

## ANNUITIES TO WIDOWS AND DEPENDENT CHILDREN OF TAX COURT JUDGES

—————  
AUGUST 14, 1961.—Ordered to be printed  
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Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

### REPORT

Together With

### MINORITY VIEWS

[To accompany H.R. 4317]

The Committee on Finance, to whom was referred the bill (H.R. 4317) to amend the Internal Revenue Code of 1954 and incorporate therein provisions for the payment of annuities to widows and certain dependents of the judges of the Tax Court of the United States, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

#### I. EXPLANATION OF COMMITTEE AMENDMENTS

(a) *Amendments pertaining to the House bill.*—Your committee amended the substance of the House-passed bill in two respects to make the benefit computation under this bill, in the case of widows of Tax Court judges, identical with the formula under Public Law 973 of the 84th Congress relating to widows of Federal judges.

The first amendment provides that in computing the annuity for a widow of a Tax Court judge, service in the executive branch of the Government is to be taken into account at a rate of three-fourths of 1 percent just as under Public Law 973. Under the House bill, such service was credited at a higher rate, thereby providing a greater annuity for a widow of a Tax Court judge than for a widow of a Federal judge, even though both judges had identical service records. Because your committee believes that in such cases survivor annuities also should be identical, the House bill has been amended to accomplish this result.

The other amendment relates to the 10-percent reduction of benefits in the case of unpaid prior service deposits. Under your committee's

amendment, this 10-percent reduction is to occur after the maximum annuity of 37½ percent of the judge's average salary for a 5-year period has been computed, just as under Public Law 973. Under the House bill this reduction applied before the maximum benefit was computed and in some cases this could have resulted in a higher benefit for widows of Tax Court judges than for widows of Federal judges.

(b) *Amendment to section 403(b).*—Section 403(b) of present law provides rules under which organizations described in section 501(c)(3) may purchase annuity contracts for their employees. In general, such a tax-exempt organization may contribute toward the purchase price of an annuity contract for an employee up to an amount equal to 20 percent of the employee's salary and even though the plan may not be a qualified plan under the Internal Revenue Code, contributions thus made by a section 501(c)(3) organization are not required to be included by the employee in his gross income for Federal income tax purposes.

The Internal Revenue Service has recently ruled that because public school systems of State or local governments are not organizations described in section 501(c)(3) they do not meet the statutory tests of section 403(b). Therefore, unless contributions are made under a qualified pension or annuity plan employees of public schools, colleges, and universities must include in their gross income, and pay tax on, amounts contributed by their employer toward the purchase price of their annuity contract.

The committee amendment provides that amounts paid to purchase annuity contracts for employees of a public school system will qualify for the exclusion from gross income in the same manner and to the same extent as amounts used to purchase contracts for employees of private organizations described in section 501(c)(3), including private schools. This amendment will make it unnecessary for public schools or State or local governmental units to file application with the Commissioner for classification as an organization described in section 501(c)(3) in order for it to purchase employee annuities under section 403(b). It did not seem reasonable to the committee to deny employees of a public school system the same benefit which is allowed employees of tax-exempt organizations when the Congress is prohibited under the Constitution from taxing such State activities.

Moreover, it will clarify the present practice under which some public school bodies have been granted the right to purchase annuity contracts for their employees under section 403(b) while others have been denied the same privilege. Thus, even though a public school, college, or university (including a land-grant college or university) is an integral part of a State or local government (and, therefore, not a sec. 501(c)(3) organization), under the amendment it will meet the requirements of section 403(b). A wholly owned State or municipal instrumentality, such as a separately organized school, college, or university, also will qualify.

The committee felt it was not reasonable to take the view that Congress ever intended that State or local governmental units should be required to file application with the Commissioner for classification as a tax-exempt organization when the Federal Government has no power under the Constitution to tax the State or local government in the first place. Since your committee viewed this amendment as a clarification of the law, it is made applicable to taxable years be-

ginning after December 31, 1957, the same effective date as section 403(b).

(c) *Accident and health insurance contract premiums.*—Under present law life insurance companies are entitled to a special deduction of 2 percent of premiums attributable to group and accident and health contracts and group life insurance contracts for purposes of the phase 2 tax on underwriting income. The committee has modified present law to provide that individual accident and health contracts written by life insurance companies also will qualify for the special 2 percent deduction unless they are of the nonparticipating type and are issued or renewed for periods of 5 years or more, in which case present law already allows a deduction of 10 percent of the increase in reserves from nonparticipating contracts or, if greater, 3 percent of premiums attributable to nonparticipating contracts (other than group).

This amendment will be of special benefit to smaller life insurance companies which generally do not write substantial group accident and health contracts but which are active in the individual accident and health insurance market, where risks frequently are greater.

Your committee has also extended this special 2 percent deduction in computing underwriting income to casualty insurance companies writing accident and health contracts. This amendment will eliminate whatever advantages the special deduction has given life insurance companies in selling this type of policy in competition with casualty companies. This amendment does not apply to mutual casualty insurance companies since under present law they are not taxable on their underwriting income and your committee does not believe their investment income should be reduced by a deduction clearly associated with their underwriting accounts.

This amendment will apply to taxable years beginning after December 31, 1960.

## II. SUMMARY OF HOUSE BILL

H.R. 4317 provides a system of annuities for the surviving widows and dependent children of judges of the Tax Court of the United States. As amended, the bill provides for these judges the same survivorship protection as is already available for judges of the other Federal courts. The maximum annuity payable to a widow under the system is 37½ percent of the judge's average salary over a 5-year period, or a maximum of \$8,437.50 a year. This is obtained, however, only if the judge had 30 years of allowable service. To be eligible for this protection a judge must have contributed to a special fund 3 percent of his salary for each prior year's service.

The bill has been reported unanimously by your committee and its enactment is favored by all of the interested Government agencies.

## III. GENERAL EXPLANATION OF HOUSE BILL

In 1953, Congress provided a retirement system for judges of the Tax Court of the United States (Public Law 219, 83d Cong., 1st sess.). That system was incorporated in section 1106 of the Internal Revenue Code of 1939 (now sec. 7447 of the 1954 Code). It was enacted because of the recognition that the civil service retirement system was inadequate and unsatisfactory for Tax Court judges, since the qualifications for appointment in this case require that they be men

of maturity and experience prior to entering service. This meant that they would receive an inadequate civil service annuity in the usual case. The retirement system in effect since 1953 provides that a judge may retire after 18 years' service or after reaching the age of 70 if he has at least 10 years' service. Retired pay is the same as active pay if the judge retires after 24 years' service. Retired pay upon retirement with less than 24 years' service is a proportionately lesser amount. Retired judges may be recalled to active service, for which they receive full pay.

In 1956, Congress provided a survivor annuity system for members of the judiciary generally, including judges of the district courts of the territories who serve for a term of years (Public Law 973, 84th Cong., 2d sess.; sec. 376 of title 28, U.S.C.). That system includes judges of the courts of appeal, the district courts, the Court of Claims, the Court of Customs and Patent Appeals, the Customs Court, and the Court of Military Appeals. A special system covers the Supreme Court. Of all the Federal courts, the Tax Court of the United States alone remains without an adequate system of survivorship protection.

Judges of the Tax Court today must depend upon the civil service retirement system for survivorship protection. As in the case of retirement protection, this system is inadequate to the needs of the judges. The survivor benefits of the civil service system are keyed to career employees who have served as such for most of their working lives. Judges, on the other hand, typically are not appointed to the bench until a relatively late point in their professional careers. Thus, generally, they are unable to build up an adequate level of survivorship benefits under the civil service system. Not only is the present absence of an adequate survivorship system a hardship insofar as the judges now on the court are concerned, but it also imposes a serious problem in attracting qualified individuals to accept appointment to the court.

Your committee's bill provides for judges of the Tax Court the same survivorship protection as is already in effect for judges of the other Federal courts, with such minor, technical modifications as have proved necessary in view of certain differences in the situation of the Tax Court.

Under the bill, Tax Court judges may within 6 months after taking office (either after appointment or reappointment), or within 6 months after the date of becoming eligible for retirement under section 7447(b) of the 1954 Code, or within 6 months after date of enactment, elect to come under the system. Once such an election has been made, contributions of the judge at the rate of 3 percent of salary will be withheld from his salary and upon his death his widow and surviving dependent children will receive annuities. No provision for annuities is made in the case of dependent parents since there is no comparable provision in the existing judicial survivorship system. The annuity in each case will depend upon the years of public service of the judge. Provision is made for deposits into the Tax Court judges survivors annuity fund by the judge with respect to prior years' service. Such deposits will be based at the rate of 3 percent of the salary received in such prior years, plus interest. In case of failure of a judge to make such deposits with respect to prior service, the bill provides for a reduction in the amount of the annuity.

The annuity payable to a widow of a former Tax Court judge is computed by taking 1¼ percent of his average salary for the last 5 years' prior to his death (or prior to his receiving retirement pay) multiplied by his number of years of service as a judge (and certain other service) and up to 15 years of service as an employee in the legislative branch of the Government. To this is added three-fourths of 1 percent of his average salary multiplied by other "allowable" service (primarily civilian Government service not allowed above, including service in the executive branch). The maximum annuity payable to a widow under the system is 37½ percent of the judge's average annual salary received during the last 5 years prior to his death, or prior to his receiving retired pay under section 7447(d), whichever first occurs. The present salary of a Tax Court judge is \$22,500 per annum. This, assuming in a given case that the average annual salary for the computation of a widow's annuity is \$22,500, the maximum widow's annuity will be \$8,437.50. In order to attain such a maximum, the judge will have to have had at least 30 years of allowable service as defined in the bill. If such service had been on the Tax Court at the present salary, the total contributions of the judge over the 30-year period at the 3-percent rate would be \$20,250, without regard to any interest earned over the period involved.

The bill sets up a Tax Court judges survivors annuity fund into which the deposits of the judges electing coverage shall be made and from which the annuities shall be paid. The bill authorizes the appropriation of funds necessary to carry out its provisions.

#### IV. TECHNICAL EXPLANATION OF THE BILL

The bill adds a new section (sec. 7448) to subchapter C of chapter 76 of the Internal Revenue Code of 1954 (relating to the Tax Court of the United States). References to subsections in the following paragraphs of this report refer to subsections of the proposed new section 7448. References to Public Law 973 are to the act of August 3 1956, which provided a survivors annuity system for members of the judiciary.

##### *Subsection (a)*

Subsection (a) contains definitions of terms used in the section. Paragraphs (2) and (4) of this subsection make it clear that retired judges (whether under recall or not) may participate in the system. The references in the two paragraphs in question to compensation in lieu of retired pay are to pay received while serving on recall. The definitions of "widow" and "dependent child" are the same as in Public Law 973. Paragraph (6) defines a "widow" as a surviving wife who has been married to the judge for at least 2 years immediately before his death or is the mother of issue by the marriage, and who has not remarried. Paragraph (7) defines "dependent child" as an unmarried child under age 18 or incapable of self-support because of physical or mental disability. The definition includes a dependent stepchild or adopted child.

##### *Subsection (b)*

This subsection provides that a judge may elect survivorship coverage by filing a written election with the chief judge of the Tax Court within 6 months after the date on which he takes office after

appointment or reappointment, or within 6 months after the date upon which he becomes eligible for retirement under section 7447(b), or within 6 months after the enactment of the new section 7448. In the case of the chief judge, his election shall be made in a manner prescribed by the Tax Court subject to the above requirements as to the time of filing. The provision that a judge may make an election within 6 months after becoming eligible for retirement under section 7447(b) has no counterpart in Public Law 973. However, it is necessary with respect to judges of the Tax Court because a judge of the Tax Court does not become eligible for retirement under section 7447 until he has served at least 18 years or, if 70 years of age, has served 10 years. Until such time, a judge of the Tax Court has no retirement protection unless he continues to contribute to the civil service retirement system. Since the bill provides that a judge electing its benefits must at the same time waive all civil service benefits, it would be unfair to require such an election prior to the time when the individual judge's retirement privileges under section 7447 have matured.

*Subsection (c)*

This subsection provides for a deduction of 3 percent from the salary of each judge electing to come under the section, including salary paid subsequent to retirement. The amounts so deducted are to be paid into a fund in the Treasury to be known as the "Tax Court judges survivors annuity fund." This subsection is identical to the comparable provision of Public Law 973 except for the name of the fund.

*Subsection (d)*

This subsection provides that a judge electing the benefits of the section shall deposit, with interest, to the credit of the fund, a sum equal to 3 percent of his salary received for past service as a judge, Senator, Representative, Delegate or Resident Commissioner in Congress and for any other civilian service of the Government. The subsection provides that such past service deposits may be made in installments. The subsection also provides that, notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the past service in computing his survivor annuity but that such annuity is to be reduced by an amount equal to 10 percent of the amount of the deposit which was not made, unless the widow elects to eliminate that service entirely from credit under subsection (n). The subsection provides that no deposit need be made for honorable service in the Armed Forces. As set forth above, the subsection is identical with the comparable provision of Public Law 973. In addition, the bill provides that no deposit shall be required for past service with respect to which deductions were actually made under the Civil Service Retirement Act. No comparable provision is contained in Public Law 973. However, the civil service retirement system was for many years the only retirement system available to judges of the Tax Court and, until enactment of this section, has been the only system affording them survivorship protection. As a result, a number of the judges of the Tax Court have been making substantial contributions at the regular 6½ percent rate to the civil service retirement system for many years. In order to elect the benefits of the system provided by this section, such judges must waive their rights to any benefits under the civil service system, including their right

to refund of their civil service contribution. It is not practical to provide for a transfer of amounts previously contributed by judges to the civil service fund from that fund to the new fund created by this section. Therefore, if it were not for the special provision referred to, a judge would be required to contribute again with respect to the same service. No similar problem was involved in connection with Public Law 973 because members of the judiciary generally were not afforded coverage under the civil service retirement system.

*Subsection (e)*

This subsection provides that the Secretary of the Treasury is to invest the Tax Court judges survivors annuity fund in interest-bearing Government securities. The subsection is identical to the comparable provision of Public Law 973.

*Subsection (f)*

This subsection provides that an individual account is to be kept for each judge of his contributions to the survivors annuity fund. The subsection is identical to the comparable provision of Public Law 973.

*Subsection (g)*

This subsection provides for the termination of all rights of a judge in the benefits provided by the section in cases where the judge's service terminates other than under section 7447, or section 1106 of the 1939 Code. In such a case, the judge will receive back the contributions which he has paid in, with interest. The last sentence of the subsection provides that, if the service terminates because of nonreappointment but the judge is eligible for and elects retired pay at that time, his rights do not terminate and he remains under the system. The subsection differs from the comparable provision of Public Law 973 only as required by the special characteristics of the Tax Court retirement system.

*Subsection (h)*

This subsection provides that, in case any judge electing the benefits of this section dies as a judge after rendering at least 5 years of civilian service as computed under subsection (n), for the last 5 years of which deposits or salary deductions have been made or the salary deductions required by the Civil Service Retirement Act actually have been made, annuities shall be paid to the survivors as follows:

(1) If survived by a widow but no dependent children, the widow shall receive an annuity deferred until after she reaches age 50 unless she has already reached that age;

(2) If survived by a widow and dependent children, the widow shall receive an immediate annuity and each dependent child shall also receive an annuity equal to one-half of the annuity of the widow but not more than \$900 per year divided by the number of children or \$360 per year, whichever is lesser.

(3) If survived by dependent children but no widow, each child shall receive an annuity equal to the widow's annuity (if she had survived) but not more than \$480 per year.

The annuity amounts are computed as provided in subsequent subsections.

The subsection provides further that a widow's annuity shall terminate upon her death or remarriage. The annuity of a dependent

child terminates upon the child reaching age 18 unless the child is incapable of self-support by reason of mental or physical disability. In every case, a dependent child's annuity terminates at the child's death or marriage.

The subsection is identical to the comparable provision of Public Law 973.

*Subsection (i)*

This subsection provides that questions of dependency and disability arising under the section are to be determined by the chief judge subject to review only by the Tax Court, the decision of which shall be final and conclusive. Under Public Law 973, such questions are determined by the Director of the Administrative Office of the U.S. Courts subject to review by the Judicial Conference.

*Subsection (j)*

This subsection provides that, if a judge who has elected to come under this section dies in office (whether in regular active service or retired from such service under sec. 7447) before he has rendered 5 years of covered civilian service or after having rendered 5 years of such civilian service but has no survivor or survivors entitled to the benefits provided by the section or the right of all persons entitled to an annuity based upon his service has terminated before a valid claim therefor has been established, the total amount credited to the individual account of the judge in the survivors annuity fund, with interest to the date of death, shall be paid to the person or persons surviving in the following order of precedence:

- (1) To the person designated by the judge in writing.
- (2) If none, to his widow (regardless of how long married),
- (3) If none, to his children and descendants,
- (4) If none, to his parents,
- (5) If none, to his executor or administrator, and
- (6) If none, to his next of kin.

Determination as to the persons entitled as set out above shall be made by the chief judge.

In cases where the annuities of all persons entitled to an annuity upon the service of a judge terminate before the aggregate amount of the annuity paid equals the total amount credited to the individual account of such judge, the subsection also provides that the remaining balance, with interest to the date of death of the judge, shall be paid in the order of precedence set out above.

The subsection also provides that any accrued annuity remaining unpaid upon the termination (other than death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving an annuity based upon the service of a judge shall be paid in the following order of precedence:

- (1) To the executor or administrator of the estate of such person;

- (2) If there is no such executor or administrator, payment may be made to such individual or individuals as may appear in the sole judgment of the chief judge to be legally entitled thereto and such payment shall be bar to recovery by any other person.

This subsection is identical to the comparable provisions of Public Law 973, except for the necessary reference to section 7447.



*Subsection (k)*

This subsection provides that payments to minors or persons mentally incompetent or under other legal disability shall be paid to the guardian or other person legally vested with the claimant's care. The subsection provides that where no such guardian or other fiduciary has been appointed, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or his estate. With the exception of the reference to the chief judge, the subsection is identical with the comparable provision of Public Law 973.

*Subsection (l)*

This subsection provides that annuities are to be payable monthly and are not to be assignable or subject to attachment or other legal process. The subsection is identical to the comparable provision of Public Law 973.

*Subsection (m)*

This subsection provides for the computation of the annuities provided by the section. The annuity of a widow is based upon the judge's average annual salary for judicial and other allowable service during the last 5 years of such service prior to the judge's death or prior to his receiving retired pay under section 7447(d), whichever first occurs. Under Public Law 973, the average is of the service during the last 5 years prior to the judge's death only. However, under the Tax Court retirement system, a judge with less than 24 years' service cannot retire at full pay, a limitation not applicable to the judiciary generally. The change provided by your committee's bill will mean, for example, that in the case of a judge who serves on the Tax Court for 18 years at \$22,500 per annum and then retires at 18/24 of that salary, the annuity for his survivor will be based upon an average salary of \$22,500 rather than upon the lesser amount received subsequent to retirement. The annuity is to be the sum of the following:

(1) One and one-fourth percent of the average salary, as set out above, multiplied by the years of allowable service as a judge, or as a Senator, Representative, Delegate, or Resident Commissioner in Congress, as a member of the Armed Forces, and his years, not exceeding 15, of service as an employee in the legislative branch of the Government; and

(2) Three-fourths of 1 percent of the average salary, as set out above multiplied by the years of any other prior allowable service, including service in the executive branch.

The annuity so computed is not to exceed 37½ percent of the average annual salary and is to be further reduced in accordance with subsection (d), if applicable.

*Subsection (n)*

This subsection, subject to the provisions of subsection (d), establishes the years of service which are allowable as the basis for calculating the annuity. These years include years of service as a member of the U.S. Board of Tax Appeals and as a judge of the Tax Court, years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, years of active service as a member of the Armed Forces not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retire-

ment or retired pay under any other provision of law, and years of any other civilian service within the meaning of section (3) of the Civil Service Retirement Act. This subsection is identical to the comparable provision of Public Law 973 except for the necessary references to the Tax Court and the U.S. Board of Tax Appeals.

*Subsection (o)*

This subsection provides that a widow may receive an annuity under this section and an annuity to which she is entitled under any other account but the same service shall not be used in computing both annuities.

*Subsection (p)*

This subsection provides that the chief judge shall submit to the Bureau of the Budget annual estimates of expenditures and appropriations necessary for the operation of the survivors annuity fund. It also provides that the chief judge shall cause periodical actuarial examinations to be made of the survivors annuity fund and shall transmit the actuary's findings and recommendations to the Tax Court. Except for the substitution of the chief judge for the Director of the Administrative Office of the U.S. Courts and of the Tax Court for the Judicial Conference, this subsection is identical to the provisions of Public Law 973.

*Subsection (q)*

This subsection provides that, in the case of a judge who dies within 6 months after the date of enactment after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), but without having made an election as provided in subsection (b), an annuity shall be paid to his widow and surviving dependents as provided by this section. The computation of the annuity in such cases will take into account all service as a judge and other prior allowable service but the reductions for nondeposit shall be made. The subsection is identical with the comparable provision of Public Law 973.

*Subsection (r)*

This subsection provides that any judge who elects the benefits of this section must, at the time of his election, waive all benefits under the Civil Service Retirement Act. No comparable provision is contained in Public Law 973.

*Subsection (s)*

This subsection authorizes the appropriation of the funds necessary to carry out the new section 7448.

## 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 D—Deferred Compensation, Etc.\* \* \* \* \*  
PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS,  
ETC.\* \* \* \* \*  
SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

## (a) TAXABILITY OF BENEFICIARY UNDER A QUALIFIED ANNUITY PLAN.—

(1) GENERAL RULE.—Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities) except that section 72(e)(3) shall not apply.

\* \* \* \* \*  
(b) TAXABILITY OF BENEFICIARY UNDER ANNUITY PURCHASED BY SECTION 501(c)(3) ORGANIZATION OR PUBLIC SCHOOL SYSTEM.—

## (1) GENERAL RULE.—If—

(A) an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a) or for an employer which is a public school system,

(B) such annuity contract is not subject to subsection (a), and

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums, then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section

72 (relating to annuities) except that section 72(e)(3) shall not apply.

(2) **EXCLUSION ALLOWANCE.**—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

(A) the amount determined by multiplying (i) 20 percent of his includible compensation, by (ii) the number of years of service, over

(B) the aggregate of the amounts contributed by the employer for annuity contracts and excludable from the gross income of the employee for any prior taxable year.

(3) **INCLUDIBLE COMPENSATION.**—For purposes of this subsection, the term “includible compensation” means, in the case of any employee, the amount of compensation which is received from the employer described in section 501(c)(3) and exempt from tax under section 501(a), and which is includible in gross income (computed without regard to sections 105(d) and 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies.

(4) **YEARS OF SERVICE.**—In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary or his delegate) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) **APPLICATION TO MORE THAN ONE ANNUITY CONTRACT.**—If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

(6) **FORFEITABLE RIGHTS WHICH BECOME NONFORFEITABLE.**—For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

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## Subchapter L—Insurance Companies

### PART I—LIFE INSURANCE COMPANIES

#### Subpart C—Gain and Loss From Operations

Sec. 809. In general.

Sec. 810. Rules for certain reserves.

Sec. 811. Dividends to policyholders.

Sec. 812. Operations loss deduction.

#### SEC. 809. IN GENERAL.

##### (a) EXCLUSION OF SHARE OF INVESTMENT YIELD SET ASIDE FOR POLICYHOLDERS.—

(1) **AMOUNT.**—The share of each and every item of investment, yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company set aside for policyholders shall not be included in gain or loss from operations. For purposes of the preceding sentence, the share of any item set aside for policyholders shall be that percentage obtained by dividing the required interest by the investment yield; except that if the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

(2) **REQUIRED INTEREST.**—For purposes of this part, the required interest for any taxable year is the sum of the products obtained by multiplying—

(A) each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by

(B) the means of the amount of such reserves computed at that rate at the beginning and end of the taxable year.

##### (b) GAIN AND LOSS FROM OPERATIONS.—

(1) **GAIN FROM OPERATIONS DEFINED.**—For purposes of this part, the term “gain from operations” means the amount by which the sum of the following exceeds the deductions provided by subsection (d):

(A) the life insurance company’s share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received); and

(B) the sum of the items referred to in subsection (c).

(2) **LOSS FROM OPERATIONS DEFINED.**—For purposes of this part, the term “loss from operations” means the amount by which the sum of the deductions provided by subsection (d) exceeds the sum of—

(A) the life insurance company’s share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received); and

(B) the sum of the items referred to in subsection (c).

(3) **LIFE INSURANCE COMPANY’S SHARE.**—For purposes of this subpart, the life insurance company’s share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of subsection (a)(1), equals 100 percent.

(4) **EXCEPTION.**—If it is established in any case that the application of the definition of gain from operations contained in paragraph (1) results in the imposition of tax on—

(A) any interest which under section 103 is excluded from gross income,

(B) any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(C) any amount of dividends received which under sections 243, 244, and 245 (as modified by subsection (d)(8)(B)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(c) **GROSS AMOUNT.**—For purposes of subsections (b) (1) and (2), the following items shall be taken into account:

(1) **PREMIUMS.**—The gross amount of premiums and other consideration (including advance premiums, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer) on insurance and annuity contracts (including contracts supplementary thereto); less return premiums, and premiums and other consideration arising out of reinsurance ceded. Except in the case of amounts of premiums or other consideration returned to another life insurance company in respect of reinsurance ceded, amounts returned where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums.

(2) **DECREASES IN CERTAIN RESERVES.**—Each net decrease in reserves which is required by section 810 or 811 (b) (2) to be taken into account for purposes of this paragraph.

(3) **OTHER AMOUNTS.**—All amounts, not included in computing investment yield and not includible under paragraph (1) or (2), which under this subtitle are includible in gross income.

Except as included in computing investment yield, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(d) **DEDUCTIONS.**—For purposes of subsections (b) (1) and (2), there shall be allowed the following deductions:

(1) **DEATH BENEFITS, ETC.**—All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto).

(2) **INCREASES IN CERTAIN RESERVES.**—The net increase in reserves which is required by section 810 to be taken into account for purposes of this paragraph.

(3) **DIVIDENDS TO POLICYHOLDERS.**—The deduction for dividends to policyholders (determined under section 811(b)).

(4) **OPERATIONS LOSS DEDUCTION.**—The operations loss deduction (determined under section 812).

(5) **CERTAIN NONPARTICIPATING CONTRACTS.**—An amount equal to 10 percent of the increase for the taxable year in the reserves for nonparticipating contracts or (if greater) an amount equal to 3 percent of the premiums for the taxable year (excluding that portion of the premiums which is allocable to annuity features) attributable to nonparticipating contracts (other than

group contracts) which are issued or renewed for periods of 5 years or more. For purposes of this paragraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (excluding that portion of the reserves which is allocable to annuity features) as relates to nonparticipating contracts (other than group contracts). For purposes of this paragraph and paragraph (6), the term "premiums" means the net amount of the premiums and other consideration taken into account under subsection (c)(1).

(6) **[GROUP LIFE, ACCIDENT, AND HEALTH INSURANCE]** *CERTAIN ACCIDENT AND HEALTH AND GROUP LIFE INSURANCE.*—An amount equal to 2 percent of the premiums for the taxable year attributable to **[group life insurance contracts and group accident and health insurance contracts]** *accident and health insurance contracts (other than those to which paragraph (5) applies) and group life insurance contracts.* The deduction under this paragraph for the taxable year and all preceding taxable years shall not exceed an amount equal to 50 percent of the premiums for the taxable year attributable to such contracts.

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SEC. 815. DISTRIBUTIONS TO SHAREHOLDERS.

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(c) **POLICYHOLDERS SURPLUS ACCOUNT.**—

(1) **IN GENERAL.**—Each stock life insurance company shall, for purposes of this part, establish and maintain a policyholders surplus account. The amount in such account on January 1, 1959, shall be zero.

(2) **ADDITIONS TO ACCOUNT.**—The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

(A) an amount equal to 50 percent of the amount by which the gain from operations exceeds the taxable investment income,

(B) the deduction for certain nonparticipating contracts provided by section 809(d)(5) (as limited by section 809(f)), and

(C) the deduction for **[group life and group accident and health insurance contracts]** *accident and health insurance and group life insurance contracts* provided by section 809(d)(6) (as limited by section 809(f)).

(3) **SUBTRACTIONS FROM ACCOUNT.**—There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) the amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a)(1) is increased by reason of section 802(b)(3).

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## PART III—OTHER INSURANCE COMPANIES

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## SEC. 832. INSURANCE COMPANY TAXABLE INCOME.

(a) DEFINITION OF TAXABLE INCOME.—In the case of an insurance company subject to the tax imposed by section 831, the term “taxable income” means the gross income as defined in subsection (b)(1) less the deductions allowed by subsection (c).

(b) DEFINITIONS.—In the case of an insurance company subject to the tax imposed by section 831—

(1) GROSS INCOME.—The term “gross income” means the sum of—

(A) the combined gross amount earned during the taxable year from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners,

(B) gain during the taxable year from the sale or other disposition of property, and

(C) all other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company described in section 831(a), the amount of single deposit premiums paid to such company shall not be included in gross income.

(2) INVESTMENT INCOME.—The term “investment income” means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, dividends, and rents due and accrued at the end of the preceding taxable year.

[(3) UNDERWRITING INCOME.—The term “underwriting income” means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.]

(3) UNDERWRITING INCOME.—The term “underwriting income” means the premiums earned on insurance contracts during the taxable year less—

(A) losses incurred and expenses incurred, and

(B) the allowance for accident and health insurance contracts (determined under paragraph (7)).

(4) PREMIUMS EARNED.—The term “premiums earned on insurance contracts during the taxable year” means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 801(b), pertaining to the life, burial, or funeral insurance, or annuity business of an



insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 801.

(5) **LOSSES INCURRED.**—The term “losses incurred” means losses incurred during the taxable year on insurance contracts, computed as follows:

(A) To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year.

(B) To the result so obtained, add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year.

(6) **EXPENSES INCURRED.**—The term “expenses incurred” means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows: To all expenses paid during the taxable year, add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For the purpose of computing the taxable income subject to the tax imposed by section 831, there shall be deducted from expenses incurred (as defined in this paragraph) all expenses incurred which are not allowed as deductions by subsection (c).

(7) *ALLOWANCE FOR ACCIDENT AND HEALTH INSURANCE.*—The allowance under paragraph (3)(B) for accident and health insurance contracts is an amount equal to 2 percent of the premiums earned for the taxable year attributable to accident and health insurance contracts, except that such allowance for the taxable year and all preceding taxable years shall not exceed an amount equal to 50 percent of the premiums earned for the taxable year attributable to such contracts.

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**CHAPTER 76—JUDICIAL PROCEEDINGS**

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**Subchapter C—The Tax Court**

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**PART I—ORGANIZATION AND JURISDICTION**

- Sec. 7441. Status.
- Sec. 7442. Jurisdiction.
- Sec. 7443. Membership.
- Sec. 7444. Organization.
- Sec. 7445. Offices.
- Sec. 7446. Times and places of sessions.
- Sec. 7447. Retirement.
- Sec. 7448. Annuities to widows and dependent children of judges.

\* \* \* \* \*

**SEC. 7447. RETIREMENT.**

(a) **DEFINITIONS.**—For purposes of this section—

(1) The term “Tax Court” means the Tax Court of the United States.

(2) The term “Civil Service Commission” means the United States Civil Service Commission.

(3) The term "judge" means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).

(4) The term "Civil Service Retirement Act" means the Civil Service Retirement Act of May 29, 1930, as amended.

(5) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge or as a member of the Board.

(b) RETIREMENT.—

(1) Any judge who has served as judge for 18 years or more may retire at any time.

(2) Any judge who has served as judge for 10 years or more and has attained the age of 70 shall retire not later than the close of the third month beginning after whichever of the following months is the latest:

(A) the month in which he attained age 70;

(B) the month in which he completed 10 years of service as judge; or

(C) August 1953.

Section 2(a) of the Civil Service Retirement Act (relating to automatic separation from the service) shall not apply in respect of judges.

(c) RECALLING OF RETIRED JUDGES.—Any individual who is receiving retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or periods specified by the chief judge; except that in the case of any such individual—

(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

(2) he shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for purposes of section 7443(a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(d) RETIRED PAY.—Any individual who after August 7, 1953—

(1) ceases to be a judge by reason of paragraph (2) of subsection (b), or ceases to be a judge after having served as judge for 18 years or more; and

(2) elects under subsection (e) to receive retired pay under this subsection,

shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge as the number of years he had served as judge bears to 24; except that the rate of such retired pay shall be not less than one-half of the rate of such salary and not more than the rate of such salary. Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to

accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more.

(e) **ELECTION TO RECEIVE RETIRED PAY.**—Any judge may elect to receive retired pay under subsection (d). Such an election—

(1) may be made only while an individual is a judge (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, it may be made at any time before the day after the day on which his successor takes office);

(2) once made, shall be irrevocable;

(3) in the case of any judge other than the chief judge, shall be made by filing notice thereof in writing with the chief judge; and

(4) in the case of the chief judge, shall be made by filing notice thereof in writing with the Civil Service Commission.

The chief judge shall transmit to the Civil Service Commission a copy of each notice filed with him under this subsection.

(f) **INDIVIDUALS RECEIVING RETIRED PAY TO BE AVAILABLE FOR RECALL.**—Any individual who has elected to receive retired pay under subsection (d) who thereafter—

(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

(2) performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation or in the field of the renegotiation of Federal contracts for his client, his employer, or any of his employer's clients,

shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the first day on which he accepts such office or employment or engages in any activity described in paragraph (2). Any individual who has elected to receive retired pay under subsection (d) who thereafter during any calendar year fails to perform judicial duties required of him by subsection (c) shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the first day on which he so fails to perform such duties.

(g) **COORDINATION WITH CIVIL SERVICE RETIREMENT.**—

(1) **GENERAL RULE.**—Except as otherwise provided in this subsection, the provisions of the Civil Service Retirement Act (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such Act applies) as if this section had not been enacted.

(2) **EFFECT OF ELECTING RETIRED PAY.**—In the case of any individual who has filed an election to receive retired pay under subsection (d) and who has not filed a waiver under paragraph (3) of this subsection—

(A) he shall not be entitled to any annuity under section 1, 2, 3A, 6, or 7 of the Civil Service Retirement Act for any

## ANNUITIES TO WIDOWS OF TAX COURT JUDGES

period beginning on or after the day on which he filed such election;

(B) no amount shall be returned to him under section 7(a) of such Act;

(C) subsections (b) and (c) of section 4 of such Act, and subsection (c) of section 12 of such Act, shall apply in respect of such individual as if he were retiring or had retired under section 1 of such Act on the date on which his retired pay under subsection 4 (d) of this section began to accrue; except that—

(i) the amount of any annuity payable to a survivor of such individual under subsection (b) or (c) of such section 4 or under subsection (c) of such section 12 shall be based on a life annuity for such individual computed as provided in subsection (a) of such section 4, and

(ii) if such individual makes the election provided by subsection (b) or (c) of such section 4, his retired pay under subsection (d) of this section shall be reduced by the amount by which a life annuity computed as provided in subsection (a) of such section 4 would be reduced;

(D) in computing the aggregate amount of the annuity paid for purposes of section 12(g) of such Act, any retired pay which has accrued under subsection (d) of this section (including any such retired pay forfeited under subsection (f)) shall be included as if it were an annuity payable to him under such Act; and

(E) no deduction for purposes of the civil service retirement and disability fund shall be made from the retired pay payable to him under subsection (d) of this section, or from any other salary, pay, or compensation payable to him, for any period after the date on which such retired pay began to accrue

(3) WAIVER OF CIVIL SERVICE BENEFITS.—

(A) Any individual who has elected to receive retired pay under subsection (d) of this section may (at any time thereafter during the period prescribed by subsection (e)(1)) waive all benefits under the Civil Service Retirement Act. Such a waiver—

(i) once made, shall be irrevocable, and

(ii) shall be made in the same manner as is provided for an election by such individual under subsection (e). The chief judge shall transmit to the Civil Service Commission a copy of each notice of waiver filed with him under this paragraph.

(B) In the case of any individual who has made a waiver under this paragraph—

(i) no annuity shall be payable to any person under the Civil Service Retirement Act with respect to any service performed by such individual (whether performed before or after such waiver is filed and whether performed as judge or otherwise);

(ii) no deduction shall be made from any salary, pay, or compensation of such individual for purposes of the

civil service retirement and disability fund for any period beginning after the day on which such waiver is filed;

(iii) except as provided in clause (iv), no refund shall be made under the Civil Service Retirement Act of any amount credited to the account of such individual or of any interest on any amount so credited;

(iv) additional sums voluntarily deposited by such individual under the second paragraph of section 10 of the Civil Service Retirement Act shall be promptly refunded, together with interest on such additional sums at 3 percent per annum (compounded on December 31 of each year) to the day of such filing; and

(v) subsections (e) and (g) of section 12 of the Civil Service Retirement Act shall not apply.

(4) **EMPLOYEES' COMPENSATION.**—The fourth and sixth paragraphs of section 6 of the Civil Service Retirement Act shall apply in respect of retired pay accruing under subsection (d) of this section as if such retired pay were an annuity payable under such Act.

**SEC. 7448. ANNUITIES TO WIDOWS AND DEPENDENT CHILDREN OF JUDGES**

(a) **DEFINITIONS.**—*For purposes of this section—*

(1) *The term "Tax Court" means the Tax Court of the United States.*

(2) *The term "judge" means the chief judge or a judge of the Tax Court, including any individual receiving retired pay (or compensation in lieu of retired pay) under section 7447 or under section 1106 of the Internal Revenue Code of 1939 whether or not performing judicial duties pursuant to section 7447(c) or pursuant to section 1106(d) of the Internal Revenue Code of 1939.*

(3) *The term "chief judge" means the chief judge of the Tax Court.*

(4) *The term "judge's salary" means the salary of a judge received under section 7443(c), retired pay received under section 7447(d), and compensation (in lieu of retired pay) received under section 7447(c).*

(5) *The term "survivors annuity fund" means the Tax Court judges survivors annuity fund established by this section.*

(6) *The term "widow" means a surviving wife of an individual, who either (A) shall have been married to such individual for at least 2 years immediately preceding his death or (B) is the mother of issue by such marriage, and who has not remarried.*

(7) *The term "dependent child" means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of 18 years or who because of physical or mental disability is incapable of self-support.*

(b) **ELECTION.**—*Any judge may by written election filed with the chief judge within 6 months after the date on which he takes office after appointment or any reappointment, or within 6 months after the date upon which he first becomes eligible for retirement under section 7447(b), or within 6 months after the enactment of this section, bring himself within the purview of this section, except that, in the case of such an election by the*

chief judge, the election shall be filed as prescribed by the Tax Court subject to the preceding requirements as to the time of filing.

(c) **SALARY DEDUCTIONS.**—There shall be deducted and withheld from the salary of each judge electing under subsection (b) a sum equal to 3 percent of such judge's salary. The amounts so deducted and withheld from such judge's salary shall, in accordance with such procedure as may be prescribed by the Comptroller General of the United States, be deposited in the Treasury of the United States to the credit of a fund to be known as the "Tax Court judges survivors annuity fund" and said fund is appropriated for the payment of annuities, refunds, and allowances as provided by this section. Each judge electing under subsection (b) shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this section.

(d) **DEPOSITS IN SURVIVORS ANNUITY FUND.**—Each judge electing under subsection (b) shall deposit, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the survivors annuity fund, a sum equal to 3 percent of his judge's salary and of his basic salary, pay, or compensation for service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, and for any other civilian service within the purview of section 3 of the Civil Service Retirement Act (5 U.S.C. 2253). Each such judge may elect to make such deposits in installments during the continuance of his service as a judge in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless such widow shall elect to eliminate such service entirely from credit under subsection (n), except that no deposit shall be required from a judge for any year with respect to which deductions from his salary were actually made under the Civil Service Retirement Act and no deposit shall be required for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

(e) **INVESTMENT OF SURVIVORS ANNUITY FUND.**—The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, such portions of the survivors annuity fund as in his judgment may not be immediately required for the payment of the annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of said fund for the purpose of paying annuities and of carrying out the provisions of subsections (g), (h), and (j).

(f) **CREDITING OF DEPOSITS.**—The amount deposited by or deducted and withheld from the salary of each judge electing to bring himself within the purview of this section for credit to the survivors annuity fund shall be credited to an individual account of such judge.

(g) **TERMINATION OF SERVICE.**—If the service of any judge electing under subsection (b) terminates other than pursuant to the provisions of

section 7447 or other than pursuant to section 1106 of the Internal Revenue Code of 1939, the amount credited to his individual account, together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him. For the purpose of this section, the service of any judge electing under subsection (b) who is not reappointed following expiration of his term but who, at the time of such expiration, is eligible for and elects to receive retired pay under section 7447 shall be deemed to have terminated pursuant to said section.

(h) **ENTITLEMENT TO ANNUITY.**—In case any judge electing under subsection (b) shall die while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c) or the deposits required by subsection (d) have actually been made or the salary deductions required by the Civil Service Retirement Act have actually been made—

(1) if such judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the judge or following the widow's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m); or

(2) if such judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed \$900 per year divided by the number of such children or \$360 per year, whichever is lesser; or

(3) if such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed \$480 per year.

The annuity payable to a widow under this subsection shall be terminable upon such widow's death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of 18 years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a widow of a judge leaving a dependent child or children of the judge surviving her, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

(i) **DETERMINATION OF DEPENDENCY AND DISABILITY.**—Questions of dependency and disability arising under this section shall be determined by the chief judge subject to review only by the Tax Court, the decision of which shall be final and conclusive. The chief judge may order or

direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this section, and may suspend or deny any such annuity for failure to submit to any examination so ordered or directed.

(j) PAYMENTS IN CERTAIN CASES.—

(1) In any case in which—

(A) a judge electing under subsection (b) shall die while in office (whether in regular active service or retired from such service under section 7447), before having rendered 5 years of civilian service computed as prescribed in subsection (n), or after having rendered 5 years of such civilian service but without a survivor or survivors entitled to annuity benefits provided by subsection (h), or

(B) the right of all persons entitled to annuity under subsection (h) based on the service of such judge shall terminate before a valid claim therefor shall have been established,

the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

(i) to the beneficiary or beneficiaries whom the judge may have designated by a writing filed prior to his death with the chief judge, except that in the case of the chief judge such designation shall be by a writing filed by him, prior to his death, as prescribed by the Tax Court;

(ii) if there be no such beneficiary, to the widow of such judge;

(iii) if none of the above, to the child or children of such judge and the descendants of any deceased children by representation;

(iv) if none of the above, to the parents of such judge or the survivor of them;

(v) if none of the above, to the duly appointed executor or administrator of the estate of such judge; and

(vi) if none of the above, to such other next of kin of such judge as may be determined by the chief judge to be entitled under the laws of the domicile of such judge at the time of his death.

Determination as to the widow, child, or parent of a judge for the purposes of this paragraph shall be made by the chief judge without regard to the definitions in subsection (a) (6) and (7).

(2) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (1).



(3) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) to the duly appointed executor or administrator of the estate of such person;

(B) if there is no such executor or administrator payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(k) **PAYMENTS TO PERSONS UNDER LEGAL DISABILITY.**—Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(l) **METHOD OF PAYMENT OF ANNUITIES.**—Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(m) **COMPUTATION OF ANNUITIES.**—The annuity of the widow of a judge electing under subsection (b) shall be an amount equal to the sum of (1)  $1\frac{1}{4}$  percent of the average annual salary received by such judge for judicial service and any other prior allowable service during the last 5 years of such service prior to his death, or prior to his receiving retired pay under section 7447(d), whichever first occurs, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding 15, of prior allowable service performed as a congressional employee, as defined in section 1(c) of the Civil Service Retirement Act (5 U.S.C. 2551(c)), and (2) three-fourths of 1 percent of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed  $37\frac{1}{2}$  percent of such average annual salary and shall be further reduced in accordance with subsection (d), if applicable.

(n) **INCLUDIBLE SERVICE.**—Subject to the provisions of subsection (d), the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a member of the United States Board of Tax Appeals and as a judge of the Tax Court, his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service

as a member of the Armed Forces of the United States not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 3 of the Civil Service Retirement Act (5 U.S.C. 2253).

(o) *SIMULTANEOUS ENTITLEMENT.*—Nothing contained in this section shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this section and any annuity to which she would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of her annuity under this section shall not be credited.

(p) *ESTIMATES OF EXPENDITURES.*—The chief judge shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The chief judge shall cause periodic examinations of the survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the chief judge to the Tax Court.

(q) *TRANSITIONAL PROVISION.*—In the case of a judge who dies within 6 months after the date of enactment of this section after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), but without having made an election as provided in subsection (b), an annuity shall be paid to his widow and surviving dependents as is provided in this section, as if such judge had elected on the day of his death to bring himself within the purview of this section but had not made the deposit provided for by subsection (d). An annuity shall be payable under this section computed upon the basis of the actual length of service as a judge and other allowable service of the judge and subject to the reduction required by subsection (d) even though no deposit has been made, as required by subsection (h) with respect to any of such service.

(r) *WAIVER OF CIVIL SERVICE BENEFITS.*—Any judge electing under subsection (b) shall, at the time of such election, waive all benefits under the Civil Service Retirement Act. Such a waiver shall be made in the same manner and shall have the same force and effect as a waiver filed under section 7447(g)(3).

(s) *AUTHORIZATION OF APPROPRIATION.*—Funds necessary to carry out the provisions of this section may be appropriated out of any money in the Treasury not otherwise appropriated.

## MINORITY VIEWS

The committee has, in our opinion, acted most unwisely in adding the provisions of the bill S. 397 as an amendment to the subject bill.

This amendment provides for the deduction of 2 percent of premiums on individual health and accident insurance by life insurance companies in determining their gain or loss from operations. This would correspond to a similar deduction in the Life Insurance Company Income Tax Act of 1959 for premiums on group health and accident business.

We doubt that there is a valid reason for allowing the 2 percent deduction in the case of group business, but the existence of this favoritism toward life insurance companies, as against other types of enterprises, has been seized upon by certain life insurance company officials as justification for a new, although related, privilege.

The Finance Committee, as it has so often done in the past when presented with an instance of unequal tax treatment, has chosen to equalize through liberalization rather than to pursue the more painstaking path of examining the justification for the bellwether provision.

Justification of an additional favoritism because of the existence of another constitutes the sole argument of the proponents of this bill. Since the special deduction is allowed for group business, and since, it is alleged, there are few essential differences between group and individual business in this field, then the special deduction should also be allowed for individual business. Or, as the leadoff witness for the life insurance companies expressed it, "Without going into any details, this 2-percent deduction would equalize the individual policy as against the group policy." Though this may be a true statement, it is not a valid argument.

Life insurance companies have shown no need for tax relief. This is not sought on the basis of need or relief of undue hardship. As an industry, life insurance companies are among the more lightly taxed.

In a quest for fairness and equity in the tax laws, it seems to us that the Finance Committee should, at least occasionally, consider the removal of a special privilege as a means toward equalization where unequal treatment now exists. The action of the committee in adopting this amendment has resulted only in a recommendation for the creation of two inequities, as against the taxpaying public, where only one existed before. We do not believe this to be a salutary process.

ALBERT GORE.  
PAUL H. DOUGLAS.