EXTENSIONS OF REMARKS

A BILL TO HALT CHARITABLE SPLIT-DOLLAR LIFE INSURANCE

HON. BILL ARCHER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 9, 1999

Mr. ARCHER. Mr. Speaker, today Congressman RANGEL and I are introducing H.R. 630, legislation designed to stop the spread of an abusive scheme referred to as charitable split-dollar life insurance. Under this scheme, taxpayers transfer money to a charity, which the charity then uses to pay premiums for life insurance on the transferor or another person. The beneficiaries under the life insurance contract typically include members of the transferor's family (either directly or through a family trust or family partnership). Having passed the money through a charity, the transferor claims a charitable contribution deduction for money that is actually being used to benefit the transferor and his or her family. If the transferor or the transferor's family paid the premium directly, the payment would not be deductible. Although the charity eventually may get some of the benefit under the life insurance contract, it does not have unfettered use of the transferred funds.

We are concerned that this type of transaction represents an abuse of the charitable contribution deduction. We are also concerned that the charity often gets relatively little benefit from this type of scheme, and serves merely as a conduit or accommodation party, which we do not view as appropriate for an organization with tax-exempt status. While there is no basis under present law for allowing a charitable contribution deduction in these circumstances, we intend that the introduction of this bill stop the marketing of these transactions immediately.

Therefore, our bill clarifies present law by specifically denying a charitable contribution deduction for a transfer to a charity if the charity directly or indirectly pays or paid any premium on a life insurance, annuity or endowment contract in connection with the transfer, and any direct or indirect beneficiary under the contract is the transferor, any member of the transferor's family, or any other noncharitable person chosen by the transferor. In addition, the bill clarifies present law by specifically denying the deduction for a charitable contribution if, in connection with a transfer to the charity, there is an understanding or exception that any person will directly or indirectly pay any premium on any such contract. Further, the bill imposes an excise tax on the charity, equal to the amount of the premiums paid by the charity. Finally, the bill requires a charity to report annually to the Internal Revenue Service the amount of premiums subject to this excise tax and information about the beneficiaries under the contract.

TECHNICAL EXPLANATION

DEDUCTION DENIAL

Specifically, the bill provides that no charitable contribution deduction is allowed for purposes of Federal tax, for a transfer to or for the use of an organization described in section 170(c) of the Internal Revenue Code, if in connection with the transfer (1) the organization directly or indirectly pays, or has previously paid, any premium on any ''personal benefit contract'' with respect to the transferor, or (2) there is an understanding or expectation that any person will directly or indirectly pay any premium on any ''personal benefit contract'' with respect to the transferor. It is intended that an organization be considered as indirectly paying premiums if, for example, another person pays premiums on its behalf.

A personal benefit contract with respect to the transferor is any life insurance, annuity, or endowment contract, if any direct or indirect beneficiary under the contract is the transferor, any member of the transferor's family, or any other person (other than a section 170(c) organization) designated by the transferor. For example, such a beneficiary would include a trust having a direct or indirect beneficiary who is the transferor or any member of the transferor's family, and would include an entity that is controlled by the transferor or any member of the transferor's family. It is intended that a beneficiary under the contract include any beneficiary under any side agreement relating to the contract. If a transferor contributes a life insurance contract to a section 170(c) organization and designates one or more section 170(c) organizations as the sole beneficiaries under the contract, generally, it is not intended that the deduction denial rule under the bill apply. If, however, there is an outstanding loan under the contract upon the transfer of the contract, then the transferor is considered as a beneficiary. The fact that a contract also has other direct or indirect beneficiaries (persons who are not the transferor or a family member, or designated by the transferor) does not prevent it from being a personal benefit contract. The bill is not intended to affect situations in which an organization pays premiums under a legitimate fringe benefit plan for employees.

It is intended that a person be considered as an indirect beneficiary under a contract if, for example, the person receives or will receive any economic benefit as a result of amounts paid under or with respect to the contract. For this purpose, an indirect beneficiary is not intended to include a person that benefits exclusively under a bona fide charitable gift annuity (within the meaning of sec. 501(m) (or a bona fide reinsurance arrangement with respect to such a charitable gift annuity)). Because we understand that a charitable gift annuity ordinarily does not involve a contract issued by an insurance company, the bill does not provide for special treatment of charitable gift annuities.

EXCISE TAX

The bill imposes on any organization described in section 170(c) of the Code an excise tax, in the amount of the premiums paid by the organization on any life insurance, annuity, or endowment contract, if the payment of premiums on the contract is in connection with a transfer for which a deduction is not allowable under the deduction denial rule of the provision. The excise tax does not apply if all of the direct and indirect beneficiaries under the contract (including any related side agreement) are organizations described in section 170(c). Under the bill, payments are treated as made by the organization, if they are made by any other person pursuant to an understanding or expectation of payment.

REPORTING

The bill requires that the organization annually report the amount of premiums that is paid during the year and that is subject to the excise tax imposed under the provision, and the name and taxpayer identification number of each beneficiary under the contract to which the premiums relate, as well as other information required by the Secretary of the Treasury. For this purpose, it is intended that a beneficiary include the beneficiary under any side agreement to which the section 170(c) organization is a party (or of which it is otherwise aware). Penalties applicable to returns required under Code section 6033 apply to returns under this reporting requirement. Returns required under this provision are to be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

REGULATIONS

The bill provides for the promulgation of regulations necessary to carry out the purposes of the provisions.

EFFECTIVE DATE

The deduction denial provision of the bill applies to transfers after February 8, 1999. The excise tax provision of the bill applies to premiums paid after the date of enactment. The reporting provision applies to premiums (that would be subject to the excise tax were it then effective) paid after February 8, 1999.

No inference is intended that a charitable contribution deduction is allowed under present law in the circumstances to which this bill applies. The bill does not change the rules with respect to fraud or criminal or civil penalties under present law; thus, actions constituting fraud or that are subject to penalties under present law would still constitute fraud or be subject to the penalties after enactment of the bill.

CONGRATULATING DERAN KOLIGIAN AND JUDITH CASE

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 9, 1999

Mr. RADANOVICH. Mr. Speaker, I rise today to congratulate Deran Koligian and Judith Case on their election to the Fresno County Board of Supervisors. Supervisor Koligian and Supervisor Case were sworn in on January 11, 1999.

Supervisor Deran Koligian represents the First Supervisorial District on the Fresno County Board of Supervisors. He represents a portion of the urban area of Fresno and a large agricultural region in western Fresno County. Deran Koligian was elected to serve as the 1996 Chairman of the Fresno County Board of Supervisors.

Supervisor Koligian has been an outspoken advocate for agriculture as a member of the Board of Supervisors of Fresno County—the