

the *timing* of employer expense deductions and employee taxable income. Broadly stated, these consequences are: employer deduction at the time of payment, and employee tax upon receipt or availability of cash. These give the appearance of tax benefits only when compared to the results under dissimilar forms of employee compensation, such as wages. As the foregoing analysis indicates, *the tax results flowing from qualified pension plans seem appropriate to the nature of the compensation arrangement involved.* [Emphasis added.] This is perhaps best demonstrated by reference to the corresponding tax treatment of employer contributions and employee benefits under the basically similar supplemental unemployment benefit plans, which are not the object of any special code provisions covering employer expense deduction or employee taxable income.¹¹

In his statement before the Subcommittee on Fiscal Policy, Mr. Surrey presented a different interpretation of the general principles of tax law and claimed that the "special tax treatment" for qualified plans resulted in an estimated tax "cost" to the Federal Government of \$3 billion. He said:

I want to make clear that qualified pension plans do get a special tax treatment and that deferral would not automatically follow as a matter of the application of the general principles of tax law.

With regard to the employer's deduction, the general rule is that an amount is deductible under the tax law when there is fixed liability on the employer to make a fixed payment to a definite person. If the employer is on an accrual basis, he may take a deduction even though he does not have to make the payment immediately, but the liability for payment must be fixed.

With regard to an employer's contribution to a pension plan where the employee's benefits are not vested, all that is involved for the employer is the possibility that he may have to make a pension payment to some employee in the future. This possibility of future payment is not sufficient under the general principles of tax law to permit an accrual of the deduction.

With regard to the employee, it would seem clear that if the pension contribution is not vested in the employee, there is no basis for taxing the employee currently at the time that the employer's contribution is made. This is the particular case where, as I pointed out, deductibility to the employer constitutes a particular benefit granted under the present law.

Where the contribution by the employer is vested at the time made, or where it becomes vested at a later point before the employee receives the pension, the general principles of tax law would suggest that the employee should be taxable at that time. It is not controlling that the employee receives no cash money at that time.

¹¹ "The Myth of Special Tax Concessions for Qualified Pension Plans," Iowa Law Review, Spring 1966. Raymond Goetz, pp. 580-581.