

Public Law 97-455
97th Congress

An Act

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.

Jan. 12, 1983

[H.R. 7093]

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

Internal
Revenue Code of
1954 and Social
Security Act,
amendments.

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:

26 USC 934A.

“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.

26 USC 1444.

“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."

26 USC 934.

(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."

26 USC 934A
note.

(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.

42 USC 423.

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

42 USC 421.

"(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.

42 USC 1395.

Overpayments.

"(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.

Waiver consideration.

42 USC 404.

“(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

42 USC 421.

“(B) prior to October 1, 1983.”

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

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

42 USC 421.

(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 Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.”

Case number determination, waiver.

Report to congressional committees.

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

Effective date.
42 USC 421 note.

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

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

42 USC 405.

(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).”.

42 USC 405 note.

Ante, p. 2499.

(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.

42 USC 405 note.

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.

Ante, p. 2499.

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:

42 USC 402 note.

“(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—

42 USC 402.

“(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

42 USC 418.

“(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”.

42 USC 402 note.

(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.

Study.

42 USC 401.

91 Stat. 1544.

(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

42 USC 402.

are each amended by inserting "for purposes of this title" after "as defined in section 210".

42 USC 402 note.

(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.

Approved January 12, 1983.

LEGISLATIVE HISTORY—H.R. 7093:

HOUSE REPORTS: No. 97-833 (Comm. on Ways and Means) and No. 97-985 (Comm. of Conference).

SENATE REPORT No. 97-648 (Comm. on Finance).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Sept. 20, considered and passed House.

Dec. 3, considered and passed Senate, amended.

Dec. 14, House concurred in Senate amendment, in another with an amendment, and disagreed to certain amendments.

Dec. 21, Senate and House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 19, No. 2 (1983):
Jan. 12, Presidential statement.