CURRENT LEGISLATION

BANKRUPTCY

Although the Bankruptcy Act has not been amended since the last issue of the REVIEW, some very significant additions to, and modifications of, the act are now being considered by Congress. Introduced January 6, 1961 and recently passed by the House, H.R. 1961 redrafts sections 67c and 70c. Section 67c provides for the postponement or invalidity of statutory liens on personal property when not accompanied by possession or levy. H.R. 1961 would amend section 67c to resolve problems created by *In re Quaker City Uniform Company*[1] and other conflicting decisions by restoring certain statutory liens from fourth priority to original first priority position above administrative expenses, wage claims and landlords' liens. The other area dealt with by H.R. 1961 concerns the rights and powers of a trustee as against liens for taxes and involves Section 6323 of the Internal Revenue Code of 1954. H.R. 1961, in amending section 70 of the act, would require the Government to perfect its lien before the date of bankruptcy to obtain a tax lien against the property of the bankrupt.[2]

H.R. 4473, also recently passed by the House, would amend sections 17(a)(1) and 64(a)(4) to allow a limited discharge of, and to restrict the priority of, tax claims in bankruptcy. Taxes that became legally due and owing more than three years before the date of bankruptcy could be discharged except: (1) when the bankrupt failed to file a return required by law, (2) when the taxes were omitted from a return filed by the bankrupt, and (3) when he filed a false and fraudulent return. Priority of taxes as against general unsecured creditors would be limited to those taxes which became due and owing within three years from the date of bankruptcy.[3]

H.R. 7405, another proposed amendment also recently passed by the House, provides for the promulgation of rules of practice and procedure under the Bankruptcy Act. While present section 30 empowers the Supreme Court to prescribe rules, forms, and orders as to procedure under the act, H.R. 7405 would conform rulemaking in bankruptcy to rulemaking in the areas of civil and criminal procedure, admiralty, and the review of decisions of the Tax Court. The Supreme Court would be required to report proposed rules to Congress for examination and possible changes.

Although not within the category of legislation, it would be relevant in view of H.R. 7405 to note that the Supreme Court, by an order dated May 29, 1961, has amended the General Orders and Official Forms in Bankruptcy in a number of important aspects too extensive to mention here. These amendments became effective on July 19, 1961, and are applicable in

1 134 F. Supp. 596 (D.C. Pa. 1955).

2 See generally U.S. Code Cong. & Ad. News, Pamphlet No. 12, pp. x-xii (Aug. 20, 1961) for further coverage of this proposed amendment.

3 Ibid.

all proceedings pending on that date except where not practical or when injustice would result.[4]

PAUL G. GARRITY

CORPORATE LEGISLATION

The past year, like its predecessor, was rich in the volume of published writings in the corporate field. There were interesting analyses of the new corporation laws in many states,[1] in addition to the traditional law review materials.[2]

Probably the most important statutory developments during the past year occurred in New York,[3] Utah,[4] Wyoming.[5] On January 1, 1962, a new Utah Business Corporation Act takes effect. The new act (S.B. No. 4, approved March 1, 1961) follows very closely the Model Business Corporation Act.[6] The following discussion indicates the few areas where Utah departed

[4] Krause, Developments in Bankruptcy Law 16, Bus. Law. 789, 790 (1961).

[1] Annual Survey of Georgia Law: June 1959-April 1960: Business Associations, J. R. Young, Jr., 12 Mercer L. Rev. 22 (Fall 1960); Annual Survey of Virginia Law: Business Associations, G. D. Gibson, G. C. Freeman, Jr., 46 Va. L. Rev. 1481 (N'60); Business Associations: 1960 Survey of New York Law, B. S. Prunty, Jr., 35 N.Y.U.L. Rev. 1467 (D'60); Massachusetts Appraisal Statute and Minority Stockholders, R. W. Bozenhard, Jr., 45 Mass. L.Q. 27 (O'60).

[2] Weiss, "California Franchise Tax as Applied to Commencing and Dissolving Corporations," 12 Hastings L.J. 93 (1960) (suggested changes in the California franchise tax law); Comment, A Consideration of the Nebraska Corporation Law in the Light of the A.B.A.'s Model Business Corporation Act, 39 Neb. L. Rev. 575 (1960); Comment, North Carolina 1959 Session Laws—Corporations, 38 N.C.L. Rev. 159 (1960); Note, A Comparison of Corporate Share Issuance and Repurchase Under Present and Proposed Utah Law, 7 Utah L. Rev. 71 (1960).

[3] The new "Business Corporation Law" passed by the New York legislature in the closing days of its session was approved by the Governor on April 24, 1961 (ch. 855, Laws of 1961). The new law takes effect on April 1, 1963. It will replace the General Corporation Law of 1929 and the Stock Corporation Law of 1923.

The new law will receive further analysis and comment in the next issue of this law review. For a preliminary analysis of this law see: Rohrlich, "New York's Proposed Business Corporation Law," 15 Record of N.Y.C.B.A. 309 (1960); see also N.Y. Leg. Doc. No. 15, at 7, 183d Sess. (1960).

[4] A new Utah Corporation Law, effective January 1, 1962, is based on the Model Business Corporation Act. Further comment on this law is to be found infra.

[5] On July 1, 1961, a new Wyoming Business Corporation Act takes effect. The new act, like the Utah act, will receive further analysis infra.

[6] The Model Business Corporation Act is a comprehensive analysis of the business corporations acts of all the states, the District of Columbia and Puerto Rico. The text takes the form of annotations in which their laws are compared with the provisions of the Model Act. Included are references to selected cases with appropriate commentary and bibliographical notes. The work was the result of a joint venture between the American Bar Foundation and the American Bar Association.

Already the Model Business Corporation Act has had considerable influence on American corporation law. It has been utilized as the basis for the new business corporation acts of Wisconsin (1951), Oregon (1953), District of Columbia (1954), Texas (1955), North Carolina (1955), Virginia (1956), North Dakota (1957), Alaska (1957),