

RETIRED PAY OF JUDGES OF TAX COURT

JANUARY 19 (legislative day, JANUARY 18), 1966.—Ordered to be printed

Mr. LONG of Louisiana, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 8445]

The Committee on Finance, to which was referred the bill (H.R. 8445) to amend the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954 to change the method of computing the retired pay of judges of the Tax Court of the United States, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 8445 is to eliminate an inequity in the provisions of existing law which prescribe the formula for computing retired pay for judges of the Tax Court of the United States. Under present law the retired pay of a judge of the Tax Court, unlike the retired pay of judges of other Federal courts, is based on the salary payable to him as judge "at the time he ceases to be a judge" rather than on the salary of the office, the normal basis utilized in computing retired pay for judges of the U.S. district courts and of the U.S. Court of Claims.

H.R. 8445, would eliminate this disparate treatment in the law by providing for the calculation of retired pay of Tax Court judges in a manner similar to that presently provided for judges of the other Federal tribunals.

GENERAL STATEMENT

Present law

Under present law a judge of the Tax Court of the United States may retire after 24 years of service and thereafter receive retired pay equal to his salary. He may also retire after 18 years of service and receive retired pay based on the ratio that the number of years actually served bears to 24 years; e.g., if he has served for 18 years he will receive eighteen twenty-fourths of his salary. A judge of the Tax

Court must retire after having attained age 70 and having served for 10 years or more, and if he has not served for 18 years, his retirement pay will be one-half of his salary. In all of the above cases, however, section 1106(d) of the Internal Revenue Code of 1939 and section 7447(d) of the Internal Revenue Code of 1954 require that the retired pay be calculated on the basis of the salary payable to him as judge "at the time he ceases to be a judge."

Reason for bill

Judges of the U.S. district courts and the Court of Claims may retire after 15 years of service upon attaining the age of 65 and after 10 years upon attaining the age of 70. Moreover, their retired pay is based on the full amount of the salary of the office, which extends to them the benefit of increases in the salary of the office which occur after their retirement.

Your committee agrees with the Ways and Means Committee of the House, that the method prescribed by existing law for computing the retired pay of judges of the Tax Court, when considered with the stringent statutory limitations imposed on them after retirement, has been inequitable in operation. All retired Tax Court judges, unless precluded by illness or disability, are subject to recall to active duty by the chief judge for a period of 90 days each year and may be recalled for longer periods with their consent. Any retired judge of the Tax Court who should fail to perform the judicial duties required of him on recall would forfeit entirely his retired pay for the year in which such failure occurs. In addition, in order to insure the availability of retired judges for recall, the retired judges of the Tax Court are prohibited from accepting any other Federal office or employment or from engaging in the practice of law or accounting in the field of Federal taxation. If they do so they would forever lose their rights to retirement pay.

The longer terms of service required of judges of the Tax Court and the more stringent obligations imposed on them by law to perform judicial service on recall during retirement requires that the method of calculation of their retirement payments be brought more closely in line with that of the judges of the Federal district courts and of the Court of Claims.

Change proposed by H.R. 8445

Your committee's bill would provide that the retired pay of judges of the Tax Court be based on the salary of the office. This would bring the salary basis for retirement purposes of Tax Court judges in line with that of judges of the U.S. district courts and of the U.S. Court of Claims. It would mean that Tax Court judges, like these other judges, would receive the benefit of increases in the salary of the office which occur after their retirement.

The amendments provided in the bill would be effective with respect to retired pay accruing on or after the first day of the first calendar month which begins after the date of enactment.

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 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

§ 7447.¹ 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

¹ Sec. 1106 of the Internal Revenue Code of 1939 is substantially identical to sec. 7447 of the Internal Revenue Code of 1954.

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] *during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period as the number of years he has served as a 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 for such period and not more than the rate of such salary for such period.* 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.

* * * * *