

by one person, or a group of persons, solely in exchange for stock or securities in the corporation, and immediately after the exchange the persons, or group of persons, is in control of the corporation.

In 1959 and 1960 and in the forefront of 1961 the Internal Revenue Service ruled that a group of persons holding stock in various companies could contribute this stock to a newly formed mutual fund corporation and receive in exchange for their contribution shares of this mutual fund. These are the so-called swap funds and the Service in these years ruled in 11 cases that there were no tax consequences resulting from the formation of one of these swap funds. It is true that beginning in 1961 the Service has not issued rulings on the tax status of the formation of swap funds. However, many private tax lawyers considered the formation of these funds to be a nontaxable transaction and operating on their advice a number of funds have been formed since that time.

Then, on July 14, 1966, the Treasury for the first time published regulations holding that the formation of these swap funds constituted a taxable transaction. At the time the Treasury took this position it offered closing agreements to existing swap funds which would provide that for past transactions, for all purposes of the tax laws, the formation of these funds would not constitute taxable transactions. In other words, for the future the Treasury applied its position as to what the law said, but because of the uncertainty which had previously existed it did not apply this position for the past. The effect of what Treasury did was to say that for the past, exchanges with swap funds were tax free, but for the future they were taxable.

Those concerned with swap funds initially made representations to members of the Finance Committee to the effect that the new regulations reversed the effect of the law even though there had been no change in the wording of the law. In other words, their position was that the Treasury was legislating by regulation. The majority of the Finance Committee voted to make it clear that swap funds were covered by section 351. I voted against this amendment in committee because I considered swap funds to be a loophole. While I understand the Treasury's opinion, nevertheless, I personally believe the Treasury's regulations do not reflect the clear wording of the law. In my opinion the tax-free formation of swap funds was provided for by the language of section 351.

I am glad to say that the conferees on the Foreign Investors Tax Act completely reversed the position on the Senate Finance Committee amendment. The action taken by the conferees makes it perfectly clear that the formation of swap funds will be viewed as a taxable transaction in all cases where exchanges are

made on or after July 1, 1967. Moreover, in the case of funds requiring registration with the Securities and Exchange Commission, registration statements must be filed by December 31 of this year and the stock of prospective shareholders must be on deposit with the funds by May 1, 1967. It was the view of the conference that the various tax-free exchange provisions of the code should not permit the tax-free diversification of investment assets.

In other words, the conference committee action in this case completely confirms what the Treasury sought to do by regulation. Moreover, it provides a statutory basis for this action which, in my opinion, the regulations of the Treasury did not have. It is true that this will cover funds where registration statements are filed with the SEC up to the end of this year. However, this, too, is in keeping with the concept in the Treasury regulations which provided tax-free treatment for all funds in certain stages of process up to the time of the issuance of the regulations. This provides essentially the same treatment for funds which have been started before the end of this year.

It is also worth pointing out that the conference committee action not only gives a statutory base for the Treasury regulations but that it in several respects provides a tighter rule than did the regulations. For example, under the conference committee action tax-free treatment is denied real estate swap funds and investment companies which have too few shareholders to be required to register with the SEC and the denial applies whether or not brokers or other intermediaries organize the fund where shareholders have rights to redeem their holdings at their option.

The conference committee action results in a much more restrictive provision than the Treasury regulations sought. As a result, it seems clear to me that what we have here is a "loophole closer" instead of a "loophole opener."

H.R. 10

Let us now turn to the third area of complaint with the Foreign Investors Tax Act. I refer here to the so-called H.R. 10 amendment, or the amendment which enlarges the deductions available to self-employed persons where amounts are set aside for their retirement years. I cannot say that I personally like this amendment. After all, the main thing that this amendment does is provide that when these self-employed persons set aside amounts for their retirement, they can deduct the full 10 percent of their wages up to a total of \$2,500, rather than one-half of this amount. I do not like this amendment because the principal provision it repeals was my own amendment several years ago, which I fought for and obtained on the floor of the Sen-