 1.—REVENUE FROM FEDERAL EXCISE TAXES ON PASSENGER AUTOMOBILES AND COMMUNICATIONS SERVICES: UNDER THE PRESENT LAW, UNDER THE COMMITTEE BILL, AND REVENUE GAIN FROM CHANGES MADE BY THE COMMITTEE BILL

[In millions of dollars; assumes current level of production and prices]

	Revenue under the present law	Revenue under the committee bill	Revenue gain from changes made in the present law by the committee bill
Fiscal year 1971:			
Passenger automobile	1,630	1,960	330
Communications services	1,420	1,720	300
Total	3,050	3,680	630
Fiscal year 1972:			
Passenger automobile	1,075	1,960	885
Communications services	740	1,720	980
Total	1,815	3,680	1,865

TABLE 2.—INCREASES IN FEDERAL EXCISE TAX LIABILITIES FROM CHANGES MADE BY THE COMMITTEE BILL IN PRESENT LAW

[In millions of dollars; assumes current levels of production and prices]

Calendar year	Passenger automobiles	Communications services	Total
1971	560	860	1,420
1972	1,120	1,205	2,325
1973	1,400	1,380	2,780
1974	1,400	1,375	2,775
1975	1,400	1,205	2,605
1976	1,400	1,030	2,430
1977	1,400	860	2,260
1978	1,120	690	1,810
1979	840	515	1,355
1980	560	345	905
1981	280	170	450
Total	11,480	9,635	21,115

III. ESTATE AND GIFT TAXES

A. Estate Tax

Criticism is frequently made, especially by beneficiaries of estates, that the period required to complete the administration of an estate, and to make a final distribution of the estate assets, is far too lengthy. A significant contributing factor to the delay in making final distribution is the settlement of the decedent's tax liabilities, which may include gift or income tax liabilities, as well as the estate tax.

In this bill, as amended, the committee makes a series of estate tax changes designed to reduce the time necessary, to the extent due to time required to settle Federal tax liabilities, to complete the administration of estates. In addition to improving our legal system in this manner, these changes also will result in a revenue increase for the fiscal year ending June 30, 1972, in the amount of $1.5 billion and in an annual saving thereafter attributable to decreases in interest costs.

The changes in the estate tax provisions made by the committee will contribute, in several different ways, to the more rapid and efficient settlement and administration of a decedent's estate.

First, under this bill, the executor of a decedent's estate will be required to file the estate tax return and pay the estate tax due within nine months after the date of the decedent's death, rather than within the fifteen-month period required by present law. Second, the bill liberalizes the rules under which an executor can obtain discharge from personal liability for a decedent's taxes to cover cases where there is an extension of time for payment of tax. Third, these rules are extended to a fiduciary other than an executor (usually a trustee) holding property included in the decedent's gross estate. Fourth, with respect to decedents dying after December 31, 1973, the bill provides an executor will be able to obtain a discharge from personal liability within nine months after application for discharge. This change is postponed until 1974 in order to allow the Internal Revenue Service a period during which it can adequately prepare for the more rapid audit procedure. Fifth, the committee has been assured that the Internal Revenue Service will implement a series of administrative procedures which are designed to give high priority to the estate tax

audit. As part of that goal, the bill authorizes the Internal Revenue Service to provide for the filing of estate tax returns with the service center serving the district in which the decedent was domiciled. All five of these changes will decrease the time necessary for administration and permit a faster distribution to the beneficiaries.

The bill also contains two provisions designed to avoid hardships which might result from a requirement that the estate tax be paid within nine months (instead of within fifteen) after the date of the decedent's death. First, property acquired from decedents will be deemed to have been held for more than six months. The effect of this is to treat gains from the sale of property obtained from the decedent, primarily those realized by the executor, as long-term, and potentially eligible for capital gains treatment, even though sold by him shortly after the death of the decedent to obtain funds to pay the estate tax or other debts. Second, if the payment of the estate tax within 9 months of the decedent's death would create hardship for the estate, the bill provides that the Commissioner may extend the time for payment of the estate tax for a period of up to 12 months, rather than the 6-month period provided by the general rule of existing law. It is the committee's understanding that these extensions of time will be liberally granted and the report subsequently details several examples of types of situations in which it is understood the grant of an extension will be allowed.

All of the provisions referred to above are analyzed more fully below.

1. Time for filing and payment—alternate valuation date (sec. 101 (a), (b), and (c) of the bill and secs. 2032, 2055, and 6075 of the code)

Present law.—Present law provides for the filing of the estate tax return and the payment of the estate tax within 15 months of the date of the decedent's death. Thus, if an individual dies on February 3, 1971, for example, the estate tax return and tax payment must be made on or before May 3, 1972. The property included in the gross estate is valued as of the date of the decedent's death, or if the executor so elects, the property may be valued as of 1 year after the decedent's death (or the date disposed of, if earlier).

Reasons for change.—As indicated previously, a shortening of the time avaliable to the executor in which to pay the estate tax is designed to decrease the period of estate administration and to facilitate a more rapid distribution of property to the beneficiaries. The present period of 15 months in most cases serves no useful purpose and merely serves to delay the period before the beneficiaries may come into possession of the property. From the Government's point of view it also results in an unnecessary delay in the receipt of needed revenues. A necessary corollary of this is the shortening of the period following death when the alternate valuation of the property in the estate is to be made. This optional valuation date must, of course, occur before the return is filed or the executor would not know which date was preferable.

Explanation of provision.—Under the bill, as amended, the estate tax return must be filed and the payment of the estate tax must be made 9 months after the date of the decedent's death, rather than 15 months after his death as under present law. In addition, the alternate valua-

tion date for property included in the gross estate is to be 6 months after the decedent's death, rather than 1 year after that date.[1]

2. Discharge of fiduciary from personal liability for estate tax (sec. 101(d) of the bill and sec. 2204 of the code)

Present law.—Under the Revised Statutes (sec. 3467; 31 U.S.C. 192), an executor or administrator or other person holding property which is subject to a debt to the United States is personally liable for the debt if he makes certain distributions—for example, distributions to beneficiaries—prior to payment of the debt to the United States. Present law in the Internal Revenue Code (sec. 2204) authorizes an executor or administrator, but not a trustee, to be relieved of personal liability for estate tax if he makes written application for discharge from personal liability. Where this application is made the executor or administrator is discharged from personal liability for estate tax if in the year following his application for discharge he has paid any estate tax liability asserted by the Service up to that time. As a result, he is then free to make distributions to beneficiaries without being held personally liable for any further estate tax payment which may be due.

Reasons for change.—Two problems have arisen in connection with the discharge provision in the Internal Revenue Code (sec. 2204). First, a discharge from personal liability cannot be obtained by the executor or administrator in any case in which an extension of time to pay part or all of the estate taxes has been obtained. A second problem arises in those instances in which trust assets are includible in the decedent's gross estate—for example, where the decedent transferred property to a revocable inter vivos trust. In such instances, fiduciaries administering the trust remain personally liable for tax even though the executor of the estate may have been discharged from personal liability as a result of the filing of an application for discharge (under sec. 2204).

The committee believes that it is desirable to permit a discharge from personal liability even where an extension of time has been granted to pay some or all of the estate taxes if the Service is satisfied that the transferee will make the appropriate payments or where a bond has been provided which assures the payment of taxes for which the extension was granted. Similarly, the committee believes that it is appropriate to provide for a discharge from liability for a fiduciary other than an executor or administrator—such as a trustee. Such a fiduciary has a legitimate concern as to the extent of his personal liability and in the committee's view should not be subject to a greater risk than is essential to the protection of the revenue.

Explanation of provision.—In view of the considerations set forth above, the bill, as amended, makes two changes in the provision dealing with the discharge from personal liability for estate tax. First, the provision is amended to enable the executor to obtain a discharge from personal liability even though the time for payment of a portion of the total estate tax liability may have been extended under the general extension of time provision (sec. 6161(a)(1)), under the special 10-

[1] Another technical amendment is also made. Present law (sec. 2055(b)(2)) allows a decedent's estate to obtain a charitable deduction for bequests in trust where the decedent's spouse is entitled to the income for life, is over 80 years of age on the date of the decedent's death and has been given a testamentary power to appoint the trust property. The shortening of the time for filing the return necessitates a change in the period (from 1 year to 6 months) during which the surviving spouse must, under this provision, specify the charitable organization in whose favor he intends to exercise the power.

year extension for payment of estate tax in cases involving undue hardship (sec. 6161(a)(2)), under the provision providing for an extension of time for payment of estate tax on the value of reversionary or remainder interests in property (sec. 6163) or under the provision providing for an extension of time for payment of estate tax where an estate consists largely of an interest in a closely held business (sec. 6166). For example, where the estate consists largely of an interest in a closely held business, even though the executor elects to pay a part of the estate tax in equal installments he may, nonetheless, be discharged from personal liability upon payment of all taxes and additions of which he is notified and for which no extension of time is in effect.

In any of the above situations involving an extension of time, the bill makes it clear that the Commissioner may request that the executor furnish a bond in the amount for which the time for payment is extended. The authority to request a bond in such situations is already granted by present law (sec. 6165).

The second change made by the bill enables a fiduciary other than an executor (but not including a fiduciary where the decedent was a nonresident), where certain conditions are met, to obtain discharge from personal liability for the decendent's estate tax. Such a fiduciary can obtain this discharge from personal liability for estate tax immediately after the discharge of the executor from personal liabiltiy or 6 months after the date of this fiduciary's application, if later. This discharge is available only if he has paid the amount of tax which the Commissioner determines represents this fiduciary's liability or if it has been determined that the fiduciary is not liable for any of the estate tax liability. In addition, as in the case of an executor, such a fiduciary may obtain a discharge from personal liability even though an extension of time for the payment of a portion of the estate tax has been obtained (under secs. 6161, 6163, or 6166 or the code). As in the case of the executor the Commissioner may request the fiduciary to furnish a bond for the amount of tax for which payment has been extended.

With the application for discharge from personal liability the fiduciary (other than an executor or administrator) is to send a copy of the instrument, if any, under which the fiduciary is acting, a description of the property held by him, and any other information for carrying out this provision as may be required by regulations.

The personal liability from which a fiduciary such as a trustee is discharged under this provision can arise under the Revised Statutes (sec. 3467; 31 U.S.C. 192) for making payments to creditors or beneficiaries other than the United States in disregard of outstanding Federal tax obligations. A trustee may also be personally liable under the internal revenue laws (under sec. 6324(a)(2)) as a transferee, to the extent of the value of the property held by the trustee at the decedent's death and to the extent that such propery is includible in the decedent's gross estate.

It should be clear that a discharge of the fiduciary from personal liability under this provision does not preclude the assessment and collection of any deficiency in estate tax from the fiduciary out of the assets still in his possession or from others personally liable as transferees (under sec. 6324(a)(2)). Further, the discharge is not to operate as a release of any part of the gross estate from the lien for estate tax for any deficiency that may thereafter be determined to be due.

3. Discharge of executor from personal liability for decedent's income and gift taxes (sec. 101(e) of the bill and new sec. 6905 of the code)

Present law.—The same provision in the Revised Statutes (sec. 3467: 31 U.S.C. 192) which makes an executor or administrator personally liable for the estate tax if he makes a distribution of the property without payment of the debt also applies in the case of the decedent's income and gift tax liabilities. Existing law contains no procedure whereby an executor can obtain a discharge from personal liability for these taxes.

Reasons for change.—The continuing threat to the executor of personal liability for any income and gift taxes of the decedent in some instances is as much of a deterrent to the rapid completion of the administration of the estate and the distribution of estate assets as his personal liability for the estate tax. To remove this potential obstacle to the rapid completion of estate administration, the committee has provided a procedure whereby the executor can obtain discharge from personal liability for these taxes as well as the estate tax.

Explanation of provision.—Under a new procedure provided by the bill, as amended, an executor can obtain a discharge from personal liability for the decedent's income and gift taxes by making a written application for release from personal liability for such taxes. This application may be made at any time after the returns are filed with respect to the taxes for which the executor seeks discharge from personal liability. In such situations the Commissioner may notify the executor of the amount of such taxes. Upon payment of the amount of which he is notified, or 1 year after the receipt of the application for discharge if he is not notified of any payments due, the executor is to be discharged from personal liability for any income or gift taxes thereafter found to be due by reason of the tax liability of the decedent.

The Internal Revenue Service is not obligated to notify the executor of the amount of any of the decedent's income or gift taxes due, but its failure to do so within 1 year after the receipt of the application for discharge is to result in the discharge of the executor under this provision. The committee recognizes that it may not be possible to complete an audit of the decedent's income or gift tax returns within the 1-year period. In such instances, although the expiration of the 1-year period will result in the discharge of the executor from personal liability for income and gift tax liabilities of the decedent, the Internal Revenue Service may still assess deficiencies for these taxes against the executor or administrator to the extent he still has any of the property or against the transferees, to the extent not prohibited by the period of limitations on assessment. As with discharge from personal liability for estate taxes, the Federal tax lien which attaches to the property on the decedent's death is not removed by the discharge of the executor from personal liability for the decedent's income and gift taxes.

4. Reduction of period for discharge of executor from personal liability (Sec. 101(f) of the bill and sec. 2204 and new sec. 6905 of the code)

Present law.—Under existing law, the Internal Revenue Service has a 1-year period, following the executor's application for discharge from personal liability for estate taxes, within which to notify the executor of any additional estate tax due.

Reasons for change.—The shortened period for the filing of the estate tax return and for the payment of the estate tax imposes a burden on the executor to complete the administration of the estate more rapidly. The committee believes there also should be a correlative obligation on the part of the Internal Revenue Service to complete its audit of the decedent's estate tax liabilities within less time. In large part, this can be accomplished by reducing the period during which the Internal Revenue Service is required to notify the executor of any additional taxes due. However, in order to provide the Internal Revenue Service with time to adjust its administrative procedures to the shorter time for making audits prior to discharge, the reduction of the discharge time period is postponed for 3 years.

Explanation of provision.—The committee has amended both the estate tax and the income and gift tax provisions whereby an executor or administrator can obtain discharge from personal liability, by shortening the period for notifying the executor or administrator of the discharge from 1 year to 9 months. However, in order to allow the Internal Revenue Service time to make appropriate administrative adjustments so that it may properly complete examination of these potential tax liabilities within 9 months after application for discharge, these amendments are made effective with respect to the estates of decedents dying after December 31, 1973.

As a result of this change, an executor or administrator applying for discharge from personal liability (under sec. 2204), with respect to the estate of a decedent dying after December 31, 1973, is to be entitled to notice from the Internal Revenue Service of the amount of estate tax due within 9 months after making such application, or, if the application is made before the return is filed, then within 9 months after the return is filed. Also, the Internal Revenue Service, with respect to the estate of a decedent dying after Decmeber 31, 1973, is to have only 9 months from the date of the application for discharge in which to notify the executor of any income or gift taxes due (sec. 6905).

5. *Holding period of property acquired from a decedent (sec. 101(g) of the bill and sec. 1223(11) of the code)*

Present law.—Under existing law, the normal holding period rules apply with respect to property acquired from a decedent. There is no tacking of the decedent's holding period with respect to the property to the holding period of the estate or other person acquiring the property from a decedent. Consequently, if an estate sells a capital asset within 6 months of the date of the decedent's death any gain realized is treated as a short-term capital gain and any loss as a short-term capital loss.

Reasons for change.—In the interest of expediting the settlement of estates, the committee believed that it was appropriate in the case of property received by an estate from a decedent to remove the 6-month holding period rule generally applicable. An executor presently has an obligation to minimize the taxes of the estate to the extent practicable by holding property for 6 months before selling it even though it needs to be sold to meet the estate tax liabilities or other debts of the estate and even though it could otherwise be disposed of in a much shorter period of time. Removing the holding period in the types of cases

referred to above will enable executors to sell property promptly and expedite the settlement of estates.

Explanation of provision.—To allow the executor or administrator to make sales of property early in the period of administration, the committee has provided that property acquired from a decedent is to be deemed to be held for more than 6 months. For property to be eligible for this treatment, it must have been acquired from a decedent (within the meaning of sec. 1014(b)), the person selling the property must have a basis for the property which was determined by reference to its value at the time of the decedent's death (or alternate valuation date), and the property must be sold (or otherwise disposed of) within 6 months after the date of the decedent's death. If these conditions are met, this new provision applies whether the sale or other disposition produces gain or loss.

It should be understood that this provision will have application to sales of property by persons other than the estate of the decedent. Included in the cases where the holding period will be deemed to be 6 months are cases involving joint tenancies, community property, and properties transferred in contemplation of death. For example, if a surviving joint tenant sells property acquired by right of survivorship within 6 months of the date of the decedent's death, and the basis of the property in the hands of the surviving joint tenant is determined (under sec. 1014(b)(9)) by reference to its value at the date of the decedent's death (or alternate valuation date), the property is to be considered to be held by the surviving joint tenant for more than 6 months. Similarly, a surviving spouse's share of community property is to be considered as held by her for more than 6 months if it is sold within 6 months of the date of the decedent's death, regardless of when the property was actually acquired by the marital community.[2]

6. Extension of time for paying estate tax (sec. 101(h) of the bill and sec. 6161(a)(1) of the code)

Present law.—Under existing law an executor seeking an extension of time for paying the estate tax may request an extension under either of two provisions (sec. 6161(a)(1) or (2)).[3] Under the first of these provisions, which applies to various types of taxes (sec. 6161(a)(1)), the Internal Revenue Service may grant an extension of time for the payment of the estate tax for a reasonable period not to exceed 6 months. Under the second provision (sec. 6161(a)(2)), which relates exclusively to the estate tax, the Internal Revenue Service may extend the time for payment of the estate tax for a reasonable period, not in excess of 10 years, if it finds that timely payment would result in "undue hardship" to the estate. Although only the second provision (sec. 6161(a)(2)) contains statutory langage requiring a finding of "undue hardship" before an extension of time may be granted, the regulations promulgated under the first provision also state that an extension of time will be granted only upon a finding that timely payment would impose "undue hardship" on the estate and that "the

[2] Further, if property is considered to have been held for more than 6 months (by reason of this provision), it also is to be considered as having been held for that period for purposes of sec. 1231 (which section is to apply if it is otherwise applicable).

[3] In addition there are other "special situation" provisions pursuant to which an extension of time for payment of the estate tax may also be obtained (e.g., sec. 6166, relating to extension of time for payment of estate tax where the estate consists largely of interests in closely held businesses).

term 'undue hardship' means more than an inconvenience to the estate." It is understood that while extensions of time for the payment of estate tax are not frequently requested under the first of these provisions (sec. 6161(a)(1)), this provision is, nevertheless, administered more liberally than the second (sec. 6161(a)(2)).

Reasons for change.—The shortening of the period for the filing of the estate tax return and payment of the estate tax from 15 to 9 months might increase hardships under present law, if no further action were taken. This is because an estate which could find the funds to pay the estate tax liability in a 15-month period might not be able to do so in a 9-month period. The 6-month extension of time under present law extends the aggregate period for filing the return from 15 to 21 months and under the bill would extend the 9-month period (if no further action were taken) to 15 months, still 6 months less than under present law. The committee believes that any problems which may occur as a result of shortening this period of time from 15 to 9 months for the filing of the return and the payment of the tax can be eliminated by increasing the maximum extension of time available for the payment of the estate tax where there is reasonable cause from 6 to 12 months. As a result of this change an estate obtaining an extension of 12 months for the payment of estate tax will have the same 21-month period after the date of the decedent's death for the payment of the estate tax as is available under present law where the 6-month extension of time is granted.

In addition, with respect to this provision the committee believes that the extension of time should not be limited to those cases involving "undue hardship." Instead it is believed that the extension should be available where there is reasonable cause. Examples of where the Treasury Department agrees there is clearly reasonable cause are set forth in the explanation below.

Explanation of provision.—This bill, as amended, modifies the first of the extension of time provisions referred to above (sec. 6161(a)(1)) by providing that an executor may obtain an extension of time for the payment of the estate tax for a period not to exceed 12 months from the date fixed for payment of the estate tax.

In making this amendment it is also the understanding of the committee from its discussions with the Treasury Department that extensions of time will be made available in the future under this provision (sec. 6161(a)(1)) on a more liberal basis than in the past and that in the future they will be available whenever there is reasonable cause.

Specific cases which the committee understands from its discussions with the Treasury Department will be granted extensions of time by the Internal Revenue Service include the following types of situations:

Example 1.—A farm (or other closely held business) comprises a significant portion of an estate. Although the percentage requirements of the provision relating to an extension where an estate consists of a closely held business (sec. 6166) are not met, sufficient funds for the payment of the estate tax are not readily available. The farm (or other closely held business) could be sold to unrelated persons at a price equal to fair market value, but the executor seeks an extension of time to facilitate the raising of funds from other sources for the payment of the tax.

Example 2.—A gross estate includes sufficient liquid assets to pay the estate tax. However, the liquid assets cannot be readily marshalled by the executor, even with the exercise of due diligence, because they are located in several jurisdictions and thus not immediately subject to his control.

Example 3.—The estate is comprised in substantial part of assets in the form of payments to be received in the future, such as annuities, copyright royalties, contingent fees, or accounts receivable. These assets provide no present cash with which to pay the estate tax and the estate cannot borrow against these assets except upon terms which would inflict loss upon the estate.

Example 4.—An estate includes a claim to substantial assets which cannot be collected without litigation, thus rendering the size of the taxable estate unascertainable.

Example 5.—The assets in the gross estate which must be liquidated to pay the estate tax must be sold at a sacrifice price or in a depressed market.

Example 6.—An estate does not—without borrowing at a rate of interest higher than that generally available—have sufficient funds with which to pay the entire tax, and at the same time to provide a reasonable allowance during the remaining period of administration of the estate for the decedent's widow and dependent children, and to satisfy claims against the estate that are due and payable. In this case, the executor has made a reasonable effort to convert assets in his possession (other than an interest in a closely held business to which sec. 6166 applies) into cash.

In all of the above situations, the extension would be limited to the amount of the cash shortage. There will, of course, be other situations, in addition to (and not necessarily analogous to) the above examples, where extensions will be granted. Although it is impossible to set forth examples which will cover all cases, it is the committee's understanding that an extension will be granted whenever an examination of all the facts and circumstances discloses that the request for additional time to pay the estate tax is for reasonable cause.

It is the committee's further understanding that the Internal Revenue Service will implement a procedure whereby an executor whose request for an extension of time to pay the estate tax under this provision (sec. 6161(a)(1)) is denied, may appeal that determination from the office of the district director of the district in which the decedent was domiciled at the time of his death to the office of the Regional Commissioner for the region which includes that district.

7. Place for filing returns (sec. 101(i) of the bill and sec. 6091(b) of the code)

Present law.—Under existing law estate tax returns are required to be filed in the internal revenue district in which the decedent was domiciled at the time of his death (or, if there was no such domicile in an internal revenue district, then at such place as the Secretary or his delegate by regulations designates).

Reasons for change.—The committee understands that the audit of estate tax returns may be slowed by the present manner in which returns are required to be filed and in which they are assigned for audit. To hasten the examination of estate tax returns, the committee

has provided that the Internal Revenue Service may provide for filing of estate tax returns with either the district director or at a service center.

Explanation of provision.—The bill, as amended, modifies the provisions dealing with the place for filing returns by providing that an estate tax return is to be filed in the internal revenue district in which the decedent was domiciled at the time of his death or at a service center serving that district, as the Secretary or his delegate may determine by regulations. This procedure parallels a practice which was made applicable to individual and corporation income tax returns in 1966. As under existing law, the estate tax return of a decedent who was not domiciled in an internal revenue district, or who had no domicile, is to be filed at such place as the Secretary or his delegate designates.

The bill also amends existing law relating to hand-carried returns to allow the executor, who desires to file an estate tax return in person, to do so by hand carrying it to the appropriate internal revenue district office. This aspect is considered important by executors who want vertification of their timely filing and payment in order to avoid any danger of a penalty for late filing.

8. Administrative procedures to be taken to speed audit process

It is the understanding of the committee that to further speed the audit process with respect to estate tax returns, and in this manner to assist in shortening the time necessary for estate administration, the Internal Revenue Service will take the following administrative actions:

(1) Issue instructions to the field offices to give high priority to the classification and audit of estate tax returns;

(2) Eliminate the requirement for a preliminary notice (on form 704 or 705) of the death of a decedent having a gross estate in excess of $60,000; and

(3) Revise instructions to executors regarding the supporting material which should be filed with the estate tax return in order to emphasize that the audit will be delayed if the material is not filed promptly.

9. Effective date

The estate tax amendments described in this part of the report (other than the change made by section 101(f) of the bill) are to apply with respect to decedents dying after December 31, 1970. This means in the case of the 6-month holding period (sec. 101(g) of the bill) that the provision will apply to sales of property acquired from a decedent dying after December 31, 1970.

B. Gift Tax

(Sec. 102 of the bill and secs. 2501 et seq., 6019, 6075(b), 6212(c)(1), 6214(b), 6234(b), 6501(e)(2), and 6512 of the code)

Present law.—Under present law, the gift tax return must be filed and the gift tax is due and must be paid by the donor by April 15 following the calendar year in which a gift was made. For example, if an individual makes taxable gifts in January and April of 1970, the donor has until April 15, 1971, to file his gift tax return and pay the

gift tax. In the case of the gift made in January, this is a period of up to 15½ months before the return must be filed and the payment is due.

Reasons for change.—As indicated above, the deferral may be for as much as 15½ months during which time the donor has the interest-free use of the funds due on the gift tax liability. The question arises, in this connection, as to who appropriately should be entitled to the use of the funds which eventually will be required for the payment of the gift tax liability. In this connection it should be noted that in the case of the income tax, as well as most other Federal taxes, the tax is payable on a current basis. The question also arises as to why there should be substantially greater tax deferral for those who make their gifts during the first part of the year than those making their gifts later in the year.

The committee sees no reason for giving donors any more gift tax deferral than is accorded taxpayers generally. Moreover, it sees no reason for granting substantially greater tax deferral for those making their gifts in the forepart of the year. For these reasons, and also because of the need for revenue, the committee concluded that it was appropriate for these taxes to be paid over more promptly to the Government and for the Government to have the interest savings which accrue as a result. From the standpoint of the budget, it is estimated that this change will increase budget receipts in the fiscal year 1971 by $100 million. In addition, because of the more prompt payment of gift tax liability during each year thereafter, it is estimated that there will be significant interest savings to the Government.

Explanation of provision.—To provide for a more nearly current payment of gift tax liabilities, the bill, as amended, provides for the filing of gift tax returns, and the payment of gift taxes, on a quarterly rather than on an annual basis. The gift tax return and the payment of the gift tax liability is to be due on or before the 15th day of the second month following the close of the calendar quarter in which the gift was made. Thus, the gift tax return and payment for a gift made on February 1, 1971, for example, will be due on or before May 15, 1971. If this same taxpayer also makes a taxable gift on September 10, 1971, he will file a second gift tax return, and pay the tax attributable to that gift by November 15, 1971.

The bill retains the structure of present law insofar as the determination of gift tax liability is concerned. The present gift tax rates, exclusions, and deductions remain the same under the proposed quarterly filing requirement as under present law. The rate of tax on gifts made in any particular calendar quarter, for example, is to be determined by taking into account the total amount of taxable gifts which the taxpayer has made in all preceding calendar years and calendar quarters. This preserves the cumulative effect of present law with respect to the computation of the gift tax.

The bill also retains the annual $3,000 per-donee exclusion from gross gifts. The exclusion however, is to be applied in the order in which the gifts are made .Thus, if a donor gives $3,000 to A in January and $2,000 to A in September, the donor need not file a gift tax return with respect to the January gift nor pay any gift tax with respect to that gift. However, a gift tax return and gift tax payment is due for the September gift (to be filed and paid on or before November 15) since the annual exclusion, with respect to A, will have been exhausted.

The bill makes no substantive change in the $30,000 lifetime exemption, which a donor can take whenever he chooses. Under the bill the $30,000 lifetime exemption is to continue to be available, in such amounts as the donor elects, for use in a single quarter or over any number of quarters he chooses.

The provision in present law which allows a husband and wife to treat a gift made by either spouse as made one-half by each spouse, also is retained by the bill. As under present law, the consent of both spouses to treat gifts as so-called split-gifts continues to be required. Under the bill, however, the consent of the spouse to treat a gift by either as a split-gift must be made on a calendar quarter basis, rather than on the annual basis required under present law. Thus, if a gift made by a husband in April is to be treated as a split-gift, consent of the husband and wife to so treat the gift must be obtained no later than the date on which the gift tax return is filed (i.e., August 15 of the same year).

The gift tax return is to be due by the 15th day of the second month after the end of the calendar quarter in which the gift is made. This quarterly filing requirement applies with respect to all types of transfer by gift, with two exceptions. First, if the gift is eligible for the annual per-donee exclusion of $3,000, the transfer (as under present law) need not be reported at any time. Thus, if a donor transfers property worth $2,500 to his son on February 10, and that is the first transfer he made to this son in that year, a gift tax return need not be filed for that transfer.

The second situation in which a quarterly gift tax return is not required by the bill is where a donor makes a "qualified charitable transfer". However, while a return for a gift of this type is not required on a quarterly basis, the donor will be required to report charitable transfers on a return for the fourth quarter of the calendar year, or at such earlier time as he is required to file a return for a noncharitable gift. The committee concluded that since outright charitable transfers produce no gift tax there was no need to require earlier filings in these situations, unless there also were taxable gifts. It was feared that to do so would disrupt existing patterns of giving to charitable organizations, since donors might delay charitable giving in order to avoid the necessity of filing returns during the year.

A "qualified charitable transfer" is one for which a deduction is allowable (under sec. 2522) for the full amount of the gift. For example, if a donor gives the full title to securities to a qualified charitable organization, the donor is to be entitled to a charitable deduction equal to the full amount of the transfer. On the other hand, if the donor transfers property in trust to his son for life, with the remainder to a charitable organization after the son's death (even though the trust complied with either the annuity trust or unitrust rules), the transfer by gift is not a "qualified charitable transfer". While the donor is entitled to a current charitable deduction in this case for the value of the remainder interest contributed to charity, a gift tax charitable deduction is not allowable in an amount equal to the full amount transferred by gift. This is true because in this situation no charitable deduction is allowable for the interest transferred to the donor's son. Consequently, the donor is required to file a return, reporting the entire transfer to the split-interest trust (with respect to which he is entitled

to a gift tax charitable deduction), by the 15th day of the second month following the end of the calendar quarter in which the transfer is made.

As indicated previously, if a donor makes a transfer which is a qualified charitable transfer, he is required to make a return for the transfer for the fourth quarter of the calendar year (regardless of when in the calendar year the qualified charitable transfer is made), or, if a return is filed for an earlier calendar quarter (because the donor also made a noncharitable gift), then the donor is required to file a return for his charitable transfer at the same time he files the return for the noncharitable transfer. The operation of this provision can be illustrated by assuming that during January a donor makes a $2,000 transfer by gift to his nephew and a $4,000 transfer by gift to a charitable organization. Since the donor is not required to file a return for the gift to his nephew, a return for the charitable transfer is not due until the fourth quarter of the year in which the transfer is made (assuming no noncharitable gifts are made later in the year). The return for the charitable gift in this case is due on or before February 15 of the year following the year in which the gift is made.

In another example, assume the donor makes a qualified charitable transfer in January and a noncharitable gift in June. Since a return is required for the noncharitable gift on or before August 15, the donor is required to report his charitable transfer at the same time he reports the noncharitable gift.

A return filed for the fourth quarter, reporting what is claimed to be a qualified charitable transfer, is treated as a return, insofar as that property transfer is concerned, for the calendar quarter in which the transfer is made. If a transfer made in February is returned as a qualified charitable transfer on a return filed for the fourth quarter, the return so filed is to be treated as a return (insofar as that transfer is concerned) for the first calendar quarter. As a result, if the Commissioner subsequently determines that the transfer was not, in fact, made to a charitable organization, the donor still is to be considered as having filed a return insofar as the questioned transfer is concerned. Consequently the period during which the gift tax may be assessed, insofar as the claimed charitable transfer is concerned, is to begin to run on the date on which the return for the charitable transfer is filed.

IV. EXCISE TAX PROVISIONS

1. Continuation of excise taxes on passenger automobiles and communications services (sec. 201 of the bill and secs. 4061 and 4251 of the code)

Present law.—The present excise tax on passenger automobiles is 7 percent of the manufacturers' sales prices. Under present law, there is a scheduled rate reduction to 5 percent for the calendar year 1971, to 3 percent for 1972, and to 1 percent for 1973. The tax is then scheduled for repeal as of January 1, 1974.

The present excise tax on local and toll telephone services and teletypewriter exchange services (commonly referred to as "communications services") is 10 percent of the amount paid for the services. As in the case of the excise tax on passenger automobiles, there is a scheduled rate reduction in the tax on these communications services

to 5 percent for the calendar year 1971, to 3 percent for 1972, and to 1 percent for 1973. The tax on communications services is also scheduled for repeal as of January 1, 1974.

Reasons for change.—At the present time, when budget conditions reflect a considerable shortfall in tax revenues, the committee decided it would be inappropriate to permit the scheduled excise tax reductions to occur in either the calendar year 1971 or 1972. If the present law rate reduction schedule were to be followed, there would be a revenue loss for the fiscal year 1971 of $630 million ($330 million from the passenger automobile tax and $300 million from the communications tax) and a revenue loss for the fiscal year 1972 of $1,865 million ($885 million from the passenger automobile tax and $980 million from the communications tax). The magnitude of these losses is unacceptable at this time in view of present revenue requirements.

The committee therefore considered it necessary to postpone the commencement of the rate reductions for these excise taxes. In taking this action, the committee continues to recognize that these excise taxes are not desirable as a permanent feature of our excise tax system. The committee is aware of the fact, however, that these excise taxes have been scheduled for reductions in other years, but on occasion, because of the need for revenue, it has been impossible to permit the reductions to occur. Given the present schedules of excise tax reductions, it is quite possible that this same problem might also be faced in the future. To overcome this difficulty, the committee's bill provides for much more gradual reductions in the future—not more than one percentage point in any one year. It is believed that the revenue loss involved in such a schedule of reduction in most years will be quite small, particularly if account is taken of the normal growth in the use of communications services or in the likely increase in volume of cars purchased, together with any future price increases. Thus, the new schedule of reduction provided by the committee's bill, although ostensibly continuing these excise taxes for an appreciably longer period than the prior schedule of rates, in the committee's view, in fact, is more likely to lead to the elimination of these taxes sooner than if the present schedule of rates were merely to be postponed.

The committee also believed that it was appropriate for the excise taxes on automobiles and communications services to be scheduled for reduction over the same period of time. Since the tax on passenger automobiles is presently at a 7-percent rate, while that on communications services is at 10 percent, the committee concluded that it would be appropriate to provide for the initial reduction of the taxes on passenger automobiles on the basis of one percentage point a year until a 5-percent rate is reached, then hold the rate at that level until the tax on communications services also reaches a 5-percent level, and thereafter provide for a uniform reduction in the rate of tax in both cases.

Explanation of provision.—As indicated above, the committee concluded that it is appropriate in view of budgetary conditions to postpone for 2 years any reductions in the excise taxes on passenger automobiles and communications services. Accordingly, the bill, as amended, provides that the current tax rates are to continue through 1972. Also, for the reasons given above, the committee has spread the

future rate of reductions over a period of 10 years so that the tax rate on communications services may be scaled down one percentage point per year. This is expected to prevent any significant revenue loss in any given year.

So that the tax on passenger automobiles may be phased out over the same period as the tax on communications services, the bill provides for a one percentage point reduction in this tax for 1973 and for 1974. For 1974 through 1977, the bill continues the 5-percent rate on passenger automobiles. In 1977, the tax rates on communications services also reaches 5-percent. Thereafter, the one percentage point reduction per year is resumed for the tax on passenger automobiles and is continued for the tax on communications services. Thus, the excise taxes on both passenger automobiles and communications services will be repealed as of January 1, 1982.

Under the bill, the schedules of rates for the excise taxes on passenger automobiles and communications services are as follows:

Calendar year	Rate (percent)	
	Passenger automobiles	Communications services
1971	7	10
1972	7	10
1973	6	9
1974	5	8
1975	5	7
1976	5	6
1977	5	5
1978	4	4
1979	3	3
1980	2	2
1981	1	1
1982	[1]	[1]

[1] Repealed.

The bill also makes conforming changes to the code provisions relating to passenger automobile floor stocks refunds, and those relating to the rules providing for the billing for communications services rendered at about the time the tax on those services is scheduled for reduction or expiration.

In the course of its consideration of the communications services tax, the committee was made aware of the fact that some believe that a tax is due when a telephone company makes calls in the course of its business and uses facilities of another telephone company. Some, but not all, of the companies involved make records of these calls and periodically settle accounts. Any such settlements, however, usually are not made on the statutory basis for toll charges; namely, charges which vary in amount with the distance and elapsed time of each call. It is understood that some have thought that the monthly net settlements made in some of these situations is a basis for imposing the tax on assumed charges for all the calls. The committee did not intend in 1965 (when the present statutory language was enacted) that the communications services tax apply in these situations and does not now intend that these arrangements are to give rise to taxes on such charges.

2. Constructive sale price (sec. 301 of the bill and sec. 4216(b) of the code)

Present law.—Present law (sec. 4216(b)) provides for a constructive sale price (as a substitute for the actual sale price) as a base for the various ad valorem manufacturers excise taxes in several different types of situations. One of these involves the situation where the article is sold at less than the "fair market price" if the transaction is not at arm's length (sec. 4216(b)(1)(C)). Sales between related companies are examples of sales which are not considered to be at arm's length. As a result, in the case of a sale by a manufacturer or importer to its selling affiliate, a determination must be made as to whether the sale is at less than fair market price, and where this is true, the appropriate constructive sale price must be determined by general standards. If industry data are available, the determination should properly be made by reference to the prices for which others in the same industry at the same level of distribution sell similar articles. Because of difficulties in obtaining what it considers to be adequate information as to selling practices and prices of various companies within an industry, the Internal Revenue Service has generally not made determinations of constructive sale prices by reference to sales by other companies.

In 1962 the Internal Revenue Service published a ruling providing for a constructive sale price where a manufacturer or importer (the party liable for the excise tax) sells his products at less than fair market price to a wholly owned sales subsidiary and the subsidiary resells to one or more independent wholesale distributors (Rev. Rul. 62–68, 1962–1 C.B. 216). This provided that the taxpayer could elect to treat the constructive sale price as being 95 percent of the lowest price for which the sales subsidiary resold the article to independent or unrelated wholesale distributors. The Service has also held in various private rulings that where a manufacturer or importer makes sales to a wholly-owned selling subsidiary at a price less than the fair market price, and the wholly-owned selling subsidiary resells the articles to independent retailers but does not regularly sell to wholesale distributors, the constructive sale price is to be 90 percent of the selling subsidiary's lowest price to independent retailers.

The Tax Reform Act of 1969 added two constructive price rules to the tax laws dealing with situations where a manufacturer or importer regularly sells an article subject to excise tax to an affiliated corporation and that corporation regularly sells these articles to independent retailers but does not regularly sell to wholesale distributors. The first of these rules was the 90-percent rule described above. The second rule provided a method for determining the fair market price in the case of such sales to a selling affiliate by reference to the markups of others in the same industry who normally sell to independent distributors.

The first rule provided that the fair market price of the article is to be 90 percent of the lowest price for which the affiliated distributor regularly sells the article in arm's-length transactions to independent retailers. The second rule provided that where the distributor regularly sells only to retailers and the normal method of sales in the industry is by arm's-length transactions to distributors, then the fair market price of the article is to be the price at which the article

is sold to retailers by the affiliated distributor, reduced by a percentage equal to the markup used by independent distributors in that industry.

Reasons for change.—The rules described above which were added to the statute by the Tax Reform Act of 1969 were intended primarily to minimize the potential impact of taxes on competition in those industries where some manufacturers regularly sell through affiliated wholesalers while other manufacturers distribute their product through independent wholesalers. The purpose of the ruling policy, and the intent of Congress in 1969, was to permit the tax bases of the different manufacturers to be made more nearly comparable, regardless of the method each manfacturer used to distribute its products. This policy appears to be appropriate in those industries where the normal practice is to distribute through unrelated wholesalers.

Automobiles and truck manufacturers, however, typically distribute their products by selling directly to retailers (or in some instances to affiliated wholesalers). In this industry, the manufacturers excise taxes are imposed upon the price at the same level of distribution for all the manufacturers. Consequently, the tax structure has not created the type of competitive disadvantage that the rulings policy (and more recently the statutory provisions) were intended to reduce.

It appears, however, that automobile and truck manufacturers may, by creating affiliated wholesale distributors, be able to qualify for the 90-percent treatment under the literal language of the ruling policy and the 1969 amendment. Such a manufacturer could then sell its cars and trucks to its affiliated wholesale distributor and the distributor could then sell all the cars and trucks to an independent retailer at the same price that the manufacturer would otherwise have charged on a direct sale to the retailer. Even though creation of the affiliated distributor in these cases is apt to have little or no economic effect (except that arising from the tax reduction), it nevertheless results in a reduction of the base upon which the manufacturers tax is computed and therefore results in a reduction in the tax.

It is understood that some of the automobile manufacturers have already begun to use this method of distribution and it would appear likely that the remaining manufacturers would for competitive reasons feel compelled to make similar changes in the near future if no action is taken on this problem.

Although the use of this 90-percent rule means that the taxpayer must relinquish other adjustments otherwise available in present law (reductions of the tax base on account of transportation costs, cooperative advertising, and certain price readjustments), it has been estimated that adoption of the selling affiliate device by the entire automobile and truck industry would(at current levels of activity) result in net manufacturers excise tax revenue losses of from $75 million to $150 million a year (the variation in large part depending on whether or not the tax savings reduce business costs which increase income subject to income tax).

Since the 90-percent constructive price rule is not needed to make the tax neutral in its competitive effect in the case of passenger cars, trucks, trailers, buses, etc., the committee believed it should forestall this revenue loss. In view of this it added a special rule applicable to the manufacturers' excise taxes on automobiles, trucks, trailers, buses, etc.

Explanation of provision.—Under the bill, as amended, where the manufacturer of an automobile, truck, trailer, bus, etc., regularly sells to an affiliated distributor which then regularly sells to independent retailers, the constructive sale price (for purposes of sec. 4216(b)(1)) is to be 98.5 percent of the lowest price for which the affiliated distributor regularly sells those items in arm's-length transactions to independent retailers. (Under H.R. 19868 as passed by the House, this percentage was 97 percent. The committee believes the higher percentage better carries out the purpose of the House bill.) As under the other special constructive sale price rules added in 1969, this price is not to be further adjusted for those transportation, advertising, and price readjustment items which would be allowable if a constructive sale price were not used. It is understood that, in general, this 1.5-percent reduction in the tax base is not more than the usual reduction in tax base that occurs under present law when adjustments are made for the transportation and other costs noted above.

Consequently, this provision is expected to be used essentially to simplify recordkeeping and is not expected to result in the auto industry being able to gain a tax advantage from the creation of affiliated distributors. In effect, then, it is expected and intended that the tax will be neutral with regard to competition within the auto industry.

In connection with this change, the committee has added a number of clarifying amendments. The two rules added in 1969 define "fair market price." Although the fair market price thus determined has been used as the constructive sale price, it has been suggested that it is possible to interpret the statute to permit determination of a different constructive sale price. In order to avoid future uncertainty on this score, the bill provides that the price determined under the two rules added in 1969, as well as the price determined under the special auto industry rule added by this bill, will be the constructive sale price—the amount upon which the tax will be computed.

Although the committee has changed the rules provided in present law to make clear that they are constructive sale price rules and has also added a provision specifying another constructive sale price rule, it recognizes that in many situations it is difficult, if not impossible, for the Internal Revenue Service to determine a "fair market price." Such a determination is necessary since (under sec. 4216(b)(1)) the constructive sale price rules are applicable only if there are sales at less than "fair market price." In the case of sales between related parties, however, unless another "fair market price" is clearly applicable, the committee believes that it is reasonable for the Internal Revenue Service to use the constructive sale price rules provided by these three provisions in determining what constitutes the "fair market price" for purposes of the sales involved.

The committee in providing the new rule specified in this bill does not mean to imply that it regards Revenue Ruling 62–68, described above, as being an unreasonable exercise of the Commissioner's discretion under the basic constructive sale price provision in those cases where none of the new constructive sale price rules apply.

Revenue Ruling 62–68, the 90-percent rule added in 1969 (and the earlier private ruling practice upon which the 1969 legislation was based), and the 98.5 percent rule added by this bill all depend upon a determination of the lowest price at which certain articles are sold on

a regular basis in arm's-length transactions. The bill provides rules for determining this lowest price. These rules are to apply to determinations made under the basic constructive sale price rule (including the 1962 ruling and the private ruling practice mentioned above) with regard to articles sold after June 30, 1962 (the effective date of the 1962 ruling), to determinations made under the 90-percent rule with regard to articles sold after December 31, 1969 (the effective date of the statutory 90-percent rule), and to determinations made under the new 98.5-percent rule with regard to articles sold after December 31, 1970.

The lowest price is to be determined without requiring that any given percentage of sales be made at that price, so long as the volume of sales made at that price is great enough so that those sales will not be engaged in primarily to establish a lower tax base. In comparing prices to determine the lowest price, so-called "dealer holdbacks" are to be excluded. That is, where the apparent price includes a fixed amount as to which the purchaser has a contractual arrangement under which an amount will be returned at a later time and the amount to be returned is determinable (e.g., a stated dollar amount or a fractional or percentage part of the total price) at the time of the sale to the purchaser, then this amount is not to be regarded as a part of the actual sale price.

The amendments made by this section of the bill are to apply with respect to articles sold after December 31, 1970, except that, as indicated above, the rules for determining lowest price also apply to earlier sales which fall under the general rule (including the 1962 ruling) or the 90-percent rule enacted in 1969.

3. Further manufacture (sec. 302 of the bill and sec. 6416 of the code)

Present law.—Under present law, an article subject to manufacturers excise tax generally can be sold tax-free for further manufacture. For example, a manufacturer of truck parts may sell those parts tax-free to a truck manufacturer, who then includes those parts in the completed taxable truck (secs. 4221 (a) (1) and 4223; a special rule for bodies of automobiles, trucks, etc., is provided in sec. 4063 (b)).

Where a person acquires a tax-paid article and makes some significant functional change to it, the resulting item is treated as a new article and the manufacturer of this new article (the "further manufacturer") is subject to tax. Usually the new article is sold at retail, bringing into play the constructive sale price rules of present law (sec. 4216 (b) (1)). The further manufacturer usually can be allowed credits for the manufacturers excise taxes paid on the components that he uses to create the new article (secs. 6416 (b) and (c)).

Reasons for change.—There is uncertainty at the present time as to how the tax is to be measured when a new taxable article is created with tax-paid components. The committee understands that Internal Revenue agents have been using a number of different methods of determining the tax base in such situations, some of which in some cases produce tax liabilities almost as great as the value of the parts and labor that the further manufacturer has added to the article. Instances of this type have led to efforts to provide statutory rules as to when taxable further manufacture has occurred. The committee

recognizes the great difficulty in providing detailed statutory rules in this area that can be administered and at the same time can provide equity among differently situated manufacturers.

The Treasury Department also recognizes that a uniform method for measuring the amount of tax in cases of further manufacture is needed and has indicated its willingness to develop such a rule largely under its present rule-making authority. However, to accomplish this result several technical changes are needed in the credit provisions. The committee believes that the Treasury's suggestion in this regard is likely to resolve in an appropriate manner most of the problems that have been presented in this area. Accordingly, the bill makes the technical changes recommended by the Treasury with the understanding that the Treasury will thereafter revise its rules in this area.

Explanation of provision.—The changes that are made in the computation of the tax on the further manufacturer are intended in effect to result in no item being included in the tax base more than once. In addition, they are intended to exclude from the tax base that part of the final price that is essentially a retailing or distributing markup, as distinguished from a manufacturing markup.

The committee understands that the tax in further manufacture situations is to be measured in essentially the following manner:

Manufacturer 1 sells a new truck tax-paid to Manufacturer 2, who then buys a new tax-paid "fifth wheel", installs it, and sells the completed article at retail to the ultimate user. Under the Internal Revenue Service's interpretation of present law, the sale by Manufacturer 2 of the truck with fifth wheel installed is subject to manufacturers excise tax (sec. 4061(a)) and a constructive sale price is to be calculated (sec. 4216(b)(1)).

Manufacturer 1 charges $11,300 for the truck. Of this amount, $300 constitutes transportation, cooperative advertising, and price readjustments, which were excluded from Manufacturer 1's tax base, and $1,000 constitutes the 10-percent truck tax calculated upon Manufacturer 1's remaining tax base of $10,000. Manufacturer 1 then remits $950 to the Internal Revenue Service—the $1,000 tax minus the $50 tire and tube tax credit to which Manufacturer 1 is entitled (sec. 6416(c)).

The fifth wheel manufacturer charges $440 for the fifth wheel. Of this amount, $8 constitutes transportation, etc., excluded from the fifth wheel manufacturer's tax base, and $32 constitutes the 8-percent truck parts tax calculated upon the fifth wheel manufacturer's remaining tax base of $400.

Manufacturer 2 then installs the fifth wheel for $100 labor and allocable overhead costs and sells the assembled vehicle for $13,000.

Manufacturer 2's tax base is $10,500, calculated as follows:

Manufacturer 1's tax base on truck	10,000
Fifth wheel manufacturer's tax base	400
Labor and allocable overhead cost to Manufacturer 2	100
Total	10,500

To this amount would be added the normal markup allocable to such manufacturing. Where the actual markup is clearly determinable, it will be used. In the usual situation, where the actual markup is not clearly determinable, the committee understands that the Internal

Revenue Service will usually assume a 10-percent manufacturer's markup on the amount added by the further manufacturer (in the above example, the assumed markup would be 10 percent of $500) in determining the constructive sale price. Where the further manufacturer is not the ultimate user, but sells the article to someone else the Service will usually assume that 25 percent of its selling price (exclusive of tax) constitutes a retailing or distributing profit and not a manufacturing profit. In such a case the tax base is the greater of the $10,500 (plus any appropriate manufacturing profit) tentative tax base referred to above or 75 percent of the selling price. Since in this example Manufacturer 2's tentative tax base of $10,500 exceeds 75 percent of the tax-excluded price for which it has sold the assembled vehicle, the tax base is $10,500 (plus any appropriate manufacturing profit). It is understood that at this time, because of competitive pressures, dealers generally install fifth wheels at cost, with no manufacturing profit. Consequently, at this time the tax base in this case would be $10,500. The gross tax, at 10 percent, is $1,050, against which Manufacturer 2 takes credits for the $950 tax paid by Manufacturer 1, the $50 credit for the tire and tube tax credit (under sec. 6416(c)), and the $32 tax paid by the fifth wheel manufacturer, all of which were passed on to Manufacturer 2. The net tax due in this case, on account of the addition of the fifth wheel, therefore is $18.

In this example, there was only one further manufacturer [1] and that person bought directly from those who had paid the original manufacturers excise taxes (or is entitled to the tire and tube tax credit under sec. 6416(c)). This method is intended to be applied, in the case of purchases of new tax-paid components, where there is a series of further manufacturers and also where there are distributors intervening between the further manufacturers and those who paid the original manufacturers taxes. In order to permit this result to be accomplished, the bill makes technical changes in the credit provisions which permit a credit (including the tire and tube tax credit) to be "passed through" a series of further manufacturers and distributors.

This mechanism for credits will not be available for used tax-paid components.[2] An article is treated as having been "used" for this purpose when it would be treated as having been previously used so as to disqualify it, under present law (sec. 4221(a)), from the privilege of tax-free sale for further manufacture, export, supplies for vessels, use by a State or local government, or use by an exempt school or university.

In the case of a used item, it is understood that the tax base for the further manufacturer will include only the cost of the new items purchased and the labor added in order to produce the assembled taxable article, plus the appropriate manufacturing profit, if any. The further manufacturer would not be permitted to claim a credit for the tax paid on used articles but would be permitted a credit for the tax paid on any new articles added to the assembled final product. It is expected that

[1] This example is based on the Internal Revenue Service's current view of what is further manufacturing—the committee at this point is concerned with the manner in which the tax is calculated and does not intend to express a view on whether a particular activity constitutes further manufacturing.

[2] If this mechanism were available in the case of used components, the credit, in many cases, could exceed the tax liability of the further manufacturer. This would be the case, for example, where a new fifth wheel would be added to a five-year-old truck, the value of which is less than the tax base of the basic truck when it was new.

comparable rules will be provided for those situations where used parts are added to a used vehicle to create a new taxable article.

The changes to the credit provisions will apply to all open transactions, that is, those transactions where the statute of limitations has not yet run and the tax liability has not yet been settled by agreement or by court decision in that case. This retroactive effective date is not intended to create a new substantive right and will not open cases that have been closed by the statute of limitations or otherwise.

The committee understands that the recent rulings of the Internal Revenue Service changing the circumstances under which further manufacture is said to have occurred, will not be applied retroactively.

4. Certain camper units (sec. 303 of the bill and sec. 4063 of the code)

Present law.—Present law imposes an excise tax on sales by a manufacturer (or importer) of automobiles, trucks, trailers, buses, etc., but not housetrailers. Generally, present law also imposes an excise tax on parts and accessories when sold separately for the above items other than passenger automobiles or housetrailers. An exception, however, provides that the tax is not to apply to articles (such as camper coaches or bodies for self-propelled mobile homes) designed to be mounted (or placed) on trucks, truck chassis, or auto chassis, and which are to be used primarily as living quarters.

Reasons for change.—The exemption referred to above was added by the Excise Tax Reduction Act of 1965. Prior to that time the Internal Revenue Service held that the exemption for housetrailers did not apply to camper coaches, which are units designed to be mounted on a truck for use as living quarters, or to mobile homes, which typically are bus-type bodies equipped for family living and mounted on truck chassis.

It was pointed out in this committee's report on the 1965 Act that, historically, the rationale for exempting housetrailers centered on the fact that such trailers were thought of as more or less permanent living quarters which were seldom moved about on the highways. However, small camper-type trailers had also been held exempt as housetrailers. The committee report also stated that, in reality, the mobile-type motor home much more closely followed the initial rationale for exemption of housetrailers than was true of many of the small camper-type trailers which had been held to be exempt. The committee report further stated that the traditional distinction between the different types of mobile living quarters had become blurred and that to continue the tax on some of these articles while exempting others would result in unfair competitive problems for the manufacturer as well as resulting in unfair treatment of those who may desire to purchase one particular type of mobile living quarters rather than another. For those reasons the above-indicated exemption was provided.

After the enactment of the exemption for camper coaches in 1965, a question arose as to whether a one-piece top (often called a camper cap) which is designed to be mounted on the body of a pickup truck came within the exemption. When it is installed, the top, together with the truck body sides and the truck floor, provide an area which can be used for sleeping quarters. The top may have windows and a rear door and can be equipped with swing-up bunks, mattresses, and a

dome light. Usually, these camper tops are designed and held out for sale by manufacturers for recreational uses such as camping, fishing, and hunting.

The Internal Revenue Service has ruled that to come within the exemption for camper coaches the article must have a practical preponderant use as living quarters. It has held that the article must be complete in itself and cannot depend on the body of a pickup truck for that completeness. It has further held that the article must be able to function as living quarters as well off the truck as it does mounted on the truck.

The committee believes it is discriminatory both insofar as the manufacturers and the users are concerned to deny exemption for the so-called camper caps used as a camper facility.

Explanation of provision.—The bill, as amended, extends the present exemption for camper coaches to those articles used primarily for camping accommodations. The exemption provides that the tax is not to apply for articles designed to be mounted or placed on trucks, truck chassis, or automobile chassis, and which are to be used primarily for living quarters or camping accommodations.

The committee intends that this provision is to apply to those articles which are designed and held out for sale by manufacturers for camping accommodations.

An example of this is a cap designed for mounting on pickup trucks which, upon installation and together with the truck body sides and the truck floor, provides an area which can be used for sleeping quarters. Articles may be considered as designed for camping accommodations if they have side windows which are screened, have separate rear access doors, and often have ventilation equipment. It is not necessary that the articles have separate floors and lower sidewalls, or that they be able to function as living quarters as well off the truck as they do mounted on the truck, or that a person be able to stand up in them. Where the article was primarily designed for camping accommodations, the exemption will not be affected by the fact that in individual cases the accommodation may have been used on a commercial basis.

No inference is intended by the provision as to the taxable status of such article under existing law.

5. Rate of tax stated on new car labels (sec. 304 of the bill)

Present law.—Under present law, a manufacturer of a new automobile is required to affix to the windshield or side window of the automobile a label on which the manufacturer shows, among other things, the suggested retail price of the vehicle, the suggested retail prices of all the optional equipment added to the vehicle, the transportation charged for delivery by the manufacturer to the dealer, and the total of these items. Penalties are provided for willful failure to affix the label ($1,000 for each offense), willful failure to state the required information on the label or willful false statement on the label ($1,000 for each offense), and willful removal, alteration, or rendering illegible of the label ($1,000 or 1 year imprisonment, or both, for each offense). These provisions appear at sections 1231 through 1233 of title 15 of the United States Code.

Reasons for change.—The committee believes that it is appropriate for members of the purchasing public to be made aware of the fact that new automobiles are subject to a significant manufacturers excise

tax and that this information should be available at the time the prospective purchaser is contemplating a purchase. Although, as indicated above, it is clear that the Government's revenue needs do not permit reduction of the passenger automobile tax at this time, an increased consumer awareness may serve to make more likely the future adherence to the scheduled reduction in passenger automobile tax rates. In any case it has been made clear that the public wants to know, and has the right to know, when it is paying tax. In this connection it should be noted that the passenger automobile tax was reduced in 1965 from the former rate of 10 percent to the present rate of 7 percent.

Explanation of provision.—The bill, as amended, provides that where a manufacturers excise tax is imposed under the Internal Revenue Code on a sale of a new automobile, which is required to have a label affixed to it as described above, then the person required to affix the label must also state on the label that the Federal manufacturers excise tax was imposed and the percentage rate at which the tax was imposed.

Willful failure to make the statement on the label or willful false statement is to result in a penalty of $1,000 for each offense.

This provision is to apply to new automobiles distributed in commerce after March 31, 1971.

V. TREASURY WORKING CAPITAL FUND

(*Sec. 401 of the bill*)

At the present time the Department of the Treasury is performing through its "Salaries and expenses" appropriation for the Office of the Secretary, on a reimbursable basis, various centralized services which benefit a number of Treasury bureaus financed by separate appropriations.

The working capital fund established by this bill, as amended, would consolidate these operations, place them on a more systematic and business-like basis, and assist the Department in presenting a more accurate cost-based budget. This method of managing, financing, and accounting could be used whenever a consolidated services operation exists or is needed in that Department.

It was brought to the attention of the committee that the working capital fund method of financing for centralized services is used by a number of other agencies of the Government, including the Departments of Agriculture (7 U.S.C. 2235), Commerce (15 U.S.C. 1521), Health, Education, and Welfare (42 U.S.C. 905), Interior (43 U.S.C. 1467), Labor (29 U.S.C. 563), and State (22 U.S.C. 2684). The committee was advised that the experience of these Departments with the working capital fund method of financing has demonstrated the value of this method of managing and financing for certain services.

The working capital fund would be a revolving fund of working capital employed to finance administrative service operations servicing more than one appropriation or activity. The fund would finance the central buying of materials, supplies, labor, and other services; the holding and issuing of materials and supplies; and the processing of materials into other forms for use. The supplies, materials, and services would be sold on order to customer activities on the basis of actual

cost and the fund reimbursed. The working capital fund would provide a means for accumulating reserves to cover the cost of repairing and replacing equipment and the stocking of supplies under the most advantageous conditions.

The centralized services initially proposed by the Department of the Treasury include printing and duplicating, procurement of supplies, materials and equipment, and telecommunication services. Other services would be added as specifically determined by the Secretary of the Treasury with the approval of the Director of the Office of Management and Budget. (The committee has amended the House bill which referred to the Director of the Bureau of the Budget in view of the recent reorganization of that office.) All such services must meet the test of being more advantageous and economically performed as central services.

The committee was informed by the Treasury witnesses that an annual business-type budget would be prepared for submission to the Congress and included in the President's budget. The Appropriations Committee would thus be kept informed of the activities being carried out and would appropriate the required funds in the appropriations of the bureaus receiving the services.

The bill places a limitation of $1 million on the capital in the working fund which will be made up of inventories and equipment and other assets, including any appropriations which may be made for this purpose. The fund is expected to revolve several times during a fiscal year.

The fourth title of the bill, as reported by the committee, is substantially identical in substance with H.R. 4890 of the 90th Congress, which was passed by the House of Representatives and was reported by the committee.

VI. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).