

CORRECTIONS OF CERTAIN INEQUITIES IN TAXATION
OF LIFE INSURANCE COMPANIES

August 20, 1964.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 5739]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5739) to amend the Internal Revenue Code of 1954 to correct certain inequities with respect to the taxation of life insurance companies, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1 and 13.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 4, 5, 6, 7, 8, 10, 11, and 12, and agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with the following amendments:

On page 6, line 11, of the Senate engrossed amendments strike out "other than" and insert *but does not include*

On page 8 of the Senate engrossed amendments strike out line 12 and insert the following: *transaction described in subparagraph (B) of such paragraph. If any part of the increase in the aggregate adjusted basis of stock of the controlled corporation after December 31, 1957, results from the transfer (other than as part of a transaction described in paragraph (3)(B)) by the distributing corporation to the controlled corporation of property which has a fair market value in excess of its adjusted basis at the time of the transfer, paragraph (3) also shall not apply to that portion of the distribution equal to such excess."*

And the Senate agree to the same.

2 INEQUITIES IN TAXATION OF LIFE INSURANCE COMPANIES

That the House recede from its disagreement to the amendment of the Senate to the title of the bill, and agree to the same.

**W. D. MILLS,
CECIL R. KING,
HALE BOGGS,
JOHN W. BYRNES,**

Managers on the Part of the House.

**HARRY F. BYRD,
RUSSELL LONG,
GEORGE SMATHERS,
JOHN WILLIAMS,
FRANK CARLSON,**

Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5739) to amend the Internal Revenue Code of 1954 to correct certain inequities with respect to the taxation of life insurance companies, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: Section 815(b) of the Internal Revenue Code of 1954 requires each stock life insurance company to establish and maintain a shareholders surplus account. Amounts in this account may be distributed to shareholders without the imposition of the so-called phase 3 tax (the tax imposed by reason of distributions considered as made out of the policyholders surplus account). The amount added to the shareholders surplus account for any taxable year includes items for life insurance company taxable income (computed without regard to sec. 802(b)(3) of the code) and the excess of long-term capital gain over short-term capital loss. By reason of a change in the method of taxing capital gains made by legislation enacted in 1962, existing law permits a double allowance with respect to capital gains.

Section 2 of the bill as passed by the House amended section 815(b)(2)(A)(ii) to provide that the addition for the excess of the long-term capital gain over the short-term capital loss be reduced (in the case of a taxable year beginning after December 31, 1961) by the amount of the life insurance company taxable income (computed without regard to sec. 802(b)(3) of the code). Under the Senate amendment, no addition may be made for such excess in the case of a taxable year beginning after December 31, 1961. The Senate recedes.

Amendment No. 2: Section 3(a) of the bill as passed by the House amended section 815(d) of the code (relating to special rules with respect to distributions to shareholders) by adding a new paragraph (5) to provide for the reduction of the policyholders surplus account for certain unused deductions. Under both the bill as passed by the House and the Senate, the policyholders surplus account is to be reduced if (A) an amount added to the account for any taxable year increased (or created) a loss from operations for such taxable year, and (B) any portion of the increase (or amount created) in such loss from operations did not reduce life insurance company taxable income for any taxable year to which such loss was carried. Under the bill as passed by the House, the account was to be reduced for the last taxable year to which the loss is carried under section 812(b)(2) of the code. The amount of the reduction was the amount described in subparagraph (B) of the new paragraph (5) or (if lesser) the amount in the account as of the close of the last taxable year to which the loss is carried (computed before any subtractions from the account

for such last taxable year). Under the Senate amendment No. 2, the account is to be reduced by the amount described in section 815(d)(5)(B) for the taxable year for which the amount added to the account increased (or created) the loss of operations. The House recedes.

Amendments Nos. 3 and 8: Section 3(b) of the bill as passed by the House provided that the amendment made by subsection (a) of section 3 was to apply with respect to taxable years beginning after December 31, 1963. Senate amendment No. 3 strikes out subsection (b). Senate amendment No. 8 adds a new subsection (f) providing that the amendments made by section 3 of the bill shall apply with respect to amounts added to policyholders' surplus accounts (within the meaning of section 815(c) of the code) for taxable years beginning after December 31, 1958. The House recedes.

Amendment No. 4: This amendment adds a new subsection (b) to section 3 of the bill to add a new subsection (k) to section 6501 of the code (relating to limitations on assessment and collection). The new subsection (k) provides that in the case of a deficiency attributable to the application to the taxpayer of new section 815(d)(5), the deficiency may be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in new section 815(d)(5)(A) is carried under section 812(b)(2) may be assessed. The House recedes.

Amendment No. 5: This amendment adds a new subsection (c) to section 3 of the bill to add a new paragraph (6) to section 6511(d) of the code (relating to special rules applicable to limitations on credit or refund of overpayments of income taxes). Under paragraph (6); if a claim for credit or refund relates to an overpayment arising by operation of section 815(d)(5), the periods of limitation under section 6511 are not (in effect) to expire before the expiration of the 15th day of the 39th month following the end of the last taxable year to which the loss described in new section 815(d)(5)(A) is carried under section 812(b)(2). The new paragraph (6) also contains special rules comparable to other provisions in section 6511. The House recedes.

Amendments Nos. 6 and 7: These amendments add new subsections (d) and (e) to section 3 of the bill to amend sections 6601(e) and 6611(f) of the code with respect to the computation of interest on underpayments which are reduced by operation of the new section 815(d)(5) and on overpayments which arise by operation of such new section. The House recedes.

Amendment No. 9: This adds a new section 4 to the bill amending section 815 of the code, relating to distributions to shareholders of life insurance companies. The substance of the change made by this amendment is contained in the new section 815(f)(3). Under this new provision, for purposes of section 815 the term "distribution" does not include any distribution of the stock of a controlled corporation to which section 355 of the code applies, if such controlled corporation is an insurance company subject to the tax imposed by section 831 of the code and if (1) control was acquired before January 1, 1958, or (2) control has been acquired after December 31, 1957; (A) in a transaction qualifying as a reorganization under section 368(a)(1)(B), if the distributing corporation has at all times since December 31, 1957, owned stock representing not less than 50 percent of the total combined voting power of all classes of stock entitled to vote, and not less than 50 percent of the value of all classes of stock,

of the controlled corporation, or (B) solely in exchange for stock of the distributing corporation which stock is immediately exchanged by the controlled corporation in a transaction qualifying as a reorganization under section 368(a)(1) (A) or (C), if the controlled corporation has at all times since its organization been wholly owned by the distributing corporation and the distributing corporation has at all times since December 31, 1957, owned stock representing not less than 50 percent of the total combined voting power of all classes of stock entitled to vote, and not less than 50 percent of the value of all classes of stock, of the corporation the assets of which have been transferred to the controlled corporation in the section 368(a)(1) (A) or (C) reorganization.

Under the amendment, the new section 815(f)(3) is not to apply to that portion of the distribution of stock of the controlled corporation equal to the increase in the aggregate adjusted basis of such stock after December 31, 1957, except to the extent such increase results from an acquisition of stock in the controlled corporation in a transaction described in section 815(f)(3). The amendments made by section 4(a) of the bill apply to taxable years beginning after December 31, 1963.

The House recedes with amendments. Under the conference agreement, if any part of the increase in the aggregate adjusted basis of stock of the controlled corporation after December 31, 1957, results from the transfer (other than as part of a transaction described in sec. 815(f)(3)(B)) by the distributing corporation to the controlled corporation of property which has a fair market value in excess of its adjusted basis at the time of the transfer, section 815(f)(3) also is not to apply to that portion of the distribution equal to such excess.

Amendment No. 10: This amendment adds a new section 5 to the bill changing section 805(d)(1) of the code, relating to pension plan reserves of life insurance companies. Under existing law, the investment income of a life insurance company which is attributable to reserves for contracts purchased under pension and profit-sharing plans which are treated as qualified plans under section 401(a), or for retirement annuity contracts purchased by certain educational, etc., organizations described in section 501(c)(3) of the code, is not taxed. Under the amendment, the same tax treatment is provided for the investment income of a life insurance company attributable to reserves for contracts purchased to provide retirement annuities for employees at educational institutions by an employer which is a State, a political subdivision of a State, or any agency or instrumentality of any one or more of the foregoing. The amendment applies to taxable years beginning after December 31, 1963. The House recedes.

Amendment No. 11: This amendment adds a new section 6 to the bill amending section 613(b) of the code, relating to percentage depletion. Under existing law, beryl produced from deposits within the United States has a percentage depletion rate of 23 percent, while other ores of beryllium (such as bertrandite, chrysoberyl, helvite, phenscite, and hambergite) have a percentage depletion rate of 15 percent. Under the amendment, the percentage depletion rate for all ores of beryllium produced from domestic deposits will be 23 percent. The amendment applies to taxable years beginning after December 31, 1963. The House recedes.

Amendment No. 12: This amendment adds a new section 7 to the bill amending section 1212(a) of the code (relating to capital loss carryovers of corporations) to provide a 10-year carryover of certain foreign expropriation capital losses.

Under existing section 1212(a), the amount of any net capital loss is a short-term capital loss in each of the 5 succeeding taxable years to the extent that such amount exceeds the total of any net capital gains of any taxable years intervening between the loss year and such succeeding taxable year.

Under the Senate amendment, paragraph (1) of section 1212(a) provides that, in the case of a corporation which has a net capital loss for any taxable year all or any portion of which is attributable to a foreign expropriation capital loss, the portion of the net capital loss for such year attributable to the foreign expropriation capital loss is to be a short-term capital loss in each of the 10 succeeding taxable years. Paragraph (2) of the amended section 1212(a) contains a definition of the term "foreign expropriation capital loss", a rule for determining the portion of any net capital loss which is attributable to a foreign expropriation capital loss, and a rule for the priority of application where the net capital loss is attributable only in part to a foreign expropriation capital loss.

Under the amendment, the amended section 1212(a) is to apply with respect to net capital losses sustained in taxable years ending after December 31, 1958.

The House recedes.

Amendment No. 13: This amendment adds a new section 8 to the bill amending section 4216(b) of the code, which relates to constructive sales price for purposes of the manufacturers excise tax. Under existing section 4216(b) a constructive sales price, as distinct from the actual sales price, is used as a base for the various ad valorem excise taxes where an article is sold at retail, on consignment, at less than the fair market price (if the transaction is not at arm's length), and to retailers. In the case of sales at retail, paragraph (1) of section 4216(b) provides the general rule that the tax base shall be the actual sales price or if lower the highest price for which the articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers, producers, or importers. Paragraph (2) of section 4216(b) contains a special rule providing that under specified circumstances the tax base for articles sold at retail, to a retailer, or to a special dealer is to be the actual sales price or if lower the highest price for which the articles are sold by the manufacturer, producer, or importer to wholesale distributors (other than special dealers).

The Senate amendment amends both of these paragraphs to strike out "highest" and insert "lowest", effective with respect to articles sold on or after the first day of the first calendar quarter which begins more than 30 days after the date of the enactment of the bill.

The Senate recedes.

W. D. MILLS,
CECIL R. KING,
HALE BOGGS,
JOHN W. BYRNES,

Managers on the Part of the House.