

SELMER AMUNDSON

DECEMBER 9, 1974.—Ordered to be printed

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

REPORT

[To accompany H.R. 3538]

The Committee on Finance, to which was referred the bill (H.R. 3538) having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to waive applicable limitations to permit the credit of self-employment income for 1964 through 1966 to Selmer Amundson for qualification for disability insurance benefits under section 223 of the Social Security Act (and to the establishment of a period of disability under section 216(i) of such Act).

STATEMENT

The Department of Health, Education, and Welfare in its report to the committee on the bill has stated that it has no objection to the bill.

H.R. 3538 would exempt Mr. Amundson from the effect of the statute of limitations provision with respect to the crediting of his self-employment income for 1964 through 1966. (His self-employment income for 1967 and 1968 is already credited to his social security earnings record.) Under this provision of the Act self-employment income reported by a person for a year may not be credited for social security purposes unless a tax return is filed with the Internal Revenue Service before the expiration of 3 years, 3 months and 15 days following the end of that year.

Mr. Amundson filed an application for social security disability insurance benefits in February 1971, stating that he had been disabled since November 1968. To be insured for disability benefits it is necessary to have at least 20 quarters of social security coverage in the pe-

riod of 40 calendar quarters ending with the quarter in which he became disabled. Mr. Amundson was advised that his social security earnings record showed no earnings credits for the years 1964 through 1968. He stated that he had net earnings from self-employment in those years in amounts sufficient to provide four quarters of social security coverage in each year.

Mr. Amundson believed that he had filed timely tax returns for the years in question. He stated that his accountant had prepared a timely tax return for each of these years and on each occasion had been given cash by Mr. Amundson to pay all of the taxes due. Mr. Amundson has receipts given to him by the accountant on each occasion. However, the Internal Revenue Service has no record of receiving the tax returns prepared by the accountant. In 1971, following exposure of the situation, the accountant attempted to make belated payment of the taxes for Mr. Amundson's account. The committee has been advised that the accountant has been indicted on tax-related charges and that one of the charges arises from his failure to file Mr. Amundson's tax returns and pay the taxes.

On the basis of tax returns filed in December 1971 for the years 1964 through 1968 by Mr. Amundson's attorney, Mr. Amundson received social security earnings credit for 1968. Since Mr. Amundson's application for social security benefits was filed in February 1971 before the statute of limitations had expired for 1967, under another provision in social security law he also received earnings credit for 1967. As the statute of limitations had expired for the years prior to 1967, no social security credit could be given for the years 1964, 1965, and 1966. As a result Mr. Amundson does not meet the insured-status requirements provided in the law for eligibility for social security disability benefits.

The committee feels that the report of the Department of Health, Education, and Welfare summarizes the factors which justify legislative relief in this instance. In indicating it had no objection to the bill the department stated:

"It seems to us that the situation of Mr. Amundson is a particularly unfortunate one. Mr. Amundson was correct and conventional in his handling of his tax returns and tax payments for the years 1964 through 1968, and except for the abuse of trust by his accountant would have had social security credit for all of these years. An extremely unusual feature of the present case is the fact that the preparation of Mr. Amundson's tax returns and his payment to the accountant of taxes due occurred in each of 5 different years. The fact that the accountant continued as an apparently reputable member of his profession and community during all of this period and beyond would certainly tend to confirm to a person in Mr. Amundson's situation that his tax returns were being properly filed.

"Although we ordinarily oppose enactment of private relief bills giving special treatment to individuals under the social security program, we believe that Mr. Amundson's situation is so unusual and so deserving of remedy that we do not oppose enactment of H.R. 3538."

The committee recommends that the bill be considered favorably.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., December 4, 1974.

HON. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on H.R. 3538, a bill "For the relief of Selmer Amundson."

The bill provides that for purposes of determining Mr. Amundson's entitlement to disability insurance benefits his income tax returns for the years 1964 through 1968, which were filed in 1971, would be deemed to have been filed before the expiration of the period of time for filing such returns provided in a statute of limitations in the Social Security Act and that his net income from self-employment in those years would be credited under social security.

H.R. 3538 would exempt Mr. Amundson from the effect of the statute of limitations provision with respect to the crediting of his self-employment income for 1964 through 1966. (His self-employment income for 1967 and 1968 is already credited to his social security earnings record.) Under this provision of the Act self-employment income reported by a person for a year may not be credited for social security purposes unless a tax return is filed with the Internal Revenue Service before the expiration of 3 years, 3 months, and 15 days following the end of that year.

Mr. Amundson filed an application for social security disability insurance benefits in February 1971, stating that he had been disabled since November 1968. Under the law, to be insured for disability benefits it is necessary for Mr. Amundson to have at least 20 quarters of social security coverage in the period of 40 calendar quarters ending with the quarter in which he became disabled. When Mr. Amundson was advised that his social security earnings record showed no earnings credits for the years 1964 through 1968 he stated that he had net earnings from self-employment in those years in amounts sufficient to provide four quarters of social security coverage in each year.

Mr. Amundson believed that he had filed timely tax returns for the years in question. He stated that his accountant had prepared a timely tax return for each of these years and on each occasion had been given cash by Mr. Amundson to pay all of the taxes due. Mr. Amundson has receipts given to him by the accountant on each occasion. However, the Internal Revenue Service has no record of receiving the tax returns prepared by the accountant. In 1971, following exposure of the situation, the accountant attempted to make belated payment of the taxes for Mr. Amundson's account. There is also information that the accountant has been indicted on tax-related charges and that one of the charges arises from his failure to file Mr. Amundson's tax returns and pay the taxes.

On the basis of tax returns filed in December 1971 for the years 1964 through 1968 by Mr. Amundson's attorney, Mr. Amundson received social security earnings credit for 1968. Since Mr. Amundson's application for social security benefits was filed in February 1971 before the statute of limitations had expired for 1967, under another provision

in social security law he also received earnings credit for 1967. As the statute of limitations had expired for the years prior to 1967, no social security credit could be given for the years 1964, 1965, and 1966. As a result Mr. Amundson does not meet the insured-status requirements provided in the law for eligibility for social security disability benefits.

A more detailed discussions of the facts in the case and the provisions of law that are involved is included in the enclosed memorandum prepared by the Social Security Administration.

In view of inequitable and anomolous situations that can arise under the present statute of limitations we are studying the feasibility of proposing modification so as to permit crediting of additional self-employment earnings without exposing the social security program to misuse.

It seems to us that the situation of Mr. Amundson is a particularly unfortunate one. Mr. Amundson was correct and conventional in his handling of his tax returns and tax payments for the years 1964 through 1968 and except for the abuse of trust by his accountant would have had social security credit for all of these years. An extremely unusual feature of the present case is the fact that the preparation of Mr. Amundson's tax returns and his payment to the accountant of taxes due occurred in each of 5 different years. The fact that the accountant continued as an apparently reputable member of his profession and community during all of this period and beyond would certainly tend to confirm to a person in Mr. Amundson's situation that his tax returns were being properly filed.

Although we ordinarily oppose enactment of private relief bills giving special treatment to individuals under the social security program, we believe that Mr. Amundson's situation is so unusual and so deserving of remedy that we do not oppose enactment of H.R. 3538.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CASPAR W. WEINBERGER, *Secretary.*

Enclosure.

MEMORANDUM TO ACCOMPANY THE REPORT OF THE DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE ON H.R. 3538

On February 25, 1971, Mr. Selmer Amundson filed an application for disability insurance benefits indicating that he had been disabled since November 15, 1968, due to a heart condition and arthritis. His claim for benefits was denied initially and upon reconsideration because he did not meet the insured-status (work) requirement to be eligible for disability insurance benefits. Mr. Amundson did not file a request for a hearing in his case.

Under the Social Security Act one of the requirements to be insured for disability benefits is that the disabled worker must have had substantial recent work covered under social security before he became disabled. This requirement provides some assurance that the protection afforded by the disability provisions will be related to the loss of covered earnings occasioned by disability. To meet this requirement Mr. Amundson would need at least 20 quarters (5 years) of social

security coverage during the period of 40 calendar quarters (10 years) ending with the quarter in which he became disabled (December 1968 according to Mr. Amundson). For self-employed people a quarter of coverage is any calendar quarter in which a person has been credited with \$100 or more in self-employment income (providing that he had at least \$400 in net earnings from self-employment for the year). Social Security Administration records show that Mr. Amundson has only 12 quarters of coverage in the pertinent 40-quarter period.

Although his social security earnings record showed no self-employment income for the years 1964 through 1968, Mr. Amundson alleged that he had net earnings from self-employment of at least \$400 for those years. Credit for this employment would give him enough quarters of coverage to be insured for disability benefits based on the date he alleged he became disabled. The evidence submitted by Mr. Amundson indicates that his income tax returns for the years 1964 through 1968 were prepared timely by Mr. Robert Sherman of Albert Lea, Minnesota. The evidence indicates Mr. Amundson paid Mr. Sherman each year the income and self-employment tax due and a fee for Mr. Sherman's services. However, Mr. Sherman apparently kept the money and did not forward the tax returns to the Internal Revenue Service. Mr. Amundson's attorney reported that Mr. Sherman has been indicted on 31 counts of income tax evasion, and one of the counts involved his failure to pay Mr. Amundson's tax. We do not know the outcome of the indictment. Mr. Amundson's attorney filed income tax returns for the years involved on or about December 18, 1971, and paid the income and self-employment taxes due.

Section 205(c)(4) of the Social Security Act provides in part that prior to the expiration of the time limitation of 3 years, 3 months, and 15 days following any year, the Secretary, if it is brought to his attention, may correct or delete an erroneous entry of self-employment income on an individual's record or he may include an entry which has been omitted. After the expiration of the time limitation, the absence of an entry of self-employment income on an individual's record shall be conclusive proof that self-employment income was not derived for that year unless it can be established that a tax return reporting such income was filed before the expiration of the time limitation. Section 205(c)(5) of the Act provides in part that after the expiration of the time limitation following any year in which self-employment income was alleged to have been derived by an individual, the Secretary may include an entry of self-employment income in his records, if an application for monthly benefits is filed within the time limitation following such year.

This time limitation resulted from the need for orderliness and finality in the administration of the social security program. The provision gives individuals adequate time to file reports of their self-employment earnings but at the same time limits the possibilities for manipulation of the social security program by people who might otherwise delay filing their self-employment tax returns and paying social security taxes until a later time when it appeared that social security coverage would be to their financial advantage.

Under the statute of limitations provision of the Internal Revenue Code, however, when a self-employed person does not file an income

tax return for a given year the Internal Revenue Service can assess the self-employment tax on the earnings for that year at any time in the future. As a result of the differences between the statute of limitations in the Internal Revenue Code and the Social Security Act in some situations an individual can be required by the Internal Revenue Service to pay social security taxes even though the self-employment income on which the taxes are based cannot be credited under social security.

Since Mr. Amundson filed for benefits in February 1971 the time limitation had not expired for the years 1967 and 1968 and his self-employment income for those years has been credited to his social security earnings record. However, since the time limitation had expired for the years 1964, 1965, and 1966, earnings from self-employment for those years may not be credited under social security.

Thus, Mr. Amundson has credit for 12 quarters of coverage in the 40-quarter period ending with the quarter he alleges he became disabled, and he is not insured for social security disability benefits.

