87TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2542

CONSTRUCTIVE SALE PRICE FOR PURPOSES OF CERTAIN MANUFACTURERS EXCISE TAXES

OCTOBER 5, 1962.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 8952]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8952) to amend the Internal Revenue Code of 1954 with respect to the conditions under which the special constructive sale price rule is to apply for purposes of certain manufacturers excise taxes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with amendments as follows:

Page 11 of the Senate engrossed amendments, strike out lines 4 to 23, inclusive.

Page 12 of the Senate engrossed amendments, strike out lines 1 to 16, inclusive, and insert the following:

(*d*) *NEW COMPANIES QUALIFYING FOR 8-YEAR LOSS CARRYOVER.*—

(*1*) *IN GENERAL.—Section 812(e)(2)(B) of such Code (relating to nonqualified corporation) is amended by adding immediately after the words "with any other corporation" in the first sentence, the following: "(except a corporation taxable under part II or part III of this subchapter)".*

(*2*) *EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to all taxable years beginning after December 31, 1954, except that in the case of a nonqualified corporation, as defined in section 812(e)(2)(B) of the Internal Revenue Code of 1954 as in effect prior to the amendment made by paragraph (1), a loss from operations for a taxable year beginning in 1955 shall not be an operations loss carryover to the year 1961, and there shall be no reduction in the portion of such loss from operations which may be carried to 1962 or 1963 by reason of an offset with respect to the year 1961.*

Page 12, line 17, of the Senate engrossed amendments, strike out "(f)" and insert the following:

(e) *CERTAIN DISTRIBUTIONS OF STOCK OF SUBSIDIARIES.*—

Page 13, line 3, of the Senate engrossed amendments, strike out "(g) EFFECTIVE DATE.—The" and insert the following:

(f) *EFFECTIVE DATE.—Except as provided in subsection (d)(2), the*

And the Senate agree to the same.

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,
NOAH MASON,
JOHN W. BYRNES,
Managers on the Part of the House.

HARRY F. BYRD,
ROBT. S. KERR,
RUSSELL LONG,
JOHN J. WILLIAMS,
CARL T. CURTIS,
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. 8952) to amend the Internal Revenue Code of 1954 with respect to the conditions under which the special constructive sale price rule is to apply for purposes of certain manufacturers excise taxes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

SECTION 1. CONSTRUCTIVE SALES PRICE FOR PURPOSES OF CERTAIN MANUFACTURERS EXCISE TAXES

Section 4216(b)(2) of the code now provides that, in determining the base for the computation of manufacturers excise taxes, a constructive sales price may be used where sales are made to retailers or to consumers if sales are also made at the wholesale level. However, this provision applies only if the normal method of sales within the industry is not to sell articles at retail, to retailers, or both. The bill as passed by the House provided that this latter restriction was not to apply in the case of the manufacturers excise taxes on refrigerators and related items, on electric, gas and oil appliances, and on radios and television sets and related items. Under the Senate amendment to the text of the bill, and under the conference agreement, this latter restriction is not to apply in the case of any of the manufacturers excise taxes except those relating to automobiles, trucks and buses, business machines, and matches.

Under the bill as passed by the House, this provision would have applied to sales after December 31, 1961. Under the Senate amendment to the text of the bill, and under the conference agreement, this provision will apply to articles sold on or after October 1, 1962.

SECTION 2. CONTRIBUTIONS TO FOUNDATIONS FOR CERTAIN STATE COLLEGES

The Senate amendment to the text of the bill amends section 170(b)(1)(A) of the 1954 Code (relating to limitation on the amount of the deduction for charitable contributions by individuals) to add a new clause (iv). Existing section 170(b)(1)(A) provides for an additional allowance (not to exceed 10 percent of an individual's adjusted gross income) above the general 20-percent limitation for charitable contributions. Under existing law this additional 10-percent limitation is applicable in the case of contributions to churches and conventions or associations of churches, and to certain schools, hospitals, and medical research organizations. The effect of the Senate amendment to the text of the bill, and of the conference agreement, is to make the additional 10-percent provision applicable

also in the case of contributions to an organization referred to in section 503(b)(3) of the code which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of section 170(b)(1)(A) and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions.

SECTION 3. LIFE INSURANCE COMPANIES

(a) VARIABLE ANNUITIES AND OTHER SEGREGATED ASSET ACCOUNTS.—The Senate amendment to the text of the bill, and the conference agreement, amend section 801(g) of the 1954 Code, relating to variable annuity contracts—

(1) to remove the termination provisions contained in existing paragraph (6) of subsection (g) of section 801 (which provides that such subsection (g) is not to apply to taxable years beginning after December 31, 1962),

(2) to provide for separate accounting by life insurance companies with respect to contracts with reserves based on segregated asset accounts, and to define such a contract as one—

(A) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company.

(B) which provides for the payment of annuities, and

(C) under which the amounts paid in, or the amounts paid as annuities, reflect the investment return and the market value of the segregated asset account,

(3) to provide, in effect, that income allocated to the contracts described in paragraph (2) is not to be taxed to the life insurance company, and

(4) to provide, in effect, that, in the case of qualified pension contracts for which segregated asset accounts are maintained, capital gains allocated to such contracts are not to be taxed to the life insurance company.

(b) TAX IN CASE OF CAPITAL GAINS.—Under existing law, a life insurance company is taxed separately on its capital gains. The excess of net long-term capital gains over net short-term capital losses is taxed at a 25 percent rate, without the alternative provided other corporations to include capital gains in the regular tax base.

The Senate amendment to the text of the bill, and the conference agreement, provide that a life insurance company is to determine its tax as the lesser of the taxes computed under two methods—a regular method and an alternative method. The regular method requires that the excess of the net long-term capital gain over the net short-term capital loss be included, in effect, in life insurance company taxable income. Under this method, such excess is not taken into account in determining investment yield. The alternative method requires that the tax be determined by adding 25 percent of such excess to the partial tax computed on the life insurance company taxable income determined without such excess. The alternative method

is the one required under present law. This provision applies to taxable years beginning after December 31, 1961.

(c) LIMITATION ON CERTAIN DEDUCTIONS.—Section 809(f)(1) of existing law limits the aggregate amount of deductions allowed to life insurance companies under paragraphs (3), (5), and (6) of section 809(d). Section 809(f)(2) imposes a priority for the application of this limitation to the three deductions. The deductions under such paragraphs (5) and (6), to the extent allowed after the application of this limitation, are added to the policyholders surplus account under subparagraphs (B) and (C) of section 815(c)(2).

The Senate amendment to the text of the bill, and the conference agreement, amend section 809(f)(2) to provide that the limitation of section 809(f)(1) is to apply first to the deduction for dividends to policyholders, then to the special deduction relating to group life insurance contracts and to accident and health insurance contracts, and finally to the special deduction relating to nonparticipating contracts. In a case where the limitation would permit the first of these deductions but not the latter two, then the latter two would not have to be added to the policyholders surplus account. This provision applies to taxable years beginning after December 31, 1961.

(d) REDUCTION OF POLICYHOLDERS SURPLUS ACCOUNT.—Subparagraphs (B) and (C) of section 815(c)(2) of existing law require the addition to the policyholders surplus account of the amount equal to the amounts which have been allowed as deductions under paragraphs (5) and (6) of section 809(d). Under certain circumstances distributions to stockholders by a life insurance company, when it has amounts in the policyholders surplus account, may result in tax to the company.

The Senate amendment to the text of the bill provided that, to the extent that the deductions added to the policyholders surplus account under the indicated subparagraphs, merely increased a loss from operations which did not result in a reduction in tax for any taxable year to which the loss could be carried, then such additions may be removed from the policyholders surplus account without incurring tax liability.

The conference agreement does not include this provision.

(e) NEW COMPANIES QUALIFYING FOR 8-YEAR LOSS CARRYOVER.—Under existing law certain new insurance companies, which are not controlled by another corporation, or which do not control another corporation, may carry over operations losses for 8 years.

The Senate amendment to the text of the bill, and the conference agreement, provide that the disqualification from the 8-year operations loss carryover will not apply where the new life insurance company is connected through stock ownership only with a corporation taxable as an insurance company other than as a life insurance company.

This provision applies to all losses to which the Life Insurance Company Tax Act of 1959 would have applied, if it had originally contained this provision, except that a loss arising in 1955 shall not by reason of this amendment be an operations loss carryover to 1961 and there shall be no reduction in the amount of such a loss which may be carried to 1962 or 1963 by reason of an offset for 1961.

(f) CERTAIN DISTRIBUTIONS OF STOCK OF SUBSIDIARIES.—Under section 815(a) of existing law a life insurance company is, under certain circumstances, subject to tax at the time of distributions of property to stockholders.

The Senate amendment to the text of the bill, and the conference agreement, provide that after December 31, 1961, and before January 1, 1964, section 815(a) will not apply to a distribution of stock of a controlled corporation, if (1) the distribution meets the requirements for a tax-free distribution under section 355, (2) the controlled corporation is an insurance company subject to tax under section 831 (relating to tax on certain insurance companies other than life and certain mutuals), and (3) control was acquired before January 1, 1963, in a stock-for-stock transaction qualifying as a reorganization under section 368(a)(1)(B).

W. D. MILLS,
CECIL R. KING,
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Managers on the Part of the House.

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