

EXTENSION OF RENEGOTIATION ACT

JUNE 23, 1945.—Ordered to be printed

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

REPORT

[To accompany H. R. 3395]

The Committee on Finance, to whom was referred the bill (H. R. 3395) to extend through December 31, 1945, the termination date under the Renegotiation Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXTENSION OF RENEGOTIATION TERMINATION DATE

Section 1 of the bill extends through December 31, 1945, the termination date of the Renegotiation Act. Under the Revenue Act of 1943, the termination date for renegotiation of war contracts was fixed as December 31, 1944, unless hostilities terminated at an earlier date. However, the President was given authority under the act to extend the date for termination of renegotiation of war contracts to June 30, 1945, if he found and so declared by proclamation that competitive conditions had not been restored. The President by proclamation, dated November 14, 1944, extended the termination date to June 30, 1945. This bill extends the termination date to December 31, 1945, unless hostilities terminate at an earlier date. Unlike existing law, the President is given no authority to alter the termination date.

It seems to be reasonably clear that competitive conditions will not be restored before December 31, 1945, and for that reason the extension of the act through December 31, 1945, is recommended by your committee. It was pointed out by representatives of the departments who requested this extension that this would be helpful to many contractors, who otherwise might be forced to pay excessive profits on part of a year, whereas if the whole year were considered a different result might obtain.

Section 1 also amends the provisions of existing law so that the act applies to profits which are determined, under regulations prescribed

by the War Contracts Price Adjustment Board, the agency charged with responsibility for the administration of the statute; to be reasonably allocable to performance prior to the termination date. Inasmuch as this amendment confers upon the Board broad discretionary power in determining items of income which fall within the scope of the act, your committee wishes to adopt as a part of this report the following statement in the report of the Committee on Ways and Means of the House, indicating certain limitations which the committee felt were attached to the use of that power, together with the statement of the Chairman of the War Contracts Price Adjustment Board.

In addition to extending the termination date under the Renegotiation Act, section 1 amends the provisions of the existing law which measure those profits attributable to performance prior to the termination date. In the ordinary case the present law applies the act to those profits received or accrued prior to the termination date. Your committee bill applies the act to profits which are determined, under regulations prescribed by the War Contracts Price Adjustment Board, the agency charged with the responsibility for the administration of the statute, to be reasonably allocable to performance prior to the termination date. It is not intended that the War Contracts Price Adjustment Board should use the powers contained herein to bring within the scope of the Renegotiation Act any items of income which are not attributable to the contractor's performance under his war contracts prior to the termination date, nor should the Board in the case of a contractor who uses the ordinary accrual method of accounting and whose fiscal year is the calendar year deviate substantially from the principles of accounting for Federal tax purposes which determine in what fiscal year receipts and accruals fall. In the case of a contractor whose fiscal year commences prior to, but ends after the termination date, the same principles of accounting should be followed in determining renegotiable business for the period prior to the termination date, but in such a case the War Price Adjustment Board will have flexibility in attributing costs to this renegotiable business so that equitable results may be accomplished.

The reasons for this change are more fully set forth in the following statement made in the public hearings on this legislation by the Chairman of the War Contracts Price Adjustment Board and made a part of this report.

"STATEMENT OF CHAIRMAN OF WAR CONTRACTS PRICE ADJUSTMENT BOARD

"In connection with the extension of the act there are a number of broad technical and administrative considerations which are extremely important to the War Contracts Price Adjustment Board and to the agencies of the various departments charged with the responsibility of administering the act. The problem of devising a simple but yet effective method of terminating the application of the act in such a manner as will fully protect the interests of the Government but will at the same time treat contractors fairly and equitably has caused some concern. All contractors do not use the same method of accounting nor do they all operate on a calendar-year basis. If a specific date is used for the termination of the Renegotiation Act, there is immediately presented the technical and administrative problems incidental to unusual accounting methods, such as the completed-contract method, the percentage-of-completion method, and other unusual systems of reporting income and deductions. Moreover, difficulty is encountered in determining the most equitable method of treating the parts of years subject to renegotiation of those contractors who have fiscal years beginning prior to the termination date and ending after the termination date.

"Under the completed-contract method of accounting and certain other unusual systems of keeping books, such as the completed-ship basis or completed-job basis, contractors defer the reporting of income and costs attributable to the long-term contract until the year in which the contract or ship or job is completed. In the case of the War Department this is a relatively minor consideration, but in the Navy, long-term contracts, particularly those for ship construction, constitute substantial renegotiable business. It seems only fair that renegotiation should be

applied to the profits under such contracts attributable to performance up to the termination date irrespective of the contractor's method of accounting. Otherwise, such contractors would have a substantial advantage over other contractors similarly situated who employ the ordinary accrual method of accounting.

"With respect to those contractors whose fiscal years commence prior to the termination date and end after the termination date, several problems are presented. Inventories, depreciation, rent, insurance, property taxes, and many other items of expense are often accounted for only on an annual basis and do not with exactitude lend themselves to monthly accounting. It is believed impracticable and even impossible to apply the ordinary income-tax rules of accounting to periods of time shorter than the accounting period used by the contractor for tax purposes. In many cases contractors will find themselves with substantial amounts of income falling within the portion of their fiscal year subject to renegotiation, but with the costs or expenses attributable thereto incurred by income-tax law standards in a period after the termination date. These complex and technical considerations make precise legislative rules with respect to the termination of renegotiation difficult to formulate. A careful effort has been made to prepare for your consideration definite statutory rules which would bring within the scope of the Renegotiation Act that income which is properly applicable to performance up to the termination date and those costs and expenses which are fairly attributable thereto, but which would not at the same time operate unfairly or inequitably to any contractor. So far no one has been able to formulate specific rules which can be said with certainty to achieve these aims.

"In view of these difficulties, it is the opinion of the War Contracts Price Adjustment Board that the interests of both the contractor and the Government will be best served if the language of the bill gives a degree of flexibility in the handling of this situation. It is believed that the bill which has been introduced by the distinguished chairman of this committee will serve the best interests of both the Government and the contractor in this connection.

"In suggesting the adoption of a statutory provision which would permit the handling of this intricate situation through the general regulatory powers of the War Contracts Price Adjustment Board, I assure you that it is neither the desire nor the purpose of the Board to use such powers in any way to bring within the scope of the Renegotiation Act any items of income which are not attributable to the contractor's performance under his war contracts prior to the termination date; nor is it the purpose of the Board in the case of the contractor who uses the ordinary accrual method of accounting and whose fiscal year is the calendar year to deviate substantially from the principles of accounting for Federal tax purposes which determine in what fiscal year receipts and accruals fall. Ordinarily the renegotiable business of such a contractor on the calendar-year basis would be determined by these principles.

"In the case of a contractor whose fiscal year commences prior to but ends after the termination date, it would be our purpose generally to follow the same principles of accounting in determining renegotiable business for the period prior to the termination date, but in such a case, for the reason stated above, I believe the War Contracts Price Adjustment Board should have sufficient flexibility in attributing costs to this renegotiable business so that equitable results may be accomplished."

TERMINATION OF REPRICING OF WAR CONTRACTS

Section 2 of the bill fixes a termination date for the provisions of title VIII of the Revenue Act of 1943, relating to repricing of war contracts, so that it will not apply to any contract with a department or any subcontract made after December 31, 1945. Under the existing law, the repricing provisions will apply to all contracts with a department or any subcontract made prior to the date proclaimed by the President or fixed by the Congress in a concurrent resolution as the date of termination of hostilities in the present war. Under the bill as it passed the House, if the date of termination of hostilities in the present war does not occur prior to December 31, 1945, the repricing provisions of title VIII will terminate on that date with respect to contracts or subcontracts entered into after that date;

the Renegotiation Act will terminate with respect to profits attributable to performance after December 31, 1945. After extended consideration your committee is inclined to the view that the repricing provisions should terminate in the manner provided in the House bill. Serious consideration was given to a suggestion that the bill might be amended to provide that the repricing power should terminate on the date specified with respect to contracts and subcontracts made prior to that date, as well as with respect to contracts made thereafter.

It was pointed out, however, that if this amendment were adopted there would be a natural tendency on the part of the departments to make sure that all outstanding contracts were repriced prior to December 31, 1945, on a basis which would assure a favorable price to the Government on deliveries made after that date. There would also be a tendency on the part of the contractors to resist this repricing and, in order to delay it until after December 31, 1945, to refuse to agree to a new price. Under these circumstances the departments would probably resort to the extensive use of the provisions authorizing the issuance of mandatory repricing orders based upon unilateral decisions by the departments. It is the view of the committee that this procedure would be less satisfactory than that which is now followed under which repricing, almost without exception, is done by agreement between the departments and the contractors.

