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MANUFACTURERS' CLAIMS FOR FLOOR STOCKS REFUNDS AND TRANSITIONAL RULE FOR MOVING EXPENSES

DECEMBER 16 (legislative day, DECEMBER 15), 1970.—Ordered to be printed

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

REPORT

[To accompany H.R. 17473]

The Committee on Finance, to which was referred the bill (H.R. 17473) to extend the period for filing certain manufacturers claims for floor stocks refunds under section 209(b) of the Excise Tax Reduction Act of 1965, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

I. SUMMARY

H.R. 17473, as passed by the House, relates to manufacturers' claims for floor stocks refunds. The committee has adopted this provision without change. However, it has added to this bill provisions which are substantially the same as H.R. 17917, as reported by the House Committee on Ways and Means, which deals with a transitional rule in the case of moving expenses.

The provision contained in the House-passed version of H.R. 17473 permits a manufacturer who complied with all the requirements of the Excise Tax Reduction Act of 1965 with regard to floor stocks refunds, except that he did not file his claim by February 10, 1966, or August 10, 1966, as the case may be, to file such a claim for refund by the 90th day after the date of enactment of this bill.

As indicated above, the committee added a provision to the House-passed bill dealing with the transitional rule in the case of moving expenses. The Tax Reform Act of 1969 limited the deductibility of moving expenses to cases generally where an individual's place of employment was 50 miles or more away from his old place of residence than was his prior place of employment. The prior rule had allowed limited

deductions where a 20-mile test was met rather than the 50-mile test. However, a special transition rule allowed taxpayers to elect the old moving expense deduction rule to apply where the employees had been notified by their employer of a move on or before December 19, 1969, and the amounts were paid or incurred for the moving expenses before July 1, 1970. This bill retains this transition rule but modifies it to cover cases where the deduction for moving expenses relates to amounts paid or incurred before January 1, 1971 (again so long as the employees were notified by the employer of the move before December 19, 1969).

The Treasury Department indicated it had no objections to the bill, as amended.

II. MANUFACTURERS CLAIMS FOR FLOOR STOCK REFUNDS

Present law.—In the Excise Tax Reduction Act of 1965 (Public Law 89–44) the Congress repealed various manufacturers excise taxes as of June 22, 1965, and other manufacturers excise taxes as of January 1, 1966. Floor stocks refunds were provided for previously-taxed items that dealers held for sale on the date the tax was repealed. This was done so that a dealer who held taxpaid merchandise would not be placed at a competitive disadvantage with a dealer who acquired his merchandise after the effective date of the tax repeal.

For the items on which the tax was repealed as of June 22, 1965, the manufacturer was required to file a claim for refund by February 10, 1966, based upon a request by the dealer submitted to the manufacturer before January 1, 1966. By February 10, 1966, the manufacturer was required either to have reimbursed the dealer for the tax that had been originally passed on to the dealer, or to have secured the dealer's written consent to the allowance of the refund to the manufacturer. In the case of items upon which the tax was repealed on January 1, 1966, the same procedure was required except that the applicable date for securing dealer requests was July 1, 1966, and the consents, reimbursements, and filing of claims by the manufacturer had to have been accomplished by August 10, 1966.

General reasons for change.—It has been brought to the committee's attention that in several instances the 40 days allowed by the Excise Tax Reduction Act of 1965 between the deadline for obtaining requests from dealers and the deadline for filing of refund claims by manufacturers was too short. In some instances, it appears that delay was occasioned by difficulties in properly classifying the dealers' requests in the available time, especially because of the large number of separate taxes that were repealed by the one act. The committee agrees with the House that additional time should be made available for filing claims for refund where all the other requirements described above had been met by the dates originally provided in the 1965 Act.

In each such case the refunds claimed are of taxes which Congress has already determined should be refunded to the manufacturers and which the manufacturer had in many cases already repaid to the dealer before February 10, 1966, or before August 10, 1966. This provision does not create a right to refund where no right had existed under prior law. Moreoever, this provision does not change the obligation of the claimant to prove his entitlement to the refund. Not to provide

for these refunds in many of these cases would mean the Government was keeping the money involved, even though the manufacturer was clearly out-of-pocket the amounts involved (since he had reimbursed the dealers).

Explanation of provisions.—The Excise Tax Reduction Act of 1965 provided a three-step procedure for claiming floor stocks refunds. The first step—requirement of a request by the dealer to the manufacturer before January 1, 1966 (in the case of tax repeals on June 22, 1965), or July 1, 1966 (in the case of tax repeals on January 1, 1966)—is not changed by this provision. The second step—reimbursement by the manufacturer to the dealer or obtaining the dealer's consent to the refund by February 10, 1966, or August 10, 1966, as the case may be—also is not changed by this provision. That is, those steps in the floor stocks refund procedure must have been accomplished by the dates originally provided in the 1965 Act.

The change made by this provision relates to the third step of the refund procedure—the date by which the manufacturer must have filed his claim for refund with the Internal Revenue Service. The provision permits such claims to be filed by the 90th day after the date of enactment of this provision.

This provision does not change existing law with regard to the obligation of the manufacturer to demonstrate his entitlement to a refund. Also, under section 111 of the code and the general "tax benefit rule," the refund normally will constitute taxable income in the hands of the manufacturer, since in most cases he deducted the excise tax as a business expense when it was paid.

III. TRANSITIONAL RULE FOR MOVING EXPENSES

The Tax Reform Act of 1969 (sec. 231) modified the rules with respect to the deduction of job-related moving expenses to allow deductions for certain additional categories of moving expenses, to require that reimbursements for moving expenses be included in gross income, to provide that the employee's new place of employment must be 50 miles (instead of 20 miles as under prior law) further from his old residence than was his prior place of employment, to extend the moving expense deduction to self-employed persons, and to modify certain other rules. Generally, the new rules were more liberal in allowing deductions than the prior rules. This was not true, however, in the case of the requirement as to the distance moved. In this case, the new place of employment must be at least 50 miles, instead of 20 miles, further from the prior residence than the former place of employment. Because of the fact that this was a more strict rule, the Act provided that the taxpayer could elect to have the old rules apply for amounts paid or incurred before July 1, 1970, if the taxpayer had been notified by his employer of a move on or before December 19, 1969.

It appears that some employees who were notified of a pending move on or before December 19, 1969, were not able, because of extenuating circumstances (for example, where the jobs were not available soon enough at the new location) to complete their moves before the July 1, 1970, cutoff date. As a result, they could not qualify under the old rules which were in effect when their notice of transfer or move was given. Where the job location move was in the 20-mile

to 50-mile range, this had the effect of denying these persons moving expense deductions where some deductions would have been available under prior law. The committee, therefore, considered it to be equitable to extend the cutoff date for the transition rule in the Tax Reform Act of 1969.

For the reasons given above, the bill as amended extends the cutoff date in the transition rule in the 1969 Act from "before July 1, 1970" to "before January 1, 1971". This will enable taxpayers to elect to have moving expenses paid or incurred in this additional 6-month period treated under the old moving expense rules. This is to apply (as under present law), however, only where an employee had been notified by his employer of the move on or before December 19, 1969.

IV. 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 italic, existing law in which no change is proposed is shown in roman):

TAX REFORM ACT OF 1969

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SEC. 231. MOVING EXPENSES.

(a) DEDUCTION FOR MOVING EXPENSES.—Section 217 (relating to moving expenses) is amended to read as follows:

"SEC. 217. MOVING EXPENSES.

"(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

"(b) DEFINITION OF MOVING EXPENSES.—

"(1) IN GENERAL.—For purposes of this section, the term 'moving expenses' means only the reasonable expenses—

"(A) of moving household goods and personal effects from the former residence to the new residence.

"(B) of traveling (including meals and lodging) from the former residence to the new place of residence,

"(C) of traveling (including meals and lodging), after obtaining employment, from the former residence to the general location of the new principal place of work and return, for the principal purpose of searching for a new residence,

"(D) of meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after obtaining employment, or

"(E) constituting qualified residence sale, purchase, or lease expenses.

"(2) QUALIFIED RESIDENCE SALE, ETC., EXPENSES.—For purposes of paragraph (1)(E), the term 'qualified residence sale, purchase, or lease expenses' means only reasonable expenses incident to—

"(A) the sale or exchange by the taxpayer or his spouse of the taxpayer's former residence (not including expenses for work performed on such residence in order to assist in its sale) which (but for this subsection and subsection (e)) would be taken into account in determining the amount realized on the sale or exchange,

"(B) the purchase by the taxpayer or his spouse of a new residence in the general location of the new principal place of work which (but for this subsection and subsection (e)) would be taken into account in determining—

"(i) the adjusted basis of the new residence, or

"(ii) the cost of a loan (but not including any amounts which represent payments or prepayments of interest),

"(C) the settlement of an unexpired lease held by the taxpayer or his spouse on property used by the taxpayer as his former residence, or

"(D) the acquisition of a lease by the taxpayer or his spouse on property used by the taxpayer as his new residence in the general location of the new principal place of work (not including amounts which are payments or prepayments of rent).

"(3) LIMITATIONS.—

"(A) DOLLAR LIMITS.—The aggregate amount allowable as a deduction under subsection (a) in connection with a commencement of work which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1) shall not exceed $1,000. The aggregate amount allowable as a deduction under subsection (a) which is attributable to qualified residence sale, purchase, or lease expenses shall not exceed $2,500, reduced by the aggregate amount so allowable which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1).

"(B) HUSBAND AND WIFE.—If a husband and wife both commence work at a new principal place of work within the same general location, subparagraph (A) shall be applied as if there was only one commencement of work. In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting '$500' for '$1,000', and by substituting '$1,250' for '$2,500'.

"(C) INDIVIDUALS OTHER THAN TAXPAYER.—In the case of any individual other than the taxpayer, expenses referred to in subparagraphs (A) through (D) of paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

"(c) CONDITIONS FOR ALLOWANCE.—No deduction shall be allowed under this section unless—

"(1) the taxpayer's new principal place of work—

"(A) is at least 50 miles farther from his former residence than was his former principal place of work, or

"(B) if he had no former principal place of work, is at least 50 miles from his former residence, and

"(2) either—

"(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

"(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

"(d) RULES FOR APPLICATION OF SUBSECTION (c)(2).—

"(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

"(A) death or disability, or

"(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

"(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

"(3) If—

"(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

"(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for the first such subsequent taxable year.

"(e) DENIAL OF DOUBLE BENEFIT.—The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d)(3).

"(f) RULES FOR SELF-EMPLOYED INDIVIDUALS.—

"(1) DEFINITION.—For purposes of this section, the term 'self-employed individual' means an individual who performs personal services—

"(A) as the owner of the entire interest in an unincorporated trade or business, or

"(B) as a partner in a partnership carrying on a trade or business.

"(2) RULE FOR APPLICATION OF SUBSECTIONS (b)(1) (c) AND (D).—For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work.

"(g) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) INCLUSION IN GROSS INCOME OF MOVING EXPENSE REIMBURSEMENTS.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding after section 81 the following new section:

"SEC. 82. REIMBURSEMENT FOR EXPENSES OF MOVING.

"There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment."

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 82. Reimbursement of moving expenses."

(2) Section 1001 (relating to determination of amount and recognition of gain or loss) is amended by adding after subsection (e) (as added by section 516(a) of this Act) the following new subsection:

"(f) CROSS REFERENCE.—

"For treatment of certain expenses incident to the sale of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e)."

(3) Section 1016(c) is amended to read as follows:

"(c) CROSS REFERENCES.—

"(1) For treatment of certain expenses incident to the purchase of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).

"(2) For treatment of separate mineral interests as one property, see section 614."

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after December 31, 1969, except that—

(1) section 217 of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not apply to any item to the extent that the taxpayer received or accrued reimbursement or other expense allowance for such item in a taxable year beginning on or before December 31, 1969, which was not included in his gross income; and

(2) the amendments made by this section shall not apply (at the election of the taxpayer made at such time and manner as the Secretary of the Treasury or his delegate prescribes) with respect to moving expenses paid or incurred before [July 1, 1970] *January 1, 1971*, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969.

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