

out "to a corporation" and inserting in lieu thereof "to a corporation (including an investment company)".

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to transfers of property whether made before, on, or after the date of the enactment of this Act.

Mr. WILLIAMS of Delaware. Mr. President, this amendment would strike out section 204. This section has to do with the tax liability of transfers of stock and securities to corporations controlled by transferors. This has been referred to as the swap amendment. The Treasury has confirmed that if the amendment as set forth in the bill is agreed to by the House it will be a wide-open loophole whereby a certain group of investors may completely avoid the capital gains tax.

To cite a specific example, let us take two individuals, one of whom owns a block of General Motors stock which he bought at a very low price as compared to today's high price. Another gentleman has a sizable block of Ford Motor Co. stock which he also brought at prices much lower than today's market. They decide to diversify their holdings so that the holder of General Motors stock will have 50 percent of his holdings in Ford Motor Co. and the holder of the Ford Motor Co. stock will have 50 percent of his investment in General Motors stock.

Ordinarily they would both be subject to a capital gains tax, but under this bill they can set up a special holding company or trust, transfer those shares of stock to this new company, and accept stock of this company in exchange. Therefore, by setting up a trust or a holding company they diversify their stockholdings and in so doing are exempt from any capital gains. They would have diversified their stockholdings whereby each of them would have half of their holdings in General Motors stock and half in Ford Motor stock, as between individual A and individual B. They would therefore diversify their holdings without being subject to a capital gains tax.

This could be done by any number of stockholders with respect to stockholdings in four or five companies. These would be no limit with respect to a free stock exchange or an exchange of certificates.

The law has been that if an individual owns stock in corporation A and wishes to exchange that stock for the stock of corporation B he must pay a capital gains tax based on the value of the stock at the time of the transfer.

Representatives of the Treasury Department appeared before our committee and took a strong position against this amendment as appearing in the bill and even went so far as to indicate that the Treasury might recommend a veto if that provision were left in the bill.

Certainly this is not the time to pass a wide-open loophole in the tax laws.

I hope my amendment, which deletes that section, will be adopted.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LONG of Louisiana. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG of Louisiana. Mr. President, I ask for the yeas and nays on the amendment of the Senator from Delaware.

The yeas and nays were ordered.

Mr. WILLIAMS of Delaware. Mr. President, as far as I am concerned we can proceed to vote. I have outlined the purpose of the amendment. It is to strike from the bill the section which would permit a tax-free exchange of securities through a so-called swap fund arrangement. As has been pointed out, if this provision stays in the bill, in addition to permitting securities to be exchanged tax free it would also make it possible to have a tax-free exchange of real estate for securities or securities for real estate. This is not permitted under existing law. I know of no better way to describe it than to use the words of the Treasury Department when they said that this would be a glaring loophole whereby knowledgeable investors could completely escape the capital gains tax.

I strongly urge the adoption of the amendment.

Mr. McCARTHY. Mr. President, for the sake of the RECORD, and for those Senators who were not here previously, I would argue very strongly that a loophole does not exist in the law with reference to the collection of capital gains.

However, if such a loophole did exist, I do not believe we ought to change it by allowing the Treasury to reverse a ruling which it made in 1960, and to change a situation which it allowed to stand from 1960 until 1966. If there is a loophole, the Treasury has had 5 or 6 years in which to come up here and ask us to pass legislation.

Of course, we could give up all responsibility with reference to taxation, and let the Under Secretary or the Secretary of the Treasury and the Solicitor of the Treasury Department make all our tax laws and tax rulings, but I do not believe we want that.

We examined this matter in the committee, and we decided that the ruling was arbitrary and did not seem to be sustained by law; and that if there was grave concern over the loophole, the Treasury had had 5 years to come up and ask us to close it. It appears the Treasury has decided that it has the prerogative to make such rulings whenever it wants to, without consultation with Con-