The original documents are located in Box 55, folder "9/17/76 HR5071 Extension of Present Tax Withholding Rates and Maintenance of Common Trust Fund by Affiliated Banks" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.

Digitized from the White House records Office: Legislation Case Files at the Gerald R. Ford Presidential Library

9/17/76

APPROVED
SEP 17 1976

THE WHITE HOUSE

WASHINGTON

ACTION

September 15, 1976

Posted 9/17/76
To Archives 9/20/76

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 5071 - Extension of present tax withholding rates and maintenance of common trust fund by affiliated banks

Attached for your consideration is H.R. 5071, sponsored by Representative Conable.

The enrolled bill would:

-- extend to October 1, 1976, certain provisions of the Tax Reduction Act of 1975 (individual income tax withholding rates and related individual and corporate estimated tax provisions) which expire September 15, 1976;

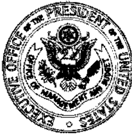
-- amend the Internal Revenue Code to permit two or more banks which are members of the same affiliated group to be treated as one bank for purposes of maintaining a common trust fund.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg), Bill Seidman and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 5071 at Tab B.



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5071 - Extension of present tax withholding rates and maintenance of common trust fund by affiliated banks
Sponsor - Rep. Conable (R) New York

Last Day for Action

Recommend action as soon as possible, since the withholding rates expire September 15, 1976.

Purpose

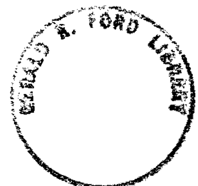
Extends to October 1, 1976, certain provisions of the Tax Reduction Act of 1975; permits two or more banks which are members of the same affiliated group to be treated as one bank for purposes of maintaining a common trust fund.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval (Informally)

Discussion

A rider to H.R. 5071, adopted by both Houses on September 14, 1976, would continue until October 1, 1976, the individual income tax withholding rates and related individual and corporate estimated tax provisions which are scheduled to expire on September 15, 1976. The extension of these rates and related provisions is required because Congress has failed to complete action on the Tax Reform Act (H.R. 10612). In the absence of this extension, individual withholding rates would return to the higher levels in effect prior to the enactment of the 1975 Tax Reduction Act.



The basic purpose of H.R. 5071 is to amend the Internal Revenue Code to permit two or more banks which are members of the same affiliated group to be treated as one bank for purposes of maintaining a common trust fund.

Current law provides that a common trust fund maintained by a bank shall not be subject to Federal income tax and shall not be considered a corporation. The term "common trust fund" means a fund maintained by a bank:

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations of the Comptroller of the Currency pertaining to the collective investment of trusts.

The purpose of the common trust fund provisions is to permit diversification in the investment of trust funds for which a bank has fiduciary-type responsibility. The funds from various trust funds are commingled in one investment account with income, gains and losses being allocated proportionately.

The Internal Revenue Service has taken the position that a fund maintained by a member bank of a bank holding company will not qualify as a common trust fund if it accepts contributions to that fund by other member banks (or trust companies) acting in their capacity as trustee, executor, administrator or guardian. H.R. 5071 would provide that where banks which are members of the same affiliated group establish a combined common trust fund, such a fund would be treated as a common trust fund for tax purposes during the period of affiliation. This change would apply to taxable years beginning after December 31, 1975.

The report of the House Ways and Means Committee on this bill states that the committee believes "that the tax treatment accorded a common fund by banks which are related through stockholdership with a common parent should be the same as where only one bank is involved ..." Treasury supported predecessor legislation in the 93rd Congress.

Acting Assistant Director
for Legislative Reference

Enclosures

9/20/76

Mr. J. –

To add to the bill file, please. Thanks.

Katie

Bill Seidman's comments

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Approved 9-15-76 per RDP

SEP 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5071 - Extension of present tax withholding rates and maintenance of common trust fund by affiliated banks
Sponsor - Rep. Conable (R) New York

Last Day for Action

Recommend action as soon as possible, since the withholding rates expire September 15, 1976.

Purpose

Extends to October 1, 1976, certain provisions of the Tax Reduction Act of 1975; permits two or more banks which are members of the same affiliated group to be treated as one bank for purposes of maintaining a common trust fund.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval (Informally)

Discussion

A rider to H.R. 5071, adopted by both Houses on September 14, 1976, would continue until October 1, 1976, the individual income tax withholding rates and related individual and corporate estimated tax provisions which are scheduled to expire on September 15, 1976. The extension of these rates and related provisions is required because Congress has failed to complete action on the Tax Reform Act (H.R. 10612). In the absence of this extension, individual withholding rates would return to the higher levels in effect prior to the enactment of the 1975 Tax Reduction Act.

THE WHITE HOUSE

ACTION MEMORANDUM — WASHINGTON — LOG NO.:

Date: September 15 — Time: 545pm

FOR ACTION:
Paul Leach
Max Friedersdorf
Bobbie Kilberg
Bill Seidman

cc (for information):
Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 15 — Time: asap

SUBJECT:

H.R. 5071 - Extension of present tax withholding rates and maintenance of common trust fund by affiliated banks

ACTION REQUESTED:

___ For Necessary Action — ___ For Your Recommendations

___ Prepare Agenda and Brief — Draft Reply

_x_ For Your Comments — Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

SEP 16 1976

Dear Sir:

This is in response to your request for the views of the Treasury Department on the enrolled bill H.R. 5071.

Section three of the enrolled bill would extend until October 1 the individual income tax withholding tables which expired on September 15. Due to the failure of Congress to complete action on the pending Tax Reform Bill (H.R. 10612), which includes provisions for extending the tax cuts voted last December, a temporary extension of the withholding tables is necessary to prevent an increase in withholding taxes at this time.

The withholding tax extension is being adopted without accompanying tax liability changes and, should Congress fail to enact an extension of the tax cuts, this action could result in some increased mismatching of withholding taxes and the tax liabilities of individual taxpayers. However, the Treasury Department believes that the resulting increased disparity between withholding tax collections and tax liabilities would be manageable. Of course, it is expected that Congress will enact an extension of the tax cuts so that an extension of the present withholding tax rates will, in the long run, facilitate a correct matching of withholding tax collections and tax liabilities. Section three of the bill also makes necessary technical changes in the individual and corporate estimated tax provisions. In the judgment of the Treasury Department, an extension of the withholding tax tables is the most appropriate action at the present time.

Section one of the enrolled bill would amend section 584 of the Internal Revenue Code. Under existing law a bank may maintain a "common trust fund" which fund itself is neither subject to Federal income taxation nor considered a corporation. A fund qualifies as a common trust fund if it is (1) maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed by the bank in its fiduciary capacity, and (2) maintained in conformity with rules and regulations of the Comptroller of the Currency pertaining to the collective investment of trusts. The income (including gains and losses from the sale of property) from the fund, representing amounts contributed from various separate trusts, is included in the gross income of each participant in the common fund on the basis of its proportionate share of the income.

The purpose of the common trust fund provision is to permit diversification in the investment of trust funds for which a bank has fiduciary responsibility.

The Internal Revenue Service has taken the position (Rev. Rul. 70-302) that a fund maintained by a member bank of a bank holding company will not qualify as a "common trust fund" if it accepts contributions to the fund by other member banks (or trust companies) acting in a fiduciary capacity. The Internal Revenue Service holds that under present law the common trust fund must be "maintained" by the bank which contributes the moneys to the fund for investment. The Internal Revenue Service also holds that a fund maintained by various members of a bank holding company will not qualify even if each member bank acts as a cotrustee of the common fund.

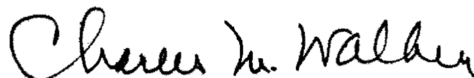
Section one of H.R. 5071 amends the provision dealing with common trust funds (sec. 584) to provide that when banks become members of the same affiliated group (within the meaning of sec. 1504) they are, for purposes of this provision, to be treated as one bank for the period of their affiliation. Consequently, if banks are affiliated (as defined in sec. 1504) they may contribute funds held in their capacity as trustee, executor, administrator or guardian to a common trust fund. Under this section it is necessary that banks contributing money to the fund act as cotrustees of the common trust fund. The affiliated group of banks may maintain a common trust fund if any member of the group serves as trustee.

Section two provides that the amendment applies to taxable years beginning after December 31, 1975.

Treasury supported the enactment of the amendments contained in sections one and two of H.R. 5071. These changes were also supported by the Comptroller of the Currency. Treasury saw no substantive reason for a difference in tax treatment between common trust funds maintained by one bank and similar funds maintained by banks related through stock ownership with a common parent. These provisions will have no effect, or at most a negligible effect, on the revenues.

The Treasury Department recommends that the President approve H.R. 5071.

Sincerely yours,



Charles M. Walker
Assistant Secretary

Director, Office of Management and Budget
Attention: Assistant Director for
Legislative Reference, Legislative
Reference Division
Washington, D.C. 20503

J. Johnston 9-15-76 5:00 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5071 - Extension of present tax withholding rates and maintenance of common trust fund by affiliated banks
Sponsor - Rep. Conable (R) New York

Last Day for Action

Recommend action as soon as possible, since the withholding rates expire September 15, 1976.

Purpose

Extends to October 1, 1976, certain provisions of the Tax Reduction Act of 1975; permits two or more banks which are members of the same affiliated group to be treated as one bank for purposes of maintaining a common trust fund.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval (Informally)

Discussion

A rider to H.R. 5071, adopted by both Houses on September 14, 1976, would continue until October 1, 1976, the individual income tax withholding rates and related individual and corporate estimated tax provisions which are scheduled to expire on September 15, 1976. The extension of these rates and related provisions is required because Congress has failed to complete action on the Tax Reform Act (H.R. 10612). In the absence of this extension, individual withholding rates would return to the higher levels in effect prior to the enactment of the 1975 Tax Reduction Act.

The basic purpose of H.R. 5071 is to amend the Internal Revenue Code to permit two or more banks which are members of the same affiliated group to be treated as one bank for purposes of maintaining a common trust fund.

Current law provides that a common trust fund maintained by a bank shall not be subject to Federal income tax and shall not be considered a corporation. The term "common trust fund" means a fund maintained by a bank:

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations of the Comptroller of the Currency pertaining to the collective investment of trusts.

The purpose of the common trust fund provisions is to permit diversification in the investment of trust funds for which a bank has fiduciary-type responsibility. The funds from various trust funds are commingled in one investment account with income, gains and losses being allocated proportionately.

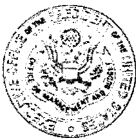
The Internal Revenue Service has taken the position that a fund maintained by a member bank of a bank holding company will not qualify as a common trust fund if it accepts contributions to that fund by other member banks (or trust companies) acting in their capacity as trustee, executor, administrator or guardian. H.R. 5071 would provide that where banks which are members of the same affiliated group establish a combined common trust fund, such a fund would be treated as a common trust fund for tax purposes during the period of affiliation. This change would apply to taxable years beginning after December 31, 1975.

The report of the House Ways and Means Committee on this bill states that the committee believes "that the tax treatment accorded a common fund by banks which are related through stockholdership with a common parent should be the same as where only one bank is involved ..." Treasury supported predecessor legislation in the 93rd Congress.

Naomi R Sweeney

Acting Assistant Director
for Legislative Reference

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

approved B Kilberg 9/15/76

SEP 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5071 - Extension of present tax withholding rates and maintenance of common trust fund by affiliated banks
Sponsor - Rep. Conable (R) New York

Last Day for Action

Recommend action as soon as possible, since the withholding rates expire September 15, 1976.

Purpose

Extends to October 1, 1976, certain provisions of the Tax Reduction Act of 1975; permits two or more banks which are members of the same affiliated group to be treated as one bank for purposes of maintaining a common trust fund.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Treasury	Approval (Informally)

Discussion

A rider to H.R. 5071, adopted by both Houses on September 14, 1976, would continue until October 1, 1976, the individual income tax withholding rates and related individual and corporate estimated tax provisions which are scheduled to expire on September 15, 1976. The extension of these rates and related provisions is required because Congress has failed to complete action on the Tax Reform Act (H.R. 10612). In the absence of this extension, individual withholding rates would return to the higher levels in effect prior to the enactment of the 1975 Tax Reduction Act.

The basic purpose of H.R. 5071 is to amend the Internal Revenue Code to permit two or more banks which are members of the same affiliated group to be treated as one bank for purposes of maintaining a common trust fund.

Current law provides that a common trust fund maintained by a bank shall not be subject to Federal income tax and shall not be considered a corporation. The term "common trust fund" means a fund maintained by a bank:

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations of the Comptroller of the Currency pertaining to the collective investment of trusts.

The purpose of the common trust fund provisions is to permit diversification in the investment of trust funds for which a bank has fiduciary-type responsibility. The funds from various trust funds are commingled in one investment account with income, gains and losses being allocated proportionately.

The Internal Revenue Service has taken the position that a fund maintained by a member bank of a bank holding company will not qualify as a common trust fund if it accepts contributions to that fund by other member banks (or trust companies) acting in their capacity as trustee, executor, administrator or guardian. H.R. 5071 would provide that where banks which are members of the same affiliated group establish a combined common trust fund, such a fund would be treated as a common trust fund for tax purposes during the period of affiliation. This change would apply to taxable years beginning after December 31, 1975.

The report of the House Ways and Means Committee on this bill states that the committee believes "that the tax treatment accorded a common fund by banks which are related through stockholdership with a common parent should be the same as where only one bank is involved ..." Treasury supported predecessor legislation in the 93rd Congress.

Naomi R Sweeney

Acting Assistant Director
for Legislative Reference

Enclosures

94TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 94–892

MAINTENANCE OF COMMON TRUST FUND BY AFFILIATED BANKS

MARCH 11, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 5071]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5071) to amend section 584 of the Internal Revenue Code of 1954 with respect to the treatment of affiliated banks for purposes of the common trust fund provisions of such Code, having considered the same, report favorably thereon with an amendment, and recommend that the bill as amended do pass.

The amendment is as follows:

Page 2, line 5, strike out "1974" and insert "1975".

I. SUMMARY

H.R. 5071 modifies the rules relating to the maintenance of common trust funds by banks. Under present law a bank may maintain a common trust fund (the income of which is taxed to the participants rather than it being taxed as a corporation) for the collective investment and reinvestment of moneys transferred to the bank in its fiduciary capacity. The Internal Revenue Service has taken the position that a fund which accepts contributions from other banks acting in a fiduciary capacity (even though the banks are affiliated) will not qualify as a common trust fund. This bill provides that where banks which are members of the same affiliated group establish a combined common trust fund, this fund is to be treated as a "common trust fund" for tax purposes during the period of the affiliation.

II. GENERAL STATEMENT

Under existing law a bank may maintain a "common trust fund" which fund itself is neither subject to Federal income taxation nor considered a corporation. A fund qualifies as a common trust fund if

57–006

it is (1) maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed by the bank in its fiduciary capacity, and (2) maintained in conformity with rules and regulations of the Comptroller of the Currency pertaining to the collective investment of trusts. The income (including gains and losses from the sale of property) from the fund, representing amounts contributed from various separate trusts, is included in the gross income of each participant in the common fund on the basis of its proportionate share of the income.

The purpose of the common trust fund provision is to permit diversification in the investment of trust funds for which a bank has fiduciary responsibility.

The Internal Revenue Service has taken the position (Rev. Rul. 70–302) that a fund maintained by a member bank of a bank holding company will not qualify as a "common trust fund" if it accepts contributions to the fund by other member banks (or trust companies) acting in a fiduciary capacity. The Internal Revenue Service holds that under present law the common trust fund must be "maintained" by the bank which contributes the moneys to the fund for investment. Your committee also understands that the Internal Revenue Service holds that a fund maintained by various members of a bank holding company will not qualify even if each member bank acts as a cotrustee of the common fund.

Your committee believes that the tax treatment accorded a common fund by banks which are related through stockholdership with a common parent should be the same as where only one bank is involved because the State where it is located permits branch banking. Your committee sees no substantive reason for a difference in tax treatment in these cases and no reason why the pooling of the trust funds for investment purposes should not be permitted. It is your committee's understanding that the Comptroller of the Currency supports this bill and will encounter no additional difficulty in regulating and administering common trust funds maintained by affiliated banks.

Accordingly, the bill amends the provision dealing with common trust funds (sec. 584) to provide that when banks become members of the same affiliated group (within the meaning of sec. 1504) they are, for purposes of this provision, to be treated as one bank for the period of their affiliation. Consequently, if banks are affiliated (as defined in sec. 1504) they may contribute funds held in their capacity as trustee, executor, administrator or guardian to a common trust fund.

It is not necessary under the bill that banks contributing money to the fund act as cotrustees of the common trust fund. The affiliated group of banks may maintain a common trust fund if any member of the group serves as trustee. (Of course, one or more members of the affiliated group may serve as cotrustees, but this is not required.) If a common trust fund in which several affiliated banks participate is later divided because of termination of the affiliation, in those cases where there is not the effect of a sale or exchange or withdrawal, it is intended that the tax consequences of the division be governed by rules similar to those applied under existing rulings relating to the division of common trust funds maintained by a single bank.[1]

[1] See Rev. Rul. 68–77, 1968–1 C.B. 289; Rev. Rul. 70–322, 1970–1 C.B.141.

The bill applies to taxable years beginning after December 31, 1975.

III. Effect on Revenues of the Bill and Vote of the Committee in Reporting the Bill

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on the revenues of this bill. Your committee estimates that this bill will have no effect, or at most a negligible effect, on the revenues. The Treasury Department agrees with this statement.

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the committee on the motion to report the bill. The bill was ordered reported by voice vote.

IV. Other Matters Required To Be Discussed Under House Rules

In compliance with clauses 2(l)(3) and 2(l)(4) of rule XI of the Rules of the House of Representatives, the following statements are made.

With respect to subdivision (A) of clause 3 relating to oversight findings, it was as a result of your committee's oversight activity concerning the rules relating to the maintenance of common trust funds and banks and the application of these rules by the Internal Revenue Service that it concluded that the provisions of this bill are appropriate.

In compliance with subdivision (B) of clause 3 of rule XI of the Rules of the House of Representatives, the committee states that the changes made to this bill involve no new budget authority.

With respect to subdivisions (C) and (D) of clause 3 of rule XI of the Rules of the House of Representatives, your committee advises that no estimate of comparison has been submitted to your committee by the Director of the Congressional Budget Office relative to the changes made by your committee, nor have any oversight findings or recommendations been submitted to your committee by the Committee on Government Operations.

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, your committee states that there is no inflationary impact as a result of the changes from this bill.

V. Changes In Existing Law Made by the Bill as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

SEC. 584. COMMON TRUST FUNDS.

(a) Definitions.—For purposes of this subtitle, the term "common trust fund" means a fund maintained by a bank—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

For purposes of this subsection, two or more banks which are members of the same affiliated group (within the meaning of section 1504) shall be treated as one bank for the period of affiliation with respect to any fund of which any of the member banks is trustee or two or more of the member banks are co-trustees.

(b) Taxation of Common Trust Funds.—A common trust fund shall not be subject to taxation under this chapter and for purposes of this chapter shall not be considered a corporation.

(c) Income of Participants in Fund.—

(1) Inclusions in taxable income.—Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(A) as part of its gains and losses from sales or exchanges of capital assets held for not more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 6 months;

(B) as part of its gains and losses from sales or exchanges of capital assets held for more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 6 months;

(C) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

(2) Dividends and partially tax exempt interest.—The proportionate share of each participant in the amount of dividends to which section 116 applies, and in the amount of partially tax exempt interest on obligations described in section 35 or section 242, received by the common trust fund shall be considered for purposes of such sections as having been received by such participant. If the common trust fund elects under section 171 (relating to amortizable bond premium) to amortize the premium on such obligations, for purposes of the preceding sentence the proportionate share of the participant of such interest received by the common trust fund shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 171 as is attributable to such share.

(d) Computation of Common Trust Fund Income.—The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) after excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) an ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) an ordinary net loss which shall consist of the excess of the deductions over the gross income;

(3) the deduction provided by section 170 (relating to charitable, etc., contributions and gifts) shall not be allowed; and

(4) the standard deduction provided in section 141 shall not be allowed.

(e) ADMISSION AND WITHDRAWAL.—No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) DIFFERENT TAXABLE YEARS OF COMMON TRUST FUND AND PARTICIPANT.—If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the taxable income of the common trust fund, in computing the taxable income of the participant for its taxable year, shall be based upon the taxable income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

(g) NET OPERATING LOSS DEDUCTION.—The benefit of the deduction for net operating losses provided by section 172 shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Secretary or his delegate.

*   *   *   *   *   *   *

O

Calendar No. 1116

94TH CONGRESS 2d Session } SENATE { REPORT No. 94–1183

MAINTENANCE OF COMMON TRUST FUND BY AFFILIATED BANKS

AUGUST 27, 1976.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 5071]

The Committee on Finance, to which was referred the bill (H.R. 5071) to amend section 584 of the Internal Revenue Code of 1954 with respect to the treatment of affiliated banks for purposes of the common trust fund provisions of such Code, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

I. SUMMARY

H.R. 5071 modifies the rules relating to the maintenance of common trust funds by banks. Under present law a bank may maintain a common trust fund (the income of which is taxed to the participants rather than it being taxed as a corporation) for the collective investment and reinvestment of moneys transferred to the bank in its fiduciary capacity. The Internal Revenue Service has taken the position that a fund which accepts contributions from other banks acting in a fiduciary capacity (even though the banks are affiliated) will not qualify as a common trust fund. This bill provides that where banks which are members of the same affiliated group establish a combined common trust fund, this fund is to be treated as a "common trust fund" for tax purposes during the period of the affiliation.

II. GENERAL STATEMENT

Under existing law a bank may maintain a "common trust fund" which fund itself is neither subject to Federal income taxation nor considered a corporation. A fund qualifies as a common trust fund if it is (1) maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed by the bank in its fiduciary

57–010

capacity, and (2) maintained in conformity with rules and regulations of the Comptroller of the Currency pertaining to the collective investment of trusts. The income (including gains and losses from the sale of property) from the fund, representing amounts contributed from various separate trusts, is included in the gross income of each participant in the common fund on the basis of its proportionate share of the income.

The purpose of the common trust fund provision is to permit diversification in the investment of trust funds for which a bank has fiduciary responsibility.

The Internal Revenue Service has taken the position (Rev. Rul. 70-302) that a fund maintained by a member bank of a bank holding company will not qualify as a "common trust fund" if it accepts contributions to the fund by other member banks (or trust companies) acting in a fiduciary capacity. The Internal Revenue Service holds that under present law the common trust fund must be "maintained" by the bank which contributes the moneys to the fund for investment. The committee also understands that the Internal Revenue Service holds that a fund maintained by various members of a bank holding company will not qualify even if each member bank acts as a cotrustee of the common fund.

The committee believes that the tax treatment accorded a common fund by banks which are related through stockholdership with a common parent should be the same as where only one bank is involved because the State where it is located permits branch banking. The committee sees no substantive reason for a difference in tax treatment in these cases and no reason why the pooling of the trust funds for investment purposes should not be permitted. It is the committee's understanding that the Comptroller of the Currency supports this bill and will encounter no additional difficulty in regulating and administering common trust funds maintained by affiliated banks.

Accordingly, the bill amends the provision dealing with common trust funds (sec. 584) to provide that when banks become members of the same affiliated group (within the meaning of sec. 1504) they are, for purposes of this provision, to be treated as one bank for the period of their affiliation. Consequently, if banks are affiliated (as defined in sec. 1504) they may contribute funds held in their capacity as trustee, executor, administrator or guardian to a common trust fund.

It is not necessary under the bill that banks contributing money to the fund act as cotrustees of the common trust fund. The affiliated group of banks may maintain a common trust fund if any member of the group serves as trustee. (Of course, one or more members of the affiliated group may serve as cotrustees, but this is not required.) If a common trust fund in which several affiliated banks participate is later divided because of termination of the affiliation, in those cases where there is not the effect of a sale or exchange or withdrawal, it is intended that the tax consequences of the division be governed by rules similar to those applied under existing rulings relating to the division of common trust funds maintained by a single bank.[1]

The bill applies to taxable years beginning after December 31, 1975.

---

[1] See Rev. Rul. 68-77, 1968-1 C.B. 289; Rev. Rul. 70-322, 1970-1 C.B. 141.

III. Cost of Carrying Out the Bill and Committee Vote

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the effect on the revenues of this bill. The enactment of H.R. 5071 will have no effect, or at most a negligible effect, on revenues. The Treasury Department agrees with this statement.

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote of the Committee on reporting this bill. This bill was ordered favorably reported by the Committee by voice vote.

IV. Changes in Existing Law Made by the Law

In compliance with paragraph 4 of rule XXIX of the Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

SEC. 584. COMMON TRUST FUNDS.

(a) Definitions.—For purposes of this subtitle, the term "common trust fund" means a fund maintained by a bank—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

For purposes of this subsection, two or more banks which are members of the same affiliated group (within the meaning of section 1504) shall be treated as one bank for the period of affiliation with respect to any fund of which any of the member banks is trustee or two or more of the member banks are co-trustees.

(b) Taxation of Common Trust Funds.—A common trust fund shall not be subject to taxation under this chapter and for purposes of this chapter shall not be considered a corporation.

(c) Income of Participants in Fund.—

(1) Inclusions in taxable income.—Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(A) as part of its gains and losses from sales or exchanges of capital assets held for not more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 6 months;

(B) as part of its gains and losses from sales or exchanges of capital assets held for more than 6 months, its proportionate share of the gains and losses of the common trust fund

from sales or exchanges of capital assets held for more than 6 months;

(C) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

(2) DIVIDENDS AND PARTIALLY TAX EXEMPT INTEREST.—The proportionate share of each participant in the amount of dividends to which section 116 applies, and in the amount of partially tax exempt interest on obligations described in section 35 or section 242, received by the common trust fund shall be considered for purposes of such sections as having been received by such participant. If the common trust fund elects under section 171 (relating to amortizable bond premium) to amortize the premium on such obligations, for purposes of the preceding sentence the proportionate share of the participant of such interest received by the common trust fund shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 171 as is attributable to such share.

(d) COMPUTATION OF COMMON TRUST FUND INCOME.—The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) after excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) an ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) an ordinary net loss which shall consist of the excess of the deductions over the gross income;

(3) the deduction provided by section 170 (relating to charitable, etc., contributions and gifts) shall not be allowed; and

(4) the standard deduction provided in section 141 shall not be allowed.

(e) ADMISSION AND WITHDRAWAL.—No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) DIFFERENT TAXABLE YEARS OF COMMON TRUST FUND AND PARTICIPANT.—If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the taxable income of the common trust fund, in computing the taxable income of the participant for its taxable year, shall be based upon the taxable income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

(g) NET OPERATING LOSS DEDUCTION.—The benefit of the deduction for net operating losses provided by section 172 shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund, under regulations prescribed by the Secretary or his delegate.

* * * * * * *

O

H. R. 5071

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To amend section 584 of the Internal Revenue Code of 1954 with respect to the treatment of affiliated banks for purposes of the common trust fund provisions of such Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 584(a) of the Internal Revenue Code of 1954 (relating to common trust funds) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, two or more banks which are members of the same affiliated group (within the meaning of section 1504) shall be treated as one bank for the period of affiliation with respect to any fund of which any of the member banks is trustee or two or more of the member banks are cotrustees.".

SEC. 2. The amendment made by the first section of this Act shall apply to taxable years beginning after December 31, 1975.

SEC. 3. WITHHOLDING; ESTIMATED TAX PAYMENTS.

(a) WITHHOLDING.—

(1) IN GENERAL.—Section 3402(a) of the Internal Revenue Code of 1954 (relating to income tax collected at source) is amended by striking out "September 15, 1976" and inserting in lieu thereof "October 1, 1976".

(2) TECHNICAL AMENDMENT.—Section 209(c) of the Tax Reduction Act of 1975 is amended by striking out "September 15, 1976" and inserting in lieu thereof "October 1, 1976".

(b) ESTIMATED TAX PAYMENTS BY INDIVIDUALS.—Section 6153(g) of such Code (relating to installment payments of estimated income by individuals) is amended by striking out "September 15, 1976" and inserting in lieu thereof "October 1, 1976".

(c) ESTIMATED TAX PAYMENTS BY CORPORATIONS.—Section 6154(h) of such Code (relating to installment payments of estimated income by corporations) is amended by striking out "September 15, 1976" and inserting in lieu thereof "October 1, 1976".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.