Public Law 96-596
96th Congress

An Act

To amend the Internal Revenue Code of 1954 with respect to the determination of second tier taxes, and for other purposes.

Dec. 24, 1980
[H.R. 5391]

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

Internal Revenue Code of 1954, amendment.

SECTION 1. 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 *et seq.*

SEC. 2. DETERMINATION OF SECOND TIER TAXES.

(a) DATE FOR DETERMINING AMOUNT OF SECOND TIER TAXES.—

(1) SUBSTITUTION OF TAXABLE PERIOD FOR CORRECTION PERIOD.—The following provisions are each amended by striking out "correction period" and inserting in lieu thereof "taxable period":

26 USC 4941–4945, 4951, 4952, 4971, 4975.

(A) Section 4941(b)(1) (relating to additional taxes on self-dealer).

(B) Section 4941(e)(2)(B) (defining amount involved).

(C) Section 4942(b) (relating to additional tax on failure to distribute income).

(D) Section 4943(b) (relating to additional tax on excess business holdings).

(E) Section 4944(b)(1) (relating to additional taxes on investment which jeopardizes charitable purpose).

(F) Section 4945(b)(1) (relating to additional taxes on taxable expenditures).

(G) Section 4951(b)(1) (relating to additional taxes on self-dealer).

(H) Section 4951(e)(2)(B) (defining amount involved).

(I) Section 4952(b)(1) (relating to additional taxes on taxable expenditures).

(J) Section 4971(b) (relating to additional tax on failure to meet minimum funding standards).

(K) Section 4975(b) (relating to additional taxes on disqualified persons).

(L) Section 4975(f)(4)(B) (defining amount involved).

(2) DEFINITION OF TAXABLE PERIOD.—

(A) Paragraph (1) of section 4941(e) (defining taxable period) is amended to read as follows:

"(1) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

"(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

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"(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

"(C) the date on which correction of the act of self-dealing is completed."

26 USC 4942.

(B) Paragraph (1) of section 4942(j) is amended to read as follows:

"(1) TAXABLE PERIOD.—The term 'taxable period' means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

"(B) the date on which the tax imposed by subsection (a) is assessed."

26 USC 4943.

(C) Paragraph (2) of section 4943(d) is amended to read as follows:

"(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess business holdings of a private foundation in a business enterprise, the period beginning on the first day on which there are excess holdings and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212 in respect of such holdings, or

"(B) the date on which the tax imposed by subsection (a) in respect of such holdings is assessed."

26 USC 4944.

(D) Paragraph (1) of section 4944(e) is amended to read as follows:

"(1) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any investment which jeopardizes the carrying out of exempt purposes, the period beginning with the date on which the amount is so invested and ending on the earliest of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

"(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

"(C) the date on which the amount so invested is removed from jeopardy."

26 USC 4945.

(E) Paragraph (2) of section 4945(i) is amended to read as follows:

"(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

"(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

"(B) the date on which the tax imposed by subsection (a)(1) is assessed."

26 USC 4951.

(F) Paragraph (1) of section 4951(e) is amended to read as follows:

"(1) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

"(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

"(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

"(C) the date on which correction of the act of self-dealing is completed."

(G) Paragraph (2) of section 4952(e) is amended to read as follows: 26 USC 4952.

"(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

"(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

"(B) the date on which the tax imposed by subsection (a)(1) is assessed."

(H) Paragraph (3) of section 4971(c) is amended to read as follows: 26 USC 4971.

"(3) TAXABLE PERIOD.—The term 'taxable period' means, with respect to an accumulated funding deficiency, the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a), or

"(B) the date on which the tax imposed by subsection (a) is assessed."

(I) Paragraph (2) of section 4975(f) is amended to read as follows: 26 USC 4975.

"(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of—

"(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212,

"(B) the date on which the tax imposed by subsection (a) is assessed, or

"(C) the date on which correction of the prohibited transaction is completed."

(3) TECHNICAL AMENDMENTS.—

(A) Subsection (e) of section 4941 is amended by striking out paragraph (4). 26 USC 4941.

(B) Subsection (j) of section 4942 is amended— 26 USC 4942.

(i) by striking out paragraph (2),

(ii) by striking out "paragraph (5)" in paragraph (3)(B)(i) and inserting in lieu thereof "paragraph (4)",

(iii) by redesignating paragraph (4) as paragraph (2), and

(iv) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(C) Subsection (d) of section 4943 is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3). 26 USC 4943.

(D) Subsection (e) of section 4944 is amended by striking out paragraph (3). 26 USC 4944.

(E) Subsection (e) of section 4951 is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4). 26 USC 4951.

(F) Subsection (f) of section 4975 is amended by striking out paragraph (6). 26 USC 4975.

(4) CLERICAL AMENDMENTS.—

26 USC 4942.

(A) Clause (ii) of section 4942(g)(2)(C) is amended by striking out "the initial correction period provided in subsection (j)(2)" and inserting in lieu thereof "the correction period (as defined in section 4962(e))".

26 USC 4943.

(B) Subparagraph (A) of section 4943(d)(3) (as redesignated by paragraph (3)(c)) is amended by striking out "4942(j)(5)" and inserting in lieu thereof "4942(j)(4)".

26 USC 6213.

(C) Subsection (e) of section 6213 (relating to suspension of filing period for certain excise taxes) is amended by striking out "section 4941(e)(4)" and all that follows through the end of such subsection and inserting in lieu thereof "section 4962(e)."

Post, p. 3473.

26 USC 6503.

(D) Subsection (g) of section 6503 (relating to suspension of running of period of limitation pending correction) is amended by striking out "section 4941(e)(4)" and all that follows through the end of such subsection and inserting in lieu thereof "section 4962(e)."

(E) Section 6503 is amended by redesignating subsection (j) as subsection (i).

26 USC 6503 note.

26 USC 6503.

(F) The amendments made by sections 1203(h)(1) and 1601(f)(2) of the Tax Reform Act of 1976, and the amendment made by section 362(d)(5) of the Revenue Act of 1978, shall be deemed to be amendments to section 6503(i) of the Internal Revenue Code of 1954 (as redesignated by subparagraph (E)).

26 USC 6214.

(b) TAX COURT TO DETERMINE WHETHER TAXABLE EVENT HAS BEEN CORRECTED.—Subsection (c) of section 6214 (relating to determinations by Tax Court) is amended by adding at the end thereof the following new sentence: "The Tax Court, in redetermining a deficiency of any second tier tax (as defined in section 4962(b)), shall make a determination with respect to whether the taxable event has been corrected."

Post, p. 3473.

(c) ABATEMENT OF TAX WHERE THERE IS CORRECTION DURING CORRECTION PERIOD.—

(1) IN GENERAL.—Chapter 42 is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Abatement of Second Tier Taxes Where There Is Correction During Correction Period

"Sec. 4961. Abatement of second tier taxes where there is correction.
"Sec. 4962. Definitions.

26 USC 4961.

"SEC. 4961. ABATEMENT OF SECOND TIER TAXES WHERE THERE IS CORRECTION.

"(a) GENERAL RULE.—If any taxable event is corrected during the correction period for such event, then any second tier tax imposed with respect to such event (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

"(b) SUPPLEMENTAL PROCEEDING.—If the determination by a court that the taxpayer is liable for a second tier tax has become final, such court shall have jurisdiction to conduct any necessary supplemental proceeding to determine whether the taxable event was corrected during the correction period. Such a supplemental proceeding may be begun only during the period which ends on the 90th day after the last day of the correction period. Where such a supplemental proceeding has begun, the reference in the second sentence of section 6213(a)

to a final decision of the Tax Court shall be treated as including a final decision in such supplemental proceeding.

"(c) SUSPENSION OF PERIOD OF COLLECTION FOR SECOND TIER TAX.—

"(1) PROCEEDING IN DISTRICT COURT OR COURT OF CLAIMS.—If, not later than 90 days after the day on which the second tier tax is assessed, the first tier tax is paid in full and a claim for refund of the amount so paid is filed, no levy or proceeding in court for the collection of the second tier tax shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2) (and of any supplemental proceeding with respect thereto under subsection (b)). Notwithstanding section 7421(a), the collection by levy or proceeding may be enjoined during the time such prohibition is in force by a proceeding in the proper court.

"(2) SUIT MUST BE BROUGHT TO DETERMINE LIABILITY.—If, within 90 days after the day on which his claim for refund is denied, the person against whom the second tier tax was assessed fails to begin a proceeding described in section 7422 for the determination of his liability for such tax, paragraph (1) shall cease to apply with respect to such tax, effective on the day following the close of the 90-day period referred to in this paragraph.

"(3) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS ON COLLECTION.—The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court with respect to any second tier tax described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

"(4) JEOPARDY COLLECTION.—If the Secretary makes a finding that the collection of the second tier tax is in jeopardy, nothing in this subsection shall prevent the immediate collection of such tax.

"SEC. 4962. DEFINITIONS. 26 USC 4962.

"(a) FIRST TIER TAX.—For purposes of this subchapter, the term 'first tier tax' means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

"(b) SECOND TIER TAX.—For purposes of this subchapter, the term 'second tier tax' means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

"(c) TAXABLE EVENT.—For purposes of this subchapter, the term 'taxable event' means any act (or failure to act) giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

"(d) CORRECT.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'correct' has the same meaning as when used in the section which imposes the second tier tax.

"(2) SPECIAL RULES.—The term 'correct' means—

"(A) in the case of the second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

"(B) in the case of the second tier tax imposed by section 4943(b), reducing the amount of the excess business holdings to zero, and

"(C) in the case of the second tier tax imposed by section 4944, removing the investment from jeopardy.

"(e) CORRECTION PERIOD.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'correction period' means, with respect to any taxable event, the period beginning on the date on which such event occurs and ending 90 days after the date of mailing under section 6212 of a notice of deficiency with respect to the second tier tax imposed on such taxable event, extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a) (determined without regard to the last sentence of section 4961(b)), and

"(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable event.

"(2) SPECIAL RULES FOR WHEN TAXABLE EVENT OCCURS.—For purposes of paragraph (1), the taxable event shall be treated as occurring—

"(A) in the case of section 4942, on the first day of the taxable year for which there was a failure to distribute income,

"(B) in the case of section 4943, on the first day on which there are excess business holdings,

"(C) in the case of section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

"(D) in any other case, the date on which such event occurred."

26 USC 7422. 26 USC 4940 *et seq.*, 4971 *et seq.*

(2) CIVIL ACTIONS FOR REFUNDS.—Paragraph (1) of section 7422(g) (relating to special rules for certain excise taxes imposed by chapter 42 or 43) is amended to read as follows:

"(1) RIGHT TO BRING ACTIONS.—

"(A) IN GENERAL.—With respect to any taxable event, payment of the full amount of the first tier tax shall constitute sufficient payment in order to maintain an action under this section with respect to the second tier tax.

"(B) DEFINITIONS.—For purposes of subparagraph (A), the terms 'taxable event', 'first tier tax', and 'second tier tax' have the respective meanings given to such terms by section 4962."

(3) CLERICAL AMENDMENT.—The table of subchapters for chapter 42 is amended by adding at the end thereof the following new item:

"SUBCHAPTER C. Abatement of second tier taxes where there is correction during correction period."

26 USC 4961 note.

(d) EFFECTIVE DATES.—

(1) FIRST TIER TAXES.—The amendments made by this section with respect to any first tier tax shall take effect as if included in the Internal Revenue Code of 1954 when such tax was first imposed.

(2) SECOND TIER TAXES.—The amendments made by this section with respect to any second tier tax shall apply only with respect to taxes assessed after the date of the enactment of this Act. Nothing in the preceding sentence shall be construed to permit the assessment of a tax in a case to which, on the date of the enactment of this Act, the doctrine of res judicata applies.

(3) FIRST AND SECOND TIER TAX.—For purposes of this subsection, the terms "first tier tax" and "second tier tax" have the respective meanings given to such terms by section 4962 of the Internal Revenue Code of 1954.

26 USC 4962.

SEC. 3. TREATMENT OF CERTAIN CHARITABLE TRUSTS FOR PURPOSES OF THE MINIMUM TAX.

(a) GENERAL RULE.—Subparagraph (C) of section 57(b)(2) (relating to treatment of certain charitable contributions of trusts for purposes of the minimum tax) is amended by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively, and by inserting after clause (iii) the following new clause: 26 USC 57.

"(iv) deductions allowable to a trust—

"(I) all the income interests in which are devoted to one or more of the purposes described in section 170(c) (determined without regard to section 170(c)(2)(A)),

"(II) all of the interests (other than income interests) in which are held by a corporation, and

"(III) the grantor of which is a corporation."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1975. 26 USC 57 note.

SEC. 4. EXCISE TAXES ON TIRES.

(a) REDUCTIONS IN RATE OF TAX.—

(1) IN GENERAL.—

(A) Section 4071(a)(1) is amended by striking out "10 cents" and inserting "9.75 cents". 26 USC 4071.

(B) Section 4071(a)(2) is amended by striking out "5 cents" and inserting "4.875 cents".

(C) Section 4071(d)(1) is amended by striking out "5 cents" and inserting "4.875 cents".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply on and after January 1, 1981. 26 USC 4071 note.

(b) DETERMINATION OF OVERPAYMENT.— 26 USC 4071 note.

(1) IN GENERAL.—The determination of the extent to which any overpayment of tax imposed by section 4071(a) (1) or (2) or section 4071(b) has arisen by reason of an adjustment of a tire after the original sale pursuant to a warranty or guarantee, and the allowance of a credit or refund of any such overpayment, shall be determined in accordance with the principles set forth in regulations and rulings relating thereto to the extent in effect on March 31, 1978. *Supra.*

(2) EFFECTIVE DATE.—This subsection shall apply to the adjustment of any tire after March 31, 1978, and prior to January 1, 1983.

(c) TIRES AND INNER TUBES.—

(1) IN GENERAL.—Paragraph (1) of section 6416(b) (relating to price readjustments) is amended to read as follows: 26 USC 6416.

"(1) PRICE READJUSTMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) or (C), if the price of any article in respect of which a tax, based on such price, is imposed by chapter 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(e) (2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. 26 USC 4061 *et seq.*

"(B) FURTHER MANUFACTURE.—Subparagraph (A) shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which

such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

"(C) ADJUSTMENT OF TIRE PRICE.—No credit or refund of any tax imposed by section 4071(a) (1) or (2) or section 4071(b) shall be allowed or made by reason of an adjustment of a tire pursuant to a warranty or guarantee."

Ante, p. 3475.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the adjustments of any tire after December 31, 1982.

26 USC 6416 note.

SEC. 5. TAX TREATMENT OF PROCEEDS HELD IN TRUST FOR KLAMATH INDIAN TRIBE.

(a) IN GENERAL.—The first section of the Act entitled "An Act to exclude from gross income gains from the condemnation of certain forest lands held in trust for the Klamath Indian Tribe", approved August 9, 1975, is amended by striking out "gain resulting from" and inserting in lieu thereof "all amounts realized by the trust from".

25 USC 564j note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to all amounts whether received before, on, or after the date of the enactment of this Act.

25 USC 564j note.

Approved December 24, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-912 (Comm. on Ways and Means).
SENATE REPORT No. 96-1034 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 126 (1980):
May 20, considered and passed House.
Dec. 13, considered and passed Senate, amended; House agreed to Senate amendments with amendments; Senate agreed to House amendments.