

TAX TREATMENT OF SURVIVOR BENEFIT PLANS OF
THE UNIFORMED SERVICES

SEPTEMBER 17, 1973.—Ordered to be printed

Mr TALMADGE (for Mr. LONG), from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 4200]

The Committee on Finance, to which was referred the bill (H.R. 4200) to amend section 122 of the Internal Revenue Code of 1954, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

This bill, as passed by the House, makes several amendments to the Internal Revenue Code of 1954 which are designed to continue the same tax treatment for servicemen and former servicemen of the United States under the Survivor Benefit Plan (recently enacted in P.L. 92-425) as formerly was available for them under the Retired Serviceman's Family Protection Plan in the case of annuities for surviving spouses or certain child beneficiaries. Under the present tax law, a member or former member of the uniformed services of the United States who receives a reduced amount of retired or retainer pay because of his election to contribute to the program for survivor annuity benefits is not required to include in his gross income the amount of this reduction in his pay. However, the law governing these annuities has recently been changed by the new Survivor Benefit Plan to provide that survivor annuity benefits apply unless the retired serviceman elects not to participate. The bill conforms the existing tax treatment to this change in the election requirement under the new Survivor Benefit Plan. Thus, where a serviceman (or former serviceman) does not elect out of the new Survivor Benefit Plan and as a result receives reduced retired pay, the amount of the reduction is not

taxed to him. Similar conforming amendments are also made to other provisions of the tax laws.

The committee accepted the House-passed bill without change.

II. GENERAL STATEMENT

Until recently, a serviceman (or former serviceman) could provide survivor benefits for his dependents only by electing to participate in the Retired Serviceman's Family Protection Plan. If a retired serviceman made the election under this plan, he would receive a reduced amount of retired or retainer pay in order to finance survivor benefits for his dependents. Since this retirement program is not funded and for that reason is not a qualified pension plan under the tax laws (sec. 401(a) of the Code), a special rule was provided for retired servicemen participating in this program. This provision (sec. 122 of the Code) provides that in the case where a member (or former member) of the uniformed services of the United States makes an election to participate in the Retired Serviceman's Family Protection Plan, the amount of any reduction in his retired or retainer pay on account of his contribution to the plan would not be taxed to him.

Congress recently passed legislation (P.L. 92-425) which completely revised the program for survivor benefits for dependents of retired servicemen. Under this newly enacted Survivor Benefit Plan, the survivor benefits will be automatically provided and the retired or retainer pay of a serviceman is automatically reduced unless he elects not to participate in the plan.

Since present law is cast in terms of an election into the program and the new survivor benefit program is automatically provided unless a retired serviceman elects out of the program, the committee agrees with the House that it is appropriate to make the necessary changes in the tax law so that under the new survivor benefit program the identical tax treatment will apply to servicemen (or former servicemen) receiving reduced retired or retainer pay as under the old program. Accordingly, the committee's bill provides that where a retired serviceman does not elect out of the new survivor benefit program and thus is automatically covered so that he receives reduced retired or retainer pay on account of his contribution to the program, the amount of the reduction is not to be taxed to him.

The bill also makes a similar conforming amendment in the provision allowing an exclusion of up to \$5,000 paid to a survivor of a deceased serviceman who retired because of disability and died before attaining normal retirement age. In addition, the bill also conforms the estate and gift tax exclusions available under the present tax law for the value of survivor annuities under the new survivor benefit program.

The income tax amendments apply to taxable years ending on or after September 21, 1972, which is the date of enactment of the new Survivor Benefit Plan (P.L. 92-425), or in the case of the death benefit exclusion those who die on or after that date. The estate tax amendment applies to individuals dying on or after September 21, 1972.

III. EFFECT ON THE REVENUES OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out this bill and the effect on the revenues of the bill. The committee estimates that since this bill continues the existing tax treatment for survivor benefit plans of the uniformed services, there will be no gain or loss in revenues. The Treasury Department agrees with this statement.

IV. VOTE OF COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act, as amended, the following statement is made relative to the vote of the committee on reporting the bill. This bill was ordered favorably reported by the committee without a roll call vote and without objection.

V. CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

SUBCHAPTER B—Computation of Taxable Income

* * * * *

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

* * * * *

SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

* * * * *

(o) ANNUITIES UNDER RETIRED SERVICEMEN'S FAMILY PROTECTION PLAN OR SURVIVOR BENEFIT PLAN.—Subsections (b) and (d) shall not apply in the case of amounts received after December 31, 1965, as an annuity under chapter 73 of title 10 of the United States Code, but all such amounts shall be excluded from gross income until there has been so excluded (under section 122(b)(1) or this section, including amounts excluded before January 1, 1966) an amount equal to the con-

sideration for the contract (as defined by section 122(b)(2)), plus any amount treated pursuant to section 101(b)(2)(D) as additional consideration paid by the employee. Thereafter all amounts so received shall be included in gross income.

* * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

* * * * *

SEC. 101. CERTAIN DEATH BENEFITS.

* * * * *

(b) EMPLOYEES' DEATH BENEFITS.—

(1) GENERAL RULE.—Gross income does not include amounts received (whether in a single sum or otherwise) by the beneficiaries or the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee.

(2) SPECIAL RULES FOR PARAGRAPH (1).—

(A) \$5,000 LIMITATION.—The aggregate amounts excludable under paragraph (1) with respect to the death of any employee shall not exceed \$5,000.

(B) NONFORFEITABLE RIGHTS.—Paragraph (1) shall not apply to amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living. This subparagraph shall not apply to total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—

(i) by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) under an annuity contract under a plan described in section 403(a), or

(iii) under an annuity contract purchased by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi) or which is a religious organization (other than a trust) and which is exempt from tax under section 501(a), but only with respect to that portion of such total distributions payable which bears the same ratio to the amount of such total distributions payable which is (without regard to this subsection) includible in gross income, as the amounts contributed by the employer for such annuity contract which are excludable from gross income under section 403(b) bear to the total amounts contributed by the employer for such annuity contract.

(C) JOINT AND SURVIVOR ANNUITIES.—Paragraph (1) shall not apply to amounts received by a surviving annuitant under

a joint and survivor's annuity contract after the first day of the first period for which an amount was received as an annuity by the employee (or would have been received if the employee had lived).

(D) OTHER ANNUITIES.—In the case of any amount to which section 72 (relating to annuities, etc.) applies, the amount which is excludable under paragraph (1) (as modified by the preceding subparagraphs of this paragraph) shall be determined by reference to the value of such amount as of the day on which the employee died. Any amount so excludable under paragraph (1) shall, for purposes of section 72, be treated as additional consideration paid by the employee. Paragraph (1) shall not apply in the case of an annuity under chapter 73 of title 10 of the United States Code [if the individual who made the election under such chapter] *if the member or former member of the uniformed services by reason of whose death such annuity is payable died after attaining retirement age.*

(3) SELF-EMPLOYED INDIVIDUAL NOT CONSIDERED AN EMPLOYEE.—For purposes of this subsection, the term "employee" does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

* * * * *

SEC. 122. CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY.

(a) GENERAL RULE.—In the case of a member or former member of the uniformed services of the United States [who has made an election under chapter 73 of title 10 of the United States Code to receive a reduced amount of retired or retainer pay], gross income does not include the amount of any reduction [after December 31, 1965,] in his retired or retainer pay [by reason of such election] *pursuant to the provisions of chapter 73 of title 10 of the United States Code.*

(b) SPECIAL RULE.—

(1) AMOUNT EXCLUDED FROM GROSS INCOME.—In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includable in gross income.

(2) CONSIDERATION FOR THE CONTRACT.—For purposes of paragraph (1) and section 72(o), the term "consideration for the contract" means, in respect of any individual, the sum of—

(A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) any amounts deposited at any time by him pursuant to section 1438 *or 1452(d)* of such title 10.

: * * * * *

CHAPTER 11—ESTATE TAX

* * * * *

SUBCHAPTER A—ESTATES OF CITIZENS OR RESIDENTS

* * * * *

PART III—GROSS ESTATE

* * * * *

SEC. 2039. ANNUITIES.

(a) **GENERAL.**—The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

(b) **AMOUNT INCLUDIBLE.**—Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit-sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(c) **EXEMPTION OF ANNUITIES UNDER CERTAIN TRUSTS AND PLANS.**—Notwithstanding the provisions of this section or of any provision of law, there shall be excluded from the gross estate the value of an annuity or other payment receivable by any beneficiary (other than the executor) under—

(1) an employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(2) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, was a plan described in section 403(a);

(3) a retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust), and which is exempt from tax under section 501(a); or

(4) chapter 73 of title 10 of the United States Code.

If such amounts payable after the death of the decedent under a plan described in paragraph (1) or (2), under a contract described in paragraph (3), or under chapter 73 of title 10 of the United States Code are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total of payments or contributions made. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b), not be considered to be contributed by the decedent. For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent. For purposes of this subsection, amounts payable under chapter 73 of title 10 of the United States Code are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 or 1452(d) of such title 10.

* * * * *

○