

REFUNDS IN THE CASE OF CERTAIN USES OF TREAD RUBBER AND TIRES

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

REPORT

[To accompany H.R. 2474]

The Committee on Finance, to which was referred the bill (H.R. 2474) to amend the Internal Revenue Code of 1954 to provide refunds in the case of certain uses of tread rubber and for other purposes, having considered the same, reports favorably with amendments and recommends that the bill as amended do pass.

I. SUMMARY

The House-passed bill (H.R. 2474) provides for credits or refunds of the manufacturers excise tax on tread rubber where tax-paid tread rubber (1) is wasted in the recapping or retreading process, (2) is used in the recapping or retreading of tires the sale of which is later adjusted under a guarantee or warranty, or (3) is used in the recapping or retreading of tires which are exported, are sold to State or local governments, are sold to nonprofit educational institutions, or are sold as supplies for vessels or aircraft. In addition, the bill imposes a tax on tread rubber used in recapping or retreading tires abroad, if those tires are then imported into the United States. The bill also modifies the treatment of credits or refunds for the manufacturers excise tax on new tires where sales are later adjusted as the result of a warranty or guarantee. The bill changes the statute of limitations so that a credit or refund of the tread rubber or new tire tax can be obtained for a period of one year after the warranty or guarantee adjustment is made.

The committee adopted the bill as passed by the House with an amendment which makes clear that the credit or refund for tires made pursuant to warranty or guaranty adjustments is to be based on the price adjustment given to the warranty holder as a percentage of the value of any replacement tire.

II. GENERAL STATEMENT

Present law

Present law (sec. 4071) imposes a tax of 5 cents per pound on tread rubber used for retreading tires of the type used on highway vehicles and a tax of 10 cents per pound on new tires of the type used on highway vehicles.

In the case of new tires, sales may be made tax-free (or a credit or refund obtained if tax has been paid) where the tire is exported, is sold for use as supplies for vessels or aircraft engaged in foreign trade, or is sold to a State or local government for exclusive use by such an entity, or to a nonprofit educational organization for its exclusive use (sec. 6416(b)). A credit or refund is also available where the sale of a new tire is later adjusted under a guarantee or warranty.

Reasons for change

There are several instances under present law where a manufacturer's excise tax is imposed on tread rubber when in a similar situation the manufacturer's excise tax is not imposed (or a credit or refund of the tax is allowed) for the tax on new tires.

First, rubber wasted in manufacturing new tires is not subject to tax since the tax is imposed when the completed tire is sold and is imposed only upon the material actually in the completed tire. The tax on tread rubber, on the other hand, is imposed before the completion of a major manufacturing process—the recapping or retreading of a used tire. Wastage of tread rubber in that process occurs after the tread rubber tax liability has been determined, and under present law no refund or credit is provided for any portion of the tax imposed on tread rubber which is so wasted.

Second, if the sale of a retreaded tire is adjusted by reason of a warranty or guarantee, no credit or refund of the tread rubber tax is provided.

Third, no credit or refund is available for the tread rubber tax when a recapped or retreaded tire (or the car on which it is mounted) is exported, sold to a State or local government, sold to a nonprofit educational organization, or used or sold for use as supplies for a vessel or aircraft. Neither is the credit or refund available where a retreaded tire is mounted on a new vehicle that is then disposed of in any of the above ways.

In addition to these problems, the present credit or refund of tax permitted for new tire warranty or guarantee adjustments in some cases is computed incorrectly, in other cases is excessively complicated to compute, and in yet other cases may be disallowed altogether. Any credit or refund is at present computed by reference to the proportion of any replacement tire sales price which is credited or refunded by the manufacturer to the customer. (Rev. Rul. 59-394, 1959-2 CB 280.) In cases where the manufacturer does not give a per tire credit or refund for defective tires, but instead either adjusts the overall sales price of tires purchased generally by the dealer or wholesaler or computes the refund or credit on an estimated or average basis, it is possible that no credit or refund of the tax would be allowed to the manufacturer since the manufacturer has not made an adjustment on the individual tire that was adjusted for warranty or guarantee. In addition, the time period for the running of the statute of limitations

for filing any claim for credit or refund is 3 years from the time the tax is due or, if later, 2 years from the time the tax is paid.) If a taxpayer makes a warranty or guarantee adjustment after the statute has run, no credit or refund can be obtained.

A final problem which has been brought to the committee's attention is the under present law used tires can be exported from the United States, recapped or retreaded, and then reimported into the United States without paying the excise tax on the retreaded rubber. This can give a competitive advantage to retreaders located outside of the United States' borders.

Explanation of the bill

The bill makes a credit or refund of the tread rubber tax available in various situations where a credit or refund would be available for new tires.

First, the credit or refund is to be available where rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process.

Second, the credit or refund is to be available where the tread rubber is used in the recapping or retreading of a tire if the sales price of the tire is later adjusted because of a warranty or guarantee.

Third, the credit or refund is to be available to the manufacturer for the tread rubber on a recapped or retreaded tire if the tire is by any person (1) exported, (2) sold to a State or local government for the exclusive use of a State or local government, (3) sold to a nonprofit educational organization for its exclusive use, or (4) used or sold for use as supplies for a vessel or aircraft.

Finally, where a retreaded tire is sold by a second manufacturer or in connection with another article manufactured by him, the bill provides that a credit or refund of the tread rubber tax is to be allowed to the further manufacturer if the article is exported or sold for any of the above purposes. Also, a credit or refund of the tread rubber tax is to be available to the manufacturer of the recapped or retreaded tire if that retreader sells the tire on or in connection with any other article manufactured by him, and that other article is exported or sold by any person for one of the uses described above.

The bill as passed the House changed the rules under which a manufacturer is allowed a credit or refund for sales of new or retreaded tires for which a warranty or guarantee adjustment is made. A committee amendment modified this provision so that when a warranty or guarantee adjustment is made on account of a tire, the amount of the deemed overpayment of tire tax is to be the amount that bears the same proportion to the total tax paid on the tire, as the price adjustment made to the holder of the warranty or guarantee bears to the total price of a replacement tire. However, in no event is the deemed overpayment to be greater than the amount of the tax credit or refund paid by the manufacturer to (or passed on to) the ultimate vendor (unless the manufacturer obtains the ultimate vendor's written consent to the obtaining of the refund or credit, sec. 6416(a) (1) (C)). For example, assume that a tire is returned by the consumer because of road failure after being used only 40 percent of its guaranteed life and that under the guarantee the owner of the tire is entitled to

reduce the price of a replacement tire by an amount equal to 60 percent of the price of the original tire. In this case 60 percent of the tax on that tire is to be credited or refunded.

This approach is to be used regardless of whether the consumer has returned the tire to the same retailer from which it was purchased, so long as the adjustment is made pursuant to a warranty or guarantee and the manufacturer ultimately passes on the tax overpayment to the person who made the adjustment with the consumer. This approach also is to apply whether the adjustment is made by an allowance against the price of a replacement tire or by cash refund. The same approach also is to apply in determining the amount of tread rubber tax that is treated as an overpayment.

This same approach is to be applied whether the adjustment is made by a retailer to a consumer, or by a manufacturer to a retailer in cases where the manufacturer's warranty is held by the retailer rather than by the ultimate consumer.

In the latter case, the credit or refund is to be based on the adjustment in any replacement tire given by the manufacturer to the retailer (rather than on any adjustment given to the ultimate consumer).

The above-described rules apply most clearly when the manufacturer makes an adjustment on a tire-by-tire basis. Under the bill, these rules are to apply also where the manufacturer makes the adjustment (either to ultimate consumers or to retailers which hold the manufacturer's warranty) on a sampling or averaging basis. For example, where (1) the manufacturer, by a sampling technique, determines that some percentage of that manufacturer's tires sold by a certain retailer (or by retailers in a given area) are adjusted under warranties or guarantees, (2) the manufacturer thereupon refunds that percentage of the sales price charged by him for tires ultimately delivered to that retailer (or those retailers), and (3) the Service is satisfied that this system of determining amounts of price adjustments fairly reflects the adjustments made on account of warranties or guarantees, then this system may be used in calculating the amount of tire taxes deemed to be overpayments on account of such adjustments. Similarly, where a manufacturer agrees to reduce its price for tires by way of advance adjustments and the manufacturer can demonstrate to the Service that the reduced prices fairly reflect the warranty or guarantee adjustments that would otherwise occur, then that reduction in sales price may be used in the computation of the deemed overpayment on account of warranty and guarantee adjustments. However, in no case are the credits or refunds calculated under these methods to be claimed in advance of the actual adjustments made.

The bill also modifies the statute of limitations in cases where a claim for credit or refund is filed as a result of a warranty or guarantee adjustment. The bill provides that in such a case a claim for credit or refund may be filed at any time before the date which is one year after the date on which the adjustment is made, if otherwise the period for filing the claim would expire before that later date.

Finally, the bill provides that used tires which are exported from the United States, recapped or retreaded abroad (other than from bead to bead) and then reimported into the United States are to be subject to the tax on tread rubber to the extent that tread rubber is incorporated into the tire. For this purpose, the amount of tread rubber

to be taken into account is to be determined as of the completion of the recapping or retreading of the tire. The amount so determined is to be either the amount which is established as actually used in recapping or retreading the tire or an average amount which is generally used on comparable tires in the industry.

Effective date

The amendments made by this bill are to take effect on October 1, 1977. Thus, they apply where, on or after the effective date, tread rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process, and where recapped or retreaded tires (or the articles on or in connection with which they are sold) are exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft.

III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING H.R. 2474

Revenue cost

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs incurred in carrying out H.R. 2474. The committee estimates that this bill will have at most a small effect (under \$200,000) on the revenues. The Treasury Department agrees with this statement.

In accordance with section 403 of the Congressional Budget Act of 1974, the Director of the Congressional Budget Office has not made an estimate or comparison of the estimates of the cost of H.R. 2474, but has examined the committee's estimates and agrees with the methods and the dollar estimates resulting therefrom.

Vote of the committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. H.R. 2474 was ordered reported by the committee by a voice vote.

Tax expenditures

With respect to the effects of the committee amendment on tax expenditures during the next five fiscal years, the following statement is made:

In accordance with section 308(a)(2) of the Congressional Budget Act of 1974, after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill involve no new budget authority or new or increased tax expenditures.

IV. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).