

INTERNAL REVENUE CODE AMENDMENTS

OCTOBER 11, 1949.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H. R. 5268]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5268) to amend certain provisions of the Internal Revenue Code, 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 8, 10, and 11.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, and 5, and agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment as follows:

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

SEC. 7. TRANSFERS TAKING EFFECT AT DEATH.

(a) *Section 811 (c) of the Internal Revenue Code (relating to transfers in contemplation of or taking effect at death) is hereby amended to read as follows:*

“(c) TRANSFERS IN CONTEMPLATION OF, OR TAKING EFFECT AT, DEATH.—

“(1) GENERAL RULE.—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

“(A) in contemplation of his death. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years

prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter; or

“(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; or

“(C) intended to take effect in possession or enjoyment at or after his death.

“(2) TRANSFERS TAKING EFFECT AT DEATH—TRANSFERS PRIOR TO OCTOBER 8, 1949.—An interest in property of which the decedent made a transfer, on or before October 7, 1949, intended to take effect in possession or enjoyment at or after his death shall not be included in his gross estate under paragraph (1) (C) of this subsection unless the decedent has retained a reversionary interest in the property, arising by the express terms of the instrument of transfer and not by operation of law, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 per centum of the value of such property. For the purposes of this paragraph, the term ‘reversionary interest’ includes a possibility that property transferred by the decedent (A) may return to him or his estate, or (B) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent’s death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Commissioner with the approval of the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate.

“(3) TRANSFERS TAKING EFFECT AT DEATH—TRANSFERS AFTER OCTOBER 7, 1949.—An interest in property transferred by the decedent after October 7, 1949, shall be included in his gross estate under paragraph (1) (C) of this subsection (whether or not the decedent retained any right or interest in the property transferred) if and only if—

“(A) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent; or

“(B) under alternative contingencies provided by the terms of the transfer, possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the earlier to occur of (i) the decedent’s death or (ii) some other event; and such other event did not in fact occur during the decedent’s life.

Notwithstanding the foregoing sentence, an interest so transferred shall not be included in the decedent’s gross estate under paragraph

(i) (C) of this subsection if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a power of appointment (as defined in section 811 (f) (2)) which in fact was exercisable immediately prior to the decedent's death."

(b) The amendment made by subsection (a) shall be applicable with respect to estates of decedents dying after February 10, 1939. The provisions of section 811 (c) of the Internal Revenue Code, as amended by subsection (a), shall (except as otherwise specifically provided in such section or in the following sentence) apply to transfers made on, before, or after February 26, 1926. The provisions of section 811 (c) (1) (B) of such code shall not, in the case of a decedent dying prior to January 1, 1950, apply to—

(1) a transfer made prior to March 4, 1931; or

(2) a transfer made after March 3, 1931, and prior to June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

No interest shall be allowed or paid on any overpayment resulting from the application of subsection (a) with respect to any payment made prior to the date of the enactment of this Act.

(c) If refund or credit of any overpayment resulting from the application of subsections (a) and (b) is prevented on the date of the enactment of this Act, or within one year from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code, relating to closing agreements, and other than section 3761 of such code, relating to compromises), refund or credit of such overpayment may nevertheless, be made or allowed if claim therefor is filed within one year from the date of the enactment of this Act. This subsection shall not apply with respect to a transfer of property in case the decedent retained for his life or for any period not ascertainable without reference to his death or for any period which did not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who should possess or enjoy the property or the income therefrom.

And the Senate agreed to the same.

Amendment numbered 7:

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment as follows:

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

SEC. 8. TAX FREE RELEASE OF CERTAIN LIFE ESTATES.

In the case of a transfer of property made prior to June 7, 1932, under which the grantor retained (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, then an assignment by the grantor of such possession, enjoyment, or right to income, or a relinquishment by him of such right of designation, shall, if made in 1949 or 1950, not be deemed a transfer of property for the purposes of chapter 4 of the Internal Revenue Code, and shall, if made prior to 1951, not be

deemed to have been made in contemplation of death within the meaning of chapter 3 of such code. The foregoing provisions shall not apply—

(A) if the transfer was made after March 3, 1931, and prior to June 7, 1932, and if the property transferred would have been includible in the grantor's gross estate upon his death by reason of the amendatory language of the joint resolution of March 3, 1931 (45 Stat. 1516); or

(B) if the property transferred would have been includible in the grantor's gross estate under section 811 (d) of the Internal Revenue Code had he died on October 7, 1949.

And the Senate 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 an amendment as follows:

On page 6, line 19, of the Senate engrossed amendments strike out "SEC. 10" and insert *SEC. 9*; and the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment as follows:

On page 9, line 2, of the Senate engrossed amendments strike out "13" and insert *10*; and the Senate agree to the same.

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Managers on the Part of the House.

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ROBERT TAFT,
HUGH BUTLER,
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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. 5268) to amend certain provisions of the Internal Revenue Code, 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: The House bill amended section 165 of the Internal Revenue Code to provide that contributions made by an employer to a trust to be applied by the trustee for the purchase of annuity contracts for the benefit of an employee shall not be included, under certain conditions, in the income of the employee in the year in which the contribution is made, even though the trust is not qualified under section 165 (a). The Senate amendment extends the application of this provision of the House bill to cases where the employer purchased an annuity contract and transferred it to the trustee. The House bill limited the application of the amendment to section 165 to contributions made pursuant to a written agreement entered into prior to October 21, 1942. The Senate amendment further limits the application of the provision by providing that the term "employee" shall include only a person who was in the employ of the employer, and was covered by the written agreement, prior to October 21, 1942. The House recedes.

Amendments Nos. 2 and 3: The House bill provided, with respect to certain reciprocal trusts, for the relinquishment free of gift tax of any power over the property in trust or over the income therefrom, if the relinquishment is made on or before December 31, 1950. The House provision was not to apply if at the time of the transfer in trust a law was in effect imposing a gift tax unless (1) a gift tax was paid or (2) a gift tax return was made but no gift tax was paid because of deductions and exclusions. The Senate amendments limit the application of the House bill to cases where the original transfer in trust was made at a time when a law was in effect imposing a gift tax and a gift tax was paid with respect to the transfer. The House recedes.

Amendment No. 4: This is a clerical amendment and the House recedes.

Amendment No. 5: The House bill provided, in connection with its provisions for relinquishment free of gift tax of a power over a reciprocal trust, that the relinquishment of the power shall be deemed not to have been made in contemplation of death for the purposes of the estate tax. This provision in the House bill was applicable with respect to decedents dying after December 31, 1939. The Senate amendment makes the provision applicable to decedents dying after February 10, 1939, the date of the enactment of the Internal Revenue Code. The House recedes.

Amendments Nos. 6 and 7: These Senate amendments, for which there are no corresponding provisions in the House bill, amend section

811 (c) of the Internal Revenue Code to change the estate-tax treatment of transfers of property during life which are intended to take effect in possession or enjoyment at or after the transferor's death. Amendment No. 6 provides that property so transferred before June 7, 1932, shall not be included in the transferor's gross estate for estate-tax purposes by reason of the fact that he retained a life estate or similar rights in the income from the property unless the transfer was made after March 3, 1931, and before June 7, 1932, and is includible in his gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516). Amendment No. 7 provides that property so transferred shall not be included in the transferor's gross estate, by reason of the fact that he retained a reversionary interest in the property, except to the extent of the value of such reversionary interest immediately before his death. Both amendments apply only to estates of decedents dying after February 10, 1939, the date of enactment of the Internal Revenue Code. In certain cases affected only by amendment No. 7, a 1-year period is provided for filing claims for refunds which would otherwise be barred. The House recedes with amendments.

The conference amendments make two changes in the Senate amendments relating to transfers of property made before March 4, 1931, in which the decedent reserved a life estate or other income interest. Under the Senate amendments, such transfers are not, by reason of such reservation, includible in the decedent's gross estate. Under the conference amendments, such transfers are excluded from the decedent's gross estate only if his death occurs before January 1, 1950. If the transferor dies after December 31, 1949, the property will be includible, under the conference amendments, in his gross estate under subparagraph (B) of section 811 (c) (1) of the code; but such a transferor is given certain tax-free privileges if he disposes of his income interest prior to 1951. Specifically, the conference amendments provide that persons who made such transfers prior to March 4, 1931, may assign or relinquish their income interests during 1949 and 1950 free of gift tax, and also provide that such assignments or relinquishments shall, if made at any time prior to 1951, not be deemed to have been made in contemplation of death. This privilege of tax-free assignment or relinquishment is available without regard to whether the transferor also has a reversionary interest in the property, but is not available where the transferor had on October 7, 1949, a power over the transferred property, and not over the income interest only, which would require the inclusion of the property under section 811 (d) of the code. In the case of reciprocal trusts which were created each in consideration of the other, these tax-free privileges are available to a life tenant of a trust which he constructively created. The tax immunities provided by these conference amendments also apply to a transfer made after March 3, 1931, and before June 7, 1932, with reservation by the transferor of an income interest which would not render the transferred property includible in his gross estate by reason of the amendatory language in the joint resolution of March 3, 1931.

The Senate amendments provide that if property transferred by the decedent would be includible in his gross estate only by reason of the retention by him of a reversionary interest in the property, the amount to be included shall not exceed the value of such interest immediately before his death. While the Senate amendments apply to transfers whenever made, the conference amendments provide one

rule for transfers made prior to October 8, 1949, and a different rule for subsequent transfers.

With respect to the transfer before October 8, 1949, of an interest intended to take effect in possession or enjoyment at or after the decedent's death, the conference amendments retain the present rule that the entire value of the interest is included in the decedent's gross estate, but restricts the application of such rule to cases in which the decedent expressly retained a reversionary interest having a value immediately before the decedent's death in excess of five percent of the value of the transferred property. Where the reversionary interest has a value of not more than 5 percent of the value of the transferred property, or where it arises by operation of law (regardless of its value), it will not cause the property to be included in the decedent's gross estate to any extent.

The term "reversionary interest" includes a possibility, whether vested or contingent that transferred property may return to the decedent or his estate or that transferred property may become subject to a power of disposition by the decedent. The term does not, however, include rights to income only, such as the right to receive the income from a trust after the death of another person.

In determining whether the value of the reversionary interest exceeds 5 percent, it is to be compared with the entire value of the transferred property, including interests which are not dependent upon survivorship of the decedent. Thus if A transferred property in trust with the income payable to B for B's life with remainder to X unless B predeceases A, in which event the property shall return to A, and A dies during B's life, the value of A's reversionary interest immediately before his death shall be compared with the entire value of the trust corpus, without deduction of the value of B's outstanding life estate. A reversionary interest which, for example, exists in only one-half of the corpus of a trust shall be computed as a percentage of the value of such one-half. The value is to be computed as of the moment immediately prior to the decedent's death without regard to whether his executor elects to have the gross estate valued as provided under section 811 (j) of the code. A possibility that the decedent may be able to dispose of property under certain conditions shall be deemed to be as valuable as a right to the return of the property to him under those conditions.

The decedent's reversionary interest is to be valued by recognized valuation principles, pursuant to regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, and, of course, without regard to the fact of the decedent's death. The value shall be ascertained as though the decedent were, immediately before his death, making a gift of the property and retaining the reversionary interest. The rule of *Robinette v. Helvering* (318 U. S. 184), under which a reversionary interest not having an ascertainable value under recognized valuation principles is considered to have a value of zero, is to apply. Thus, if a reversionary interest consisting of a right enforceable in equity to compel a trustee to apply trust corpus for the support and maintenance of the grantor would be considered to have a value of zero for gift tax purposes were it being retained under a transfer by gift, it is to be similarly valued for the purpose of the conference amendments.

The amendments last described apply only where possession or enjoyment of the transferred interest cannot be obtained except by

beneficiaries who must survive the decedent. The existing rule that a transfer of a property interest is not intended to take effect in possession or enjoyment at or after the decedent's death unless the beneficiaries must survive the decedent to obtain possession or enjoyment is not disturbed.

The following examples illustrate the application of the conference amendments to transfers made prior to October 8, 1949:

Example (1): The decedent, prior to October 8, 1949, transferred property in trust, giving the income therefrom to his son for life and the remainder to his son's surviving issue. It was further provided that if no issue survived the son, the property was to revert to the decedent or his estate. In this case, neither the son nor his issue need survive the decedent in order to obtain possession or enjoyment of the property. Therefore, the transfer is not taxable to any extent under section 811 (c) as amended in conference (nor under the existing rule), the value of the reversionary interest being immaterial for this purpose.

Example (2): The decedent, prior to October 8, 1949, transferred property in trust to accumulate the income during his life, and at his death to pay the principal and accumulated income to his son if living; if not, to the decedent or his estate. In this case the son cannot obtain possession or enjoyment of the property unless he survives the decedent. Under the conference amendments the entire value of the transferred property is, therefore, includible in the decedent's gross estate if the value of his reversionary interest immediately before his death exceeds 5 percent of the value of the trust property.

Example (3): The decedent in 1929 transferred property in trust reserving to himself the income for his life, with the remainder to those five named grandchildren who survive him. The trust instrument specifically provided that if none of the grandchildren survives him, the property is to return to him. The decedent died in 1948 survived by the five grandchildren. Under the conference amendments the transferred property is not includible (under section 811 (c) (1) (B)) in the decedent's gross estate by reason of his life estate since he died prior to 1950. Nor is the property includible (under section 811 (c) (1) (C)) by reason of his reversionary interest since its value immediately before his death was less than 5 percent of the value of the trust property.

Under the conference amendments, the test of whether possession or enjoyment must await the transferor's death will also apply to transfers made after October 7, 1949. The taxability of such transfers is, however, not dependent upon the retention by the transferor of an interest in the property, thus rendering inapplicable the contrary rule enunciated by the Supreme Court in *Reinecke v. Northern Trust Co.* (278 U. S. 339) that the property must pass from the possession or control of the transferor at his death.

A twofold rule applies to transfers made after October 7, 1949, for the purpose of determining whether the transfer is intended to take effect in possession or enjoyment at or after the decedent's death. The first of these rules is that an interest in property transferred by the decedent is includible in his gross estate if possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent. Where separate interests are transferred to each of several beneficiaries the above rule is to be separately applied to each interest. Thus, if beneficiary A receives an interest

which enables him to obtain possession or enjoyment of the property without surviving the decedent and beneficiary B obtains an interest which enables him to obtain possession or enjoyment of the property only by surviving the decedent, it is only the transfer of the interest to beneficiary B which is intended to take effect in possession or enjoyment at or after the decedent's death. Likewise, if the transferor gives his son the immediate right to receive the income from the property until 5 years after the transferor's death, and the right to the corpus upon the expiration of such term, it is only the transfer of the latter interest which is intended to take effect in possession or enjoyment at or after the transferor's death.

The second rule is that an interest in property transferred by the decedent after October 7, 1949, shall be included in his gross estate if, under alternative contingencies provided by the terms of the transfer, possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the earlier to occur of (1) the decedent's death or (2) some other event; and such other event did not in fact occur during the decedent's life. This rule, like the first rule, is to be applied in the light of the circumstances existing immediately prior to the decedent's death. The expression "some other event" is intended to include the expiration of a term of years or the happening or failure to happen of a certain or uncertain event (including the possible exercise of a power which is not a taxable power of appointment as defined in section 811 (f) (2) of the code).

Neither of the above rules, however, draws into the decedent's gross estate an interest in property transferred by him if possession or enjoyment of the property was obtainable during the decedent's life through the exercise of a power of appointment as defined in section 811 (f) (2) of the code and such power was in fact exercisable immediately prior to the decedent's death.

The following examples illustrate the application of the conference amendments to transfers made after October 7, 1949:

Example (1): The decedent, after October 7, 1949, transferred property in trust, providing for an estate for life in his daughter, and a remainder to the children of the daughter. No part of the property is includible. The daughter can possess and enjoy the property through ownership of the life estate without surviving the decedent. The same is true of the daughter's children with respect to their remainder interest.

Example (2): The decedent, after October 7, 1949, transferred property in trust, to pay the income to his wife during her life, and at her death to pay the corpus to the decedent if living, and if not, to his children. The decedent was survived by his wife. The transferred property, less the outstanding life estate in the wife, is includible in the decedent's gross estate since the children cannot obtain possession or enjoyment of the property, through ownership of their interest, except by surviving the decedent.

Example (3): The decedent, after October 7, 1949, transferred property in trust to accumulate the income during his life and at his death to distribute the principal and accumulated income to his son or the son's estate. While the decedent has retained no right or interest in the property, the transfer is taxable since possession or enjoyment of the property cannot be obtained except by surviving the decedent.

Example (4): The decedent, after October 7, 1949, transferred property in trust providing for payment of the income to his wife until her death, at which time the son would receive the corpus. If the son predeceased the wife the corpus was to revert to the decedent if living at his wife's death; and if the decedent was not then living, it was to pass to X or X's estate. The decedent was survived by his wife, his son, and X. Neither the interest transferred to the wife nor to the son is includible in the decedent's gross estate since each could, through ownership of his interest, obtain possession or enjoyment of the property even though the decedent was living. The interest transferred to X, however, is includible under section 811 (c) (3) (A) (to the extent of the value of X's interest immediately after the decedent's death) since X's possession or enjoyment of the property, if it materializes, could be obtained only by surviving the decedent. Section 811 (c) (3) (B) has no application to this example.

Example (5): The decedent, after October 7, 1949, transferred property in trust, to accumulate the income until his son reached the age of 30, or until the decedent's prior death. Upon the first to occur of these events the son was to receive the corpus. The decedent's death in fact occurred before his son attained the age of 30. The transfer is taxable under section 811 (c) (3) (B) since the son could obtain possession or enjoyment only by surviving the earlier to occur of the decedent's death or the son's attaining age 30, and since the decedent's death in fact occurred first.

Example (6): The decedent, after October 7, 1949, transferred property in trust providing for accumulation of the income during his life, and at his death to pay the entire fund to his children or their issue. His wife was given the unrestricted power to alter, amend, or revoke the trust. The wife survived the decedent and did not in fact exercise her power during the decedent's life. Under the last sentence of section 811 (c) (3) the transfer is not taxable since possession or enjoyment of the property was obtainable during the decedent's life through the exercise of the wife's power, which was a power of appointment as defined in section 811 (f) (2) of the code, and was in fact exercisable immediately prior to the decedent's death.

In order to effectuate the changes made by the conference amendments such amendments subdivide section 811 (c) of the code into three paragraphs. Paragraph (1) merely states the existing general rule that transferred property is includible in the decedent's gross estate if made (A) in contemplation of death, (B) with reservation of an income interest, or (C) if intended to take effect in possession or enjoyment at or after his death. Paragraph (2) provides a limiting requirement (the 5 percent rule explained above) in the case of transfers intended to take effect in possession or enjoyment at or after the decedent's death if made before October 8, 1949. Paragraph (3) contains the rules, heretofore explained, under which a transfer shall be considered to be intended to take effect in possession or enjoyment at or after the decedent's death if made after October 7, 1949.

Paragraph (1) (B) of section 811 (c), as thus subdivided, contains the amendatory language enacted into the estate tax law by section 803 (a) of the Revenue Act of 1932, relating to transfers in which an income interest is retained. Prior to *Commissioner v. Church* (335 U. S. 632) the Supreme Court had held in the case of *Hassett v. Welch* (303 U. S. 303) that such amendatory 1932 language did not apply to transfers made prior to its enactment. However, the Church decision

held that this same type of transfer was taxable without regard to the time of the transfer under the intended to take effect in possession or enjoyment clause. For the sake of clarity, the conference amendments make applicable the amendatory language of the 1932 act to transfers whenever made in cases of decedents dying after 1949, thus retaining the result of the Church decision for the future. At the same time the conference amendments also provide certain relief against hardship as already explained.

The income interests described by section 811 (c) (1) (B) and by similar language elsewhere in the conference amendments include reserved rights to the income from transferred property and rights to possess or enjoy non-income-producing property. Such interests also include a reserved power to designate the persons who shall, during the decedent's life or during any lesser period described in section 811 (c) (1) (B), receive the income from transferred property or who shall, during any such period, possess or enjoy non-income-producing property. Such interests do not, however, include powers over the transferred property itself not affecting the enjoyment of the income during the decedent's life. The expression "not ascertainable without reference to his death" as used in section 811 (c) (1) (B) and elsewhere in the conference amendments includes the right to receive the income from transferred property after the death of another person who in fact survived the transferor; but in such a case the amount to be included under section 811 (c) (1) (B) in the transferor's gross estate does not include the value of the outstanding income interest in such other person.

The conference amendments, in conformity with the Senate amendments, do not apply to decedents who died on or before February 10, 1939. No interest shall be allowed or paid on any overpayment resulting from the enactment of the conference amendments with respect to any payment made prior to the date of such enactment.

The conference amendments, like the Senate amendments, provide a rule for cases in which the refund or credit of an overpayment resulting from the enactment of the amendments is prevented on the date of such enactment, or within one year from such date, by the operation of any law or rule of law (including a judicial determination, but not including section 3760 or 3761 of the code). The refund or credit is, nevertheless, to be made or allowed if it results from the application of the amendments to a transfer of property in which the decedent did not retain any income interest described in section 811 (c) (1) (B), if claim therefor is filed within one year from the date of the enactment of the bill. However, a refund or credit which is so prevented may not be allowed if it results from the application of the amendments to a transfer of property in which the decedent retained any such income interest.

Amendment No. 8: The Senate amendment added a new section to the House bill amending section 114 (b) of the code to provide percentage depletion at the rate of 15 percent in the case of perlite, diatomaceous earth, tripoli, granite, marble, borax mines and deposits, sand, gravel, stone, calcium and magnesium carbonates, and all other nonmetallic clays and minerals. The conferees agreed to eliminate this amendment with the understanding that the entire matter of percentage depletion will be considered early next year after full study and hearings. The Senate recesses.

Amendment No. 9: The Senate amendment added a new section to the House bill amending paragraph 1798 of the Tariff Act of 1930 which now provides that \$100 in value of articles may be brought into this country free of duty by a resident of the United States returning from abroad if such articles are for personal use and other restrictive conditions are met. The Senate amendment increases to \$200 the existing exemption of \$100. The House recedes with a change in section number.

Amendment No. 10: The Senate amendment added a new section to the bill to provide that if stock in a corporation was exchanged after March 11, 1941, and prior to July 1, 1945, by a testamentary trust for stock and other securities in such corporation in pursuance of a recapitalization under State law of that corporation, and if the stock and securities so received by the trust are surrendered prior to January 1, 1950, to the corporation solely in exchange for stock identical in character and amount with that previously held by the trust, no gain, profit, income, loss or deduction from such exchange or reexchange shall be recognized, for income-tax purposes, to the corporation or the trust. The Senate recedes.

Amendment No. 11: The Senate amendment added a new section to the House bill to provide that where a new corporation is formed, pursuant to a plan of reorganization, by using part of the assets of an existing corporation, and the stock of the new corporation is distributed to the stockholders of the existing corporation without surrender of the stock in the existing corporation, no tax effect is recognized with respect to the stockholder as a result of the reorganization. The Senate recedes.

Amendment No. 12: The Senate amendment added a new section to the House bill amending subchapter B of chapter 3 of the Internal Revenue Code to provide that the additional estate tax imposed by section 935 does not apply in the case of a citizen or resident dying between December 6, 1941, and January 1, 1947, while in military service of the United States or any of the United Nations, if the decedent was killed in action or died as the result of injuries or of disease "suffered in line of duty by reason of a hazard to which he was subjected as an incident of military or naval service." No interest is to be paid on any refund resulting from the amendment. The amendment further provides that if the making of a refund resulting from the amendment is barred on the date of the enactment of the bill, or within 1 year from such date, by the operation of any law or rule of law (including a judicial determination but not including sec. 3761 of the code) the refund shall, nevertheless, be made if claim therefor is filed within 1 year from the date of the enactment of the bill. The House recedes with a change in section number.

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