

be effective for distributions after the date of enactment.

Differences from the Administration Proposal. The current proposal is similar to the Administration proposal liberalizes current law by imposing the interest charge based on the weighted average life of the trust's accumulated income instead of the trust's oldest undistributed income. The current proposal also makes a corresponding change to the treatment of trust distributions when information about the trust is not available.

B. Constructive Distributions

Current law. The tax consequences of the use of trust assets by beneficiaries is ambiguous under present law. Taxpayers may assert that a beneficiary's use of assets owned by a trust does not constitute a distribution to the beneficiary.

Reasons for Change. If a corporation makes corporate assets available for a shareholder's personal use (e.g., a corporate apartment made available rent-free to a shareholder), the fair market value of the use of that property is treated as a constructive distribution. Further, if a controlled foreign corporation makes a loan to a U.S. person, the loan is treated as a deemed distribution by the foreign corporation to its U.S. shareholders. The use of nongrantor foreign trust assets by trust beneficiaries should give rise to tax consequences that are similar to those associated with the use of corporate assets by corporate shareholders.

Proposal. If a U.S. beneficiary (or a U.S. related person) uses assets of a nongrantor foreign trust, the value of that use would be treated as income to the foreign trust which is deemed distributed to the U.S. beneficiary. Thus, if a nongrantor foreign trust made a residence available for use by a U.S. beneficiary, the difference between the fair rental value of the residence and any rent actually paid would be treated as a constructive distribution to that beneficiary. If a nongrantor foreign trust purported to loan cash or marketable securities to a U.S. beneficiary, the loan proceeds would be treated as a constructive distribution by the foreign trust to the U.S. beneficiary. For this purpose, an organization exempt from U.S. tax would not be considered a U.S. person. It is intended that no inference be drawn from the proposal as to the treatment under present law of the use of trust assets by beneficiaries and others. The provisions would be effective for loans of cash or marketable securities after September 19, 1995, and uses of other trust property after December 31, 1995.

Difference from the Administration Proposal. The current proposal is similar to the Administration proposal.

V. RESIDENCE OF TRUSTS

A. Definition

Current Law. Under current law, a "foreign estate or trust" is an estate or trust the "income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A" of the Internal Revenue Code. Section 7701(a)(31). This definition does not provide criteria for determining when an estate or trust is foreign.

Court cases and rulings indicate that the residence of an estate or trust depends on various factors, such as the location of the assets, the country under whose laws the estate or trust is created, the residence of the trustee, the nationality of the decedent or settlor, the nationality of the beneficiaries, and the location of the administration of the trust. See e.g., *B.W. Jones Trust v. Comm'r*, 46 B.T.A. 531 (1942), *aff'd*, 132 F.2d 914 (4th Cir. 1954).

Reasons for Change. Present rules provide insufficient guidance for determining the residence of estates and trusts. In addition, the increasing mobility of people and capital make certain factors (e.g., nationality of the settlor or beneficiaries, situs of assets) less relevant. Because the tax treatment of an estate, trust, settlor or beneficiary may depend on whether the estate or trust is foreign or domestic, it is important to have an objective definition of the residence of an estate or trust. Fewer factors for determining the residence of estates or trusts would increase the flexibility of grantors and trust administrators to decide where to locate the trust and in what assets to invest. For example, if the location of the administration of the trust were no longer a relevant criterion, grantors of foreign trusts would be able to choose whether to administer the trusts in the United States or abroad based on nontax considerations.

Proposal. An estate or trust would be considered to be a domestic estate or trust if two factors are present: (1) a court within the United States is able to exercise primary supervision over the administration of the estate or trust; and (2) a U.S. fiduciary (alone or in concert with other U.S. fiduciaries) has the authority to control decisions of the estate or trust.

The first factor is intended to refer to the court with authority over the entire estate or trust, and not merely jurisdiction over certain assets or a particular beneficiary. Normally, the first factor would be satisfied if the trust instrument is governed by the laws of a U.S. State. One way to satisfy this factor is to register the estate or trust in a State pursuant to a State law which is substantially similar to Article VII of the Uniform Probate Code as published by the American Law Institute. The second factor would normally be satisfied if a majority of the fiduciaries are U.S. persons and a foreign fiduciary (including a "protector" or similar trust advisor) may not veto important decisions of the U.S. fiduciaries. In applying this factor, the IRS would allow an estate or trust a reasonable period of time to adjust for inadvertent changes in fiduciaries (e.g., a U.S. trustee dies or abruptly resigns where a trust has two U.S. fiduciaries and one foreign fiduciary).

The new rules defining domestic estates and trusts would be effective for taxable years of an estate or trust that begin after December 31, 1996. The delayed effective date is intended to allow an estate or trust a period of time to conform its governing instrument or to change fiduciaries so that the estate or trust may effectively elect to be treated as domestic or foreign. However, trustees will be allowed to elect to apply these rules for taxable years ending after the date of enactment.

Differences from the Administration Proposal. The current proposal is similar to the Administration proposal.

B. OUTBOUND TRUST MIGRATION

Current Law. Under current law, a 35 percent excise tax is imposed upon any appreciation in property that is transferred by a U.S. person to a nongrantor foreign trust. A taxpayer can avoid the excise tax by electing to pay income tax on any appreciation in the transferred property. No excise tax is imposed on transfers to foreign grantor trusts. Current law is not clear as to whether the excise tax applies when a nongrantor domestic trust changes its residence to become a nongrantor foreign trust.

Reasons for Change. The excise tax is designed to prevent U.S. persons from transferring assets to a nongrantor foreign trust without paying U.S. tax on the appreciation in those assets. Taxpayers should not be able

to achieve tax results through migration of a domestic trust that they could not achieve directly by the creation of a foreign trust.

Proposal. The proposal would treat a nongrantor domestic trust that becomes a nongrantor foreign trust as having transferred, immediately before becoming a nongrantor foreign trust, all of its assets to a foreign trust. The section 1491 excise tax would apply to this transfer. Penalties would be imposed for failure to report any transaction subject to the excise tax. The provisions would be effective on the date of enactment.

Differences from the Administration Proposal. Under the Administration proposal, outbound migrations of trust with U.S. beneficiaries would generally have been subject to the foreign grantor trust rule, and the migrations would therefore not have been subject to the excise tax. Because the current proposal limits the application of the foreign grantor trust rule to certain outbound trust migrations, the current proposal applies the excise tax to outbound trust migrations that result in a nongrantor foreign trust.

ADDITIONAL COSPONSORS

S. 141

At the request of Mrs. KASSEBAUM, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 141, a bill to repeal the Davis-Bacon Act of 1931 to provide new job opportunities, effect significant cost savings on Federal construction contracts, promote small business participation in Federal contracting, reduce unnecessary paperwork and reporting requirements, and for other purposes.

S. 358

At the request of Mr. HEFLIN, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 358, a bill to amend the Internal Revenue Code of 1986 to provide for an excise tax exemption for certain emergency medical transportation by air ambulance.

S. 381

At the request of Mr. HELMS, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 381, a bill to strengthen international sanctions against the Castro government in Cuba, to develop a plan to support a transition government leading to a democratically elected government in Cuba, and for other purposes.

S. 490

At the request of Mr. GRASSLEY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 490, a bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes.

S. 545

At the request of Mr. BUMPERS, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 545, a bill to authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property.

S. 773

At the request of Mrs. KASSEBAUM, the names of the Senator from Virginia

[Mr. WARNER], the Senator from Kentucky [Mr. FORD], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Virginia [Mr. ROBB], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 773, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for improvements in the process of approving and using animal drugs, and for other purposes.

S. 881

At the request of Mr. PRYOR, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 881, a bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 949

At the request of Mr. GRAHAM, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 949, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the death of George Washington.

S. 959

At the request of Mr. HATCH, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 959, a bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes.

S. 1181

At the request of Mr. STEVENS, the names of the Senator from Indiana [Mr. LUGAR] and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 1181, a bill to provide cost savings in the medicare program through cost-effective coverage of positron emission tomography (PET).

S. 1245

At the request of Mr. ASHCROFT, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 1245, a bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to identify violent and hardcore juvenile offenders and treat them as adults, and for other purposes.

SENATE RESOLUTION 173—TO PROCLAIM NATIONAL DOG WEEK

Mr. D'AMATO submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 173

Whereas, dogs play an integral role in our lives, communities and nation, in good and bad times; and their present and future well-being in society requires education about responsible dog ownership;

Whereas, many assistance dogs provide valuable service as seeing eye dogs; hearing dogs; disabled assistance dogs; drug, bomb

and arson detection dogs; and for tracking and locating missing persons and fugitives;

Whereas, as the public good is advanced when we foster the ideas of canine good citizens by promoting the positive interaction between dogs and society;

Whereas, raising a canine good citizen, is first and foremost, an obligation of the owner;

Whereas, dog owners must make conscientious efforts to develop the essential traits and characteristics that comprise responsible dog ownership;

Whereas, the decision to become a dog owner is an emotional and monetary long-term commitment which carries a tremendous responsibility;

Whereas, dog owners bear a special responsibility to their canine companions to provide proper care and humane treatment at all times;

Whereas, this proper care and treatment includes an adequate and nutritious diet, clean water, clean and comfortable living conditions, regular veterinary care, kind and responsive human companionship and training in appropriate behavior;

Whereas, dog ownership requires honesty about an owner's readiness and ability to be responsible for their canine companion;

Whereas, this requires personal questioning about one's time commitments, desire for a dog and family situations;

Whereas, the next component of choosing a canine companion involves educating oneself about obtaining a dog or puppy from a responsible source;

Whereas, a responsible source will provide a prospective dog owner with appropriate information about the breed of dog, training, feeding and care;

Whereas, the Senate encourages people to be responsible dog owners and encourages people to recognize the positive ramifications on society of promoting Canine Good Citizens.

Whereas, the Senate encourages people to recognize the contributions that our canine companions make to all of us throughout the year;

Now therefore be it

Resolved, That the Senate proclaims the week of September 24-30, as National Dog Week.

• Mr. D'AMATO. Mr. President, I submit a resolution commemorating September 24 through September 30, 1995, as National Dog Week. Dogs have always been a source of comfort and companionship to men, women and children of all ages. They play an important role in the lives of many and provide valuable services such as seeing eye dogs, drug detection dogs and dogs that locate missing persons. Dog ownership requires a serious commitment by the owner, but the rewards are great. I urge my colleagues to support this resolution. •

SENATE RESOLUTION 174—RELATIVE TO VIETNAM

Mr. GRAMS (for himself, Mr. DOLE, Mr. HELMS, and Mr. THOMAS) submitted the following resolution; which was considered and agreed to:

S. RES. 174

Whereas there are many outstanding issues between the United States and Vietnam including a full accounting of MIAs/POWs; pursuant of democratic freedoms in Vietnam, including freedom of expression and association; and resolution of human rights violations;

Whereas the Government of Vietnam continues to imprison political and religious leaders to suppress the nonviolent pursuit of freedom and human rights;

Whereas the Government of Vietnam has not honored its commitments under the Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights;

Whereas two American citizens, Mr. Nguyen Tan Tri and Mr. Tran Quang Liem, are among those recently sentenced to prison terms of 7 and 4 years, respectively, for their efforts to organize a conference, after 2 years of detention without charge; and

Whereas these two Americans are in poor health and are not receiving proper treatment: Now, therefore, be it

Resolved, That the Senate hereby—

(1) urges the Secretary of State to pursue the release of the American prisoners as well as all political and religious prisoners in Vietnam as a matter of the highest priority;

(2) requests that the Secretary of State submit regular reports to the Committee on Foreign Relations of the Senate regarding the status of the imprisonment and wellbeing of the two American prisoners; and

(3) requests that the President meet with relatives of the two Americans at his earliest convenience.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President and the Secretary of State.

AMENDMENTS SUBMITTED

THE WORK OPPORTUNITY ACT OF 1995

DOLE AMENDMENT NO. 2692

Mr. DOMENICI (for Mr. DOLE) proposed an amendment to the amendment No. 2280 proposed by Mr. DOLE to the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending, and reduce welfare dependence; as follows:

On page 12, between lines 22 and 23, in the matter inserted by amendment No. 2486 as modified—

(1) in subparagraph (G), strike "3 years" and insert "2 years"; and

(2) in subparagraph (G), strike "6 months" and insert "3 months".

On page 69, line 18, in the matter inserted by amendment No. 2479, as modified—

(1) in section 413(a), strike "country" and insert "county"; and

(2) in section 413(b)(5), strike "eligible countries are defined as:" and insert "ELIGIBLE COUNTY.—A county may participate in a demonstration project under this subsection if the county is—".

On page 50, line 6, in the matter inserted by amendment No. 2528—

(1) in subsection (d)(3)(A), strike "1998" and insert "1996";

(2) in subsection (d)(3)(C), strike "1998, 1999, and 2000" and insert "1996, 1997, 1998, 1999, 2000, 2001, and 2002"; and

(3) in subsection (d)(3)(C), strike "as may be necessary" and insert "specified in subparagraph (B)(ii)".

On page 77, between lines 21 and 22, insert the following new section:

"SEC. 420. ELIGIBILITY FOR CHILD CARE ASSISTANCE.

Notwithstanding section 658T of the Child Care and Development Block Grant Act of 1990, the State agency specified in section 402(a)(6) shall determine eligibility for child