

## AMENDING THE INTERNAL REVENUE CODE WITH RESPECT TO CAPITAL STOCK ISSUES AND CORPORATE BONDS

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

### REPORT

[To accompany H. R. 3613]

The Committee on Finance, to whom was referred the bill (H. R. 3613) to amend sections 1820 (a), 1802 (b), and 3481 (a) of the Internal Revenue Code, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this action, the Committee on Finance adopts the report of the Committee on Ways and Means of the House of Representatives, which follows.

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#### GENERAL STATEMENT

This bill would amend three sections of the Internal Revenue Code relating to the stamp and document taxes on issues of capital stock and bonds, respectively. In general, it is designed to remove certain inequities arising under code sections 1802 and 3481. At present, in some cases, the tax imposed under section 1802 on capital stock issues, once levied, must be reimposed upon part of a new capital stock issue. Again, mere loans of stock made to accommodate owners of shares who cannot meet the legal requirements of timely delivery in connection with the sale of their shares, would be exempt from the required tax applicable in the case of such loans. With respect to partnerships owning shares or certificates of stock, or bonds, the bill would limit the tax applicable upon the transfer of partnership interests, when a change in the personnel of the partnership occurs, to an amount proportionate to the capital interest transferred. Under present law, in such cases, the tax is based upon the full number of shares, certificates or bonds, as the case may be, owned by the partnership, even though the entire capital is not involved in the transfer.

Your committee sees no justification whatever for permitting these inequities to continue. Their removal will greatly simplify present procedures and will have no material effect upon Federal revenues.

The Treasury Department has furnished the committee with a favorable report on the bill and the Security and Exchange Commission has offered no objections to its passage. The report of the Treasury Department and a letter from the Chairman of the Security and Exchange Commission appear in full, below:

TREASURY DEPARTMENT,  
Washington, July 10, 1947.

Hon. HAROLD KNUTSON,  
Chairman, Committee on Ways and Means,  
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of May 29, 1947, enclosing two copies of bill H. R. 3613, to amend sections 1802 (a), 1802 (b), and 3481 (a) of the Internal Revenue Code, and requesting a statement of this Department's views on the proposed legislation.

The bill proposes to amend section 1802 (a), *supra*, relating to the stamp tax on issues of capital stock and similar interests, so as to limit the tax on the issuance of certificates (or shares, where no certificates are issued), in those cases where new and additional capital is introduced to the capital stock accounts, to an amount calculated on the basis of the earned surplus or other capital which for the first time is dedicated as capital. The tax imposed by this section of the Internal Revenue Code is laid on each original issue of shares or certificates of stock. Corporations, when adjusting their capital structure, frequently transfer surplus or other new capital to one or more of their capital stock accounts and issue new shares against the sum total of the old and new capital. In this situation there is no alternative under the present law to taxing as an original issue all the shares or certificates of stock so issued. The proposed amendment will avoid the reimposing of a tax on the amount of capital which has previously been subject to the original issue tax as imposed by section 1802 (a), *supra*, by specifically providing that the tax shall be limited to a tax calculated on that amount which for the first time is dedicated as capital.

The bill further proposes to amend section 1802 (b), *supra*, so as to limit the tax upon any transfer of an interest in a partnership owning shares or certificates of stock, to an amount equal to that percentage of a tax computed on the transfer of all of such shares or certificates of stock owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners. The proposed amendment will avoid the inequity of asserting a tax on the full number of shares of stock coowned by the members of a partnership when a change occurs in such coownership by a change in the partnership personnel. The tax, under the proposed amendment, will be limited to the interest transferred.

The bill also proposes to further amend section 1802 (b), *supra*, so as to exempt from the tax mere loans of stock. The proposed amendment will restore the exemption from the tax which existed prior to the enactment of the Revenue Act of 1932. The repeal of the exemption for loans of stock in 1932, while motivated largely by the desire to discourage short selling, which is now under the control of the Securities and Exchange Commission, penalizes many persons who own the stocks they sell but who, because of their distance from the New York Stock Exchange or other selling agency, cannot effect physical delivery of their certificates within the time required by the rules of the exchange or other selling agency. Hence, stock is borrowed to make timely delivery and a borrowing tax is accordingly incurred. The proposed amendment will avoid this inequity.

The bill further proposes to amend section 3481 (a), *supra*, so as to limit the tax upon any transfer of an interest in a partnership owning bonds or other instruments taxable on transfer under that section of the Internal Revenue Code. The effect of this proposed amendment is to afford the same relief in case of transfer of an interest in a partnership owning bonds as is afforded by the proposed amendment to section 1802 (b), *supra*, with respect to the transfer of shares or certificates of stock. The amendment of section 3481 (a) made by the bill appears to involve a technical error in that the word "further" would be inserted after the word "Provided". Since the matter to be inserted will be the first proviso the word "further" is unnecessary, and should be eliminated. Accordingly, page 2 of the bill should be amended by changing lines 17-19 to read as follows:

"Section 3481 (a) of the Internal Revenue Code is amended by inserting after 'Provided', the following: 'That upon any transfer of an interest in a partner-'.

The proposed amendments will remove inequities and afford a reasonable, fair, and simple basis for the Administration of the several sections of the Internal Revenue Code in the particular types of transactions contemplated.

The amount of the loss in the revenue which will result from the enactment of the proposed amendments cannot be determined. However, the Department will interpose no objection to the enactment of H. R. 3613.

If further correspondence relative to this matter is necessary, please refer to IR:MT:M.

Due to the expeditious nature of this report, the Department has not been advised by the Bureau of the Budget as to whether the proposed legislation is in accord with the program of the President.

Very truly yours,

A. L. M. WIGGINS,  
*Acting Secretary of the Treasury.*

JUNE 6, 1947.

Re: H. R. 3613

JAMES A. TAWNEY,  
*Clerk, Committee on Ways and Means,  
House of Representatives, Washington, D. C.*

DEAR MR. TAWNEY: This is in reply to your letter of May 29, 1947, transmitting copies of H. R. 3613 to the Commission for its comments and recommendations.

The bill would amend certain sections of the Internal Revenue Code taxing the issuance and transfer of corporate securities. We have examined the bill from the viewpoint of the statutes we administer but have found no such relationship as would warrant an expression of views by this Commission.

We appreciate the opportunity extended to us to comment on the bill.

Sincerely yours,

JAMES J. CAFFREY, *Chairman.*

#### CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in the Internal Revenue Code 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, and existing law in which no change is proposed is shown in roman):

#### CHAPTER 11.—DOCUMENTS, OTHER INSTRUMENTS, AND PLAYING CARDS

##### SUBCHAPTER A—RATE AND PAYMENT OF TAX

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#### SEC. 1802. CAPITAL STOCK (AND SIMILAR INTERESTS).

(a) ORIGINAL ISSUE.—On each original issue, whether on organization or reorganization, of shares or certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, or by any investment trust or similar organization (or by any person on behalf of such investment trust or similar organization) holding or dealing in any of the instruments mentioned or described in this subsection or section 1801 (whether or not such investment trust or similar organization constitutes a corporation within the meaning of this title), on each \$100 of par or face value or fraction thereof of the certificates issued by such corporation or by such investment trust or similar organization (or of the shares where no certificates were issued), 11 cents: *Provided*, That where such shares or certificates are issued without par or face value, the tax shall be 11 cents per share (corporate share, or investment trust or other organization share, as the case may be), unless the actual value is in excess of \$100 per share; in which case the tax shall be 11 cents on each \$100 of actual value or fraction thereof of such certificates (or of the shares where no certificates were issued), or unless the actual value is less than \$100 per share, in which case the tax shall be 3 cents on each \$20 of actual value, or fraction thereof, of such certificates (or of the shares where no certificates were issued) [.] *Provided further*, That where such certificates (or shares, where no certificates are issued) are issued in a recapitalization, the tax payable shall be that proportion of the tax computed on such certificates or shares issued in the recapitalization that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total par value (or actual value if no par stock) of such certificates or shares issued in the recapitalization. The stamps representing the tax imposed by this subsection shall be attached to the stock books or corresponding records of the organization and not to the certificates issued.

(b) **SALES AND TRANSFERS.**—On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subsection (a), or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such share, certificate, interest, or rights, or not), on each \$100 of par or face value or fraction thereof of the certificates of such corporation or other organization (or of the shares where no certificates were issued), 5 cents, and where such shares or certificates are without par or face value, the tax shall be 5 cents on the transfer or sale or agreement to sell on each share (corporate share, or investment trust or other organization share as the case may be): *Provided*, That in case the selling price, if any, is \$20 or more per share the above rate shall be 6 cents: *Provided further*, That upon any transfer of an interest in a partnership owning shares or certificates of stock, the tax shall be limited to an amount equal to that percentage of a tax computed on the transfer of all of such shares or certificates of stock owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners: *Provided further*, That it is not intended by this chapter to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock, nor upon the return of stock loaned: *Provided further*, That the tax shall not be imposed upon deliveries or transfers to a broker or his registered nominee for sale, nor upon deliveries or transfers by a broker or his registered nominee to a customer for whom and upon whose order the broker has purchased same, nor upon deliveries or transfers by a purchasing broker to his registered nominee if the shares or certificates so delivered or transferred are to be held by such nominee for the same purpose as if held by the broker, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: *Provided further*, That in case of sale where the evidence of transfer is shown only by the books of the corporation or other organization the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before-mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers: *Provided further*, That as used in this section the term "registered nominee" shall mean any person registered with the collector in accordance with such rules and regulations as the Commissioner with the approval of the Secretary shall prescribe. The tax shall not be imposed upon deliveries or transfers of shares or certificates—

(1) From the owner to a custodian if under a written agreement between the parties the shares or certificates are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian.

No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

The tax imposed by this subsection shall not be imposed upon any delivery or transfer by an executor or administrator to a legatee, heir, or distributee of shares

or certificates of stock if it is shown to the satisfaction of the Commissioner that the value of such shares or certificates is not greater than the amount of the tax that would otherwise be imposed on such delivery or transfer.

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### CHAPTER 31.—DOCUMENTS AND OTHER INSTRUMENTS

#### SEC. 3481. TRANSFER OF BONDS

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(a) IMPOSITION OF TAX.—On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or described in section 1801 and of a kind the issue of which is taxable thereunder, whether made by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not), on each \$100 of face value or fraction thereof, 5 cents: *Provided, That upon any transfer of an interest in a partnership owning such instruments, the tax shall be limited to an amount equal to that percentage of a tax computed on the transfer of all of such instruments owned by the partnership as the interest transferred bears to the total interests in the partnership of all the partners: Provided further, That* is is not intended by this chapter to impose a tax upon an agreement evidencing a deposit of instruments as collateral security for money loaned thereon, which instruments are not actually sold, nor upon the delivery or transfer for such purpose of instruments so deposited: *Provided further, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: Provided further, That the tax shall not be imposed upon deliveries or transfers from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if such instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: Provided further, That* where the change of ownership is by transfer of the instrument the stamp shall be placed upon the instrument; and in cases of an agreement to sell or where the transfer is by delivery of the instrument assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement, to sell before-mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any such instrument, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both.

The tax shall not be imposed upon deliveries or transfers made after June 30, 1938, of instruments—

(1) From the owner to a custodian if under a written agreement between the parties the instruments are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian.

No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

Any person who, with intent to evade the tax provided in this subdivision, falsely makes a certificate accompanying any delivery or transfer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

