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UNLIMITED DEDUCTION FOR CHARITABLE CONTRIBUTIONS

MAY 4, 1960.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 6779]

The Committee on Finance, to whom was referred the bill (H.R. 6779) to amend section 170 of the Internal Revenue Code of 1954 (relating to the unlimited deduction for charitable contributions for certain individuals), having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 1, line 7, beginning with "For", strike out all through the period in line 9 on page 2 and insert the following:

> For purposes of this subparagraph, in the case of taxable years ending before January 1, 1961, within such 10 preceding taxable years, if the sum of the charitable contributions and the income taxes paid during the taxable years in any period of two consecutive taxable years exceeds 90 percent of the sum of the taxpayer's taxable incomes (as so computed) for such two consecutive taxable years, and if the sum of the charitable contributions and the income tax so paid during each such consecutive taxable year exceeds 75 percent of the taxpayer's taxable income (as so computed) for such year, the 90 percent test shall be considered satisfied with respect to both such consecutive taxable years; but no taxable year shall be included in more than one period of two consecutive taxable years and not more than two periods of two consecutive taxable years within such 10 preceding taxable years shall be taken into account.

On page 2, line 18, strike out "1959" and insert "1960".

GENERAL STATEMENT

Under present law the charitable contribution deduction of an individual generally is limited to 20 percent of the taxpayer's adjusted gross income, although in the case of contributions to churches, schools and colleges, and hospitals the limitation is 30 percent instead of 20 percent. However, in addition to this, a deduction for charitable contributions without limitation also is allowed where certain conditions are met.

Before an individual is eligible for the unlimited charitable contribution, however, he must establish that he has for an extended period of time given the bulk of his income to charity or to the Government in the form of taxes. More specifically, to be eligible for the unlimited charitable deduction he must in the current year and in 8 out of the 10 preceding years have given 90 percent of his taxable income to charity or to the Federal Government in the form of income taxes. (For this purpose taxable income is relatively large since it is computed without regard to charitable contributions, personal exemptions, or any net operating loss carryback to the year in question.)

In the Technical Changes Act of 1958, Congress recognized the restrictive nature of the present rules and provided an exception to the general rules set forth above. It provided that in determining whether the 90-percent test was made income taxes could be attributed to the year in which they were incurred rather than the year in which they were paid. With respect to that change one of the committee reports indicated it was made because it was believed unfortunate to deny the benefits of the unlimited charitable contribution deductions merely on the grounds of the timing of the income-tax payments.

This bill also is concerned with the question of timing, but in this case it is the timing of the charitable contributions. Cases have appeared where the taxpayers did not qualify for the unlimited charitable contribution deductions because of year-to-year fluctuations in the charitable contributions even though in 8 out of the last 10 years more than three-quarters of their income went to charity or for taxes, and even though the 90-percent test would have been met if it were computed on the basis of the average charitable contributions and taxes paid in 2-year periods.

The House bill provided that the 90-percent test was to be considered as met for any 2 consecutive years in the 10-year period preceding the taxable year if the total of the charitable contributions and taxes for the 2-year period met the 90-percent test. However, in each of the 2 years the charitable contributions and taxes had to represent 75 percent of the taxable income (before charitable contributions, personal exemptions, or net operating loss carryback) and no 1 year could be included in more than one 2-year period.

COMMITTEE AMENDMENT

Your committee has amended the House bill in four respects. First, no more than two periods of 2 consecutive years may be taken into account in determining whether the 90-percent test has been satisfied in 8 out of 10 prior years.

Second, the period to which the bill applies and within which the averaging device may be employed is limited to the 10-year period ending before January 1, 1961. Thus, under your committee's bill this averaging device will not become a permanent feature of the tax law. It will, however, make it less difficult for taxpayers to qualify for the unlimited charitable-contribution deduction in the current and future years by averaging income and contributions and taxes in years prior to January 1, 1961. Neither the House bill nor your committee's bill have changed the requirement of present law that contributions and taxes must exceed 90 percent of the taxpayer's income (properly adjusted) in the current year before he may take the unlimited deduction. The bill only goes to the question of whether the taxpayer has established a pattern of giving 90 percent or more of his income to charity or to the Government in the form of taxes in 8 out of 10 years. Although the bill applies to taxable years beginning after December 31, 1956, a taxpayer will be permitted to average two periods of 2 consecutive years whether such 2-year period occurred prior to or after December 31, 1956, so long as those years come within the 10-year period ending before January 1, 1961.

Third, a clerical amendment has been made to the bill to make it absolutely clear that the term "taxable income" as used in this provision means taxable income computed without regard to personal exemptions, charitable contributions, and net operating loss carrybacks.

Fourth, because of the passage of time since the bill was acted upon by the House, the effective-date provision has been amended so that while the bill continues to apply to taxable years beginning after December 31, 1956, no credit or refunds are to be paid as a result of this bill for any years beginning before January 1, 1960.

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):

SECTION 170 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) ALLOWANCE OF DEDUCTION.—

(1) GENERAL RULE.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

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(b) LIMITATIONS.—

(1) INDIVIDUALS.—In the case of an individual the deduction provided in subsection (a) shall be limited as provided in subparagraphs (A), (B), (C), and (D).

(A) SPECIAL RULE.—Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization referred to in section 503(b)(2), or

(iii) a hospital referred to in section 503(b)(5) or to a medical research organization (referred to in section 503(b)(5)) directly engaged in the continuous active conduct of medical research in conjunction with a hospital, if during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

shall be allowed to the extent that the aggregate of such contributions does not exceed 10 percent of the taxpayer's adjusted gross income computed without regard to any net operating loss carryback to the taxable year under section 172.

(B) GENERAL LIMITATION.—The total deductions under subsection (a) for any taxable year shall not exceed 20 percent of the taxpayer's adjusted gross income computed without regard to any net operating loss carryback to the taxable year under section 172. For purposes of this subparagraph, the deduction under subsection (a) shall be computed without regard to any deduction allowed under subparagraph (A) but shall take into account any charitable contributions to the organizations described in clauses (i), (ii), and (iii) which are in excess of the amount allowable as a deduction under subparagraph (A).

(C) UNLIMITED DEDUCTION FOR CERTAIN INDIVIDUALS.—The limitation in subparagraph (B) shall not apply in the case of an individual if, in the taxable year and in 8 of the 10 preceding taxable years, the amount of the charitable contributions, plus the amount of income tax (determined without regard to chapter 2, relating to tax on self-employment income) paid during such year in respect of such year or preceding taxable years, exceeds 90 percent of the taxpayer's taxable income for such year, computed without regard to—

(i) this section,

(ii) section 151 (allowance of deductions for personal exemptions), and

(iii) any net operating loss carryback to the taxable year under section 172.

For purposes of this subparagraph, in the case of taxable years ending before January 1, 1961, within such 10 preceding taxable years, if the sum of the charitable contributions and the income taxes paid during the taxable years in any period of two consecutive taxable years exceeds 90 percent of the sum of the taxpayer's taxable incomes (as so computed) for such two consecutive taxable years, and if the sum of the charitable contributions and the income tax so paid during each such consecutive taxable year exceeds 75 percent of the taxpayer's taxable income (as so computed) for such year,

the 90 percent test shall be considered satisfied with respect to both such consecutive taxable years; but no taxable year shall be included in more than one period of two consecutive taxable years and not more than two periods of two consecutive taxable years within such 10 preceding taxable years shall be taken into account. [In lieu of the amount of income tax paid during any such year,] *In applying the preceding sentences of this subparagraph, in lieu of the amount of income tax paid during any taxable year*, there may be substituted for that year the amount of income tax paid in respect of such year, provided that any amount so included in the year in respect of which payment was made shall not be included in any other year.

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