97TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT No. 97-984

TAX TREATMENT OF PERIODIC PAYMENTS

DECEMBER 21 (legislative day DECEMBER 19), 1982.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 5470]

The committee of conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the text of the bill (H.R. 5470) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of periodic payments for damages received on account of personal injury or sickness, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

In lieu of the matter proposed to be inserted by the House amendment to the Senate amendment, insert the following:

SECTION 1. AMENDMENT OF 1954 CODE.

Whenever in title I or II an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—INCOME TAX PROVISIONS

SEC. 101 TREATMENT OF RECIPIENT OF SETTLEMENT PERIODIC PAYMENTS.

(a) TREATMENT OF RECIPIENT.—Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended by striking out "whether by suit or agreement" and inserting in lieu thereof "whether by suit or agreement and whether as lump sums or as periodic payments".

(b) TREATMENT OF ASSIGNEE-PAYOR.—

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(1) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 130 as section 131 and by inserting after section 129 the following new section:

"SEC. 130. CERTAIN PERSONAL INJURY LIABILITY ASSIGNMENTS.

"(a) IN GENERAL.—Any amount received for agreeing to a qualified assignment shall not be included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

"(b) TREATMENT OF QUALIFIED FUNDING ASSET.—In the case of any qualified funding asset—

"(1) the basis of such asset shall be reduced by the amount excluded from gross income under subsection (a) by reason of the purchase of such asset, and

"(2) any gain recognized on a disposition of such asset shall be treated as ordinary income.

"(c) QUALIFIED ASSIGNMENT.—For purposes of this section, the term 'qualified assignment' means any assignment of a liability to make periodic payments as damages (whether by suit or agreement) on account of personal injury or sickness—

"(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, and

"(2) if—

"(A) such periodic payments are fixed and determinable as to amount and time of payment,

"(B) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments,

"(C) the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor,

"(D) the assignee's obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

"(E) such periodic payments are excludable from the gross income of the recipient under section 104(a)(2).

"(d) QUALIFIED FUNDING ASSET.—For purposes of this section, the term 'qualified funding asset' means any annuity contract issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

"(1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,

"(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,

"(3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and

"(4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified

assignment and not later than 60 days after the date of such assignment."

(2) Conforming amendment.—The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 130 and inserting in lieu thereof the following new items:

"Sec. 130. Certain personal injury liability assignments.
"Sec. 131. Cross references to other Acts."

(c) Effective Date.—The amendments made by this section shall apply to taxable years ending after December 31, 1982.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR CERTAIN FOSTER CARE PAYMENTS.

(a) In General.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income), as amended by section 101(b), is amended by redesignating section 131 as section 132 and by inserting after section 130 the following new section:

"SEC. 131. CERTAIN FOSTER CARE PAYMENTS.

"(a) General Rule.—Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.

"(b) Qualified Foster Care Payment Defined.—For purposes of this section—

"(1) In general.—The term 'qualified foster care payments' means any amount—

"(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

"(B) which is—

"(i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

"(ii) a difficulty of care payment.

"(2) Qualified foster child.—The term 'qualified foster child' means any individual who—

"(A) has not attained age 19, and

"(B) is living in a foster family home in which such individual was placed by—

"(i) an agency of a State or political subdivision thereof, or

"(ii) an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).

"(c) Difficulty of Care Payments.—For purposes of this section—

"(1) Difficulty of care payments.—The term 'difficulty of care payments' means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

"(A) are compensation for providing the additional care of a qualified foster child which is—

"(i) required by reason of a physical, mental, or emotional handicap of such child with respect to which

the State has determined that there is a need for additional compensation, and

"(ii) provided in the home of the foster parent, and

"(B) are designated by the payor as compensation described in subparagraph (A).

"(2) LIMITATION BASED ON NUMBER OF CHILDREN.—In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 10 qualified foster children."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 131 and by inserting in lieu thereof the following items:

"Sec. 131. Certain foster care payments.
"Sec. 132. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1978.

TITLE II—TAX STATUS OF INDIAN TRIBAL GOVERNMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the "Indian Tribal Governmental Tax Status Act of 1982".

SEC. 202. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

(a) GENERAL RULE.—Chapter 80 (relating to general rules) is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Provisions Affecting More than One Subtitle

"Sec. 7871. Indian tribal governments treated as States for certain purposes.

"SEC. 7871. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

"(a) GENERAL RULE.—An Indian tribal government shall be treated as a State—

"(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

"(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

"(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or

"(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

"(2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

"(A) chapter 31 (relating to tax on special fuels),

"(B) chapter 32 (relating to manufacturers excise taxes),

"(C) subchapter B of chapter 33 (relating to communications excise tax), or

"(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

"(3) for purposes of section 164 (relating to deduction for taxes);

"(4) subject to subsection (c), for purposes of section 103 (relating to interest on certain governmental obligations);

"(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

"(6) for purposes of—

"(A) section 37(e)(9)(A) (relating to certain public retirement systems),

"(B) section 41(c)(4) (defining State for purposes of credit for contribution to candidates for public offices),

"(C) section 117(b)(2)(A) (relating to scholarships and fellowship grants), and

"(D) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities); and

"(7) for purposes of—

"(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

"(B) subchapter A of chapter 42 (relating to private foundations).

"(b) ADDITIONAL REQUIREMENTS FOR EXCISE TAX EXEMPTIONS.—Paragraph (2) of subsection (a) shall apply with respect to any transaction only if, in addition to any other requirement of this title applicable to similar transactions involving a State or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

"(c) ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT BONDS.—

"(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

"(2) NO EXEMPTION FOR CERTAIN PRIVATE-ACTIVITY BONDS.—Subsection (a) of section 103 shall not apply to any of the following issued by an Indian tribal government (or subdivision thereof):

"(A) An industrial development bond (as defined in section 103(b)(2)).

"(B) An obligation described in section 103(l)(1)(A) (relating to scholarship bonds).

"(C) A mortgage subsidy bond (as defined in paragraph (1) of section 103A(b) without regard to paragraph (2) thereof).

"(d) TREATMENT OF SUBDIVISIONS OF INDIAN TRIBAL GOVERNMENTS AS POLITICAL SUBDIVISIONS.—For the purposes specified in subsection (a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a State if (and only if) the Secretary determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government."

(b) CONFORMING AMENDMENTS RELATING TO CROSS REFERENCES.—

(1) Subsection (d) of section 41 is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For disallowance of credits to estates and trusts, see section 642(a)(2).

"(2) For treatment of Indian tribal governments as States (and the political subdivisions of Indian tribal governments as political subdivisions of States), see section 7871."

(2) Subsection (m) of section 103 is amended to read as follows:

"(m) CROSS REFERENCES.—

"For provisions relating to the taxable status of—

"(1) Certain obligations issued by Indian tribal governments (or their subdivisions), see section 7871.

"(2) Exempt interest dividends of regulated investment companies, see section 852(b)(5)(B).

"(3) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (48 U.S.C. 745).

"(4) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1919 (48 U.S.C. 1403).

"(5) Certain obligations issued under title I of the Housing Act of 1949, see section 102(g) of title I of such Act (42 U.S.C. 1452(g))."

(3) Section 164(f) is amended by adding at the end thereof the following new paragraph:

"(3) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871."

Section 170(k) is amended by adding at the end thereof the following new paragraph:

"(8) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871."

(5) Section 2055(f) is amended by adding at the end thereof the following new paragraph:

"(11) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871."

(6) Subparagraph (F) of section 2106(a)(2) is amended to read as follows:

"(F) CROSS REFERENCES.—

"(i) For option as to time for valuation for purposes of deduction under this section, see section 2032.

"(ii) For exemption of certain bequests for the benefit of the United States and for rules of construction for certain bequests, see section 2055(f).

"(iii) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871."

(7) Subsection (d) of section 2522 is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).

"(2) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871."

(8) Section 4227 is amended to read as follows:

"SEC. 4227. CROSS REFERENCES.

"(1) For exemption for a sale to an Indian tribal government (or its subdivision) for the exclusive use of an Indian tribal government (or its subdivision), see section 7871.

"(2) For credit for taxes on tires and tubes, see section 6416(c)."

(9) The table of sections for subchapter G of chapter 32 is amended by striking out the item relating to section 4227 and inserting in lieu thereof the following new item:

"Sec. 4227. Cross references."

(10) Section 4484 is amended to read as follows:

"SEC. 4484. CROSS REFERENCES.

"(1) For penalties and administrative provisions applicable to this subchapter, see subtitle F.

"(2) For exemption for uses by Indian tribal governments (or their subdivisions), see section 7871."

(11) The table of sections for subchapter D of chapter 36 is amended by striking out the item relating to section 4484 and inserting in lieu thereof the following new item:

"Sec. 4484. Cross references."

(12) Sections 6420(h) and 6421(j) are each amended by adding at the end thereof the following new paragraph:

"(4) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871."

(13) Sections 6424(g) and 6427(k) are each amended by adding at the end thereof the following new paragraph:

"(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871."

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 80 is amended by adding at the end thereof the following new item:

"Subchapter C. Provisions affecting more than one subtitle."

SEC. 203. DEFINITION OF INDIAN TRIBAL GOVERNMENT.

Subsection (a) of Section 7701 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(40) INDIAN TRIBAL GOVERNMENT.—The term 'Indian tribal government' means the governing body of any tribe, band, community, village, or group of Indians which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise substantial governmental functions and in Alaska shall include only the Metlakatla Indian Community."

SEC. 204. EFFECTIVE DATES.

The amendments made by this title—

(1) insofar as they relate to chapter 1 of the Internal Revenue Code of 1954 (other than section 103 thereof), shall apply to taxable years beginning after December 31, 1982, and before January 1, 1985,

(2) insofar as they relate to section 103 of such Code, shall apply to obligations issued after December 31, 1982, and before January 1, 1985,

(3) insofar as they relate to chapter 11 of such Code, shall apply to estates of decedents dying after December 31, 1982, and before January 1, 1985,

(4) insofar as they relate to chapter 12 of such Code, shall apply to gifts made after December 31, 1982, and before January 1, 1985, and

(5) insofar as they relate to taxes imposed by subtitle D of such Code, shall take effect on January 1, 1983, and shall cease to apply at the close of December 31, 1984.

TITLE III—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 301. TREATMENT OF HAWAII PREPAID HEALTH CARE ACT UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) EXEMPTION FROM PREEMPTION.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).

"(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

"(i) any State tax law relating to employee benefit plans, or

"(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

"(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph), but the Secretary may enter into cooperative arrangements under paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts."

(b) TREATMENT OF OTHER STATE LAWS.—The amendment made by this section shall not be considered a precedent with respect to extending such amendment to any other State law.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 302. TREATMENT OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) DEFINITION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENT.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), relating to definitions, is amended by adding at the end thereof the following new paragraph:

"(40)(A) The term 'multiple employer welfare arrangement' means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—

"(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, or

"(ii) by a rural electric cooperative.

"(B) For purposes of this paragraph—

"(i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,

"(ii) the term 'control group' means a group of trades or businesses under common control,

"(iii) the determination of whether a trade or business is under 'common control' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent, and

"(iv) the term 'rural electric cooperative' means—

"(I) any organization which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954 and which is engaged primarily in providing electric service on a mutual or cooperative basis, and

"(II) any organization described in paragraph (4) or (6) of section 501(c) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code and at least 80 percent of the members of which are organizations described in subclause (I)."

(b) LIMITATION ON PREEMPTION OF STATE LAW WITH REGARD TO WELFARE PLANS WHICH ARE MULTIPLE EMPLOYER WELFARE ARRANGEMENTS.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)), as amended by section 301 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(6)(A) Notwithstanding any other provision of this section—

"(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which

regulates insurance may apply to such arrangement to the extent that such law provides—

"(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

"(II) provisions to enforce such standards, and

"(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

"(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

"(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

"(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

And the House agree to the same.

DAN ROSTENKOWSKI,
SAM GIBBONS,
J. J. PICKLE,
JOHN J. DUNCAN,
BILL FRENZEL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
MALCOLM WALLOP,
RUSSELL B. LONG,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 5470) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of periodic payments for damages received on account of personal injury or sickness, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House amendment to the Senate amendment struck out all of the Senate amendment and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the House amendment and the Senate amendment. The differences between the House amendment, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Periodic Payment Settlement Act of 1982

1. Exclusion for Periodic Damage Payments

Present law

Present law generally excludes from gross income damages received by an individual on account of personal injuries or sickness. Furthermore, the IRS has ruled that damages for personal injuries are excludible from gross income whether paid as a lump sum, or paid in periodic payments out of a fund invested and owned by the tortfeasor or an insurer.

House bill

The House bill excludes from gross income damage payments for injuries or sickness whether paid as lump sums or as periodic payments.

Furthermore, under certain circumstances, an amount received for agreeing to undertake an assignment of a liability to make periodic payments of personal injury damages is not included in gross income. Specifically, any amount so received will not be included in gross income to the extent it is used to purchase an annuity contract issued by a company licensed to do business as an insurance company under the laws of any State or an obligation of the United States. It is intended that the definition of a "qualified funding asset," meaning an annuity contract designed to satisfy a "qualified assignment," encompass an annuity policy the payments from which end upon the death of a measuring life, i.e., an annuity with a life contingency.

The provision is effective for taxable years ending after 1982.

Senate amendment

The Senate amendment is similar to the House bill except that if an annuity contract is used to fund periodic payments, it must be issued by a life insurance company.

Conference agreement

The conference agreement follows the House bill.

The conferees wish to emphasize that, as a result of this legislation, no negative inference should be drawn as to the appropriate tax treatment of such transactions under present law and administrative rulings.

2. Exclusion From Gross Income For Certain Foster Care Payments

Present law

Except as otherwise provided by law, gross income means all income from whatever source derived.

The IRS has set forth guidelines regarding the tax treatment of amounts received and amounts expended by individuals providing foster care to children. If foster parents are rendering gratuitous services to child-placing agencies in feeding, clothing, and caring for foster children, then payments received from the child-placing agency for the support of a foster child are excludible from gross income to the extent that the payments do not exceed the expenses incurred by the foster parents in supporting the child. If foster parents have a profit motive, then a portion of each payment from the child-placing agency for the support of a foster child is excludible from gross income to the extent that the payments do not exceed the expenses incurred by the foster parents in supporting the child. If foster parents have a profit motive, then a portion of each payment from the child-placing agencies represents reimbursement or advancement for expenses incurred on behalf of the agency by the foster parents, and the remainder is compensation for their services.

House bill

The House bill excludes from the gross income of a foster parent amounts paid to reimburse the foster parent for the expense of caring for a foster child (under the age of 19) in the foster parent's home and difficulty of care payments. This exclusion, in the case of difficulty of care payments, is available with respect to payments for the care of up to 10 children.

Difficulty of care payments are payments that are compensation for providing the additional care of a foster child which is required by reason of a physical, mental, or emotional handicap with respect to which the State has determined that there is a need for additional compensation and which is provided in the home of the foster parent.

In order for payments to be excludible, the foster child with respect to whom payments are made must be placed by an agency of a State or political subdivision thereof, or by a State-licensed, private, tax-exempt agency.

The provision applies to taxable years beginning after December 31, 1978.

Senate amendment

The Senate amendment is similar to the House bill, with two exceptions. First, the Senate amendment excludes only difficulty of

care payments, not reimbursements. Second, the amendment does not require private child-placing agencies to be licensed by the State.

Conference agreement

The conference agreement follows the House bill.

3. Taxation of Indian Tribal Governments

Present law

States (including the District of Columbia) and their political subdivisions generally are exempt from Federal tax. In addition, numerous transactions by private parties with State governments and their political subdivisions result in favorable Federal tax treatment (e.g., exclusion from income, tax deductions, or tax credits) for the private parties involved.

Under present law, Indian tribal governments are not treated as State governments. The Internal Revenue Service has ruled that tribal government income is tax exempt until the income is received, or constructively received, by tribe members (Rev. Rul. 67-284, 1967-2 C.B. 55).

House bill

No provision.

Senate amendment

Overview

The Senate amendment provides that, for a series of specified purposes under the Internal Revenue Code, Indian tribal governments are to be treated the same as States or similar to States. The term Indian tribal government is defined to include in Alaska only the Metlakatla Indian Community. The provisions will not apply to any Indian tribal government unless it is recognized by the Treasury Department (after consultation with the Interior Department) as exercising sovereign powers. Sovereign powers include the power to tax, the power of eminent domain, and police powers (such as control over zoning, police protection, and fire protection).

Present law generally provides that political subdivisions of States are to be treated essentially the same as the States themselves. Therefore, a subdivision of an Indian tribal government will be treated as a political subdivision of a State for the purposes specified in the amendment if the Treasury Department determines (after consultation with the Interior Department) that the subdivision of the Indian tribal government has been delegated the right to exercise one or more of the sovereign powers of the Indian tribal government.

Taxation of Indian tribal governments

Under the amendment, most Federal excise taxes will not apply to articles sold for the exclusive use of Indian tribal governments. Specifically, exemption will be provided from the following taxes:

Diesel and special motor fuels;

Gasoline;

Tires, innertubes, and tread rubber;

Lubricating oil;
Highway use tax;
Bows and arrows;
Firearms; and
Telephones.

The amendment does not change the present income tax treatment of Indian tribal governments specified in Rev. Rul. 67-284, *supra.*

Special treatment of certain transactions involving Indian tribal governments

General rule.—Indian tribal governments will be treated as States in the following transactions involving private parties—

(1) The exclusion from income of interest on certain obligations of State governments (except as set forth below);

(2) The income tax deduction for taxes paid to State and local governments;

(3) The income, estate, and gift tax deductions for charitable contributions;

(4) The tax on unrelated business income of certain types of organizations;

(5) The taxes imposed on certain prohibited transactions by pubic charities and private foundations;

(6) The income tax credit for individuals who receive retirement income from public retirement systems;

(7) Eligibility for certain tax-deferred annuities;

(8) The income tax credit for political campaign contributions; and

(9) The exclusion of certain scholarships and fellowships awarded to students who are not candidates for a degree.

Special rules for tax-exempt bonds.—The amendment permits Indian tribal governments to issue tax-exempt industrial development bonds only where the primary activities of the businesses benefitting from the bonds take place on the reservation and where substantially all of the off-reservation activities are purchasing, marketing, and similar related activities. Additionally, interest on bonds other than IDBs is exempt from tax only if substantially all of the proceeds of the obligations are used in the exercise of essentially governmental functions or for a public utility. These requirements are in addition to any other requirements imposed under the Code for tax-exempt bonds.

In general, the amendment applies to taxable years beginning after 1982.

The provisions related to tax-exempt bonds will apply to obligations of Indian tribal governments issued after the date of enactment in taxable years ending after that date.

The provisions amending the estate or gift taxes will apply to estates of individuals dying, or gifts made, after 1982.

The excise tax provisions are effective on January 1, 1983.

Conference agreement

The conference agreement follows the Senate amendment, with modifications and clarifications. First, Indian tribal governments are permitted only to issue public activity bonds, the proceeds of

which are used in an essential governmental function (such as schools, streets, and sewers). Therefore, tribal governments are not permitted to issue private activity bonds (i.e., industrial development bonds, scholarship bonds, and mortgage subsidy bonds). Second, all of the provisions will terminate after December 31, 1984. Third, the provision permitting issuance of tax-exempt bonds is effective for obligations issued after December 31, 1982, and before January 1, 1985.

Finally, the conferees wish to clarify two points. The present-law requirement that an excise tax exempt article be sold for the exclusive use of a State or local government will apply in the case of articles sold to Indian tribal governments. The tax-exempt articles must be for the Indian tribal government's exclusive use in carrying out an essential governmental function. Additionally, the requirement of consultation between the Secretary of the Treasury and the Secretary of the Interior is not to be construed as requiring the consent of the Secretary of the Interior before adoption of any regulation, ruling, or other determination made by the Secretary of the Treasury.

4. Waiver of Preemption in Case of Hawaiian Prepaid Health Care Act

Present law

The Employee Retirement Income Security Act of 1974 (ERISA) provides comprehensive rules relating to employee benefit plans, including plans providing health benefits to employees. The Act (sec. 514(a)) generally supersedes State laws insofar as they relate to employee benefit plans.

The Hawaii Act (Haw. Rev. Stat. 393-1 through 51), provides for a program of health insurance for employees. As a result of litigation, it was determined that the Hawaiian Act was preempted by ERISA (*Standard Oil Company of California* v. *Agsalud,* 633 F. 2d 760 (9th Cir. 1980), aff'd, 454 U.S. 801 (1981)).

House bill

The provision generally exempts the Hawaii Prepaid Health Care Act from preemption by ERISA. Under the provision, however, preemption is continued with respect to (1) any State tax law relating to employee benefit plans, or (2) any amendment of the Hawaii Act enacted after September 2, 1974, to the extent the amendment provides for more than the effective administration of that Act as in effect on September 2, 1974. The provision continues Federal preemption of State law with respect to matters governed by the reporting and disclosure and the fiduciary responsibility provisions of ERISA, as well as certain of the provisions of the administration and enforcement rules of ERISA (Title I, part 1, part 4, and secs. 501 through sec. 514(b)). The provision also permits the Secretary of Labor to enter into cooperative arrangements with the officials of the State of Hawaii to assist them in effectuating the policies of the provisions of the Hawaii Act that are superseded by ERISA.

The provision states that it is not to be considered a precedent for extending non-preemption to any other State law.

The provision is effective on the date of enactment.

Senate amendment

The Senate amendment generally follows the House bill except that the exemption from the ERISA preemption provision applies to the Hawaii Prepaid Health Care Act, as in effect on January 1, 1976. Additionally, the amendment requires that the Secretary of Labor conduct a study of the feasibility of extending the exemption to include other State laws which establish health care plans and report to the Congress on his findings within two years.

Conference agreement

The conference agreements follows the House bill.

5. Waiver of Preemption in Case of Multiple Employer Welfare Arrangements

Present law

The Employee Retirement Income Security Act of 1974 (ERISA) provides comprehensive rules relating to employee benefit plans, including plans providing health benefits to employees. The Act (sec. 514(a)) generally supersedes State laws insofar as they relate to employee benefit plans.

House bill

The provision generally exempts certain multiple employer welfare arrangements from the ERISA preemption provision. Under the provision, a multiple employer welfare arrangement is any plan or other arrangement established to offer welfare benefits, such as health insurance, to the employees of two or more employers. However, it continues preemption with respect to State law applying to any plan maintained pursuant to a collective bargaining agreement or maintained by a tax exempt rural electric cooperative.

In the case of a fully insured multiple employer welfare arrangement, the provision exempts from ERISA preemption any State laws that require the maintenance of specified levels of reserves and contributions in order for such an arrangement to be considered adequately funded.

In the case of a multiple employer welfare arrangement that is not fully insured, the provision exempts from ERISA preemption any State laws that regulate insurance. Notwithstanding this provision, the Secretary is authorized to determine the extent to which the ERISA preemption provision will be applied to a multiple employer welfare arrangement that is not fully insured. The Secretary's determination may be made on a case-by-case basis or a class basis.

The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

6. Reduction in Income Tax Rate on Virgin Islands Source Income

Present law

The Treasury and the Government of the Virgin Islands take the position that present law imposes a 30-percent tax on the U.S. recipient of certain Virgin Islands source passive investment income, and that present law also imposes withholding at the source by the V.I. payor of such income. Certain taxpayers contend there is no such tax or withholding obligation.

House bill

No provision.

Senate amendment

The Senate amendment provides for a 10-percent rate of tax by the Virgin Islands when the recipient is a U.S. citizen, resident alien, or corporation and provides for a corresponding withholding obligation on the V.I. payor of such income. The amendment makes clear the Virgin Islands' right prospectively both to impose the tax and to collect it by requiring withholding. The amendment is not intended to affect disputes now pending with respect to prior years between various taxpayers and the V.I. Government as to whether under existing law the Virgin Islands can tax U.S. recipients nonresident in the Virgin Islands on passive income from Virgin Islands sources. The amendment will allow the V.I. Government to reduce this 10-percent rate in its discretion. Payments of V.I. source passive income to non-U.S. persons will continue to be subject to the tax at a 30-percent rate.

The new tax rates generally will apply to amounts received after the date of enactment. The corresponding withholding obligation will apply to payments made after the date of enactment.

Conference agreement

The conference agreement follows the House bill.

7. One-Year Extension of Highway Trust Fund Taxes

Present Law

Highway Trust Fund taxes are scheduled to expire or revert to lower tax rates after September 30, 1984. Receipts from those highway taxes that would continue after expiration of the trust fund would be deposited in the general fund of the Treasury. The exemption from the fuels tax (4 cents a gallon) for qualified taxicabs expires after December 31, 1982.

Expenditures may be made from the trust fund for authorized highway purposes through September 30, 1984.

House bill

No provision.

Senate amendment

The Highway Trust Fund is extended for one-year, through September 30, 1985. Receipts from excise taxes designated for deposit to the trust fund also is extended for one-year, through September 30, 1985. Expenditures from the trust fund for authorized purposes is extended for two years, through September 30, 1986.

Transfer of recreational motor boat fuels taxes to the Land and Water Conservation Fund also is extended for one additional year.

In addition, the refund of the taxes on motor fuels used in qualified taxicabs is extended for one-year, through December 31, 1983.

Conference agreement

The conference agreement follows the House bill.

ESTIMATED REVENUE EFFECTS OF PROVISIONS OF H.R. 5470 AS AGREED TO BY THE CONFERENCE COMMITTEE—FISCAL YEARS 1983-87

[Millions of dollars]

Provision	1983	1984	1985	1986	1987
1. Exclusion for periodic damage payments	(1)	(1)	(1)	(1)	(1)
2. Exclusion from gross income for certain foster care payments	(2)	(2)	(2)	(2)	(2)
3. Taxation of Indian tribal governments	(2)	(2)	(1)	(1)	(1)
4. Waiver of preemption in case of Hawaiian prepaid health care act	(2)	(2)	(2)	(2)	(2)
5. Waiver of preemption of ERISA in case of multiple employer welfare arrangements	(1)	(1)	(1)	(1)	(1)

(1) Negligible revenue impact.
(2) Loss of less than $5 million.

And the House agree to the same.

DAN ROSTENKOWSKI,
SAM GIBBONS,
J. J. PICKLE,
JOHN J. DUNCAN,
BILL FRENZEL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
MALCOLM WALLOP,
RUSSELL B. LONG,
Managers on the Part of the Senate.

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