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FOR THE RELIEF OF THE AMERICAN-LaFRANCE & FOAMITE CORPORATION OF NEW YORK

FEBRUARY 17 (calendar day, FEBRUARY 19), 1931.—Ordered to be printed

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

REPORT

[To accompany S. 4260]

The Committee on Finance, to whom was referred the bill (S. 4260) for the relief of the American-LaFrance & Foamite Corporation of New York, having considered the same, report it back to the Senate without amendment and recommend that the bill do pass.

The following statement explains the facts and circumstances of the case:

From 1917 to April, 1925, inclusive, the Internal Revenue Bureau erroneously and illegally collected from the American-LaFrance Fire Engine Co., a manufacturer of self-propelled fire-fighting apparatus, approximately $850,000 upon the erroneous theory that fire-fighting apparatus constituted automobiles within the meaning of the excise tax law as contained in the revenue act of 1917, revenue act of 1918, the revenue act of 1921, and the revenue act of 1924.

The United States Court of Appeals, Second Circuit, in the case of the American-LaFrance Fire Engine Co. *v.* Riordan, Collector (6 Fed. Rep., 2d series, p. 964), held that it was not the intent of Congress to tax fire-fighting apparatus and, therefore, that fire-fighting apparatus was not included within the excise tax laws imposing taxes upon automobiles, automobile trucks, and automobile accessories. The Internal Revenue Bureau accepted the opinion of the Circuit Court of Appeals as good law and returned to claimant, the successor of the American-LaFrance Fire Engine Co. approximately $700,000, leaving about $150,000 due claimants and not returned for the reasons stated below.

The Internal Revenue Bureau dealt with fire-fighting apparatus in a series of rulings confusing and wholly inconsistent with each other. The American-LaFrance Fire Engine Co. of Elmira, N. Y., is the largest manufacturer of fire-fighting apparatus, and in January, 1918,

the Treasury Department ruled that a self-propelled pumping engine, being the instrument which actually pumps the water through the hose and on the fire, was not an automobile, but that other fire-fighting apparatus should be classed as automobiles or automobile accessories and taxed at 5 per cent. In May, 1918, the Commissioner of Internal Revenue, by Regulations 44, article 7, announced that articles sold to a State or political subdivision thereof for use in carrying on its governmental operations were not subject to excise taxes. Approximately 90 per cent of the fire-fighting apparatus manufactured by the American-LaFrance Fire Engine Co. and other fire-engine companies is sold to municipalities, and while this ruling was in force, the Internal Revenue Bureau collected taxes only on fire-fighting apparatus sold to individuals, firms, or private corporations, and thereafter the Government in some instances refunded to the American-LaFrance Fire Engine Co. taxes paid under former rulings. Under date of May 5, 1919, Regulations 47 construing the revenue act of 1918 was announced, and article 10 of Regulations 47 repeated the regulation that articles sold to a State or municipal subdivision thereof by a manufacturer for use in carrying on its governmental operations were not subject to the tax.

In the month of July, 1919, the Commissioner of Internal Revenue promulgated Treasury Decision No. 2897, which reversed the above-mentioned regulations and decisions in regard to sales to States and municipalities, and further provided that such reversal should have a retroactive effect. That thereafter and by Treasury Decision No. 2930 issued October 7, 1919, the Treasury Department again apparently ruled that pumping engines and perhaps other kinds of fire-fighting apparatus were not subject to the excise tax, but this ruling was so confusing that its meaning was doubtful. A sentence in said ruling reads as follows:

> A self-propelled fire engine, if designed to carry only such persons as are necessary to drive it and to operate the pumping engine, is not taxable.

This ruling was formally published as article 11 of Regulations 47. Such fire-fighting apparatus as was allowed to be taxable was taxed as a pleasure automobile at 5 per cent.

These rulings necessarily resulted in the greatest confusion with respect to what taxes, if any, would be demanded. Conferences were held by representatives of the American-La France Fire Engine Co. with Treasury officials concerning the situation. Then later the Treasury Department notified the American-La France Fire Engine Co. that they were still uncertain with respect to the tax liability of fire-fighting apparatus and that the whole situation would be reviewed in an additional ruling. In the meantime they were informed that the Internal Revenue Bureau would accept claims in abatement with respect to excise taxes claimed and not paid due to the existing confusion.

Thereafter and by Treasury Decision No. 2989 issued March 3, 1920, the Internal Revenue Bureau reversed and modified the above ruling, to wit, Treasury Decision 2930, and promulgated articles 11, 12, and 13 of Regulations 47, and ruled therein that all fire-fighting apparatus of every kind and nature should be regarded as automobile trucks and should be taxable at 3 per cent instead of 5 per cent as in the case of ordinary automobiles. This ruling was made retro-

active, and the American-LaFrance Fire Engine Co. was informed that they must now pay excise taxes at the rate of 3 per cent with respect to all sales, whether made to a city, county, State, person, or corporation, and with respect to every kind of fire-fighting apparatus, including pumping engines.

The foregoing shows the confused condition in the Treasury Department relating to the collection of excise taxes on fire-fighting apparatus.

This ruling, to wit, articles 11, 12, and 13 of Regulations 47, very seriously affected the finances of all manufacturers of fire-fighting apparatus. The Internal Revenue Bureau, using the ruling as authority, suddenly called for excise taxes now claimed to be due for previous years and months and for periods of time when according to Internal Revenue Bureau rulings no taxes were due, and with respect to certain kinds of fire-fighting apparatus, which had not heretofore been taxed. Moreover, this ruling came in a period of great depression and it was very hard to raise money. The result was that some of the smaller manufacturers of fire-fighting apparatus were forced to the wall.

The American-LaFrance Fire Engine Co. was suddenly called upon to pay approximately $340,000 of alleged back excise taxes when all the time it had been trying to observe Treasury rulings, and it found itself in a very distressing situation. It was only by the curtailment of expenses, the rapid cutting down of inventories, and by resorting very largely to the point of exhaustion of its credit at the banks that the American-LaFrance Fire Engine Co. was able to pay these alleged taxes, which afterwards the United States courts held to be illegally collected.

Each time a tax was paid by the American-LaFrance Fire Engine Co. it protested the tax under oath upon the ground that fire-fighting apparatus could not be regarded as automobiles, and that it was not the intention of Congress to include fire-fighting apparatus when it provided for the excise tax upon automobiles, automobile trucks, and automobile accessories.

Thereupon the American-LaFrance Fire Engine Co. brought a suit in the Circuit Court of the United States, Western District of New York, to recover sums paid as excise taxes during three of the preceding months. The suit was carried to the Circuit Court of Appeals, second circuit, and by decision No. 159 decided April 6, 1925, the Circuit Court of Appeals held that fire-fighting apparatus could not be classed as automobiles or automobile trucks within the meaning of any of the excise tax laws previously enacted; and that Congress did not intend to tax fire-fighting apparatus since fire-fighting apparatus was used solely for the purpose of extinguishing fires and that such apparatus was purchased almost entirely by municipalities or for State purposes.

Thereupon the Treasury Department accepted the above-mentioned decision of the Circuit Court of Appeals, second circuit, and proceeded to make refunds with respect to claims filed by the American-LaFrance Fire Engine Co. and other fire-engine companies covering taxes paid by them.

Due to the confusion explained above, which necessarily resulted from the action of the Government in promulgating retroactive, conflicting, and inconsistent rulings with respect to fire-fighting appa-

ratus, the American-LaFrance Fire Engine Co. was about 15 days too late in filing refund claims with respect to certain payments of approximately $150,000 made in 1920, and as these claims were not filed within the period of limitation then existing, the Government refused to return to the American-LaFrance Fire Engine Co. approximately $150,000 of the sums which the Government had erroneously and illegally collected despite the protests duly and emphatically made. It is submitted, therefore, that since the Government illegally collected the above moneys, when no part of it was due or owing, that in all fairness provision should now be made for the return to the American-LaFrance Fire Engine Co. of the sums to which it is entitled.

Due to the existing depression, employment at the factory of the American-LaFrance & Foamite Corporation is low. The company is anxious to return more men to the pay rolls. For the nine months ending September, 1930, the company suffered a deficit of $116,000. By passing Senate bill 4260 help would be given, at a needed time, to a worthy corporation anxious to do its part in restoring business conditions to normal.

Following are letters from the Secretary of the Treasury regarding the bill:

TREASURY DEPARTMENT,
Washington, January 20, 1931.

Hon. REED SMOOT,
Chairman Committee on Finance, United States Senate.

MY DEAR MR. CHAIRMAN: Reference is made to the recent request for a report by the Treasury on bill S. 4260, now pending before your committee, for the relief of the American-La France & Foamite Corporation of New York.

Bill S. 4260 is in all respects similar to bill (S. 4342) introduced in the Senate on May 3, 1928 (70th Cong., 1st sess.), concerning which the Treasury has rendered two reports to your committee, the first under date of May 15, 1928, and the second under date of January 24, 1929. Copies of those reports, recommending against the enactment of bill S. 4342, are attached for your information and made a part of this report. There has been nothing to warrant a change in the Treasury's position since the reports referred to were rendered. Accordingly, for the reasons set forth in those reports the Treasury is unable to lend its approval to the proposed legislation.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

MAY 15, 1928.

Hon. REED SMOOT,
Chairman Committee on Finance, United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your communication of May 5, 1928, inclosing a copy of bill (S. 4342), now pending before your committee, for the relief of the American-La France & Foamite Corporation of New York, successor to the American-La France Fire Engine Co. (Inc.).

You request that a report be rendered as to the merits of this bill.

Under section 600 (a), revenue act of 1917, and section 900 (a), revenue act of 1918, the sale of an automobile truck or automobile wagon by the manufacturer, producer, or importer thereof was subject to a tax amounting to 3 per cent of his selling price. In its regulations interpreting the law the Bureau of Internal Revenue took the position that automotive hook-and-ladder trucks, hose carts, and certain self-propelled fire engines were taxable as automobile trucks. This position was sustained under date of November 3, 1923, by the United States District Court for the Western District of New York, but was reversed by the decision of the United States Circuit Court of Appeals for the Second Circuit rendered March 7, 1925. The bureau acquiesced in the opinion of the circuit court, amended its regulations and refunded to the American-La France Fire Engine Co. more than $1,000,000 which had been paid as tax on sales of fire

apparatus. However, payments totaling $151,402.83 had been made more than four years prior to the date the company filed claims for their refund and this sum was, therefore, rejected as being barred by the statute of limitations imposed by section 1012, revenue act of 1924.

With respect to the merits of this bill, it would appear the amount referred to above was erroneously paid on nontaxable sales. However, the delay in filing claims for refund was apparently due to the company's oversight or neglect, since it had protested the correctness of the bureau's position from the beginning, but did not file claim for refund of the above amount until December 29, 1924, which was some time after the decision had been rendered by the United States district court in the suit brought for later payments.

If the bill were enacted into law, a precedent would be established for numerous cases of a like nature and would be tantamount to providing that since the taxpayer did not protect its interests by filing claim within the statutory period, Congress will, by legislative enactment, reimburse it for the loss occasioned through such failure.

I am unable to lend my approval to the proposed legislation.

It may be added that the Director of the Bureau of the Budget advises that this report is not in conflict with the financial program of the President.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

JANUARY 24, 1929.

Hon. REED SMOOT,
Chairman Committee on Finance, United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your communication of January 17, inclosing a copy of bill S. 4342, now pending before your committee, for the relief of the American-La France & Foamite Corporation of New York, successor to the American-La France Fire Engine Co. (Inc.). You request that a report be rendered as to whether this proposed legislation would establish, if enacted into law, a precedent for other cases of similar nature, and, if so, the approximate number of such cases.

The bill referred to would authorize the repayment to the taxpayer of taxes erroneously paid but barred from refund by the operation of the statute of limitations. If the bill were enacted into law, a precedent would be established for numerous cases of a like nature. Since the object to be attained by this bill is not exceptional, being the same as in all cases where parties fail to file claim within the period provided by law, no reason is known why it should be enacted.

The records of the department are not kept in such a manner as will permit a determination of the number of cases similar to this. It may be stated, however, that the amounts involved would aggregate millions of dollars and that over a ong period of years the department has been consistent in recommending adversely on similar bills. This department is not aware of any instance where Congress, by a special act, has granted relief in a specific case of like nature. I am unable to lend my approval to the proposed legislation.

It may be added that the Director of the Bureau of the Budget advises that the proposed legislation is in conflict with the financial program of the President.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.