

REVOCABILITY OF ELECTION TO RECEIVE RETIRED PAY AS JUDGE OF TAX COURT

AUGUST 11 (legislative day, MAY 17), 1978.—Ordered to be printed

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

REPORT

[To accompany H.R. 8811]

The Committee on Finance, to which was referred the bill (H.R. 8811) relating to revocability of election to receive retired pay as a judge of the Tax Court, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

I. SUMMARY

The bill allows an individual who has filed an election to receive retired pay as a Tax Court judge to revoke that election at any time before retired pay would begin to accrue, thereby enabling that individual to seek to qualify for benefits under the civil service retirement system (but not under both retirement systems).

II. GENERAL STATEMENT

Present law

If a United States Tax Court judge elects to come under the Tax Court retirement system, all civil service retirement benefits are waived. Thus, any Tax Court judge who elects to be covered by the Tax Court retirement system may not receive any benefits under the civil service retirement system for any service performed before or after the election is made, for services performed as a judge or otherwise.¹

¹ A Tax Court judge must retire at age 70, but may retire at age 65 after having served as a judge at least 15 years. A judge may retire at a younger age with 15 years of service if he or she is available for re-appointment at the conclusion of a term but is not reappointed. A judge who is permanently disabled must retire. Generally, retirement under any of these conditions is at full pay under the Tax Court retirement System.

If a judge reaches the mandatory retirement age of 70 before having served 10 years, the Tax Court pension is based on the number of years served. If a judge is retired because of disability, but has not served 10 years, the Tax Court pension is one-half the salary of the office.

The Tax Court retirement system is noncontributory. The survivors benefit provisions, however, require that the judges make contributions (3 percent of salary) if they want coverage for their families. The civil service retirement system is contributory (generally, 7 percent of salary). The civil service system includes survivor benefits with no additional contributions required for those benefits. If a judge elects to come under the Tax Court retirement system, then not only is that judge excluded from civil service retirement benefits, but also the judges survivors are excluded from the civil service survivors' program, whether or not the judge also elects to come under the Tax Court survivors' program.

Present law has been interpreted as barring an individual who elects to be covered by the Tax Court judge retirement system from ever receiving any civil service benefits, even though the minimum requirement of 10 years of Tax Court service necessary to qualify for Tax Court judge retired pay never may be met, and notwithstanding the fact that the individual otherwise might qualify for civil service retirement benefits. Thus, an individual who has credible civil service time before and after Tax Court service, and who elected Tax Court retirement pay while a judge but served in that capacity for less than 10 years, will be precluded from receiving benefits under either system.²

Reasons for change

The committee believes that a judge who elects the Tax Court retirement system should not be excluded from receiving civil service retirement benefits if that judge does not ultimately qualify for Tax Court retirement benefits. In other words, the judge ought not to have to run the risk of being excluded from both systems of retirement benefits simply because he or she has made the Tax Court retirement system election.

The committee does not seek to change the concept that a Tax Court judge should not be able to receive both Tax Court retirement system benefits and civil service retirement system benefits. However, the committee does believe that a Tax Court judge should be able to choose which system will apply to him or her and, until retired pay begins to accrue, should be able to revoke that choice.

Explanation of the bill

The bill allows an individual who has filed an election to receive retired pay as a Tax Court judge to revoke that election at any time before the first day on which retired pay would begin to accrue with respect to that individual.

Under the bill, no civil service retirement credit is to be allowed for any service as a Tax Court judge, unless with respect to that service the amount required by the civil service retirement laws has been deposited, with interest, in the Civil Service Retirement and Disability Fund. The bill also provides that if an individual revokes an election to receive retired pay and thereafter deposits the required amount with the Civil Service Retirement and Disability Fund, service on the

² In contrast, a U.S. district court judge may receive retirement benefits both as a judge and under civil service. See 45 Comp. Gen. 383.

Tax Court is to be treated as service with respect to which deductions and contributions had been made during the period of service. Therefore, such a revocation will allow service on the Tax Court to satisfy the civil service rule that an individual must have current covered employment in order to be permitted to revive his or her credits for prior covered employment.

Under the bill, a revocation of an election to come under the Tax Court retirement system also constitutes a revocation of any election to come under the Tax Court survivors' benefit system. In addition, the bill provides that upon a revocation of an election, the individual's account is to be credited with any amounts paid by the individual, together with interest thereon, to the Tax Court judges survivors' annuity fund. This amendment is necessary to prevent the individual from having to contribute to two survivors' annuity systems (U.S. Tax Court and Civil Service) even though his or her survivors would be entitled to benefits under only one system.

This bill applies to any Tax Court judge who has elected the Tax Court retirement system and has not yet retired. It also applies to a former Tax Court judge, Russell E. Train, who did not serve on the Tax Court long enough to qualify for Tax Court retirement, but has been ruled by the Civil Service Commission to be ineligible for civil service retirement benefits because of his Tax Court election, and to any other former Tax Court judge who may be in a similar position.

Effective date

The bill applies to revocations made after the date of enactment.

Also, if anyone revokes his or her Tax Court retirement system election within one year after the date of this bill's enactment, that individual is automatically treated as satisfying the civil service rule that an individual must have current covered employment in order to be permitted to revive his or her credits for prior covered employment. This provision is expected to apply to Mr. Train's situation, discussed above. After leaving the Tax Court, Mr. Train served in covered employment under the civil service retirement system from 1969 until early in 1977. If this bill had been enacted before the end of that 8-year period, Mr. Train could have complied with the regular civil service rules regarding current covered employment. This effective date provision gives Mr. Train, and anyone else similarly situated one year to "catch up" to the change in the law.

Revenue effect

The provisions contained in the bill are not expected to have any significant revenue or expenditure effect in the current fiscal year or in any of the five following fiscal years.

III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING H.R. 8811

Revenue Cost

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs

incurred in carrying out H.R. 8811 as reported by the committee. The provisions contained in the bill are not expected to have any significant revenue or expenditure effect in the current fiscal year or in any of the five following fiscal years.

The Treasury Department agrees with this statement.

Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill H.R. 8811 was ordered reported by a voice vote.

IV. REGULATORY IMPACT OF THE BILL AS REPORTED AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

Regulatory Impact

Pursuant to Rule XXIX of the Standing Rules of the Senate, as amended by S. Res. 4 (February 4, 1977), the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of H.R. 8811, as reported by the committee.

A. Numbers of individuals and businesses who would be regulated.—The bill applies with respect to any U.S. Tax Court judge who elects the Tax Court retirement system and who is not retired, and to any former Tax Court judge who did not serve on the Tax Court long enough to qualify for Tax Court retirement but who is considered ineligible for civil service retirement benefits because of an election to receive retired pay as a Tax Court judge.

B. Economic impact of regulation on individuals, consumers, and businesses affected.—The provisions of the bill allow an individual who has filed an election to receive retired pay as a U.S. Tax Court judge to revoke that election at any time before retired pay would begin to accrue, thereby enabling that individual to seek to qualify for benefits under the civil service retirement system (but not under both retirement systems).

C. Impact on personal privacy.—The bill makes no changes in those provisions of Federal law relating to the personal privacy of taxpayers.

D. Determination of the amount of paperwork.—The bill will involve little, if any, additional paperwork for taxpayers.

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimate (as shown in part III of this report) and agrees that the bill will not have any significant revenue or expenditure effect.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

