86TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2005

PUBLIC DEBT AND TAX RATE EXTENSION ACT OF 1960

JUNE 25, 1960.—Ordered to be printed

Mr. MILLS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 12381]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12381) to increase for one-year period the public debt limit set forth in section 21 of the Second Liberty Bond Act and to extend for one year the existing corporate normal-tax rate and certain excise-tax rates, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 2.

That the House recede from its disagreement to the amendment of the Senate numbered 1 and agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 301. INVESTIGATION OF, AND REPORTS ON, TREATMENT OF ENTERTAINMENT AND CERTAIN OTHER EXPENSES.

(a) INVESTIGATION AND REPORT BY JOINT COMMITTEE ON INTERNAL REVENUE TAXATION.—The Joint Committee on Internal Revenue Taxation is hereby authorized and directed to make a full and complete investigation and study of the operation and effects of present law, regulations, and practices relating to the deduction, as ordinary and necessary business expenses, of expenses for entertainment, gifts, dues or initiation fees in social, athletic, or sporting clubs or organizations, and similar or related items. The Joint Committee shall report to the House of Representatives and to the Senate the results of its investigation and study as soon as practicable during the 87th Congress, together with its recom-

mendations for any changes in the law and administrative practices which in its judgment are necessary or appropriate.

(b) REPORT BY SECRETARY OF THE TREASURY.—The Secretary of the Treasury is hereby authorized and directed to report as soon as practicable during the 87th Congress to the House of Representatives and to the Senate the results of the enforcement program of the Internal Revenue Service (announced in Technical Information Release 221, dated April 4, 1960) relating to the deductions, as ordinary and necessary business expenses, of expenses for entertainment, travel, yachts, hunting lodges, club dues, and similar or related items, together with such recommendations with respect thereto as he considers necessary or appropriate to avoid misuse of the business expense deduction.

(c) CONSULTATION OF STAFFS.—The staff of the Joint Committee on Internal Revenue Taxation, and the staff of the Secretary of the Treasury, shall consult and cooperate with each other in performing any duties assigned to carry out the purposes of this section.

And the Senate agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 302. DEPLETION RATE FOR CERTAIN CLAYS; TREATMENT PROCESSES CONSIDERED AS MINING FOR COMPUTING PERCENTAGE DEPLETION IN THE CASE OF MINERALS AND ORES.

(a) DEPLETION RATE FOR CERTAIN CLAYS.—Subsection (b) of section 613 of the Internal Revenue Code of 1954 (relating to percentage depletion rates) is amended as follows:

(1) Paragraph (3) is amended to read as follows:

"(3) 15 percent—

"(A) metal mines (if paragraph (2)(B) does not apply), rock asphalt, and vermiculite; and

"(B) if paragraph (5)(B) does not apply, ball clay, bentonite, china clay, sagger clay, and clay used or sold for use for purposes dependent on its refractory properties."

(2) Paragraph (5) is amended to read as follows:

"(5) 5 percent—

"(A) gravel, mollusk shells (including clam shells and oyster shells), peat, pumice, sand, scoria, shale, and stone, except stone described in paragraph (6);

"(B) clay used, or sold for use, in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products; and

"(C) if from brine wells—bromine, calcium chloride, and magnesium chloride."

(3) Paragraph (6) is amended by striking "refractory and fire clay,".

(b) TREATMENT PROCESSES CONSIDERED AS MINING.—Subsection (c) of section 613 of the Internal Revenue Code of 1954 (relating to the definition of gross income from property) is amended as follows:

(1) By amending paragraph (2) to read as follows:

"(2) MINING.—The term 'mining' includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary or his delegate finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills."

(2) By striking out paragraph (4) and inserting in lieu thereof the following new paragraphs:

"(4) TREATMENT PROCESSES CONSIDERED AS MINING.—The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:

"(A) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;

"(B) in the case of sulfur recovered by the Frasch process—cleaning, pumping to vats, cooling, breaking, and loading for shipment;

"(C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and ores or minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, sintering, and substantially equivalent processes to bring to shipping grade and form, and loading for shipment;

"(D) in the case of lead, zinc, copper, gold, silver, uranium, or fluorspar ores, potash, and ores or minerals which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit;

"(E) the pulverization of talc, the burning of magnesite, the sintering and nodulizing of phosphate rock, and the furnacing of quicksilver ores;

"(F) in the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

"(G) in the case of clay to which paragraph (5)(B) of subsection (b) applies—crushing, grinding, and separating the mineral from waste, but not including any subsequent process; and

"(H) any other treatment process provided for by regulations prescribed by the Secretary or his delegate which, with respect to the particular ore or mineral, is not inconsistent with the preceding provisions of this paragraph.

"(5) TREATMENT PROCESSES NOT CONSIDERED AS MINING.—Unless such processes are otherwise provided for in paragraph (4) (or are necessary or incidental to processes so provided for), the following treatment processes shall not be considered as 'mining': electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping."

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be applicable only with respect to taxable years beginning after December 31, 1960.

And the Senate agree to the same.

Amend the title so as to read: "An Act to increase for a one-year period the public debt limit set forth in section 21 of the Second Liberty Bond Act and to extend for one year the existing corporate normal-tax rate and certain excise-tax rates, and for other purposes."

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AIME J. FORAND,
CECIL R. KING,
THOMAS J. O'BRIEN,
N. M. MASON,
JOHN W. BYRNES,
HOWARD H. BAKER,
Managers on the Part of the House.

HARRY F. BYRD,
ROBT. S. KERR,
J. ALLEN FREAR, Jr.,
JOHN J. WILLIAMS,
FRANK CARLSON,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12381) to increase for 1-year period the public debt limit set forth in section 21 of the Second Liberty Bond Act and to extend for 1 year the existing corporate normal-tax rate and certain excise-tax rates, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: This is a technical amendment adding to the bill a new heading "Title III—Miscellaneous Provisions." The House recedes.

Amendment No. 2: Section 34 of the Internal Revenue Code of 1954 provides that there shall be allowed (subject to the limitations provided in the law) to an individual, as a credit against the income tax imposed by subtitle A of the code for the taxable year, an amount equal to 4 percent of the dividends received from domestic corporations which are included in gross income. Senate amendment No. 2 added a new section to the bill which provided, effective with respect to taxable years beginning after December 31, 1960, for the repeal of section 34 of the Internal Revenue Code of 1954. The Senate recedes.

Amendment No. 3: This amendment added a new section 302 to the bill relating to the disallowance, as trade or business expenses, of deductions of certain expenditures for entertainment, gifts, and club dues.

Subsection (a) of the new section 302 amended section 162 of the 1954 Code (relating to trade or business expenses) to provide that no deduction was to be allowed under section 162(a) of the code for any expenses paid or incurred for—

(1) entertainment (unless entertainment is the trade or business of the taxpayer and the expenses are paid or incurred to further such trade or business), except that the expenses paid or incurred for food or beverages for the primary purpose of providing an opportunity to advance the trade or business of the taxpayer may be deducted, if such expenses would have been deductible prior to the enactment of this new provision;

(2) gifts, except that any gift by the taxpayer in the course of his trade or business to any person may be deducted in an amount not exceeding $10 per person per year, if such expenses would have been deductible prior to the enactment of this new provision; or

(3) dues or initiation fees in social, athletic, or sporting clubs or organizations.

Subsection (b) of the new section 302 provided that subsection (2) thereof was to apply to taxable years beginning after the date of the enactment of H.R. 12381.

Under the conference agreement the House recedes on amendment No. 3 with an amendment which is a substitute for the Senate amendment.

Subsection (a) of new section 301 added to the bill under the conference agreement provides for an investigation and report by the Joint Committee on Internal Revenue Taxation with respect to the treatment of entertainment and certain other expenses. Under this provision, the Joint Committee is to make a full and complete investigation and study of the operation and effects of present law, regulations, and practices relating to the deduction (as ordinary and necessary business expenses) of expenses for entertainment, gifts, dues or initiation fees in social, athletic, or sporting clubs or organizations, and similar or related items. The Joint Committee is to report to the House of Representatives and to the Senate the results of its investigation and study as soon as practicable during the 87th Congress, together with the recommendations of the Joint Committee for any changes in the law and administrative practices which in its judgment are necessary or appropriate.

Subsection (b) of the new section 301 provides for a report by the Secretary of the Treasury of the results of the recently adopted enforcement program of the Internal Revenue Service relating to the deduction (as ordinary and necessary business expenses) of expenses for entertainment, travel, yachts, hunting lodges, club dues, and similar or related items, together with such recommendations with respect thereto as he considers necessary or appropriate to avoid misuse of the business expense deduction. The report is to be made to the House of Representatives and to the Senate as soon as practicable during the 87th Congress.

On April 4, 1960, the Internal Revenue Service issued Technical Information Release No. 221 in order to secure additional information from corporations, partnerships, and proprietorships at the time when they file their business income returns for taxable years beginning after December 31, 1959.

The additional information required relates to deductions claimed for—

(1) allowances (including expense account allowances) paid to or on behalf of certain officers, employees, partners, and proprietors;

(2) the use of hunting lodges, working ranches and farms, fishing camps, resort properties, pleasure boats and yachts, and similar facilities;

(3) the use of hotel rooms and suites, apartments, and other dwellings;

(4) the attendance of members of families of officers and employees at conventions or business meetings; and

(5) vacations for officers or employees, or members of their families.

Technical Information Release No. 221 also states that the field offices of the Internal Revenue Service have been instructed to place increased emphasis on the examination of returns involving entertainment, travel, and expenses of a similar nature.

Subsection (c) of the new section 301 provides that the staff of the Joint Committee on Internal Revenue Taxation, and the staff of the Secretary of the Treasury, are to consult and cooperate with each

other in performing any duties assigned to carry out the purposes of the new section 301.

Amendment No. 4: This amendment added a new section to the bill relating to the depletion rate for certain clays, and to the treatment processes considered as mining for computing percentage depletion in the case of minerals and ores.

SENATE AMENDMENT

Depletion rates for certain clays

Under paragraph (3) of section 613(b) of the Internal Revenue Code of 1954 the percentage depletion rate for ball clay, bentonite, china clay, and sagger clay is 15 percent, and under paragraph (6) of such section (relating to rate for all minerals not provided for in pars. (1) to (5), inclusive) the rate for refractory and fire clay is 15 percent unless it is used or sold for use for certain specified purposes (in which case the rate is 5 percent). Under the Senate amendment, the percentage depletion rate is 15 percent for ball clay, bentonite, china clay, sagger clay, and "clay used or sold for use for purposes dependent on its refractory properties." However, the 15 percent rate is not to apply to any clay described in the preceding sentence used, or sold for use in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flowerpots, and kindred products.

Under paragraph (5) of section 613(b) of the 1954 Code the percentage depletion rate is 5 percent for brick and tile clay. The Senate amendment strikes out the reference to brick and tile clay and provides that the 5 percent rate is to apply to all clay used, or sold for use, in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flowerpots, and kindred products.

Treatment processes considered as mining

Subject to the limitation (50 percent of taxable income from the property) in section 613(a) of the code, the allowance for percentage depletion in the case of ores or minerals is the percentage (specified in the statute) of the gross income from mining. Section 613(c)(2) of the 1954 Code provides that the term "mining" includes not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products and (within specified limits) transportation to the plants or mills in which the ordinary treatment processes are applied.

Under the Senate amendment, the term "mining" is defined to mean the extraction of the ores or minerals from the ground, the treatment processes considered as mining described in new paragraphs (3) and (4) (which are substituted for existing par. (4) of sec. 613(c) of the 1954 Code), and (within the same limits as provided by existing law) transportation to the plants or mills in which the treatment processes (provided by the amendment) are applied. Under the amendment, the phrase "ordinary treatment processes normally applied by mine owners or operators to obtain the commercially marketable product or products" is deleted.

Specifically included treatment processes.—Under the Senate amendment the treatment processes considered as mining are limited to those specifically listed in the amendment. Subparagraphs (A), (B), and

(D) (relating to coal, sulfur, talc, magnesite, quicksilver ores, and phosphate rock) of the new paragraph (3) listed the same processes which under existing law are listed as included in the processes which are ordinary treatment processes. Subparagraph (C) was in effect a substitute for existing subparagraphs (C) and (D) of section 613(c)(4) of the 1954 Code. Under existing subparagraph (C), the listed processes are included in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of a crude mineral product. Under existing subparagraph (D), the listed processes are included in the case of lead, zinc, copper, gold, silver, or fluorspar ores, potash, and ores which are not customarily sold in the form of the crude mineral product.

Specifically excluded treatment processes.—Under the new paragraph (4) as contained in the Senate amendment it is provided that the following treatment processes shall not be considered as mining:

(A) In the case of all minerals or ores—electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping, unless such processes are otherwise provided for in the new paragraph (3) contained in the Senate amendment.

(B) Any treatment process which follows a process that is not considered as mining, notwithstanding any other provisions of section 613(c) of the 1954 Code as changed by the Senate amendment.

Effective date

Under the Senate amendment, the changes made by the amendment apply only with respect to taxable years beginning after December 31, 1960.

CONFERENCE SUBSTITUTE

Under the conference agreement the House recedes on Senate amendment No. 4 with an amendment which is a substitute for the Senate amendment.

Depletion rates for certain clays

Subsection (a) of new section 302 added to the bill under the conference agreement relates to the depletion rate for certain clays. Subsection (a) makes the same changes in section 613(b) of the 1954 Code as were proposed by the Senate amendment and explained above.

Treatment processes considered as mining

Under the conference agreement, subsection (b) of the new section 302 added to the bill relates to treatment processes considered as mining.

Paragraph (1) amends paragraph (2) of section 613(c) of the 1954 Code to provide that the term "mining" includes not merely the extraction of the ores or minerals from the ground but also the "treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto)" and (within the same limits as provided by existing law) transportation to the plants or mills in which the treatment processes are applied. As under the Senate amendment, the phrase "ordinary treatment processes normally applied by mine owners or operators in order to obtain the com-

mercially marketable product or products" is deleted under the conference agreement.

Paragraph (2) of section 302(b) added to the bill under the conference agreement strikes out paragraph (4) of section 613(c) of the 1954 Code and inserts in lieu thereof new paragraphs (4) and (5).

Specifically included treatment processes.—The new paragraph (4) of section 613(c) describes (in subpars. (A) to (H), inclusive) treatment processes which are to be considered as mining, where applied by the mineowner or operator, to the extent such processes are applied to the ore or mineral in respect of which the mine owner or operator is entitled to a deduction for depletion under section 611 of the 1954 Code. As under existing law, a described process is to be treated as mining where performed by another person for the mineowner or operator if the mineowner or operator has not disposed of his depletable interest in the ore or mineral to which such process is applied. Under the language of this provision, a described process is not treated as mining where applied to a purchased ore or mineral.

The changes in the text of existing paragraph (4) which are made under the conference agreement are as follows (matter to be omitted is enclosed in black brackets and new matter is printed in italics):

> (4) [ORDINARY] TREATMENT PROCESSES *CONSIDERED AS MINING.*—[The term "ordinary treatment processes" includes the following:] *The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:*
>
> (A) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;
>
> (B) in the case of sulfur recovered by the Frasch process—*cleaning,* pumping to vats, cooling, breaking, and loading for shipment;
>
> (C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and *ores or* minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, [and sintering] *sintering, and substantially equivalent processes* to bring to shipping grade and form, and loading for shipment;
>
> (D) in the case of lead, zinc, copper, gold, silver, *uranium,* or fluorspar ores, potash, and ores *or minerals* which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including [as an ordinary treatment process] electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore *or the mineral or minerals from other material from the mine or other natural*

deposit; [, including the furnacing of quicksilver ores; and]

(E) the pulverization of talc, the burning of magnesite, [and] the sintering and nodulizing of phosphate [rock] *rock, and the furnacing of quicksilver ores;*

(F) in the case of calcium carbonates and other minerals when used in making cement—all processes (other than pre-heating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

(G) in the case of clay to which paragraph (5)(B) of subsection (b) applies—crushing, grinding, and separating the mineral from waste, but not including any subsequent process; and

(H) any other treatment process provided for by regulations prescribed by the Secretary or his delegate which, with respect to the particular ore or mineral, is not inconsistent with the preceding provisions of this paragraph.

The above material indicates that all of the specifically allowed processes under existing law will continue to be allowed under the bill. In addition, certain other processes are specifically provided for. These include cleaning in the case of sulfur recovered by the Frasch process, and in the case of the minerals and ores coming under subparagraph (C) substantially equivalent processes to those named therein. Under the conference agreement, the treatment processes allowable under existing law with respect to coal and sulfur (recovered by the Frasch process) are to continue to be allowable. Under subparagraph (C), "sintering" is to be allowed to the same extent as under existing law. Under the amendment uranium is specifically named in subparagraph (D); and the furnacing of quicksilver ores is shifted to subparagraph (E) which contains the specialized processing allowed by present law. In addition, subparagraphs (C) and (D) have been modified so that each relates to minerals or ores otherwise qualifying under such subparagraph.

For calcium carbonates and other minerals when used in making cement, a new subparagraph (F) has been added providing for the allowance of all processing up to the point of the introduction of the kiln feed into the kiln (except for preheating of the kiln feed), but not including any subsequent process. In the case of clay used or sold for use in the manufacture of building and paving brick, drainage and roofing tile, sewer pipe, flowerpots and kindred products, a new list of allowable processes is provided for in the new subparagraph (G). The allowable processes in the case of clay so used or sold for use include crushing, grinding, and separating the mineral from waste, but not any subsequent process. In addition, new subparagraph (H) includes as an allowable process any other treatment process provided for by regulations prescribed by the Secretary of the Treasury or his delegate which, with respect to the particular ore or mineral, is not inconsistent with the preceding provisions of the new paragraph (4).

Specifically excluded treatment processes.—The new paragraph (5) added to section 613(c) of the 1954 Code under the conference agreement provides that unless such processes are otherwise provided for

in paragraph (4) (or are necessary or incidental to processes so provided for), the following treatment processes shall not be considered as "mining": electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping.

Effective date

Subsection (c) of the new section 302 provides that the amendments made by subsections (a) and (b) of the new section 302 are to apply only with respect to taxable years beginning after December 31, 1960.

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