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SUMMARY OF TAX AND OTHER BILLS PASSED BY THE HOUSE ON DECEMBER 21 OR 22, 1970

PREPARED FOR THE

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

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A. TAX BILLS

1. Wagering Tax Amendments of 1970 (H.R. 322)

Reasons for bill

In January 1968, the Supreme Court, in *Marchetti* v. *United States* (390 U.S. 39) and *Grosso* v. *United States* (390 U.S. 63), held that a person may validly refuse to comply with the Federal wagering tax statute by asserting the self-incrimination privilege of the fifth amendment to the Constitution, where complying with the statute could incriminate him. As a result of the *Marchetti* and *Grosso* cases, the wagering taxes have become largely unenforceable.

In addition to the constitutional problems created by the wagering taxes, other problems exist with respect to their administration and enforcement which the bill seeks to remedy.

Explanation of bill

The most significant feature of the bill is its prohibition of disclosure of wagering tax information received by Government personnel, except in connection with the administration or enforcement of internal revenue taxes. It is expected that this change in the law will remove any constitutional problems regarding enforcement of the wagering taxes.

Additionally, the bill makes the following other changes in existing law:

1. Under present law, a $50 occupational tax is imposed on persons liable for payment of the 10-percent excise tax on wagers and on persons engaged in receiving wagers. These persons, denominated "principals", "agents", and "punchboard operators" under the bill, will continue to be subject to the occupational tax. However, principals and agents will be subject to a $1,000 tax and punchboard operators will be subject to a $100 tax. Additional categories of persons not now subject to the occupational tax ("pickup men" and other "employees" of a gambling operation) will be subject to a $100 tax.

2. The bill provides more severe criminal penalties for noncompliance than those contained in existing law. The bill would make any willful failure to pay the wagering taxes a felony punishable by up to five years imprisonment and/or a fine of up to $10,000 or three times the tax due, whichever is greater. Additionally, the nonpayment of taxes alone would be punishable as a misdemeanor by imprisonment of up to one year and/or a fine of up to $5,000 or twice the tax due, whichever is greater.

The bill is substantially the same as S. 1624, which was reported by the Judiciary Committee on May 5, 1970 and referred to the Committee on Finance on that day. However, the following differences exist:

1. S. 1624 provides an exemption from the wagering taxes with respect to State or locally licensed gambling which is subject to a State or local tax. The House bill provides a credit in place of the exemption on the grounds that an exemption could eliminate liability for relatively large amounts of Federal tax upon the imposition of a small State or local tax.

2. S. 1624 provides that in case of a criminal conviction for violation of the wagering taxes, the sentencing judge must set forth his reasons for imposing any sentence which does not include incarceration. H.R. 322 eliminates this requirement on the ground that this is an attempt to induce a judge to provide a harsher sentence than he considers appropriate.

3. S. 1624 provides immunity front prosecution with respect to testimony which is compelled over an objection based on the self-incrimination privilege. In light of the recent enactment of the Organized Crime Control Act of 1970 (Public Law 91-452), which contains a similar provision which applies in wagering tax cases, this provision was eliminated from the House bill.

Administration position

The Treasury Department and Justice Department recommend the enactment of this bill.

2. Taxes and Regulatory Provisions Relating to Beer (H.R. 6562)

Reasons for bill

The bill makes a series of changes designed to relax Internal Revenue Code regulatory provisions dealing with beer, but only under such regulatory authority and other restrictions as are designed to assure efficient supervision of operations and collection of tax by the Internal Revenue Service. The relaxation of these requirements are intended to facilitate the brewing of beer without giving rise to any difficulties as to the collection of taxes.

Explanation of bill

This bill, H.R. 6562, makes the following changes in the beer tax provisions of the present law:

(1) The bill permits credits or refunds if beer is returned to another (instead of only the original) brewery of the same brewer. Also it permits offsets (instead of merely a credit or refund) if the beer is returned to the brewery from which it was removed even though the beer is not returned on same day it was removed. (The offset procedure is simpler and more convenient than the claim-for-refund procedure, for both the Internal Revenue Service and the taxpayers.)

(2) The bill permits credits or refunds in the case of loss by theft (where there is no collusion of the brewer's employees or those with whom he deals) and also where the beer is rendered unmerchantable (even though it is not actually destroyed). For this provision to apply, the theft or rendering unmerchantable must have occurred before transfer of title to any other person, and the theft must have occurred before removal from the brewery. The brewer must show that the provisions of the statute have been complied with and may be required to file a formal claim where he seeks relief from the tax. The theft provisions added by the bill are essentially similar to those under existing law in the case of distilled spirits.

(3) The bill permits beer to be removed from the brewery without payment of tax for use in research, development, or testing of processes, systems, materials, or equipment relating to beer or brewery operations. The removals are subject to such conditions as the Internal Revenue Service prescribes and the beer must not be used for consumer testing and other market analysis.

(4) The bill permits the bonding requirement to be satisfied by continuation of an existing bond, with such continuation being subject to Government approval in the same manner as is the case with regard to a new bond (instead of requiring a new bond every four years). The purpose of the bonding requirement is to protect the collection of the revenue.

(5) The bill codifies present regulations defining the area of a brewery and permitting loading facilities to be near the main facilities (rather than requiring them to adjoin the main factilities), except that it permits separate case packing and storing facilities to be approved as part of the brewery under the same circumstances that apply under present regulations to loading facilities.

(6) The bill eliminates the requirement of separate facilities for the bottling of beer and cereal beverages and makes other minor definitional changes to simplify the present statutory provisions without changing the substance of the provisions

(7) The bill codifies present regulations permitting the establishment, at the discretion of the Internal Revenue Service, of pilot brewing plants off the brewery premises for research, analytical, experimental, or developmental purposes with regard to beer or brewery operations.

The changes made by the bill take effect on the first day of the first calendar month beginning more than 90 days after the date of the enactment of the bill.

Treasury position

The Treasury Department has indicated that it has no objection to the bill's enactment.

3. Certain Regulated Investment Companies (H.R. 6742)

Reasons for bill

Under present law, regulated investment companies (mutual funds) are taxed only on the income which they retain and do not distribute to their shareholders if they meet, among other things, certain diversification requirements. Under these requirements, at least 50 percent of a fund's assets must be invested in cash, cash items, and certain corporate securities. A fund's stockholdings in a company in excess of 10 percent of the stock of that company do not qualify for this 50-percent test.

An exception to the above requirement is provided for development companies (established to provide funds for corporations marketing new products) if not more than 25 percent of the company's assets is represented by stock of companies in which it has excess (over 10 percent) holdings which it has held for 10 years or more. A company which fails to meet this requirement, however, may continue to qualify (and be taxed) as a mutual fund even though it, in effect, no longer meets the prescribed requirements. This is because a special savings provision continues the fund's status if it does not acquire new securities.

One development company's stockholdings have substantially appreciated in value and now represent more than 25 percent of its assets. Accordingly, it no longer meets the special 25-percent rule and thus must sell its excess holdings before it may continue making new investments. The bill, in effect, is designed to require the company to sell these excess securities in an orderly fashion (i.e., in relatively small amounts) if it wishes to retain its status, so it can invest its funds in other companies marketing new products.

Explanation of bill

H.R. 6742 provides that so-called development companies (established to provide funds for corporations marketing new products) which are taxed as regulated investment companies (mutual funds) must dispose of their excess holdings in such corporations within a 20-year period (instead of the 10-year period under present law) to the extent the holdings represent more than 25 percent of their investments. However, for this treatment to be available beginning with the 15th year such companies must dispose of at least 40 percent of their excess holdings of stock by the end of the 15th year. Companies which once met the statutory requirements to qualify as regulated investment companies through the application of the special development company rules, and which fail to meet these limitations for any quarter, may not have the benefit for that quarter of the special savings clause under existing law.

Provisions which were identical in substance to the provisions of this bill passed both the House (H.R. 15023) and the Senate (H.R. 2767) in 1968, but neither of those bills was enacted.

The amendments made by this bill apply with respect to taxable years beginning on or after January 1, 1967, except that the prohibition against reliance on the general savings clause in order to qualify as a regulated investment company applies to taxable years beginning after the date of enactment.

Treasury position

The Treasury Department has no objection to the enactment of this bill.

4. Ammunition Recordkeeping Requirements (H.R. 14233)

Reasons for bill

Under present law, a licensee under the Gun Control Act of 1968 must record the name, age, and residence of anyone who purchases ammunition from him. In addition, regulations require the licensee to record: the date of the transaction, the name of the manufacturer, the caliber, gauge or type of component, and the quantity of the ammunition transferred; and the method used by the licensee to establish the identity of the purchaser.

In 1969, Congress, in effect, repealed these requirements with respect to sales of (1) shotgun ammunition, (2) ammunition suitable for use only in rifles generally available in commerce, and (3) component parts for these types of ammunition. This exemption does not, however, cover .22 caliber rimfire ammunition since, while it is suitable for use in rifles, it is also suitable for use in handguns.

The types of ammunition exempted under present law from the registration requirements are those used largely in sporting types of firearms. Congress provided this exemption because it believed that the reporting requirements for ammunition for firearms of sporting types created a large and unnecessary administrative burden on the Treasury Department, on firearms dealers, and on the Nation's sportsmen who purchase this type of ammunition.

The House concluded that .22 caliber rimfire ammunition should also be exempted from the above requirements on the grounds that: (1) .22 caliber rimfire ammunition was in the past excluded by statute from classification as ammunition for pistols and revolvers; (2) .22 caliber rimfire ammunition has become the most popular sporting rifle ammunition in the United States; (3) neither the Treasury Department nor the Justice Department is aware of any instance where the recordkeeping provisions as to sporting ammunition (including .22 caliber rimfire ammunition) has been helpful in investigation and prosecution of a crime; and (4) the Treasury Department reports that because of the volume of transactions in this ammunition, the recordkeeping requirements have become so burdensome that they tend to detract from the enforcement of other provisions of the firearms laws.

Explanation of bill

The bill adds .22 caliber rimfire ammunition to the existing provision exempting certain ammunition from the recordkeeping requirements under the Gun Control Act of 1968. Under the provision, as amended, a Federal licensee is not to be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, .22 caliber rimfire ammunition, or the component parts for these types of ammunition.

This bill does not affect existing controls of interstate shipments and sales of ammunition of any types by a licensee to certain classes of people such as juveniles, drug addicts, felons, and others subject to the provisions of the Gun Control Act of 1968.

This provision is to be effective after the enactment of the bill.

Treasury position

The Treasury Department has indicated that it favors the enactment of the bill.

5. Floor Stocks Refunds on Cement Mixers (H.R. 17658)

Reasons for bill

Until 1968, when the Internal Revenue Service changed its position, the excise tax on manufacturers' sales of automobile truck bodies was not applied in the case of concrete mixers where the actual mixing of the concrete occurred in the tank mounted on a truck chassis. In the Tax Reform Act of 1969, Congress concluded that the earlier position of the Service with respect to concrete mixers better expressed the intent of Congress, and it provided that the truck tax and truck parts and accessories tax would be inapplicable to cement mixer bodies and to parts and accessories for those bodies sold on and after January 1, 1970. No provision was made, however, for floor stocks refunds for those items upon which tax had been paid and which were still in the hands of dealers on the date the tax was repealed.

Due to the absence of the customary floor stocks refund provision, dealers have had to absorb excise taxes ranging up to $700 or $800 for each mixer in inventory on January 1, 1970, on which tax had been paid. Dealers placed in these circumstances are at a competitive disadvantage as compared with dealers who purchased stock from manufacturers tax-free in 1970 (or acquired stock on a consignment basis tax-free in 1969 and still had the mixers in stock on January 1, 1970).

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Refunds in such situations are generally allowed so the dealer will not be required to bear the full burden of the tax at a time when the tax is reduced or eliminated, and also to remove a competitive discrimination against dealers with large inventories at the changeover date.

It has been estimated that the total amount of refunds will approximate $200,000 to $250,000.

Explanation of bill

The bill provides that a dealer is to be entitled to floor stocks refunds (without interest) if, on January 1, 1970, he held any new cement mixers which had been subject to the truck tax during the period between June 30, 1968, (the effective date of the Internal Revenue Service ruling that such articles were subject to the truck tax), and January 1, 1970 (the effective date of the 1969 legislation on this point). The bill also provides floor stocks refunds for parts and accessories designed primarily for use on or in connection with such cement mixers.

Except for the fact that more time is allowed for filing the refund claims, the refund procedure provided in the bill is substantially the same as the procedure already provided under present law for automobiles, trucks, etc., and the procedure provided for a number of manufacturers excise taxes in the Excise Tax Reduction Act of 1965.

Treasury position

The Treasury Department has indicated it has no objection to the enactment of this bill.

6. Transition Rule for Moving Expenses (H.R. 17917)

Reasons for bill

The Tax Reform Act of 1969 modified the rules with respect to the deduction of job-related moving expenses to allow deductions for certain additional categories of moving expenses, to require that reimbursements for moving expenses be included in gross income, to provide that the employee's new place of employment must be 50 miles (instead of 20 miles as under prior law) farther from his old residence than was his prior place of employment, to extend the moving expense deduction to self-employed persons, and to modify certain other rules. Generally, the new rules were more liberal in allowing deductions than the prior rules. This was not true, however, in the case of the requirement as to the distance moved. In this case, the new place of employment must be at least 50 miles, instead of 20 miles, farther from the prior residence than the former place of employment. Because of the fact that this was a more strict rule, the act provided that the taxpayer could elect to have the old rules apply for amounts paid or incurred before July 1, 1970, if the taxpayer had been notified by his employer of a move on or before December 19, 1969.

It appears that some employees who were notified of a pending move on or before December 19, 1969, were not able, because of extenuating circumstances (for example, where the jobs were not available soon enough at the new location) to complete their moves before the July 1, 1970, cutoff date. As a result, they could not qualify under the old rules which were in effect when their notice of transfer or move was given. Where the job location move was in the 20-mile to 50-mile range, this had the effect of denying these persons moving expense deductions where deductions would have been available under prior law.

Explanation of bill

The bill extends the cutoff date in the transition rule in the 1969 act from "before July 1, 1970" to "on or before December 31, 1970." This will enable taxpayers to elect to have moving expenses paid or incurred in this additional 6-month period treated under the old moving expense rules. This is to apply (as under present law), however, only where an employee had been notified by his employer of the move on or before December 19, 1969.

The bill, H.R. 17917, is substantially the same as the amendment relating to the transitional rule for moving expenses made by the committee to H.R. 17473, which was reported out by the committee and was later passed by the Senate on December 18, 1970. This bill as amended has been considered by the House and returned to the Senate with an amendment deleting the provision modifying the minimum tax, but with no change in the moving expense provision. The Senate on December 22, 1970 agreed to the House amendment thereby sending H.R. 17473 (with this moving expense provision) to the President.

Treasury position

The Treasury Department indicated it had no objection to the enactment of this bill.

7. Transitional Rules for Corporate Distributions of Appreciated Property to Shareholders (H.R. 17984)

Reasons for bill

The Tax Reform Act of 1969 provided that if a corporation distributes appreciated property to a shareholder in redemption of part or all of his stock, gain is recognized to the corporation. Transitional rules made this provision inapplicable to contracts in existence on November 30, 1969, to offers made before December 1, 1969, or in cases where a ruling request was filed with the Internal Revenue Service or a registration statement was filed with the SEC before that date.

A similar type of case was called to the attention of the House where corporations had begun plans of redemption (pursuant to Boards of Directors resolutions) before the Congressional consideration of the provision and where a substantial part of the plans had been carried out before the date of enactment of the 1969 Act. The House believed that the existence of an authorization to redeem—taken together with the fact that a significant proportion of the program had been carried out—is the equivalent of the existing transitional rules.

Explanation of bill

The bill adds a new transitional rule to the Tax Reform Act providing that gain is not to be recognized upon the distribution of appreciated property to a shareholder in redemption of part or all of his stock where the following conditions are met:

(1) The redemption is pursuant to a resolution adopted before November 1, 1969, by the Board of Directors authorizing the redemption of more than 10 percent of the outstanding stock of the corporation;

(2) more than 40 percent of the stock which the Directors authorized to be redeemed was redeemed before December 30, 1969;

(3) more than half of the stock so redeemed was redeemed with property other than money;

(4) the property used in the redemption was owned by the distributing corporation (or by its wholly-owned subsidiary) on December 1, 1969;

(5) the stock redeemed was outstanding on November 30, 1969; and

(6) the stock is redeemed before July 31, 1971, and cancelled before that date.

Treasury position

The Treasury Department has indicated that it has no objection to the enactment of this bill.

8. Application of Investment Credit Recapture Rule to Leased Aircraft (H.R. 17988)

Reasons for bill

The amount of the 7-percent investment tax credit previously allowed with respect to investment credit property was determined with reference to the length of time the property would be used by the taxpayer (i.e., 100 percent of the credit if held 8 or more years, two-thirds if held 6 to 8 years, or one-third if held 4 to 6 years). If property with respect to which the investment credit was previously allowed is disposed of, or ceases to be qualified investment credit property, before the end of the period used in determining the amount of the credit originally allowed, then the credit is recaptured in whole or in part, depending on the period of time it was actually used in the specified manner by the taxpayer.

For an airplane to qualify initially as investment credit property and to continue to qualify, it must be principally used in the United States or (if it is registered with the Federal Aviation Agency) operated either to and from the United States or under contract with the United States. This requirement has been interpreted by the Treasury Department to mean that the plane must be used in the specified manner for more than half of each taxable year.

In recent years, U.S. air carriers have acquired (or are under binding obligations to acquire) airplanes based on a projected demand which took into account to a significant degree governmental airlift requirements, particularly those associated with Southeast Asia. Governmental airlift needs, however, have been decreasing from past levels and, as a result, a number of U.S. airlines find they have excess equipment. The only practical use of the excess airplanes at the present time, other than letting them remain idle, is to lease them on a temporary basis for use outside the United States. If this were done, however, there could be a recapture of the investment credit previously allowed with respect to the airplane.

It is possible at the present time to avoid the application of the recapture rules by the expensive and often impractical procedure of rotating the individual aircraft used outside the United States so that in any 1 taxable year an airplane is used more than one-half the time in the United States.

The House concluded that it was appropriate in view of the above considerations to not apply the investment credit recapture rules where an airplane is used outside the United States for less than half the period taken into account in determining the amount of the investment credit previously allowed. In effect, this is applying the concept of the present Treasury regulations which require an airplane to be used principally in the United States during each taxable year, but over the longer period used in computing the amount of the credit originally allowable. At the same time, it was believed this rule will allow aircraft to be used in a profitable and economic manner without investment credit recapture consequences.

Explanation of bill

The bill provides that a new airplane which qualified for the investment credit under the rules of present law for the year it was placed in service may be used outside the United States without a recapture of the credit for up to half of the time period taken into account in determining the amount of the investment credit originally allowed (that is, 4 to 6, 6 to 8 or 8 or more years) with respect to the airplane. This treatment is to be available, however, only with respect to airplanes leased from U.S. air carriers after April 18, 1969, under leases which comply with the applicable Federal aviation statutes.

If an airplane which is used outside the United States in the manner described above is disposed of (or otherwise ceases to quality as investment credit property) before the end of the period taken into account in determining the amount of the credit originally allowed, then the amount of the credit to be recaptured is to be determined in the following manner. The months during which an aircraft was used outside the United States under the type of lease described above may be taken into account only to the extent of the number of months during which the plane was used (or considered used) in the United States. (However, an aircraft for any calendar month in a taxable year ending before 1971 is to be treated as used in the United States if the plane was qualified investment credit property under present law for that year.)

The amendment made by this bill is to apply to taxable years ending after April 18, 1969.

Treasury Position

The Treasury Department is not opposed to the enactment of this bill.

9. Refunds in the Case of Certain Uses of Tread Rubber (H.R. 18251)

Reasons for bill

There are several instances under present law where a manufacturers tax is imposed on tread rubber when in a similar situation a manufacturers tax would not be imposed in the case of a new tire.

First, the tire tax is imposed on the weight of the new tires after completion of the manufacturing process. Rubber wasted in manufacturing does not figure in the tax base for the new tire. In the case of the tax on tread rubber, the tax is imposed before the completion of a major manufacturing process—the recapping or retreading of the used tire. No refund or credit is provided for any portion of the tax imposed on the tread rubber which is wasted in the recapping or retreading process.

Second, under present law, where the sale of a new tire is adjusted on account of a tread mileage or road hazard guarantee or other similar arrangement, a credit is allowed for the portion of the tax equal to the proportion of the reduction in price of the replacement tire. However, if the sale of a retreaded tire is adjusted under the same circumstances, present law does not permit any credit or refund of the tread rubber tax.

Third, under present law, a credit or refund of the tax on new tires is available when the tire is exported, sold to a State or local government, sold to a nonprofit educational organization, or sold as supplies for a vessel or aircraft. A credit also is available on account of the tire tax when a new tire is mounted on a new automobile that is then disposed of in any of the above ways. However, no credit or refund is available for the tread rubber tax when a recapped or retreaded tire (or the car on which it is mounted) is disposed of in any of those ways.

Explanation of bill

This bill, H.R. 18251, provides credits or refunds of the manufacturers excise tax on tread rubber where tax-paid tread rubber: (1) is wasted in the recapping or retreading processes; (2) is used in the recapping or retreading of tires the sale of which is later adjusted; or (3) is used in the recapping or retreading of tires which are exported, are sold to State or local governments, are sold to nonprofit educational institutions, or are sold as supplies for vessels or aircraft.

These changes are intended to permit credit or refund of the tax on the tread rubber used on a recapped or retreaded tire, under the circumstances where a credit or refund would be available for a new tire.

The amendments made by this bill take effect on the first day of the first calendar month which begins more than 10 days after the date of the bill's enactment.

Treasury position

The Treasury Department has indicated that it has no objection to the bill's enactment.

10. Credit for Foreign Taxes Paid by Certain Foreign Corporations (H.R. 18549)

Reasons for bill

Under present law, U.S. corporations are allowed a credit against the tax on their foreign income for foreign income taxes paid by them with respect to that income. In addition, a domestic corporation is allowed a foreign tax credit for foreign taxes paid on income earned by a foreign corporation which in turn is paid as a dividend to the domestic corporation (referred to here as an indirect credit). To claim an indirect credit on dividends received, a domestic corporation must own at least 10 percent of a foreign corporation. An indirect foreign tax credit is also allowed for foreign income taxes paid by a second-tier foreign corporation which is at least 50 percent owned by the first-tier foreign corporation when its earnings are distributed through the first-tier corporation to the domestic corporation.

In the past it has not been clear why the credit has not been available in the case of third-tier corporations except possibly because of a concern with the administrative difficulties which would be presented.

It has become increasingly common, however, for U.S. taxpayers to engage in joint ventures at the second-tier level in foreign countries where there is not a 50-percent ownership between the first- and second-tier levels. In addition, foreign law often requires a substantial degree of local ownership so that it may be difficult for a first-tier foreign subsidiary to have a 50-percent ownership in a second-tier foreign subsidiary. Moreover, it has become increasingly common (and at times necessary) for U.S. taxpayers to engage in business in foreign countries through foreign subsidiaries at the third-tier level.

The House concluded that the principle of allowing an indirect foreign tax credit in the case of taxes paid by third-tier foreign corporations is the same as in the case of the indirect credit allowed under present law. Moreover, it was concluded that allowing the credit in these cases should not present significant administrative difficulties for the Treasury Department for two reasons: First, extensive information reporting requirements are presently imposed on U.S. taxpayers with respect to foreign corporations in which they have an ownership interest. Second, under present law, a taxpayer is not allowed a foreign tax credit unless the taxpayer has established the amount of the tax for which a credit is claimed and all other information which is necessary to verify and compute the foreign tax credit.

Explanation of bill

The bill extends the indirect foreign tax credit to foreign income taxes paid by third-tier foreign corporations in which the second-tier foreign corporation has at least a 10 percent ownership interest (determined by voting power).

The bill also reduces the required ownership for allowance of the indirect foreign tax credit between first- and second-tier foreign corporations from 50 percent to 10 percent. The indirect credit is allowed for foreign income taxes paid by a second- or third-tier foreign corporation, however, only where the domestic corporate shareholder has an indirect ownership interest (determined by voting power) of at least 5 percent in the second- and third-tier foreign corporation.

The amendments made by this bill apply to taxable years of domestic corporations ending after the date of enactment of the bill, but only with respect to dividends paid by one corporation in a chain to another corporation in the chain after the date of enactment of the bill.

Treasury position

The Treasury Department does not object to the enactment of this bill.

11. Certain Cuban Expropriation Losses (H.R. 18693)

Reasons for bill

Under present law, net operating losses may be carried back 3 years and carried forward 5 years to offset income of the taxpayer. Net operating losses arising from expropriation by a foreign government may not be carried back, but they may be carried forward 10 years. However, in the case of individuals, these provisions are fully applicable, in effect, only to losses incurred in the taxpayer's trade or business.

A special rule is provided for Cuban expropriation losses of property of an individual held for personal use, such as his residence. If the individual was a citizen or resident of the United States on December 31, 1958, any Cuban expropriation loss sustained before January 1, 1964, which was not a trade or business loss or an investment loss may be carried back 3 years and carried forward 5 years. If the property is tangible property, it must have been held by the taxpayer and located in Cuba on December 31, 1958.

On the other hand, an individual's Cuban expropriation losses on investment property (that is, property held for the production of income not in connection with a trade or business) may not be carried back or carried over under the regular net operating loss provision except to the extent the individual has investment income.

The House considered it anomalous that unused Cuban expropriation losses of business property and personal-use property may be carried to other taxable years, but unused Cuban expropriation losses of investment property cannot. It concluded that there was no reason why, if carrybacks and carryovers are to be allowed for expropriation losses of personal-use property, they should not be allowed for expropriation losses of investment property, a class of property more closely related to business property, with respect to which losses have traditionally been accorded carryback and carryover treatment.

Situations were also presented to the House where a taxpayer acquired property after December 31, 1958, but before the Cuban Government initiated its widespread policy of expropriation. Such taxpayers were ineligible for loss carrybacks and carryovers in the case of expropriations of both personal property and of investment property.

Explanation of bill

The bill generally provides that Cuban expropriation losses of individuals with respect to investment property are to be treated in the same way as Cuban expropriation losses of individuals with respect to personal-use property under present law—that is, as casualty losses which may be carried back 3 years and carried over 5 years under the net operating loss provisions.

The bill provides that for purposes of determining whether personal-use or investment property qualifies for casualty loss treatment, the property must have been held by the taxpayer in Cuba on one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959.

The bill also permits a taxpayer to file a claim for refund or credit for otherwise closed years (1) with respect to expropriated investment property, and (2) with respect to expropriated personal-use property acquired and held in Cuba after December 31, 1958, and on or before May 16, 1959, since casualty loss treatment is not available for expropriations of such property under present law. No interest is to be allowed on these refunds or credits for any period before January 1, 1972.

Treasury position

The Treasury Department does not oppose the enactment of this bill.

12. Capitalization of Costs of Planting Almond Groves (H.R. 19242)

Reasons for bill

Generally, taxpayers engaged in the business of farming can use the cash accounting rules which are available for computing income or loss from farming but which are not generally applicable to other forms of business. The Tax Reform Act of 1969 limited the application of this provision, however, in the case of those engaged in the farming business of purchasing, planting, cultivating, maintaining, or developing a citrus grove. In this case that act provided that expenses incurred for these purposes through the fourth taxable year (beginning in the year in which the trees were planted) were to be treated as capital expenditures rather than as currently deductible expenses. As a result in this case, the expenses must be written off over the life of the grove rather than in the year the expense is paid or incurred.

The provision described above, however, does not apply in the case of capital expenditures incurred in the development of an almond grove, although the cases are substantially the same. As a result, the expenditures of purchasing, planting, cultivating, maintaining, and developing an almond grove during the early years of the life of the asset can be expensed and the deductions taken currently. Therefore, in the case of almond groves, new plantings can be used to obtain current deductions against other income by taxpayers who are not primarily engaged in farming during the period of the development of a grove even though there is no economic loss from incurring the expenses of planting and developing the almond grove. In later years, when the taxable income from the grove increases and the development expenditures are largely completed, the grove in many cases can be sold with the income realized in the form of capital gains subject to a maximum tax rate between 25 percent and 35 percent.

Explanation of bill

The bill amends the provision which requires the capitalization of expenditures incurred in developing a citrus grove to also make it applicable to almond groves. It provides that the expenditures, attributable to purchasing, planting, cultivating, maintaining, or developing an almond grove must be capitalized, if the expenditures are incurred prior to the end of the third taxable year after the year in which the grove is planted. Thus, expenditures incurred during this period cannot be deducted as a current expense, but instead must be charged to capital account.

This capitalization rule does not apply to expenditures incurred in replanting an almond grove which was damaged or destroyed (while in the hands of the taxpayer) by freeze, drought, disease, pests, or casualty.

The provision applies to trees planted on or after December 30, 1970.

Treasury position

The Treasury Department has indicated that it has no objection to the enactment of this bill.

13. Losses on Worthless Securities (H.R. 19369)

Reasons for bill

Under present law, a corporation whose stock or securities in a subsidiary company become worthless is allowed an ordinary loss deduction, rather than the capital loss treatment generally provided for worthless securities. However, a company is considered a subsidiary company for this purpose only if the parent corporation owns at least 95 percent of each class of the subsidiary's stock. On the other hand, in determining when a parent company may file a consolidated income tax return with its subsidiary, present law provides an 80 percent rather than a 95 percent stock ownership test.

When the ordinary loss treatment for securities of a subsidiary company which become worthless was originally enacted in 1942, Congress indicated it was providing this treatment since (at that time) a consolidated income tax return could be filed by a parent and its subsidiary companies where the parent had a 95-percent ownership interest in the subsidiaries. In these cases the concept was that the companies were considered closely enough related, in effect, to treat them as one operating business. In the case of consolidated return treatment, the losses of one may be offset against the income of the other. In the case where the securities of the subsidiary company become worthless, following the same concept, the loss, in effect, is regarded as a loss of part of the business of the parent corporation rather than as a loss on an investment.

In 1954 the required ownership which must exist for companies to file consolidated returns was reduced from 95 percent to 80 percent. Since an 80-percent control interest is considered an appropriate degree of relation for purposes of treating two or more corporations as one business under the consolidated return provisions of the tax law, the House concluded that it was appropriate to reduce the required ownership for ordinary loss treatment of worthless stock and securities of a subsidiary company from 95 percent to 80 percent.

Explanation of bill

The bill amends the provision in the tax laws allowing a corporation ordinary loss treatment for its holdings of stock or securities of a subsidiary company which becomes worthless, by substituting an 80-percent ownership requirement for the present 95-percent requirement. As a result, ordinary loss treatment is to be available to a parent company for its holdings of stock or securities of a subsidiary which become worthless if the parent company directly owns at least 80 percent of the voting power of all classes of the subsidiary's stock and at least 80 percent of each class of the subsidiary's nonvoting stock. For purposes of this ownership test, preferred stock is not taken into account.

The amendment is to apply to taxable years beginning on or after January 1, 1970.

Treasury position

The Treasury Department is not opposed to the enactment of this bill.

14. Tax Treatment of Certain Statutory Mergers (H.R. 19562)

Reasons for bill

In 1968, Congress added a provision permitting statutory mergers where the stock of a parent corporation was used in the acquisition made by the subsidiary. At that time the Congress said that it saw no reason why tax-free treatment should be denied in cases of this type where a corporation was acquired with the stock of the parent instead of the stock of the subsidiary.

As a result of this provision, an unrelated corporation may be merged into a subsidiary in exhange for the stock of the parent of the subsidiary in a tax-free statutory merger. However, if for legal or business reasons unrelated to Federal income taxation, it is considered more desirable to merge the subsidiary into the unrelated corporation—a so-called reverse merger—the transaction is not a tax-free statutory merger under present law.

The House believed that there was no reason why a merger of a subsidiary into an unrelated corporation should be taxable while the merger in the other direction—of the unrelated corporation into the subsidiary—under identical circumstances is tax free.

Explanation of bill

The bill amends the tax laws to permit a tax-free statutory merger of an unrelated corporation into another when the stock of the parent of the merged corporation is given to the shareholders of the survivor corporation in exchange for their stock. To obtain this tax-free treatment, however, the following conditions must be met:

(1) The corporation surviving the merger must hold substantially all of its own properties and substantially all of the properties of the merged corporation (except the distributed stock of the controlling corporation); and

(2) the former shareholders of the surviving corporation must receive voting stock of a controlling corporation for stock representing 80 percent of the voting power and value of the surviving corporation (additional stock in the surviving corporation may be received for cash or other property or need not be acquired at all).

The amendment applies to statutory mergers occurring after December 31, 1970.

Treasury position

The Treasury Department has indicated it has no objection to the enactment of this bill.

15. Interest Rates Under the Renegotiation Act of 1951 (H.R. 19566)

Reasons for bill

Under present law, a contractor who disagrees with a determination of excessive profits, as made by the Renegotiation Board, may petition the U.S. Tax Court for a review of the Board's findings. In such circumstances, repayment of the excessive profits may be delayed until a Tax Court decision is rendered. Interest at the rate of 4 percent accrues on these unpaid excessive profits beginning 30 days after the Board's determination and running until these excessive profits (or any lesser excessive profits as determined by the Tax Court) are repaid. Interest at the same rate also accrues on any additional excessive profits determined by the Tax Court from the date of the determination until the time of the repayment.

The House believed that in any of these situations, the contractor has, in effect, borrowed funds from the Government for a period extending from the time of the Board's determination, or the Tax Court's determination, to the time when any excessive profits are repaid. Not to charge realistic interest on these unpaid excessive profits tends to encourage the filing of petitions for redetermination with the Tax Court merely in order to secure low interest rate "loans" from the Government.

Accordingly, the House concluded that the contractor should be required to pay interest on these "borrowed" funds at a rate which is reasonable in light of the prevailing commercial rates of interest for borrowed money.

In the reverse situation, if excessive profits as determined by the Board are repaid and subsequently the Tax Court determines that there were no excessive profits or that they were less than the amount determined by the Board, the House believed that it was equally clear that the Government has, in effect, borrowed money from the contractor for a period extending from the time of the repayment of the erroneously determined excessive profits to the time of the refund. Under existing law, interest at the rate of 4 percent is paid on such refunds. Here, too, the House concluded that interest should be paid on the refund at a rate which is reasonable in light of prevailing commercial interest rates.

Explanation of bill

The bill provides that the rate of interest to be used with respect to excessive profits is to be determined by the Secretary of the Treasury for the 6-month period beginning January 1, 1971, and for each 6-month period thereafter. He is to determine the rate by taking into consideration current rates of interest on commercial loans.

The rate of interest determined in the manner provided above, for any particular 6-month period, is to apply to all determinations of excessive profits and to all overcollections of excessive profits, on which interest begins to run in the period in question. The interest rate once determined in this manner with respect to any specific excessive profits determination is to continue unchanged thereafter with respect to those excessive profits. If, subsequently, in a redetermination, there are additional excessive profits, the interest rate applicable to these additional profits is to be the interest rate applicable for the period in which the redetermination occurs.

Administration position

This bill results from an administration proposal presented by the Renegotiation Board.

16. Certain Passive Income of Subchapter S Corporations (H.R. 19627)

Reasons for bill

In 1958, Congress enacted the subchapter S provisions in order to permit small business corporations and their shareholders to be taxed basically like partnerships and partners. At that time, Congress determined to make those provisions applicable only to operating businesses and not to businesses which received significant amounts of passive investment income, such as royalties, rents, dividends, interest, annuities, and gains from sales or exchanges of stock or securities. Consequently, it provided that a corporation would be ineligible for subchapter S treatment if it derived more than 20 percent of its gross receipts from passive investment income sources. Since then, however, the elimination of the passive income requirement has been urged by some tax writers, and was included in the legislative proposals presented by the Treasury Department (both the 1968 and 1969 recommendations) to simplify subchapter S and to deal with other problems, such as the inadvertent terminations of elections.

The passive investment income limitation has presented especially difficult problems where corporations carrying on active businesses have realized corporate gains which have unexpectedly disqualified them for subchapter S treatment. It has been held, for example, that passive investment income for purposes of subchapter S includes capital gains received by a corporation in the liquidation of another corporation. These gains are so treated although the business operation is clearly active, as evidenced by the ownership by the corporation involved of more than 50 percent of the liquidated corporation's stock. As a result, in those cases where such a gain brings the corporation's passive investment income over the 20-percent limitation, the company becomes ineligible for subchapter S treatment—even though the company is basically an operating business—merely because of the liquidation of another active corporation in which it owned a controlling interest. This is true despite the fact that the corporation's controlling interest indicates that its interest in the liquidated corporation was active in nature and did not represent a portfolio investment.

Explanation of bill

The bill provides that for purposes of applying the passive investment income test, a capital gain occuring upon the liquidation of a corporation is not to be considered as passive income for subchapter S purposes if the corporation involved had more than a 50-percent interest of each class of the stock or the liquidated corporation. This treatment applies to taxable years of subchapter S corporations ending after the date of enactment of this bill, and also applies to any taxable year ending before October 7, 1970 (the date of this bill's introduction), if the making of a refund or the allowance of a credit is not barred on that date by any law or rule of law. However, in order to avoid manipulation of open overpayment years against closed deficiency years, the bill provides that the statute of limitations for deficiencies for any years involved is not to expire for one year after the last date for filing an election under this provision.

The bill also provides special rules to prevent the denial of subchapter S status to a corporation in two cases. First, this status is not to be denied because the application of the passive investment income limitations in the past caused a corporation to file its income tax return on a form 1120 (corporate tax return) instead of a form 1120S (subchapter S corporation tax return) for any year beginning before the date of enactment of this bill. Second, subchapter S status is not to be denied because the application of the investment income limitation in the past caused a new shareholder of the corporation not to file a timely consent to the subchapter S election. However, the bill is not to apply to prior years unless all persons who were shareholders during this period consent to its application—in particular, to the recalculation of taxes and to the opening of closed deficiency years.

Treasury position

The Treasury Department has indicated that it has no objection to the enactment of this bill.

17. Tax Treatment of Certain Transfers of Property to Foreign Corporations (H.R. 19686)

Reasons for bill

Under present law an exchange involving a foreign corporation which would otherwise be treated as a tax-free transaction under the corporation organization, reorganization or liquidation provisions does not qualify for tax-free treatment, unless prior clearance is obtained from the Internal Revenue Service.

This provision is applicable where the exchange involves both a domestic and a foreign corporation and also where it involves only foreign corporations. An example of the latter situation is a merger of two second tier foreign subsidiaries. A transaction involving second tier foreign subsidiaries can have immediate tax consequences to the United States shareholders of the first tier foreign subsidiary (under subpart F of the Code) if the transaction is treated as a taxable transaction. This is because the transaction in this case can result in taxable income to the first tier foreign subsidiary which would be currently taxable to the United States shareholder as a constructive dividend (under subpart F).

Although there may be a number of types of transactions with respect to which further consideration would indicate that the required ruling should be obtainable after the transaction occurs as well as before it occurs, a type of situation has arisen where, at this time, the House believed it was appropriate to allow this treatment. This involves the case where a second tier foreign subsidiary changes its form of organization from one corporate form (under the applicable foreign law) to another corporate form. Under present United States tax law, this transaction is treated as a tax-free exchange by the first tier subsidiary of stock in the second tier foreign subsidiary for stock in a new second tier foreign subsidiary. If an advance ruling is not obtained prior to the transaction, however, any "gain" on the transaction may be treated as ordinary income to the first tier subsidiary and in turn treated as currently taxable to the U.S. parent company (under subpart F).

The harshness of this result is avoided if the U.S. parent company is allowed to demonstrate to the Internal Revenue Service after the exchange that it did not have as one of its principal purposes the avoidance of Federal income taxes. In this regard, it should be noted that under the present ruling policy of the Internal Revenue Service, the required advance ruling would normally be granted in this type of transaction as a matter of course.

Dealing with another aspect of the advance ruling provision, a recent court decision held that the advance ruling requirement did not apply to a capital contribution to a controlled foreign corporation where the transferor shareholder did not receive any stock in return. The House believed there was as much opportunity for tax avoidance in the case of a capital contribution of property to a controlled foreign corporation where no stock is received, as in the case where stock is received by the transferor shareholder (in which an advance ruling clearly would be required.)

Explanation of bill

For the reasons discussed above, this bill modifies the advance ruling requirement, which applies in the case of exchanges involving foreign corporations, to allow the ruling to be obtained after the exchange in the case of a transaction involving merely a change in the form of organization of a second or lower tier foreign subsidiary. For this treatment to be available, however, the ownership of the corporation whose form is changed is identical before and after the transactions.

The bill also provides that the advance ruling requirement is to apply to situations in which one or more persons transfer property to a foreign corporation which they control as a contribution to the capital of the foreign corporation. In other words, a transaction of this type is to be treated as a taxable transaction unless a ruling is obtained before it occurs to the effect that the transaction is not pursuant to a plan having as one of its principal purposes the avoidance of Federal income taxes. Control for the purposes of this provision is defined to mean 80 percent of the voting power of the corporation (determined with the application of the stock ownership attribution rules).

The amendments made by the bill which permit the required ruling to be obtained after the transaction has occurred in the case of certain change of form reorganizations are to apply with respect to transfers made after (including exchanges occurring after) December 31, 1967.

The amendments which provide that contributions to the capital of a foreign corporation are to be treated as taxable exchanges in certain cases unless prior clearance is obtained are to apply with respect to transfers made after December 31, 1970.

Treasury position

The Treasury Department is not opposed to the enactment of this bill.

18. Joint Income Tax Liability of Innocent Spouses (H.R. 19774)

Reasons for bill

Under existing law, individuals filing a joint income tax return are jointly and severally liable for any income tax liability found to be due. This joint and several liability also exists as to penalties and additions to tax: e.g., the 50-percent fraud penalty determined to be due as a result of the fraud of either spouse. In recent years, there have been numerous situations in which an innocent spouse has been held liable for the income taxes and penalties due as a result of the wrongful omission, by the other spouse, of amounts from income. For example, if a husband embezzles funds and omits the proceeds from gross income, the wife of the embezzler may be held liable for the taxes and penalties due as a result of the omission if she files a joint return with her husband. This liability may be imposed upon the wife even though she had no knowledge of her husband's activities and the resulting omission from income, and even though she did not benefit in any way from the use of the funds. Several of the decided court cases holding an innocent spouse liable in these situations have expressed considerable dissatisfaction with the harshness of the present law and have carried pleas for legislative relief.

In view of the above considerations the House sought to correct the unfairness involved in these situations and to bring tax collection practices into accord with basic principles of equity and fairness.

Explanation of bill

This bill deals with the problem outlined above by adding two provisions to the tax laws.

First, the bill provides that when 3 conditions exist, the innocent spouse is to be relieved of the tax liability to the extent the liability is attributable to an omission from the gross income. The conditions which must exist before an innocent spouse can be relieved of liability for tax (including interest, penalties, and other amounts) are: (1) a joint return must have been filed and the omission from gross income (attributable to one spouse) must be more than 25 percent of the total gross income stated on the return; (2) the innocent spouse must establish that in signing the return he or she did not know of, and had no reason to know of, the omission from income, and; (3) taking into account whether or not the spouse significantly benefited from the items omitted from gross income, and all other facts and circumstances, it would be inequitable to hold the spouse in question liable for the deficiency in tax. The first requirement noted above is intended to limit the relief provided in the bill to those cases where the income omitted represents a significant amount relative to the reported income. The second requirement imposes on the innocent spouse the burden of showing that he or she did not know of, and had no reason to know of, the omission from income. In determining whether or not the spouse seeking relief significantly benefited from the items omitted from gross income (the third requirement noted above), the term "benefit" as used in the bill is not intended to include ordinary support of the innocent spouse but would, for example, include unusual support or transfers of property to the spouse.

Second, the bill amends the provision imposing a 50 percent penalty when the underpayment of tax is due to fraud. The bill provides, in effect, that if one spouse is shown to be guilty of fraud in the filing of a joint return, the other spouse is not liable for the fraud penalty unless it is also established that he or she is also guilty of fraud. This potential relief from the fraud penalty applies even though the spouse in question may be jointly liable for the underpayment of tax due (e.g., where the underpayment of tax resulted from fraudulent deductions rather than from an omission from gross income).

The amendments made by this bill apply to all open years to which the 1954 Code and the 1939 Code apply.

Treasury position

The Treasury Department has no objection to the enactment of this bill.

19. Sales by a Corporation of Real Property Held More Than 25 Years (H.R. 19790)

Reasons for bill

In 1956, Congress provided that, in certain cases, corporations, as well as individuals, could subdivide real property for sale without this giving rise to ordinary income. The 1956 amendment was generally applicable only to cases where property was acquired through the foreclosure of a lien securing the payment of a debt. However, the provision also covered nearby property if 80 percent of the property owned was obtained through the foreclosure of the lien.

The Internal Revenue Service in administering and interpreting this provision did not make the relief available in the types of situations Congress intended to cover. This bill clarifies the types of situations originally intended to be covered. Because Congress acted on this in the middle 1950's, the bill applies to all taxable years after 1957 not closed at the time of the enactment of this bill.

Explanation of bill

The bill, in general, provides that a corporation may subdivide and sell land and pay capital gains tax rather than ordinary income tax where the following conditions are present:

(1) the land has been held for more than 25 years at the time of its sale,

(2) the land was acquired before 1934, and

(3) the land was acquired as a result of a foreclosure of liens.

The capital gains treatment referred to above is available only for the proportion of the gain exceeding 5 percent of the selling price (the gain to the extent of 5 percent is treated as ordinary income received as a commission on a sale).

The capital gains treatment described above also applies to property acquired before 1957 in "the near vicinity" of the property acquired by foreclosure and also to other minor acquisitions (to fill gaps in previously acquired property, to facilitate the installation of streets, etc., or to facilitate the sale of adjacent property). However, the capital gains treatment is available only 80 percent of the real property sold in any year is property acquired as a result of the foreclosure.

The bill applies only to years beginning before December 31, 1983, since it is intended to cover liquidating operations for property acquired before 1953. The bill does not reopen any closed years.

Treasury position

The Treasury Department has indicated no objection to the enactment of this bill.

20. COMPUTATION OF POLICYHOLDERS' SHARE OF INVESTMENT YIELD ON LIFE INSURANCE COMPANY TAX RETURNS (H.R. 19881)

Reasons for bill

In the Life Insurance Company Income Tax Act of 1959, Congress extensively revised the income tax treatment of life insurance companies. This revision, however, did not include rules dealing with the taxation of a group of affiliated life insurance companies which elected to file a consolidated income tax return. The Internal Revenue Code as well as the Treasury regulations under both the life insurance company provisions and the consolidated return provisions have remained silent on the manner in which these two complex areas of the tax law relate to each other and are to be applied.

In the past, faced with this ambiguous situation, life insurance companies which elected to file a consolidated tax return eliminated intercorporate dividends from the various life insurance company tax computations. The elimination of intercorporate dividends is what is provided for generally in the case of consolidated returns. A recent court case (*Jefferson Standard Life Insurance Company* v. *United States*, 408 F. 2d 842 (CA. 4, 1969)), however, held that this method of computing an insurance company's taxable income was incorrect on the basis that the elimination of intercorporate dividends allowed a life insurance company to deduct a portion of those dividends twice.

The principle enunciated by the court (namely, that life insurance companies filing consolidated tax returns should compute the amount of their investment yield which is taxable to them as if they were filing separate returns) appeared appropriate to the House in view of the method of taxing life insurance companies.

This principle, however, could have an effect, which the House considered undesirable, in the case of prior years where there was a lack of any official guidance as to the manner in which these provisions of the tax law were to be coordinated. The principle of the court deprived life insurance companies of the advantages they anticipated receiving from filing consolidated returns (primarily the elimination of intercorporate dividends) while not returning to them various benefits each company in the group would have had if completely separate returns had been filed (principally not having to pay the 2-percent penalty tax imposed prior to 1964 on companies which filed consolidated tax returns).

Explanation of bill

To deal with the above problems, the bill provides that a life insurance company which files a consolidated tax return for a year is to compute its share of its investment yield (i.e., the amount of its investment yield remaining after deduction of the policyholders' share of the investment yield) as if it were filing a separate tax return. This rule is to apply to the computation of the life insurance company's share of the investment yield under both phase I and phase II of the life insurance company tax provisions.

This provision is to apply to all taxable years to which the Life Insurance Company Income Tax Act of 1959 is applicable (i.e., years beginning after December 31, 1957).

In addition, a rule is provided which allows those companies which previously filed consolidated income tax returns under the 1959 act for years ending prior to the enactment of the bill to refile on a completely separate basis for those years up to 1 year after the enactment of the bill.

For this rule to apply, a life insurance company (and its affiliated life insurance companies) must file a separate return for the first year under the 1959 Act for which a consolidated return was filed and for each subsequent year ending prior to the enactment of the bill. If this is done, the companies are to be allowed any credit or refund of tax, or reduction in a deficiency of tax, which may result from the filing on a seperate basis rather than a consolidated basis. In addition, any deficiency of tax arising for this reason may be assessed for up to two years after the enactment of the bill.

Treasury position

The enactment of this bill is not opposed by the Treasury Department.

B. TARIFF BILLS

1. Tariff Classification of Certain Sugars, Sirups, and Molasses (H.R. 7226)

Reasons for bill

Invert or high-test molasses, the principal product covered by this bill, is produced from the concentrated juice or sap of the sugar beet or sugarcane (in the form of sucrose) by treating it to convert part of the sucrose into invert sugar. This product is usually used for other than human consumption or commercial extraction of sugars. Its primary uses are for the distillation of alcohol, as livestock feed, and other industrial uses.

Prior to August 31, 1963, the effective date of the Tariff Schedules of the United States, imports of "invert or high-test molasses" were dutiable at the rate of duty applicable to molasses imported for use other than the commercial extraction of sugar or human consumption. The assessment of duty at this rate was based on the "similitude" provision of the former tariff schedules. The same duty treatment, by similitude, was also accorded to certain other products containing over 6 percent by weight of soluble nonsugar solids which products resulted from a manipulation in bonded warehouse consisting of the admixing of sugars and molasses. The Bureau of Customs practices based on similitude were not of public record, and these particular similitude practices were not called to the attention of the Tariff Commission when it drafted (item 155.40) the new tariff schedules. As a result, the products which were covered by such practices are presently dutiable under the TSUS at rates considerably higher than the rate of 0.012 cent per pound of total sugars imposed on molasses imported for use other than the commercial extraction of sugar or human consumption.

In the absence of the change in classification as proposed by the bill, imports of these products will remain dutiable at rates considerably higher than the rates in effect prior to the new tariff schedules.

Explanation of bill

The bill amends the item relating to molasses, including dried molasses, for use other than the commercial extraction of sugar or human consumption (item 155.40) of the Tariff Schedules of the United States by broadening the article description to make invert molasses and certain other products derived from sugarcane and sugar beets dutiable at the rate (0.012 cent per pound of total sugars) imposed by that item. Further, the bill would establish a procedure for making this treatment applicable to such products which were entered after August 30, 1963, and before the date of enactment. Finally the bill would provide for the liquidation or reliquidation of certain specified entries of sugar at Philadelphia at the rate of duty of 0.012 cent per pound of total sugars, upon the furnishing of appropriate evidence that the sugar was not used for human consumption or for the commercial extraction of sugar.

Administration position

Favorable reports on H.R. 7626 were received from the Departments of State, Treasury, Agriculture, Labor, and Commerce, and the Office of the Special Representative for Trade Negotiations. An informative report was received from the Tariff Commission.

2. Elimination of Duty on Upholstery Regulators and Upholsterers' Regulating Needles and Pins (H.R. 10875)

Reasons for bill

Upholstery regulators, which are similar to knitting needles, are used to stuff furniture being upholstered. They are presently dutiable under TSUS item 651.04 at 13 percent ad valorem.

Upholsterers' regulating needles are eyeless needles, about 12 inches in length, and are presently dutiable under item 651.47 at 11.5 percent ad valorem. Upholsterers' pins are 3 inches in length with a loop instead of a head. These pins are dutiable under item 657.20 at 13 percent ad valorem. The rates of duty on these three articles (upholstery regulators, upholsterers' regulating needles, and upholsterers' pins) are being reduced in stages to 9.5 percent, 8.5 percent, and 9.5 percent, respectively, effective January 1, 1972, pursuant to the Kennedy Round of Trade Negotiations.

The House was informed that there is no commercial production of these articles in the United States and that the domestic upholstery trade is dependent on imports of these articles. Imports of upholstery regulators and upholsterers' pins and regulating needles are not separately reported. However, it is known that the volume of such imports is small.

Explanation of bill

H.R. 10875 would provide for the duty-free treatment for imports of upholstery regulators, upholsterers' regulating needles, and upholsterers' pins by establishing a new item 651.06 in the tariff schedules of the United States (TSUS) under which all imports of these articles would be free of duty.

Administration position

Favorable reports on H.R. 10875 were made by the Departments of Labor, Commerce, Treasury, and State.

3. Duty-Free Entry of Carillon—University of California at Santa Barbara (H.R. 14995)

Reasons for bill

The House of Representatives has been informed that the carillon for the use of the University of California at Santa Barbara was entered in 1969. The aggregate value of the carillon was $63,046 and total duties of $8,160.35 were assessed and were paid. Congress in the past, where it was informed by appropriate agencies of government (including the Tariff Commission), that such bells are not produced in the United States, has permitted the bells to be admitted free of duty.

Explanation of bill

H.R. 14995 authorizes and directs the Secretary of the Treasury to admit free of duty a carillon that was imported in June 1969, for the use of the University of California at Santa Barbara. The bill further provides that if liquidation of the entry has become final, the entry is to be reliquidated and the appropriate refund of duty made.

Administration position

No departmental or other objection has been made to the enactment of this bill.

4. Duty-Free Entry of Carillon—Indiana University (H.R. 19113)

Reasons for bill

The House was informed that the 61-note cast bell carillon and the 42-note subsidiary cast bell carillon imported for the use of Indiana University, Bloomington, Indiana, at the time of entry were valued at $40,000 and the estimated duty was $1,800 to $2,000. Congress in the past, where it was informed by appropriate agencies of government (including the Tariff Commission) that such bells are not produced in the United States, has permitted the bells to be admitted free of duty.

Explanation of bill

H.R. 19113 authorizes and directs the Secretary of the Treasury to admit free of duty a 61-note cast bell carillon and a 42-note subsidiary cast bell carillon imported for the use of Indiana University, Bloomington, Indiana. The bill further provides that if liquidation of the entry has become final, the entry is to be reliquidated and the appropriate refund of duty made.

Administration position

No departmental or other objection has been made to the enactment of this bill.

5. Protest of Customs Decisions by Transferees of Warehoused Merchandise (H.R. 19391)

Reasons for bill

The Customs Simplification Act of 1953, following the recommendation of the Treasury Department, withdrew the right of a transferee of merchandise in a bonded warehouse to file protests against custom decisions affecting his merchandise. The Treasury Department has now concluded that the denial since 1953 of the right of transferees to file protests to secure administrative and judicial review of customs decisions has created inequities, and the Department now recommends that the right to protest be restored.

The House believed that a transferee of merchandise should have an independent right to file protests against decisions affecting his merchandise instead of relying, as required by existing law, upon the importer of record who might be unable or unwilling to file a protest on behalf of the transferee.

Explanation of bill

The bill amends the Tariff Act of 1930 to provide that a transferee of merchandise is to have an independent right to file protests against customs decisions affecting his merchandise to the same extent as the importer. The bill provides that notice of liquidation is to be given to the transferee in the form and manner prescribed by the Secretary of the Treasury.

The bill is to become effective with respect to articles entered for warehousing on or after the date of enactment.

Treasury position

The Treasury Department recommends the enactment of the bill.

6. Elimination of Duty of Certain Natural Rubber (H.R. 19526)

Reasons for bill

Processed natural rubber (natural rubber containing fillers, extenders, pigments, or rubber-processing chemicals) is presently dutiable at 7-percent ad valorem, the most-favored-nation or trade agreement rate, (under item 446.10 of the Tariff Schedules). This rate of duty is scheduled to be further reduced to 5 percent ad valorem by January 1, 1972, pursuant to the rate reduction agreed to in the Kennedy Round of Trade Negotiations.

Natural rubber consumers in this country very often require natural rubber containing small amounts of processing chemicals which can be easily added in the country producing the natural rubber. The House was of the view that the elimination of the duty on the processed rubber would benefit domestic manufacturers by reducing the cost of this specialized rubber material. Imports of unprocessed natural rubber have long been free of duty. No objection as been raised by domestic rubber manufacturers to the elimination of the duty on processed natural rubber and certain developing countries which produce natural rubber, principally Malaysia, have expressed an interest in the removal of this tariff barrier to their exports.

Explanation of bill

This bill amends the Tariff Schedules of the United States to make duty free the imports of natural rubber containing fillers, extenders, pigments, or rubber-processing chemicals (when entered at the column 1 rate of duty under item 446.10 of the tariff schedules).

Administration position

No departmental or other objection has been made to the enactment of this bill.

7. Suspension of Duty on Certain Bicycle Parts (H.R. 19670)

Reasons for bill

The House received testimony from representatives of the domestic bicycle industry with regard to their difficulties in competing with imported bicycles. H.R. 19670 is intended to improve the competitive ability of domestic producers of bicycles by temporarily suspending the duty on imports of certain bicycle parts and accessories, thereby reducing their costs.

Explanation of bill

The bill temporarily suspends the duty on generator lighting sets for bicycles (provided for in item 653.39 of the Tariff Schedules of the United States). Such imports are presently dutiable at 19 percent ad valorem, and this duty is not scheduled for further reduction pursuant to any trade agreement concession.

H.R. 19670 would also suspend the duty on derailleurs, caliper brakes, drum brakes, three-speed hubs incorporating coaster brakes, three-speed hubs not incorporating coaster brakes, click twist grips, click stick levers, and multiple freewheel sprockets. These parts and accessories presently are dutiable (under TSUS item 732.36) at the rate of 21 percent. This rate was subject to a tariff concession pursuant to the Kennedy Round of Trade Negotiations and is scheduled for further reduction to 15 percent ad valorem by January 1, 1972.

The House was satisfied that H.R. 19670, as passed by it, would not, if enacted, have any unfavorable effects on domestic manufacturers of bicycle parts.

Administration position

The bill has not been objected to by any interested government agency to the bill, as amended, nor was any objection received from domestic produgars of bicycle parts to the bill as reported by the Ways and Means Committee.

C. MEDICARE AND SOCIAL SECURITY

1. Reasonable Approval of Rural Hospitals for Medicare Purposes (H.R. 19470)

Reasons for bill

Under present law, a hospital cannot be certified to participate in the Medicare program unless, among other requirements, the hospital provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times. The existing shortages of qualified nursing personnel has made it difficult for many rural hospitals to meet this nursing staff requirement, and some hospitals in isolated rural areas face the strong possibility of being denied certification for failure to furnish around-the-clock nursing service. In some cases, lack of certification would work an extreme hardship on Medicare patients who would be required to leave their home community and local doctor and go to a distant hospital for care.

To deal with the dilemma created by the need to assure the availability of hospital services of adequate quality in rural areas and the fact that existing shortages of qualified nursing personnel make it difficult for some rural hospitals to make the nursing staff requirements of present law, the bill authorizes the Secretary of Health, Education and Welfare, under certain conditions, to waive the requirement that an access hospital have registered nurses on duty around the clock. Such authority to waive the nursing requirement will expire October 31, 1975.

Explanation of bill

Under the bill, the Secretary may waive the nursing staff requirements of present law only if he finds that the hospital:

(1) has at least one registered nurse on the day shift and is a making a bona fide effort to comply with the registered nursing staff requirements with respect to other shifts, but is unable to employ the personnel necessary, at prevailing wage or salary levels, because of nursing personnel shortages in the area;

(2) is located in an isolated geographical area in which hospitals are in short supply and the closest other participating hospitals are not readily accessible to people of the area; and

(3) nonparticipation of the "access" hospital would seriously reduce the availability of hospital services to Medicare beneficiaries residing in the area.

Under the provision the waiver would be granted by the Secretary on an annual basis for not more than one year at at ime. This waiver authority would apply only with respect to the nursing staff requirement and not with respect to other conditions of participation under existing law.

Administration position

The Department of Health, Education and Welfare is not opposed to the enactment of the bill.

2. MAKING PERMANENT EXISTING TEMPORARY PROVISION DISREGARDING INCOME OF OASDI AND RAILROAD RETIREMENT INCOME RECIPIENTS IN DETERMINING NEED FOR PUBLIC ASSISTANCE (H.R. 19915)

Reason for bill

Under the Social Security Amendments of 1969, the States were required to take action to assure that recipients of public assistance under the Federally-aided adult public assistance programs (the old-age assistance, aid to the blind, and aid to the permanently and totally disabled programs) who received a social security benefit increase under the 1969 amendments would realize an increase in combined income from public assistance and social security equal to $4.00 a month (or the amount of the social security benefit increase, if less).

This provision, as originally enacted, applied only to public assistance payments made before July 1970. The provision was enacted on a temporary basis to allow Congress time to consider the problem more thoroughly in connection with its planned work on major welfare proposals this year. In June of this year the Senate adopted an amendment to another pending bill extending the application of this provision through October 1970. This amendment broadened the provision to apply to railroad retirement beneficiaries. The House agreed to this amendment and it became public law.

Both the House and the Senate Finance Committee have taken further action with respect to this provision. H.R. 16311, the House passed welfare bill, would have made this provision permanent law. H.R. 17550, reported by the Senate Finance Committee, would have extended this provision through December 31, 1971.

The House believes that it is imperative that action be taken on this legislation in order to prevent the States from reducing public assistance payments by as much as $4.00 a month for some recipients.

Explanation of bill

This bill amends the Social Security Amendments of 1969 (sec. 1007) by deleting the reference in this provision to "and before November 1970."

The effect of this is to extend the provision referred to above on a permanent basis. As a result recipients of public assistance under the old age assistance, aid to the blind, and aid to the permanently and totally disabled, who also received a social security benefit increase under 1969 amendments would continue to receive the increase in combined income from public assistance and social security previously granted to them equal to $4.00 a month (or the amount of the social security increase, if less).

This provision applies retroactively to public assistance payment for months since October 1970.

Administration position

The Department of Health, Education and Welfare favors this bill.

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