

Public Law 87-403

AN ACT

February 2, 1962
[H. R. 8847]

To amend the Internal Revenue Code of 1954 so as to provide that a distribution of stock made to an individual (or certain corporations) pursuant to an order enforcing the antitrust laws shall not be treated as a dividend distribution but shall be treated as a return of capital; and to provide that the amount of such a distribution made to a corporation shall be the fair market value of the distribution.

Stock, antitrust
distribution.
Income tax treat-
ment.
68A Stat. 295;
70 Stat. 139.
26 USC 1101-
1103.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subchapter O of chapter 1 of the Internal Revenue Code of 1954 (relating to gain or loss on disposition of property) is amended by adding at the end thereof the following new part:

**“PART IX—DISTRIBUTIONS PURSUANT TO ORDERS
ENFORCING THE ANTITRUST LAWS**

“Sec. 1111. Distribution of stock pursuant to order enforcing the antitrust laws.

“SEC. 1111. DISTRIBUTION OF STOCK PURSUANT TO ORDER ENFORCING THE ANTITRUST LAWS.

68A Stat. 84, 95,
98.
26 USC 301, 312,
316.

“(a) GENERAL RULE.—Notwithstanding sections 301, 312, and 316, a distribution of divested stock (as defined in subsection (e)), to a qualifying shareholder (as defined in subsection (b)), to which section 301 (c) (1) would, but for this section, apply, shall be a distribution which is not out of the earnings and profits of the distributing corporation for purposes of this subtitle.

Definitions.

“(b) QUALIFYING SHAREHOLDER.—For purposes of this section, the term ‘qualifying shareholder’ means any shareholder other than a corporation which may be allowed a deduction under section 243, 244, or 245 with respect to dividends received.

26 USC 243-245.

“(c) SPECIAL RULES.—

“(1) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—Subsection (a) shall not apply to any transaction one of the principal purposes of which is the distribution of the earnings and profits of the distributing corporation or of the corporation whose stock is distributed, or both.

“(2) STOCK.—For purposes of this section, the term ‘stock’ includes rights to fractional shares.

“(d) DEFINITION OF ANTITRUST ORDER.—For purposes of this section, the term ‘antitrust order’ means, in the case of any corporation, a final judgment rendered after January 1, 1961, by a court with respect to such corporation in a court proceeding under the Sherman Act (26 Stat. 209; 15 U.S.C. 1-7) or the Clayton Act (38 Stat. 730; 15 U.S.C. 12-27), or both, to which the United States is a party, if such proceeding was commenced on or before January 1, 1959.

71 Stat. 163.

73 Stat. 243.

“(e) DEFINITION OF DIVESTED STOCK.—For purposes of this section, the term ‘divested stock’ means stock meeting the following requirements:

“(1) the stock is the subject of an antitrust order entered after January 1, 1961, which—

“(A) directs the distributing corporation to divest itself of such stock by distributing it to its shareholders (or requires such distribution as an alternative to other action by any person);

“(B) specifies and itemizes the stock to be divested; and

“(C) fixes the period of time within which the distributing corporation must divest itself of all stock to be disposed of by it by reason of the suit, and such period expires not later than 3 years from the date on which such order becomes final (appeal time having run or appeal having been completed); and

“(2) the court finds—

“(A) that the divestiture of such stock, in the manner described in paragraph (1) (A), is necessary or appropriate to effectuate the policies of the Sherman Act, or the Clayton Act, or both;

“(B) that the application of subsection (a) is required to reach an equitable antitrust order in such suit or proceeding; and

“(C) that the period of time for the complete divestiture fixed in the order is the shortest period within which such divestiture can be executed with due regard to the circumstances of the particular case;

but no stock shall be divested stock if the court finds that its divestiture is required because of an intentional violation of the Sherman Act, or the Clayton Act, or both.”

(b) The table of parts for subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following:

“Part IX. Distributions pursuant to orders enforcing the antitrust laws.”

(c) The amendments made by this section shall apply only with respect to distributions made after the date of the enactment of this Act.

Effective date.

SEC. 2. (a) Section 301 of the Internal Revenue Code of 1954 (relating to distributions of property) is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:

26 USC 301.

“(f) SPECIAL RULES FOR DISTRIBUTIONS OF ANTITRUST STOCK TO CORPORATIONS.—

“(1) DEFINITION OF ANTITRUST STOCK.—For purposes of this subsection, the term ‘antitrust stock’ means stock received, by a corporation which is a party to a suit described in section 1111(d) (relating to definition of antitrust order), in a distribution made after September 6, 1961, either pursuant to the terms of, or in anticipation of, an antitrust order (as defined in subsection (d) of section 1111).

“‘Antitrust stock.’”
Ante, p. 4.

“(2) AMOUNT DISTRIBUTED.—Notwithstanding subsection (b)(1) (but subject to subsection (b)(2)), for purposes of this section the amount of a distribution of antitrust stock received by a corporation shall be the fair market value of such stock.

“(3) BASIS.—Notwithstanding subsection (d), the basis of antitrust stock received by a corporation in a distribution to which subsection (a) applies shall be the fair market value of such stock decreased by so much of the deduction for dividends received under the provisions of section 243, 244, or 245 as is, under regulations prescribed by the Secretary or his delegate, attributable to the excess, if any, of—

26 USC 243-245

“(A) the fair market value of the stock, over

“(B) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the stock, increased by the amount of gain which is recognized to the distributing corporation by reason of the distribution.”

Effective date.

(b) The amendments made by this section shall apply only with respect to distributions made after the date of the enactment of this Act.

26 USC 312.

SEC. 3. (a) Section 312 of the Internal Revenue Code of 1954 (relating to the effect on earnings and profits) is amended by adding at the end thereof the following new subsection:

Ante, p. 5.
26 USC 301.

“(k) SPECIAL ADJUSTMENT ON DISPOSITION OF ANTITRUST STOCK RECEIVED AS A DIVIDEND.—If a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied, and the amount of the distribution determined under section 301(f)(2) exceeded the basis of the stock determined under section 301(f)(3), then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, to the earnings and profits of such corporation at the time such stock (or other property the basis of which is determined by reference to the basis of such stock) is disposed of by such corporation.”

26 USC 535.

(b) Subsection (b) of section 535 of the Internal Revenue Code of 1954 (relating to accumulated taxable income) is amended by adding at the end thereof the following new paragraphs:

Ante, p. 4.

“(9) DISTRIBUTIONS OF DIVESTED STOCK.—There shall be allowed as a deduction the amount of any dividend distribution received of divested stock (as defined in subsection (e) of section 1111), minus the taxes imposed by this subtitle attributable to such receipt, but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years prior to the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

“(10) SPECIAL ADJUSTMENT ON DISPOSITION OF ANTITRUST STOCK RECEIVED AS A DIVIDEND.—If—

“(A) a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied,

“(B) the amount of the distribution determined under section 301(f)(2) exceeded the basis of the stock determined under section 301(f)(3), and

“(C) paragraph (9) did not apply in respect of such distribution,

then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, if such stock (or other property the basis of which is determined by reference to the basis of such stock) is sold or exchanged.”

74 Stat. 77.
26 USC 543.

(c) Section 543 of the Internal Revenue Code of 1954 (relating to personal holding company income) is amended (1) by adding at the end of paragraph (1) of subsection (a) the following new sentence: “This paragraph shall not apply to a dividend distribution of divested stock (as defined in subsection (e) of section 1111) but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years prior to the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.”; and (2) by adding at the end thereof the following new subsection:

Ante, p. 4.

“(d) SPECIAL ADJUSTMENT ON DISPOSITION OF ANTITRUST STOCK RECEIVED AS A DIVIDEND.—If—

“(1) a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied,

“(2) the amount of the distribution determined under section 301(f)(2) exceeded the basis of the stock determined under section 301(f)(3), and

“(3) such distribution was includible in personal holding company income under subsection (a) (1), then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, to amounts includible in personal holding company income under subsection (a) (2) with respect to such stock (or other property the basis of which is determined by reference to the basis of such stock).”

(d) Subsection (b) of section 545 of the Internal Revenue Code of 1954 (relating to undistributed personal holding company income) is amended by adding at the end thereof the following new paragraphs:

26 USC 545.

“(10) DISTRIBUTIONS OF DIVESTED STOCK.—There shall be allowed as a deduction the amount of any income attributable to the receipt of a distribution of divested stock (as defined in subsection (e) of section 1111), minus the taxes imposed by this subtitle attributable to such receipt, but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years prior to the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

Ante, p. 4.

Ante, p. 4.

“(11) SPECIAL ADJUSTMENT ON DISPOSITION OF ANTITRUST STOCK RECEIVED AS A DIVIDEND.—If—

“(A) a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied,

Ante, p. 5.
26 USC 301.

“(B) the amount of the distribution determined under section 301(f) (2) exceeded the basis of the stock determined under section 301(f) (3), and

“(C) Paragraph (10) did not apply in respect of such distribution,

then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, if such stock (or other property the basis of which is determined by reference to the basis of such stock) is sold or exchanged.”

(e) Subsection (b) of section 556 of the Internal Revenue Code of 1954 (relating to undistributed foreign personal holding company income) is amended by adding at the end thereof the following new paragraphs:

26 USC 556.

“(7) DISTRIBUTIONS OF DIVESTED STOCK.—There shall be allowed as a deduction the amount of any income attributable to the receipt of a distribution of divested stock (as defined in subsection (e) of section 1111), minus the taxes imposed by this subtitle attributable to such receipt, but only if the stock with respect to which the distribution is made was owned by the distributee on September 6, 1961, or was owned by the distributee for at least 2 years prior to the date on which the antitrust order (as defined in subsection (d) of section 1111) was entered.

“(8) SPECIAL ADJUSTMENT ON DISPOSITION OF ANTITRUST STOCK RECEIVED AS A DIVIDEND.—If—

“(A) a corporation received antitrust stock (as defined in section 301(f)) in a distribution to which section 301 applied,

“(B) the amount of the distribution determined under section 301(f) (2) exceeded the basis of the stock determined under section 301(f) (3), and

“(C) paragraph (7) did not apply in respect of such distribution,

then proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, if such stock (or other property the basis of which is determined by reference to the basis of such stock) is sold or exchanged.”

68A Stat. 198.
26 USC 561.

(f) Subsection (b) of section 561 of the Internal Revenue Code of 1954 (relating to deduction for dividends paid) is amended to read as follows:

“(b) SPECIAL RULES APPLICABLE.—

26 USC 562.

“(1) In determining the deduction for dividends paid, the rules provided in section 562 (relating to rules applicable in determining dividends eligible for dividends paid deduction) and section 563 (relating to dividends paid after the close of the taxable year) shall be applicable.

Ante, p. 5.
26 USC 301.

“(2) If a corporation received antitrust stock (as defined in section 301(f) in a distribution to which section 301 applied and such corporation distributes such stock (or other property the basis of which is determined by reference to the basis of such stock) to its shareholders, proper adjustment shall be made, under regulations prescribed by the Secretary or his delegate, to the amount of the deduction provided for in subsection (a).”

Effective date.

(g) The amendments made by this section shall apply only with respect to distributions made after the date of the enactment of this Act.

Approved February 2, 1962.

Public Law 87-404

February 13, 1962
[H. J. Res. 612]

JOINT RESOLUTION

Making supplemental appropriations for the Veterans Administration for the fiscal year ending June 30, 1962, and for other purposes.

Supplemental
appropriations,
1962.
Veterans Admin-
istration.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Veterans Administration for the fiscal year ending June 30, 1962, namely:

INDEPENDENT OFFICES

VETERANS ADMINISTRATION

READJUSTMENT BENEFITS

For an additional amount for “Readjustment benefits,” \$55,000,000, to remain available until expended.

LOAN GUARANTY REVOLVING FUND

An additional amount of not to exceed \$115,247,000 shall be available in the “Loan guaranty revolving fund” for expenses for property acquisitions and other loan guaranty and insurance operations under chapter 37, title 38, United States Code, except administrative expenses, as authorized by section 1824 of such title: *Provided*, That in addition to amounts heretofore made available, not to exceed \$115,247,000 of the “Direct loans to veterans and reserves revolving fund” shall be available, during the current fiscal year, for transfer to said “Loan guaranty revolving fund” in such amounts as may be necessary to provide for the foregoing expenses.

Approved February 13, 1962.

38 USC 1801-
1825.
74 Stat. 532.