

Calendar No. 2369

81ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 2367

PROVIDING FOR THE REFUND OF CERTAIN ESTATE TAXES

AUGUST 16 (legislative day, JULY 20), 1950.—Ordered to be printed

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

R E P O R T

[To accompany H. R. 7840]

The Committee on Finance, to whom was referred the bill (H. R. 7840) to provide for the refund of certain estate taxes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

GENERAL STATEMENT

H. R. 7840 amends section 7 (c) of Public Law 378 of the first session of this Congress to permit refund or credit of overpayment of estate tax resulting from application of section 7 of such law to cases where the decedent retained a life estate or other income interest in property transferred during life, unless such refund or credit was prevented on or before January 16, 1949, by the operation of any law or rule of law.

Section 7 of Public Law 378 provided in certain cases that an inter vivos transfer of property by a decedent prior to March 4, 1931 (or, in some cases, prior to June 7, 1932), with certain interests in the income or use of the property retained during his life would not result in inclusion of the property in the decedent's gross estate if he died before January 1, 1950. Section 7 of Public Law 378 also provided that retention by a decedent of certain minor reversionary interests in a transfer of property prior to October 8, 1949, would not result in inclusion of the property in the decedent's gross estate. Section 7 (c) of Public Law 378 provided for the reopening of closed cases so as to permit refund or credit of overpayment of estate tax in cases where property was included in the gross estate by reason of the retention by the decedent of a minor reversionary interest. However, refund or credit was not permitted in closed cases if the decedent, in

transferring the property in question, retained the income from the property for life or some other interest in the income or use of the property.

In general, this was a desirable limitation on the reopening of closed cases where estate tax had been paid as the result of retention by the decedent of a reversionary interest, since payment of the estate tax was not necessarily inequitable where the decedent retained not only a reversionary interest but also an interest in the income from the transferred property. The limitation on refunds in closed cases in section 7 (c) of Public Law 378 is inequitable, however, in its application to cases where estate tax has been paid and refund has been prevented by the running of the time for filing claim for refund or by a final court decision after January 16, 1949. There were no final court decisions on or before this date in which property was included in a decedent's gross estate by reason of the fact that an interest in the income from the property was retained by the decedent in a transfer of such property prior to March 4, 1931. On January 17, 1949, the Supreme Court held, in the case of *Commissioner v. Church* (335 U. S. 632), that property transferred before March 4, 1931, was includible in the decedent's gross estate by reason of his retention of a life estate in the property, whether or not he retained a reversionary interest in the property.

Consequently, after January 16, 1949, it was possible for an estate-tax case to become closed, so that refund would not be allowed, even though the only basis for inclusion of certain property in the decedent's gross estate was the retention by him of a life estate in the property in a transfer made before March 4, 1931. Your committee believes that this result is contrary to the general policy of Public Law 378, which is that property transferred prior to March 4, 1931, shall not be included in a decedent's gross estate solely by reason of the retention by him of a life estate if the decedent died before January 1, 1950. H. R. 7840 corrects this result by permitting refund or credit of overpayment resulting from the application of Public Law 378 regardless of the retention of a life estate in the transferred property, unless such refund or credit was prevented on or before January 16, 1949, by the operation of any law or rule of law.

The amendment to Public Law 378 made by this bill permits refund in a case where refund is prevented under the present law by a final court decision rendered after January 16, 1949, and in a case where refund is prevented by the fact that the case was closed on stipulation of counsel after January 16, 1949, while on appeal from a lower court decision adverse to the taxpayer.

Section 7 (c) of Public Law 378 provides that the refund or credit permitted therein shall be made or allowed if claim is filed within 1 year from the date of enactment of such act. Claims for refund or credit permitted by reason of the amendment to Public Law 378 by this bill must also be filed within 1 year from such date; that is, within 1 year from October 25, 1949.

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):

SEC 7. TRANSFERS TAKING EFFECT AT DEATH

* * * * *

(c) If refund or credit of any overpayment resulting from the application of subsections (a) and (b) is prevented on the date of the enactment of this Act, or within one year from such date, by the operation of any law or rule of law (other than sec. 3760 of the Internal Revenue Code, relating to closing agreements, and other than sec. 3761 of such code, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from the date of the enactment of this Act. This subsection shall not apply with respect to a transfer of property in case (1) the decedent retained for his life or for any period not ascertainable without reference to his death or for any period which did not in fact end before his death **[(1)]** (A) the possession or enjoyment of, or the right to the income from, the property, or **[(2)]** (B) the right, either alone or in conjunction with any person, to designate the persons who should possess or enjoy the property or the income therefrom **[.]**, and (2) *refund or credit of any overpayment resulting from the applicatio of subsections (a) and (b) was prevented on or before January 16, 1949, by the operation of any law or rule of law.*

