

TAXES ON VIRGIN ISLAND SOURCE INCOME; DISABILITY BENEFITS

DECEMBER 21 (legislative day of DECEMBER 19), 1982.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 7093]

The committee of conference on the disagreeing votes of the two Houses on the Senate amendments numbered 2, 3, and 4 to the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes, and on the disagreeing votes of the two Houses on the House amendment to the Senate amendment numbered 1 to such bill, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 3, and 4.

That the Senate recede from its disagreement to the House amendment to the Senate amendment numbered 1 and agree to the same with an amendment as follows:

In lieu to the matter proposed to be inserted by the House amendment to the Senate amendment, insert the following:

SECTION 1. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

(a) *IN GENERAL.*—Subpart D of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to possessions) is amended by inserting after section 934 the following new section:

“SEC. 934A. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

“(a) *GENERAL RULE.*—For purposes of determining the tax liability incurred by citizens and resident alien individuals of the United States, and corporations organized in the United States, to the

Virgin Islands pursuant to this title with respect to amounts received from sources within the Virgin Islands—

“(1) the taxes imposed by sections 871(a)(1) and 881 (as made applicable to the Virgin Islands) shall apply except that ‘10 percent’ shall be substituted for ‘30 percent’, and

“(2) subsection (a) of section 934 shall not apply to such taxes.

“(b) **SUBSECTION (a) RATES NOT TO APPLY TO PRE-EFFECTIVE DATE EARNINGS.**—

“(1) **IN GENERAL.**—Any change under subsection (a)(1), and any reduction under section 934 pursuant to subsection (a)(2), in a rate of tax imposed by section 871(a)(1) or 881 shall not apply to dividends paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction.

“(2) **ORDERING RULE.**—For purposes of paragraph (1), dividends shall be treated as first being paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction (to the extent thereof).”

(b) **WITHHOLDING.**—Subchapter A of chapter 3 of such code (relating to withholding of tax on nonresident aliens and foreign corporations) is amended by adding at the end thereof the following new section:

“**SEC. 1444. WITHHOLDING ON VIRGIN ISLANDS SOURCE INCOME**

“For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 (as modified by section 934A) shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be.”

(c) **TECHNICAL AMENDMENT.**—Subsection (a) of section 934 of such Code is amended by inserting before the period at the end thereof “or in section 934A”.

(d) **CLERICAL AMENDMENTS.**—

(1) The table of sections for subpart D of part III of subchapter N of chapter 1 of such Code is amended by inserting after the item relating to section 934 the following new item:

“Sec. 934A. Income tax rate on Virgin Islands source income.”

(2) The table of sections for subchapter A of chapter 3 of such Code is amended by adding at the end thereof the following new item:

“Sec. 1444. Withholding on Virgin Islands source income.”

(e) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

(2) **WITHHOLDING.**—The amendment made by subsection (b) shall apply to payments made after the date of the enactment of this Act.

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“Continued Payment of Disability Benefits During Appeal

“(g)(1) In any case where—

“(A) an individual is a recipient of disability insurance benefits, or of child’s, widow’s, or widower’s insurance benefits based on disability,

“(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

“(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual’s wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

“(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

“(B) If the Secretary determines that the individual’s appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual’s election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

“(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

“(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

“(B) prior to October 1, 1983.”

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended—

(1) by inserting “(1)” after “(i)”;

(2) by inserting “, subject to paragraph (2)” after “at least every 3 years”; and

(3) by adding at the end thereof the following new paragraph:
 “(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on the Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.”

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.

(a) IN GENERAL.—Section 205(b) of the Social Security Act is amended—

(1) by inserting “(1)” after “(b)”; and

(2) by adding at the end thereof the following new paragraph:
 “(2) In any case where—

“(A) an individual is a recipient of disability insurance benefits, or of child’s, widow’s, or widower’s insurance benefits based on disability,

“(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

“(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary,

the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).

(b) *EFFECTIVE DATE.*—The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.

SEC. 5. CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

SEC. 6. REPORT BY SECRETARY.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

“(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.”

SEC. 7. OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS.

(a) *ADDITIONAL EXEMPTION.*—

(1) Section 334 of the Social Security Amendments of 1977 (Public Law 95-216) is amended by adding at the end thereof the following new subsection:

“(h) In addition, the amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

"(1) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act); and

"(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

"(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

"(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g)."

(2) Section 334(f) of such Act is amended by striking out "The amendments" and inserting in lieu thereof "Subject to subsections (g) and (h), the amendments".

(b) **REPORT BY SECRETARY.**—The Secretary of Health and Human Services shall conduct a study of the provisions of title II of the Social Security Act which require an offset against spouses' and surviving spouses' benefits on account of public pensions, as added by section 334 of the Social Security Amendments of 1977 (taking into account the amendment made by subsection (a) of this section as well as the provisions of such section 334), and shall report to the Congress, no later than May 15, 1983, his recommendations for any permanent legislative changes in such provisions (or in the applicability of such provisions) which he may consider appropriate.

(c) **TECHNICAL AMENDMENTS.**—Subsections (b)(4)(A), (c)(2)(A), (e)(8)(A), (f)(2)(A) and (g)(4)(A) of section 202 of the Social Security Act are each amended by inserting "for purposes of this title" after "as defined in section 210".

(d) **EFFECTIVE DATE.**—The amendments made by subsections (a)

and (c) of this section shall be effective with respect to monthly insurance benefits for months after November 1982.

And the House agree to the same.

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J. J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD GEPHARDT,
JAMES SHANNON,
BILL ARCHER,
JIM MARTIN,

Managers on the Part of the House.

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RUSSELL B. LONG,
HARRY F. BYRD, Jr.,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the Senate amendments numbered 2, 3, and 4 to the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes, and on the disagreeing votes of the two Houses on the House amendment to the Senate amendment numbered 1 to such bill, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME

Present law.—The Virgin Islands Government contends that payments of passive investment income by V.I. persons to U.S. persons are subject to a 30-percent tax (on the gross amount of the payment) and a corresponding withholding obligation. Certain U.S. recipients of such income contend that such payments are subject to neither tax nor withholding. (Similar payments to foreign persons are clearly subject to the tax and the withholding obligation.)

Senate position.—The Senate language (which is identical to the original House language) provides that the rate of V.I. tax on payments of passive investment income from V.I. persons to U.S. persons shall not exceed 10 percent. This treatment would apply to dividend payments out of earnings and profits accumulated in taxable years beginning on or after the date of enactment. The Government of the Virgin Islands would be able to reduce this 10 percent maximum rate in its discretion. The withholding obligation of the payer would in every case correspond to the substantive tax liability of the recipient. Payments to foreign persons would continue to be subject to the 30-percent tax and corresponding withholding.

House amendment.—The House amendment follows the Senate position, but makes two technical changes.

First, the House amendment makes it clear that Congress is taking neither side in the current dispute between U.S. persons and the V.I. Government by striking references to "reductions" in tax.

Second, the House amendment makes it clear that the Virgin Islands will be able to impose and require withholding of a tax of up to 10 percent on payments of passive income to U.S. persons.

Conference agreement.—The conference agreement follows the House amendment with the two technical changes.

CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL

Present law.—A social security disability insurance (DI) beneficiary who is found to be no longer disabled under the provisions of the Social Security Act continues to receive benefits for two months after the month in which his eligibility is determined to have ceased. (As an administrative practice, individuals are now generally found to be “no longer disabled” no earlier than the month in which the individual is notified of the termination decision.)

The individual may request a reconsideration of the decision, and if the termination is upheld, he may appeal the decision to an Administrative Law Judge (ALJ). The individual is not presently eligible for benefits during the appeals process. However, if the initial termination decision is reversed, benefits are paid retroactively.

House bill.—Upon request of the beneficiary, DI benefits and Medicare coverage would continue to be paid through the month preceding the month of the decision pursuant to a hearing before an Administrative Law Judge. These additional DI benefits would be subject to recovery as overpayments, subject to the same waiver provisions now in current law, if the initial termination decision is upheld.

The provision is effective for benefit payments beginning with the first month after the date of enactment for cases where a termination decision has been made before October 1, 1983. In all cases such benefit payments would cease no later than June 1984. For cases where a termination decision was made before the date of enactment and a timely appeal is pending or is filed, benefits could be paid under this provision, but no lump sum back payments would be authorized.

Senate amendment.—Identical to House provision.

Cost effect.—According to the Congressional Budget Office this provision will increase outlays by \$75 million in fiscal years 1983–85. There are no costs beyond those years.

Conference agreement.—The conference agreement follows the House provision.

PERIODIC REVIEWS OF DISABILITY CASES

Present law.—The Social Security Disability Amendments of 1980 required the Secretary of Health and Human Services to review the cases of current disability beneficiaries at least once every three years, beginning in January, 1982, to determine whether they are still disabled. Beneficiaries judged to be permanently disabled were to be excluded from this review.

House bill.—The House bill authorizes the Secretary to slow down the number of cases sent to the State disability agencies for re-examination below the rate required by the 1980 amendments. The Secretary’s determination of the appropriate numbers of cases to be reviewed in each State shall be based on consideration of the backlogs of such pending reviews, projected numbers of new applicants for disability benefits, and projected staffing levels of State

agencies. The State agency must demonstrate a good faith effort to meet appropriate staffing requirements and to process reviews in a timely fashion. The Secretary is to report annually to the House Committee on Ways and Means and the Senate Finance Committee on the determinations made under this section.

Senate amendment.—Same as House bill.

Cost effect.—Negligible.

Conference agreement.—The conference agreement follows the House provision.

REPORT BY SECRETARY

Present law.—There is no requirement for periodic reports to the Congress by the Secretary of Health and Human Services with respect to continuing disability investigations.

House bill.—Requires the Secretary of HHS to report to the Senate Finance Committee and the House Committee on Ways and Means semiannually on the number of: continuing eligibility reviews, termination decisions, reconsideration requests, and termination decisions which are overturned at the reconsideration or hearing level.

The provision is effective upon enactment.

Senate amendment.—Identical to House provision.

Cost effect.—None.

Conference agreement.—The conference agreement follows the House provision.

EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS

Current law.—The Social Security Act provides for initial determinations of disability by the State agencies authorized by the Secretary to make disability decisions, and for continuing reviews of disability by the Secretary or the State agency. The law also provides for a hearing by the Secretary, and subsequent judicial review, for any individual dissatisfied with determinations made by the State agencies or the Secretary.

House bill.—The House bill requires the Secretary to provide, beginning no later than January 1, 1984, opportunity for a face-to-face, evidentiary hearing prior to reconsideration of decisions to terminate benefits for disability beneficiaries. This requirement does not supplant or affect in any way the requirement of existing law for a hearing by an Administrative Law Judge. The provision applies only to reconsiderations of determinations that the beneficiary is not disabled because the physical or mental impairment on which his eligibility is based is found to have ceased, not to have existed or to no longer be disabling.

Senate amendment.—No provision.

Cost effect.—Negligible.

Conference agreement.—The conference agreement follows the House provision.

CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES

Present law.—The Social Security Act provides for initial determinations to be made by the State agency or the Secretary, and for hearings conducted by the Secretary and judicial review after such hearings for those individuals dissatisfied with the earlier decisions.

House bill.—The House bill requires the Secretary to take all steps necessary to insure public understanding of the importance Congress attaches to the face-to-face reconsideration hearings provided in Section 4. The Secretary is required to assure that beneficiaries will receive reasonable notice and information as to the time and place of the reconsideration, of the opportunities to be represented by counsel and to introduce evidence at the reconsideration, and of the importance of submitting all available evidence concerning the case at the reconsideration.

Senate bill.—No provision.

Cost effect.—None.

Conference agreement.—The conference agreement follows the House provision.

MEDICAL EVIDENCE

Present law.—Although current law does not specify a time period for the collection of medical evidence, current procedures, detailed in guidelines used by State agencies, require the Secretary to seek to obtain all medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

Under both the regulations and the guidelines used by State agencies, an individual must meet the prevailing requirements for eligibility and no medical improvement needs to be shown to find an individual no longer eligible for disability benefits.

House bill.—No provision.

Senate amendment.—Requires the Secretary to make every reasonable effort to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated such individuals with respect to his impairment or impairments within the preceding 12-month period. Requires the Secretary to consider all evidence available in the individual's case file relating to such impairment or impairments in making a determination on the case. States that nothing in the preceding sentence shall preclude the Secretary from finding an individual to be ineligible under the terms of the Social Security Act even if such individual's medical condition has not improved or otherwise changed since any prior determination of his disability.

Cost effect.—No estimate made.

Conference agreement.—The conference agreement does not include the Senate provision.

PUBLIC PENSION OFFSET

Present law.—Prior to 1977, social security spouse's benefits were available only to men, who could meet a dependency test and to

women, all of whom were presumed to be dependent. These provisions were declared in March 1977 (*Califano v. Goldfarb*) unconstitutional since they applied differently to men and women.

The Social Security Amendments of 1977 responded to the Goldfarb decision by providing, except for beneficiaries who are covered by the public pension offset exception clause, that social security dependents' benefits which are paid to spouses of retired, disabled, or deceased workers are reduced dollar-for-dollar by an amount equal to any public pension which the spouse receives as a result of his or her own employment by a Federal, state or local government which is not covered by social security. (Non-covered government employment is defined as employment not covered under section 210 of the Social Security Act on the last day the spouse was employed by the government.)

Under the exception clause (which expired December 1, 1982), the offset would not apply if: (1) a beneficiary is either receiving or eligible to receive a government pension based on non-covered employment for any month in the period December 1977 through November 1982, and (2) the beneficiary, at the time of filing for social security dependents' benefits, meets all the requirements for entitlement as they were in effect and being administered in January 1977. The law in January 1977 required men, but not women, to prove they were dependent on their spouses for at least one-half of their support in order to qualify for the spouse benefit.

House bill.—The House bill provides that during the 60 month period beginning with December 1982, the amount of the public pension used for purposes of the public pension offset shall be an amount equal to one-third of the public pension.

Senate amendment.—No provision.

Cost effect.—According to unofficial estimates of the Congressional Budget Office, the House bill would increase outlays by the following amounts (by fiscal years, in millions of dollars):

1983	15
1984	40
1985	65
1986	85
1987	108
1988	30

Conference agreement.—The Conferees agreed that, in lieu of a modification of the public pension offset clause, the public pension offset would not apply to an individual who becomes eligible for a public pension prior to July 1983 if that individual is dependent upon his or her spouse for one-half support. The one-half support test would be applied according to the pre-1977 law, except that it would apply to both men and women.

The amendment would also require the Secretary of Health and Human Services to study the pension offset provisions and to report his recommendation for any permanent legislation that may be appropriate by May 15, 1983.

In addition, the Conferees agreed to specify the definition of non-covered government employment as government employment

which on the last day the spouse was employed, was not covered employment for purposes of title II of the Social Security Act.

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