Public Law 96-605
96th Congress

An Act

To make various changes in the tax laws.

Dec. 28, 1980
[H.R. 7956]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Miscellaneous Revenue Act of 1980.

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Miscellaneous Revenue Act of 1980". 26 USC 1 note.

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954. 26 USC 1.

TITLE I—AMENDMENTS RELATING TO INCOME TAX GENERALLY

SEC. 101. TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART.

(a) GENERAL RULE.—Part I of subchapter B of chapter 1 (defining gross income, adjusted gross income, taxable income, etc.) is amended by adding at the end thereof the following new section:

"SEC. 66. TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART. 26 USC 66.

"(a) GENERAL RULE.—If—

"(1) 2 individuals are married to each other at any time during a calendar year;

"(2) such individuals—

"(A) live apart at all times during the calendar year, and

"(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

"(3) one or both of such individuals have earned income for the calendar year which is community income; and

"(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a). 26 USC 879.

"(b) DEFINITIONS.—For purposes of this section—

"(1) EARNED INCOME.—The term 'earned income' has the meaning given to such term by section 911(b). 26 USC 911.

"(2) COMMUNITY INCOME.—The term 'community income' means income which, under applicable community property laws, is treated as community income.

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"(3) COMMUNITY PROPERTY LAWS.—The term 'community property laws' means the community property laws of a State, a foreign country, or a possession of the United States."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 66. Treatment of community income where spouses live apart."

26 USC 66 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 1980.

SEC. 102. AMORTIZATION OF START-UP EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

26 USC 195.

"SEC. 195. START-UP EXPENDITURES.

"(a) ELECTION TO AMORTIZE.—Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the business begins).

"(b) START-UP EXPENDITURES.—For purposes of this section, the term 'start-up expenditure' means any amount—

"(1) paid or incurred in connection with—

"(A) investigating the creation or acquisition of an active trade or business, or

"(B) creating an active trade or business, and

"(2) which, if paid or incurred in connection with the expansion of an existing trade or business (in the same field as the trade or business referred to in paragraph (1)), would be allowable as a deduction for the taxable year in which paid or incurred.

"(c) ELECTION.—

"(1) TIME FOR MAKING ELECTION.—An election under subsection (a) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the business begins (including extensions thereof).

"(2) SCOPE OF ELECTION.—The period selected under subsection (a) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

"(3) MANNER OF MAKING ELECTION.—An election under subsection (a) shall be made in such manner as the Secretary shall by regulations prescribe.

"(d) BUSINESS BEGINNING.—For purposes of this section, an acquired trade or business shall be treated as beginning when the taxpayer acquires it."

(b) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 195. Start-up expenditures."

26 USC 195 note.

(c) EFFECTIVE DATE.—The amendements made by this section shall apply to amounts paid or incurred after July 29, 1980, in taxable years ending after such date

SEC. 104. REVISION OF SOURCE RULES FOR INCOME FROM CERTAIN LEASED AIRCRAFT, VESSELS, AND SPACECRAFT.

(a) IN GENERAL.—Subsection (e) of section 861 (relating to election to treat income from certain aircraft and vessels as income from sources within the United States) is amended to read as follows: 26 USC 861.

"(e) INCOME FROM CERTAIN LEASED AIRCRAFT, VESSELS, AND SPACECRAFT TREATED AS INCOME FROM SOURCES WITHIN THE UNITED STATES.—

"(1) IN GENERAL.—For purposes of subsection (a) and section 862(a), if— 26 USC 862.

"(A) a taxpayer owning a craft which is section 38 property (or would be section 38 property but for section 48(a)(5)) leases such craft to a United States person, other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer, and 26 USC 38. 26 USC 48. 26 USC 1563.

"(B) such craft is manufactured or constructed in the United States,

then all amounts includible in gross income by the taxpayer with respect to such craft for any taxable year ending after the commencement of such lease (whether during or after the period of such lease), including gain from sale, exchange, or other disposition of such craft, shall be treated as income from sources within the United States.

"(2) CERTAIN TRANSFERS INVOLVING CARRYOVER BASIS.—If the taxpayer transfers or distributes a craft to which paragraph (1) applied and the basis of such craft in the hands of the transferee or distributee is determined by reference to its basis in the hands of the transferor or distributor, paragraph (1) shall continue to apply to such craft in the hands of the transferee or distributee.

"(3) CRAFT DEFINED.—For purposes of this subsection, the term 'craft' means a vessel, aircraft, or spacecraft.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property first leased after the date of the enactment of this Act. 26 USC 861 note.

SEC. 105. TAXATION OF HOMEOWNERS ASSOCIATIONS.

(a) GENERAL RULE.—Subsection (b) of section 528 (relating to tax imposed with respect to certain homeowners associations) is amended to read as follows: 26 USC 528.

"(b) TAX IMPOSED.—A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be equal to 30 percent of the homeowners association taxable income.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1980. 26 USC 528 note.

SEC. 106. TREATMENT OF CERTAIN INCOME OF MUTUAL OR COOPERATIVE ELECTRIC AND TELEPHONE COMPANIES.

(a) TREATMENT OF CERTAIN INCOME FOR PURPOSES OF TAX EXEMPT STATUS.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended— 26 USC 501.

(1) by striking out "(12)" and inserting in lieu thereof "(12)(A)",

(2) by striking out the second sentence, and

(3) by adding at the end thereof the following new subparagraphs:

"(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

"(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

"(ii) from qualified pole rentals, or

"(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

"(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

"Qualified pole rental."

"(D) For purposes of this paragraph, the term 'qualified pole rental' means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

"(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

"(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

"Rental."

For purposes of the preceding sentence, the term 'rental' includes any sale of the right to use the pole (or other structure)."

26 USC 513.

(b) ENGAGING IN POLE RENTALS TREATED AS NOT ENGAGING IN UNRELATED TRADE OR BUSINESS.—Section 513 (defining unrelated trade or business) is amended by adding at the end thereof the following new subsection:

"Unrelated trade or business."

"(g) CERTAIN POLE RENTALS.—In the case of a mutual or cooperative telephone or electric company, the term 'unrelated trade or business' does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D)).

Supra.

(c) EFFECTIVE DATES.—

26 USC 501 note.

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to all taxable years to which the Internal Revenue Code of 1954 applies.

26 USC 1.

26 USC 513 note.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1969.

SEC. 107. EXEMPTION FOR CERTAIN SUBSISTENCE ALLOWANCES RECEIVED BY CERTAIN POLICE OFFICERS BEFORE JANUARY 1, 1978.

26 USC 119 note.

(a) GENERAL RULE.—Subsection (b) of section 3 of the Act of October 7, 1978, entitled "An Act to prohibit the issuance of regulations on the taxation of fringe benefits, and for other purposes" is amended—

(1) by striking out "January 1, 1977" and inserting in lieu thereof "January 1, 1974", and

(2) by striking out "calendar year 1977" and inserting in lieu thereof "calendar year 1974, 1975, 1976, or 1977".

26 USC 119 note.

(b) STATUTE OF LIMITATIONS.—In the case of any allowance received during calendar year 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 shall be applied by substituting the date one year after the date of the enactment of this Act for "April 15, 1979" each place it appears.

SEC. 108. TREATMENT OF CERTAIN EXPENSES INCLUDIBLE IN THE INCOME OF THE RECIPIENT.

26 USC 274.

(a) IN GENERAL.—Subsection (e) of section 274 (relating to specific exceptions to application of disallowance of certain entertainment,

etc., expenses) is amended by inserting after paragraph (9) the following new paragraph:

"(10) EXPENSES INCLUDIBLE IN INCOME OF PERSONS WHO ARE NOT EMPLOYEES.—Expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included."

26 USC 74.

26 USC 6031.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any expenses paid or incurred after December 31, 1980, in taxable years ending after such date.

26 USC 274 note.

SEC. 109. INVESTMENT CREDIT FOR CERTAIN PROPERTY USED IN MARITIME SATELLITE COMMUNICATIONS.

(a) GENERAL RULE.—Paragraph (5) of section 48(a) (relating to property used by governmental units) is amended to read as follows:

26 USC 48.

"(5) PROPERTY USED BY GOVERNMENTAL UNITS.—Property used by the United States, any State or political subdivision thereof, any international organization, or any agency or instrumentality of any of the foregoing shall not be treated as section 38 property. For purposes of the preceding sentence, the International Telecommunications Satellite Consortium, the International Maritime Satellite Organization, and any successor organization of such Consortium or Organization shall not be treated as an international organization."

26 USC 38.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1979.

26 USC 48 note.

SEC. 110. ACQUISITION INDEBTEDNESS.

(a) IN GENERAL.—Section 514(c) of the Internal Revenue Code of 1954 (defining acquisition indebtedness) is amended by adding at the end thereof the following new paragraph:

26 USC 514.

"(9) REAL PROPERTY ACQUIRED BY QUALIFIED TRUST.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'acquisition indebtedness' does not include indebtedness incurred by a qualified trust in acquiring or improving any real property.

Acquisition indebtedness.

"(B) EXCEPTIONS.—The provisions of subparagraph (A) shall not apply in any case in which—

"(i) the acquisition price is not a fixed amount determined as of the date of acquisition;

"(ii) the amount of any indebtedness or any other amount payable with respect to such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

"(iii) the real property is at any time after the acquisition leased by the qualified trust to the person selling such property to such trust or to any person who bears a relationship described in section 267(b) to such person;

26 USC 267.

"(iv) the real property is acquired from, or is at any time after the acquisition leased by the qualified trust to, any person who—

26 USC 4975.

"(I) bears a relationship which is described in section 4975(e)(2) (C), (E), or (G) to any plan with respect to which such trust was formed, or

"(II) bears a relationship which is described in section 4975(e)(2) (F) or (H) to any person described in subclause (I); or

"(v) any person described in clause (iii) or (iv) provides the qualified trust with nonrecourse financing in connection with such transaction and such debt—

"(I) is subordinate to any other indebtedness on such property, or

"(II) bears interest at a rate which is significantly less than the rate available from any person not described in clause (iii) or (iv) at the time such indebtedness is incurred.

"(C) QUALIFIED TRUST.—For purposes of this paragraph, the term 'qualified trust' means any trust which constitutes a qualified trust under section 401."

26 USC 401.

26 USC 514 note.

(b) NO PRECEDENT.—The amendment made by subsection (a) shall not be considered a precedent with respect to extending such amendment (or similar rules) to any other person.

26 USC 514 note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1980.

TITLE II—AMENDMENTS RELATING TO PENSION PLANS

Subtitle A—Prevention of Abuse of Certain Pension Plan Provisions

SEC. 201. PREVENTION OF ABUSE OF CERTAIN PENSION PLAN PROVISIONS THROUGH THE USE OF SEPARATE CORPORATIONS OR OTHER ORGANIZATIONS.

26 USC 414.

(a) IN GENERAL.—Section 414 (relating to definitions and special rules relating to pension plan, etc.) is amended by adding at the end thereof the following new subsection:

"(m) EMPLOYEES OF AN AFFILIATED SERVICE GROUP.—

"(1) IN GENERAL.—For purposes of the employee benefit requirements listed in paragraph (4), except to the extent otherwise provided in regulations, all employees of the members of an affiliated service group shall be treated as employed by a single employer.

"(2) AFFILIATED SERVICE GROUP.—For purposes of this subsection, the term 'affiliated service group' means a group consisting of a service organization (hereinafter in this paragraph referred to as the 'first organization') and one or more of the following:

"(A) any service organization which—

"(i) is a shareholder or partner in the first organization, and

"(ii) regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons, and

"(B) any other organization if—

"(i) a significant portion of the business of such organization is the performance of services (for the first organization, for organizations described in subparagraph (A), or for both) of a type historically performed in such service field by employees, and

"(ii) 10 percent or more of the interests in such organization is held by persons who are officers, highly compensated employees, or owners of the first organization or an organization described in subparagraph (A).

"(3) SERVICE ORGANIZATIONS.—For purposes of this subsection, the term 'service organization' means an organization the principal business of which is the performance of services.

"(4) EMPLOYEE BENEFIT REQUIREMENTS.—For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

"(A) paragraphs (3), (4), (7), and (16) of section 401(a), 26 USC 401.

"(B) sections 408(k), 410, 411, and 415, 26 USC 408, 410, 411, 415.

"(C) section 105(h), and 26 USC 105.

"(D) section 125. 26 USC 125.

"(5) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) ORGANIZATION DEFINED.—The term 'organization' means a corporation, partnership, or other organization.

"(B) OWNERSHIP.—In determining ownership, the principles of section 267(c) shall apply. 26 USC 267.

"(6) PREVENTION OF AVOIDANCE.—The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance with respect to service organizations, through the use of separate organizations, of any employee benefit requirement listed in paragraph (4)." Regulations.

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (8) of section 105(h) (relating to amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan) is amended— 26 USC 105.

(A) by striking out "subsection (b) or (c) of section 414" and inserting in lieu thereof "subsection (b), (c), or (m) of section 414", and

(B) by striking out "CONTROLLED GROUPS" in the paragraph heading and inserting in lieu thereof "CONTROLLED GROUPS, ETC.".

(2) Paragraph (4) of section 125(g) (relating to special rules for cafeteria plans) is amended— 26 USC 125.

(A) by striking out "subsection (b) or (c) of section 414" and inserting in lieu thereof "subsection (b), (c), or (m) of section 414", and

(B) by striking out "CONTROLLED GROUPS" in the paragraph heading and inserting in lieu thereof "CONTROLLED GROUPS, ETC.".

(c) EFFECTIVE DATES.— 26 USC 414 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years ending after November 30, 1980.

(2) PLANS IN EXISTENCE ON NOVEMBER 30, 1980.—In the case of a plan in existence on November 30, 1980, the amendments made by this section shall apply to plan years beginning after November 30, 1980.

Subtitle B—Amendments Relating to Employee Stock Ownership Plans

SEC. 221. CASH DISTRIBUTION OPTION AND PUT OPTION FOR STOCK BONUS PLANS.

26 USC 401.

(a) IN GENERAL.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting immediately before the last sentence thereof the following new paragraph:

"(23) A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409A(h)(2)."

26 USC 409A.

26 USC 401 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to plan years beginning after December 31, 1980.

SEC. 222. LIMITATION ON ANNUAL ADDITIONS TO PARTICIPANT ACCOUNTS UNDER EMPLOYEE STOCK OWNERSHIP PLANS.

26 USC 415.

(a) IN GENERAL.—Subparagraph (A) of section 415(c)(6) (relating to special limitation for employee stock ownership plan) is amended by inserting ", or purchased with cash contributed," after "contributed".

26 USC 415 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to years beginning after December 31, 1980.

SEC. 223. VALUATION OF EMPLOYER SECURITIES IN TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.

26 USC 48.

(a) IN GENERAL.—Clause (i) of section 48(n)(6)(B) (defining value for employer securities) is amended by striking out "the due date for filing the return for the taxable year (determined with regard to extensions)" and inserting in lieu thereof "the date on which the securities are contributed to the plan".

26 USC 48 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1980.

SEC. 224. PARTICIPATION OF SUBSIDIARY CORPORATION IN TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.

26 USC 409A.

(a) IN GENERAL.—Paragraph (4) of section 409A(l) (defining controlled group of corporations) is amended—

(1) by striking out the caption and inserting in lieu thereof "(4) APPLICATION TO CONTROLLED GROUP OF CORPORATIONS.—",

(2) by striking out "COMMON PARENT MAY OWN ONLY" in the caption of subparagraph (B) and inserting in lieu thereof "WHERE COMMON PARENT OWNS AT LEAST", and

(3) by adding at the end thereof the following new subparagraph:

"(C) WHERE COMMON PARENT OWNS 100 PERCENT OF FIRST TIER SUBSIDIARY.—For purposes of subparagraph (A), if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier

26 USC 1563.

subsidiary were the common parent) shall be treated as includible corporations.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to qualified investment for taxable years beginning after December 31, 1978. 26 USC 409A note.

SEC. 225. PARTICIPATION RULES FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN WHICH IS ONLY EMPLOYER-PROVIDED ALTERNATIVE TO INDIVIDUAL RETIREMENT SAVINGS.

(a) IN GENERAL.—Subsection (b) of section 410 (relating to eligibility) is amended— 26 USC 410.

(1) by redesignating paragraph (2) as (3),

(2) by striking out "paragraph (1)" in paragraph (3) (as so redesignated) and inserting in lieu thereof "paragraphs (1) and (2)", and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) SPECIAL RULE FOR CERTAIN PLANS.—A trust which is part of a tax credit employees stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of paragraph (1) if— 26 USC 401.

"(A) it benefits 50 percent or more of all the employees who are eligible under the plan (excluding employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation), and

"(B) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year."

(b) CONFORMING AMENDMENTS.—

(1) The last sentence of section 401(a)(4) is amended by striking out "section 410(b)(2)(A)" and inserting in lieu thereof "section 410(b)(3)(A)". 26 USC 401.

(2) Subparagraph (B) of section 401(d)(3) is amended—

(A) by striking out "section 410(b)(2)(A)" and inserting in lieu thereof "section 410(b)(3)(A)", and

(B) by striking out "section 410(b)(2)(C)" and inserting in lieu thereof "section 410(b)(3)(C)".

(3) The last sentence of section 408(k)(2) is amended by striking out "section 410(b)(2)" and inserting in lieu thereof "section 410(b)(3)". 26 USC 408.

(4) Clause (i) of section 408(k)(3)(B) is amended by striking out "section 410(b)(2)" and inserting in lieu thereof "section 410(b)(3)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1980. 26 USC 401 note.

SEC. 226. APPLICATION OF CASH OR DEFERRED ARRANGEMENT RULES TO CAFETERIA PLANS.

(a) IN GENERAL.—Paragraph (2) of section 125(d) (relating to deferred compensation plans excluded) is amended by adding at the end thereof the following: "The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee." 26 USC 125. 26 USC 401.

26 USC 125 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1980.

SEC. 227. ELIMINATION OF WITHHOLDING TAX ON PENSIONS PAID TO CERTAIN NONRESIDENT ALIENS.

26 USC 871.

(a) IN GENERAL.—Section 871(f) (relating to taxation of nonresident alien individuals) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if—

26 USC 403.
26 USC 401.
26 USC 501.

"(A) all of the personal services by reason of which the annuity is payable were either—

"(i) personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or

"(ii) personal services described in section 864(b)(1) performed within the United States by such individual, and

26 USC 864.

"(B) at the time the first amount is paid as an annuity under the annuity plan or by the trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which the trust is a part, are citizens or residents of the United States.

"(2) EXCLUSION.—Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if—

"(A) the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

"(B) the recipient's country of residence is a beneficiary developing country within the meaning of section 502 of the Trade Act of 1974 (19 U.S.C. 2462).".

26 USC 871 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts received after July 1, 1979.

TITLE III—AMENDMENTS RELATING TO ESTATE TAX

SEC. 301. ADDITIONAL 3 YEARS ALLOWED TO AMEND GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFT OF SPLIT INTEREST TO CHARITY.

26 USC 2055.

(a) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF ESTATE TAXES.—The first sentence of paragraph (3) of section 2055(e) (relating to disallowance of deductions in certain cases) is amended—

(1) by striking out "December 31, 1977" and inserting in lieu thereof "December 31, 1978"; and

(2) by striking out "December 31, 1978" each place it appears and inserting in lieu thereof "December 31, 1981".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply in the case of decedents dying after December 31, 1969. 26 USC 2055 note.

(2) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF INCOME AND GIFT TAXES.—Section 514(b) (and section 514(c) insofar as it relates to section 514(b)) of the Revenue Act of 1978 shall be applied as if the amendment made by subsection (a) had been included in the amendment made by section 514(a) of such Act. 26 USC 2055 note. *Ante*, p. 219.

TITLE IV—MISCELLANEOUS AMENDMENTS

SEC. 401. TREATMENT OF CERTAIN SOCIAL SECURITY TAX WAIVER EXEMPTIONS.

(a) WAIVER CERTIFICATE.— 26 USC 3121 note.

(1) IN GENERAL.—Notwithstanding any other provision of law, any waiver certificate filed by a qualified corporation (herinafter in this section referred to as the "corporation") under section 3121(k)(1) of the Internal Revenue Code of 1954 (relating to waiver of exemption from social security taxes by certain organizations) shall be deemed not to be effective, for purposes of the taxes imposed by section 3101 of such Code, with respect to any wages— 26 USC 3121. 26 USC 3101.

(A) paid by the Corporation to any employee thereof after December 31, 1972, and before April 1, 1975, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that the Corporation as refunded, prior to February 1, 1977, to such employee (or to his survivors or estate) the full amount of the taxes imposed by section 3101 of such Code on such wages, or

(B) paid after March 31, 1975, and prior to July 1, 1977, by the Corporation to an individual as an employee of the Corporation, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that (i) such individual was not an employee of the Corporation on June 30, 1978, and (ii) no amount of the taxes imposed by section 3101 of such Code on such wages were withheld by the Corporation from such wages.

(2) APPLICATION OF PARAGRAPH (1).—

(A) EVIDENCE TO BE SUBMITTED TO SECRETARY.—The provisions of paragraph (1) shall not apply to wages described in subparagraph (A) or (B) of such paragraph unless, prior to the close of the one-year period which begins on the date of the enactment of this Act, the Corporation furnishes to the Secretary of the Treasury or his delegate the evidence referred to in either such subparagraph.

(B) TAX NOT IMPOSED.—If the provisions of paragraph (1) apply with respect to any wages paid by the Corporation to an employee thereof, no taxes imposed on such wages by section 3101 of the Internal Revenue Code of 1954 shall be payable, and no interest or penalty with respect to the imposition of taxes by such section on such wages (or with respect to the imposition of taxes by such section or section 3111 of such Code on any wages paid by the Corporation prior to January 1, 1978) shall be imposed or collected. 26 USC 3111.

(C) CREDIT AGAINST TAX.—Under regulations prescribed by the Secretary, there shall be allowed as a one-time credit against the tax imposed on the Corporation under section 3101 or 3111 of the Internal Revenue Code of 1954 (and any interest or penalties imposed thereon) an amount equal to the sum of—

26 USC 3101, 3111.

(i) all amounts of tax imposed by section 3101 of such Code which have been paid by the Corporation with respect to wages to which paragraph (1) applies, and

26 USC 3101.

(ii) all amounts paid by such Corporation as a penalty or as interest with respect to the tax imposed by section 3101 or 3111 of such Code on such wages.

(b) TREATMENT FOR PURPOSES OF SOCIAL SECURITY ACT.—In the administration of titles II and XVIII of the Social Security Act, any wages paid to any individual to which the provisions of subsection (a) apply shall be treated as wages (within the meaning of section 209 of such Act) for purposes of determining—

42 USC 401, 1395.

42 USC 409.

(1) entitlement to, or amount of, any insurance benefit payable to such individual or any other person on the basis of the wages and self-employment income of such individual, or

(2) entitlement of such individual to benefits under title XVIII of such Act or entitlement of any other person to such benefits on the basis of the wages and self-employment income of such individual.

(c) QUALIFIED CORPORATION DEFINED.—For purposes of this section, the term "qualified corporation" means any corporation which—

(1) filed a waiver certificate under section 3121 of the Internal Revenue Code of 1954 during 1968;

26 USC 3121.

(2) filed a second waiver certificate under such section during 1975 believing that no other waiver certificate had been filed;

(3) received a refund of the taxes imposed by sections 3101 and 3111 of such Code with respect to certain wages paid to more than 120 but less than 180 employees who did not concur in the filing of the second waiver certificate; and

26 USC 3101, 3111.

(4) was notified during 1977 by the Internal Revenue Service that the certificate had been filed during 1968.

(d) LIABILITY FOR TAXES.—Except as provided in subsection (a)(2)(C)(ii), nothing in this section shall be construed to relieve the Corporation of any liability for the payment of the taxes imposed by section 3111 of the Internal Revenue Code of 1954 with respect to any wages paid by it to any individual for any period.

SEC. 402. TREATMENT OF AUTHORS AND ARTISTS AS EMPLOYEES.

26 USC 7701 note.

(a) IN GENERAL.—An author or artist performing services under contract with a corporation shall be considered as an employee of the corporation for the purpose of applying the provisions specified in section 7701(a)(20) of the Internal Revenue Code of 1954, if, on December 31, 1977, such author or artist was a participant in one or more of the pension, profit-sharing or annuity plans of such corporation which are described in subsection (b)(2).

26 USC 7701.

(b) DEFINITIONS.—For purposes of this section—

(1) CONTRACT.—The term "contract" means a contract which during its term—

(A) requires such author or artist to give the corporation first reading or first refusal on writings or drawings of specified types, and prohibits him from offering any such writing or drawing to any other publication unless it has been offered to and rejected by the corporation; or

(B) requires such author or artist to use his best efforts to produce work of specified types for the corporation.

(2) CORPORATION.—The term "corporation" means a corporation which for at least 15 years prior to January 1, 1978, had in effect one or more pension, profit-sharing and annuity plans, each of which—

(A) had contained from its inception a definition of the term "employee" that included the category of "authors and artists under contract", and

(B) had been determined by the Secretary of the Treasury (taking into account the definition described in subparagraph (A)) to be a qualified plan within part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1954 for all of such years.

26 USC 401.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after December 31, 1980.

Approved December 28, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1278 (Comm. on Ways and Means).
SENATE REPORT No. 96-1036 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 126 (1980):
Sept. 9, considered and passed House.
Dec. 13, considered and passed Senate, amended; House agreed to certain Senate amendments, to others with amendments, and disagreed to those remaining; Senate agreed to certain House amendments and receded from its remaining amendments.