Calendar No. 2472

84TH CONGRESS, 2d Session | SENATE | REPORT No. 2438

AMENDING THE INTERNAL REVENUE CODES OF 1939 AND 1954

JULY 9, 1956.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 9083]

The Committee on Finance, to whom was referred the bill (H. R. 9083) to amend the Internal Revenue Code of 1954 to extend the period for amortization of grain-storage facilities, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) section 169 of the Internal Revenue Code of 1954 (relating to amortization of grain-storage facilities) is amended—

(1) by striking out in subsection (d) thereof "December 31, 1956," wherever appearing therein, and inserting in lieu thereof "December 31, 1958"; and

(2) by adding at the end thereof the following new subsection:

"(h) CROSS REFERENCE.—

"For special rule with respect to gain derived from the sale or exchange of property the adjusted basis of which is determined with regard to this section, see section 1238."

(b) Section 1238 of such Code (relating to amortization in excess of depreciation) is amended by inserting after "section 168 (relating to amortization deduction of emergency facilities)" the following: "or section 169 (relating to amortization deduction of grain-storage facilities)."

(c) The amendment made by subsection (b) shall apply only with respect to sales or exchanges of property on or after the date of the enactment of this Act.

SEC. 2. Section 172 (f) of the Internal Revenue Code of 1954 (relating to net operating loss deduction) is hereby amended by adding at the end thereof the following new paragraph:

"(3) The net operating loss deduction shall be, in lieu of the amount specified in section 122 (c) of the Internal Revenue Code of 1939, the sum of—

"(A) that portion of the net operating loss deduction for such year, computed as if subsection (a) of this section were applicable to the taxable year, which the number of days in the taxable year after December 31, 1953 bears to the total number of days in such year, and

"(B) that portion of the net operating loss deduction for the taxable year, computed under section 122 (c) of the Internal Revenue Code of

1939 as if this paragraph had not been enacted, which the number of days in the taxable year before January 1, 1954, bears to the total number of days in such year.

A corresponding pro rata computation (notwithstanding subsection (e)) shall also be made in determining the adjustments to the taxable income of such taxable year for the purposes of the second sentence of subsection (b) (2)."

SEC. 3. (a) Section 1234 of the Internal Revenue Code of 1954 (relating to options to buy or sell) is amended by striking out "a privilege or option to buy or sell property" and inserting in lieu thereof "a privilege or option, acquired after February 28, 1954, to buy or sell property."

(b) The amendment made by subsection (a) shall be effective as if enacted as an original part of the Internal Revenue Code of 1954.

SEC. 4. Section 1321 of the Internal Revenue Code of 1954 (relating to inventory liquidation of LIFO inventories) is amended by striking out "January 1, 1956" and inserting in lieu thereof "January 1, 1957".

SEC. 5. (a) Section 4272 of the Internal Revenue Code of 1954 (relating to exemptions from the tax on the transportation of property) is amended by adding at the end thereof the following new subsection:

"(f) FARM COMMODITIES.—The tax imposed by section 4271 shall not apply to amounts paid for the transportation by or for the owner, tenant, or operator of a farm of an agricultural commodity (including livestock and poultry) in continuous movement from the farm on which such commodity was produced to a processing or distributing plant located within the local marketing area for such commodity."

(b) Section 3475 of the Internal Revenue Code of 1939 (relating to the tax on the transportation of property) is amended by adding at the end thereof the following new subsection:

"(f) FARM COMMODITIES.—The tax imposed by this section shall not apply to amounts paid by or for the owner, tenant, or operator of a farm for the transportation of an agricultural commodity (including livestock and poultry) in continuous movement from the farm on which such commodity was produced to a processing or distributing plant located within the local marketing area for such commodity."

(c) (1) The amendment made by subsection (a) shall apply with respect to amounts paid after December 31, 1954. The amendment made by subsection (b) shall apply with respect to amounts paid after November 30, 1942, for transportation which begins after such date.

(2) No interest shall be allowed or paid in respect of any overpayment of tax resulting from the amendments made by this section.

Amend the title so as to read:

An Act to amend the Internal Revenue Code of 1954 to extend the period within which grain-storage facilities may be constructed in order to qualify for rapid amortization, and for other purposes.

SECTION 1. AMORTIZATION OF GRAIN-STORAGE FACILITIES

Subsection (a) of section 1 of this bill, which was adopted by your committee, extends the benefit of the 5-year amortization period to grain-storage facilities constructed or adapted after December 31, 1956, and before January 1, 1959. Except for the addition of the cross reference to section 1238 of the 1954 Code, this subsection corresponds to the bill as it passed the House.

Section 169 of existing law allows the cost of the construction of grain-storage facilities, or the cost of adapting existing facilities to the storage of grain, to be deducted, for income tax purposes, over a period of 60 months beginning with the month following the month in which the facility was completed or adapted, or with the succeeding taxable year. However, this relief is granted only where the construction or adaptation occurred after December 31, 1952, and before January 1, 1957. Since the shortage of facilities for the storing of grain is still acute, your committee believes, as did the House Ways and Means Committee, that it is desirable to extend the period for construction

of grain-storage facilities or the adaptation of existing buildings for the storage of grain. Accordingly, the period in which such construction or adaptation can be made is extended from December 31, 1956, to January 1, 1959, so that such construction or adaptation can receive the benefit of the 5-year writeoff now allowed under existing law. It is believed that the extension will be of special benefit to the farmer who needs grain-storage facilities.

Subsections (b) and (c) of section 1 of this bill, which were added by your committee, amend section 1238 of existing law to provide that gain from the sale or exchange of a grain-storage facility occurring on or after the date of enactment of this bill shall be considered as ordinary income to the extent that the gain represents the excess of the amortization allowed under section 169 of the 1954 Code over depreciation otherwise allowable with respect to such facility. Presently, under section 1238 of the 1954 Code this rule is applicable to sales and exchanges of emergency facilities the cost of which also may be written off over a 5-year period. Your committee has extended this provision to sales of grain-storage facilities at the request of the Treasury Department in order that sales and exchanges of both emergency facilities and grain-storage facilities receive the same tax treatment.

SECTION 2. NET OPERATING LOSS DEDUCTION IN THE CASE OF TAXABLE YEARS BEGINNING IN 1953 AND ENDING IN 1954

Section 2 of this bill, which was added by your committee, changes the effective date of the 1954 Code with respect to a net operating loss deduction for a year beginning in 1953 and ending in 1954 so as to parallel the treatment accorded the computation of a net operating loss which arises in such year.

Under your committee's amendment, the net operating loss deduction for a 1953–54 fiscal year would be computed under both the 1954 and 1939 Code rules. The amount of the net operating loss deduction allowed depends on the relative portions of the year which precede or are a part of the calendar year 1954. The effect of this section of the bill is to apply the 1954 Code rules to that part of the year beginning January 1, 1954, and to apply the 1939 Code rules to the part of the year preceding that date. Under existing law, the net operating loss deduction for the entire 1953–54 fiscal year is subject to the more severe economic income modifications of the 1939 Code, such as adjustments for percentage depletion, the dividends received deduction, and tax-exempt interest. No such adjustments will be made under this section of the bill to that part of the year falling in 1954, following the taxable income approach of the 1954 Code.

This provision also provides that there will be a similar pro rata computation of the adjustments to the 1953–54 fiscal year income in determining the unabsorbed amount of a net operating loss deduction which may be carried over to another year. It is anticipated that the Secretary of the Treasury or his delegate will implement this provision with regulations consistent with the purposes of this section of the bill, treating 1953–54 fiscal years as being subject in part to the 1939 Code rules and in part to the 1954 Code rules.

Under existing law, the present differences in rules between the computation of the net operating loss and the computation of the net

operating loss deduction produces some anomalous results. For example, under existing law the taxpayer may have a fiscal 1953–54 year which results in a net operating loss that may be carried over, but from the standpoint of a carryback of a 1956 loss to that year the computation required for the 1953–54 year may result in sufficient economic net income so as to absorb in whole or in part the 1954 loss. This would happen where the taxpayer had significant amounts of percentage depletion, dividends, or tax-exempt interest in the 1953–54 fiscal year. Contrary to the determination of a loss for that year certain modifications, such as that for percentage depletion, dividends received deduction, and tax-exempt interest are required in the computation of the net operating loss deduction. Your committee's amendment eliminates this anomaly by providing similar rules for both the net operating loss arising in a fiscal 1953–54 year and a net operating loss deduction resulting from losses carried to that year.

SECTION 3. OPTIONS TO BUY AND SELL

Section 3 of this bill, which was added by your committee, provides that section 1234 of the 1954 code (relating to options to buy or sell) is to apply only to options acquired after February 28, 1954.

Under the general provisions of the 1939 Code an option, like any other property right, was considered subject to the general capital-gains provisions. Hence, its sale may give rise to capital gain or loss where the holder was not in the business of dealing with such options. As to a loss resulting from the failure to exercise an option, section 117 (g) (2) of the 1939 Code provided that such loss was a short-term capital loss.

This area of the tax laws was changed by section 1234 of the 1954 Code which provided that the character of the transaction with respect to the option would be determined by reference to the character of the property to which the option related. Thus, options relating to noncapital assets would, if sold, give rise to ordinary gain or loss; and where a loss arose on the failure to exercise such an option, the loss would be treated as an ordinary loss. Likewise, options would be treated as capital assets where the property to which they relate is a capital asset. Both the House and Senate committee reports with respect to section 1234 of the 1954 Code stated that the new rules contained in that section would apply only to options acquired after February 28, 1954. However, section 1234 itself contained no such provision.

In order to carry out the express intent of the House and Senate committee reports under the 1954 Code, your committee has provided that section 1234 of the 1954 Code is to apply only to options acquired after February 28, 1954. This amendment shall be effective as if it had been enacted as part of the 1954 Code.

ONE-YEAR EXTENSION OF SECTION 4. REPLACEMENT PERIOD FOR LIFO INVENTORY

Section 4 of the bill, which was added by your committee, extends for 1 additional year the replacement period for inventories valued on the last-in, first-out (LIFO) basis which was liquidated involuntarily during the period of shortages resulting from the Korean war crisis.

Under existing law, taxpayers had to replace their LIFO inventories in a year ending before January 1, 1956, in order to adjust their taxes in the year of liquidation under section 1321 of the 1954 Code and corresponding provisions of the 1939 Code. In view of the continuing shortages in certain commodities, such as in copper and nickel, your committee believes that it is proper to extend the replacement period 1 year to years ending before January 1, 1957.

This section of the bill follows recommendations made by Secretary of Commerce Weeks and Secretary of the Treasury Humphrey. Secretary Humphrey wrote the following letter on this matter to the chairman of you committee:

NOVEMBER 10, 1955.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

MY DEAR SENATOR BYRD: I have received a letter from Secretary Weeks recommending an extension of the December 31, 1955, date in the tax law for the replacement of LIFO inventories which were liquidated through December 31, 1954, during the period of shortages resulting from the Korean crisis. Section 1321 of the Internal Revenue Code, which carries forward a similar provision of the 1939 code, provides for the adjustment of tax returns where such an inventory liquidation is followed by replacement of LIFO inventories prior to the end of this year. This provision is equitable and is the desirable economic result of avoiding artificial pressures for inventory replacement during periods of shortage. It is now apparent that shortages will continue on certain commodities through the remainder of this calendar year, and an extension of the replacement date would accordingly appear desirable.

Since it will, of course, be impossible to have any legislation before the end of this year, I am using this means of indicating at this time the position of the Treasury Department on the subject. I am taking the liberty of sending a copy of this letter to Senator Millikin, and I am sending a similar letter to Mr. Cooper, with a copy to Mr. Reed.

Sincerely yours,

GEORGE M. HUMPHREY,
Secretary of the Treasury.

SECTION 5. APPLICATION OF TAX ON TRANSPORTATION OF PROPERTY TO FARM COMMODITIES

Section 5 of this bill, which was added by your committee, provides that the tax on transportation of property imposed by the 1939 and 1954 Codes shall not apply to amounts paid by or for the owner, tenant, or operator of a farm for the transportation of an agricultural commodity (including livestock and poultry) from the farm where such commodity was raised to a processing or distributing plant located within the local marketing area of such commodity.

Up to the present time, in many cases no tax was collected on amounts paid for transportation of this type, but it is possible that under present law the Internal Revenue Service will now assess deficiencies on amounts paid in back years and require that the tax be collected on all amounts paid in the future. Under the provision adopted by your committee, amounts paid for the transportation of

agricultural commodities would be exempt if the transportation proceeds in a continuous movement from the farm where such commodity was raised to a processing or distributing plant located within the local marketing area of such commodity.

The exemption applies only if the transportation begins at the place where the agricultural commodity was raised and ends at the processing or distributing plant, and the commodity must be in "continuous movement" from the farm to the plant. Whether the commodity is in "continuous movement" is to be determined by standards similar to those prescribed by the regulations under the 1939 Code (and generally applicable under the 1954 Code) in determining whether transportation of property intended for export is exempt. (See Regulations 113, secs. 143.30 and 143.31.)

Under this provision the exemption for agricultural commodities is limited to the transportation from the farm to the marketing or processing plant, and it cannot apply in the case of transportation from, for example, the processing plant to the distributor. Also, the exemption will apply only if the processing or distributing plant is located in the local marketing area of the commodity transported. Such a plant is considered to be in the local marketing area of the farm on which the commodity is raised if such commodities produced in the area of such farm are ordinarily transported to such distributing or processing plants.

The amendment made by subsection (a) applies to all transportation of the type described to which the transportation tax on property imposed under the 1954 code applies. The amendment made by subsection (b) similarly applies to all transportation subject to tax imposed by the 1939 code. It is expected that very few refunds will be made pursuant to the changes made by this section, and, in any event, no interest will be allowed or paid in respect of any overpayment.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics, existing law in which no change is proposed is shown in roman):

THE INTERNAL REVENUE CODE OF 1939

* * * * * * *

SEC. 3475. TRANSPORTATION OF PROPERTY.

* * * * * * *

(f) FARM COMMODITIES.—The tax imposed by this section shall not apply to amounts paid by or for the owner, tenant, or operator of a farm for the transportation of an agricultural commodity (including livestock and poultry) in continuous movement from the farm on which such commodity was produced to a processing or distributing plant located within the local marketing area for such commodity.

* * * * * * *

THE INTERNAL REVENUE CODE OF 1954

* * * * * * *

Chapter 1—Normal Taxes and Surtaxes

* * * * * * *

SUBCHAPTER B—COMPUTATION OF TAXABLE INCOME

* * * * * * *

Part VI—Itemized Deductions for Individuals and Corporations

* * * * * * *

SEC. 169. AMORTIZATION OF GRAIN-STORAGE FACILITIES

* * * * * * *

(d) DEFINITION OF GRAIN-STORAGE FACILITY.—For purposes of this section, the term "grain-storage facility" means—

(1) any corn crib, grain bin, or grain elevator, or any similar structure suitable primarily for the storage of grain, which crib, bin, elevator, or structure is intended by the taxpayer at the time of his election to be used for the storage of grain produced by him (or, if the election is made by a partnership, produced by the members thereof); and

(2) any public grain warehouse permanently equipped for receiving, elevating, conditioning, and loading out grain,

the construction, reconstruction, or erection of which was completed after December 31, 1952 and on or before [December 31, 1956] *December 31, 1958*. If any structure described in clause (1) or (2) of the preceding sentence is altered or remodeled so as to increase its capacity for the storage of grain, or if any structure is converted, through alteration or remodeling, into a structure so described, and if such alteration or remodeling was completed after December 31, 1952, and on or before [December 31, 1956] *December 31, 1958*, such alteration or remodeling shall be treated as the construction of a grain-storage facility. The term "grain-storage facility" shall include only property of a character which is subject to the allowance for depreciation provided in section 167. The term "grain-storage facility" shall not include any facility any part of which is an emergency facility within the meaning of section 168 of this title.

* * * * * * *

(*h*) *CROSS REFERENCE.*—

For special rule with respect to gain derived from the sale or exchange of property the adjusted basis of which is determined with regard to this section, see section 1238.

* * * * * * *

SEC. 172. NET OPERATING LOSS DEDUCTION.

* * * * * * *

(f) TAXABLE YEARS BEGINNING IN 1953 AND ENDING IN 1954.—

* * * * * * *

(3) The net operating loss deduction shall be, in lieu of the amount specified in section 122 (c) of the Internal Revenue Code of 1939, the sum of—

(A) that portion of the net operating loss deduction for such year, computed as if subsection (a) of this section were applicable to the taxable year, which the number of days in the taxable year after December 31, 1953 bears to the total number of days in such year, and

(B) that portion of the net operating loss deduction for the taxable year, computed under section 122 (c) of the Internal Revenue Code of 1939 as if this paragraph had not been enacted, which the number of days in the taxable year before January 1, 1954, bears to the total number of days in such year.

A corresponding pro rata computation (notwithstanding subsection (e)) shall also be made in determining the adjustments to the taxable income of such taxable year for the purposes of the second sentence of subsection (b) (2).

* * * * * * *

SUBCHAPTER P—CAPITAL GAINS AND LOSSES

* * * * * * *

Part IV—Special Rules for Determining Capital Gains and Losses

* * * * * * *

SEC. 1234. OPTIONS TO BUY OR SELL.

Gain or loss attributable to the sale or exchange of, or loss on failure to exercise, [a privilege or option to buy or sell property] *a privilege or option, acquired after February 28, 1954, to buy or sell property* which in the hands of the taxpayer constitutes (or if acquired would constitute) a capital asset shall be considered gain or loss from the sale or exchange of a capital asset; and, if the loss is attributable to failure to exercise such privilege or option, the privilege or option shall be deemed to have been sold or exchanged on the day it expired. This section shall not apply to losses on failure to exercise options described in section 1233 (c).

* * * * * * *

SEC. 1238. AMORTIZATION IN EXCESS OF DEPRECIATION.

Gain from the sale or exchange of property, to the extent that the adjusted basis of such property is less than its adjusted basis determined without regard to section 168 (relating to amortization deduction of emergency facilities) *or section 169 (relating to amortization deduction of grain-storage facilities)*, shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231.

* * * * * * *

SUBCHAPTER Q—READJUSTMENT OF TAX BETWEEN YEARS AND SPECIAL LIMITATIONS

* * * * * * *

Part III—Involuntary Liquidation and Replacement of LIFO Inventories

* * * * * * *

SEC. 1321. INVOLUNTARY LIQUIDATION OF LIFO INVENTORIES.

(a) ADJUSTMENT OF TAXABLE INCOME AND RESULTING TAX.—If, for any taxable year ending after June 30, 1950, and before January 1, 1955, the closing inventory of a taxpayer inventorying goods under the method provided in section 22 (d) of the Internal Revenue Code of 1939 reflects a decrease from the opening inventory of such goods for such year, and if the taxpayer elects, at such time and in such manner and subject to such regulations as the Secretary or his delegate may prescribe, to have this section apply, and if it is established to the satisfaction of the Secretary or his delegate, in accordance with such regulations, that such decrease is attributable to the involuntary liquidation of such inventory as defined in section 22 (d) (6) (B) of the Internal Revenue Code of 1939 (as modified by subsection (b) of this section), and if the closing inventory of a subsequent taxable year, ending before [January 1, 1956] *January 1, 1957*, reflects a replacement, in whole or in part, of the goods so previously liquidated, then the taxable income of the taxpayer otherwise determined for the year of such involuntary liquidation shall be increased by an amount equal to the excess, if any, of the aggregate cost of such goods reflected in the opening inventory of the year of involuntary liquidation over the aggregate replacement cost, or decreased by an amount equal to the excess, if any, of the aggregate replacement cost of such goods over the aggregate cost thereof reflected in the opening inventory of the year of the involuntary liquidation. The taxes imposed by this chapter (and by chapters 1 and 2 of the Internal Revenue Code of 1939) for the year of such liquidation, for preceding taxable years, and for all taxable years intervening between the year of liquidation and the year of replacement shall be redetermined, giving effect to such adjustments. Any increase in such taxes resulting from such adjustments shall be assessed and collected as a deficiency but without interest, and any overpayment so resulting shall be credited or refunded to the taxpayer without interest.

* * * * * * *

Chapter 33—Facilities and Services

* * * * * * *

SUBCHAPTER C—TRANSPORTATION

* * * * * * *

Part II—Property

* * * * * * *

SEC. 4272. EXEMPTIONS.

* * * * * * *

(f) FARM COMMODITIES.—The tax imposed by section 4271 shall not apply to amounts paid for the transportation by or for the owner, tenant, or operator of a farm of an agricultural commodity (including livestock and poultry) in continuous movement from the farm on which such commodity was produced to a processing or distributing plant located within the local marketing area for such commodity.

O