

TAXATION OF THE COMPENSATION OF PUBLIC OFFICERS AND EMPLOYEES

APRIL 10, 1939.—Committed to the Committee of the Whole House on the state of
the Union and ordered to be printed

Mr. DOUGHTON, from the committee of conference, submitted the
following

CONFERENCE REPORT

[To accompany H. R. 3790]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 3790) relating to the taxation of the compensation of public officers and employees, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 8.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 9, 10, and 13, and agree to the same.

Amendment numbered 7:

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows:

Omit the matter proposed to be inserted by the Senate amendment and, on page 6 before line 1 of the House bill, insert the following:

Sec. 210. For the purposes of this Act, the term "officer or employee" includes a member of a legislative body and a judge or officer of a court.

And the Senate agree to the same.

Amendment numbered 11:

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

Sec. 207. No collection of any tax (including interest, additions to tax, and penalties) imposed by any State, Territory, possession, or local

taxing authority on the compensation, received before January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof which is exempt from Federal income taxation and, if a corporate agency or instrumentality, is one (a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States, shall be made after the date of the enactment of this Act.

And the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 208. This title shall not apply with respect to any officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, after the Secretary of the Treasury has determined and proclaimed that it is the policy of such State to collect from any individual any tax, interest, additions to tax, or penalties, on account of compensation received by such individual prior to January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof. In making such determination the Secretary of the Treasury shall disregard the taxation of officers and employees of any corporate agency or instrumentality which is not exempt from Federal income taxation, or which if so exempt is one (a) a majority of the stock of which is not owned by or on behalf of the United States and (b) the power to appoint or select a majority of the board of directors of which is not exercisable by or on behalf of the United States.

And the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: 211; and the Senate agree to the same.

R. L. DOUGHTON,
THOS. H. CULLEN,
JOHN W. McCORMACK,
JERE COOPER,
ALLEN T. TREADWAY,
FRANK CROWTHER,
HAROLD KNUTSON,

Managers on the part of the House.

PAT HARRISON,
TOM CONNALLY,
PRENTISS M. BROWN,
ROBERT M. LA FOLLETTE,
Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 3790) relating to the taxation of the compensation of public officers and employees, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: The Senate amendment is clerical, and the House recedes.

Amendments Nos. 2, 3, 4, and 10: The Senate amendments make the changes in existing law proposed by the bill amendments to the new internal-revenue code rather than to the Revenue Act of 1938. The House recedes.

Amendment No. 5: The Senate amendment provides that the compensation of judges of courts of the United States who took office on or before June 6, 1932, shall be included in gross income for Federal income-tax purposes for taxable years beginning after December 21, 1938. The present law subjects to Federal income taxation the compensation of so-called "constitutional" judges taking office after June 6, 1932, and the compensation of so-called "legislative" judges whether appointed on, before, or after June 6, 1932. The amendment adds to the class of taxable judges only so-called constitutional judges appointed on or before June 6, 1932, because they are the only group of judges now exempt. There is no comparable provision in the House bill. The House recedes.

Amendment No. 6: The Senate amendment changes a section number, and the House recedes.

Amendments Nos. 7 and 8: The Senate amendments expressly include within the provision of the House bill under which consent was granted to the taxation by State and local taxing authorities of compensation of Federal officers received after December 31, 1938, Senators and Representatives, and judges and officers of courts. The House bill had the effect of consenting to the taxation of such persons. The conference agreement inserts a clarifying definition which provides that for the purposes of the bill the term "officer or employee" includes a member of a legislative body and a judge or officer of a court. This would, of course, include Senators and Representatives as well as Federal judges and court officers and make them subject to State taxation to the same extent as other Federal officers. It would also include members of the State legislatures, State judges, and court officers, and make them subject to Federal taxation to the same extent as other State officers. The House recedes with such an amendment on amendment No. 7, and the Senate recedes on amendment No. 8.

Amendment No. 9: Under the House bill credit or refund of tax for years prior to January 1, 1939, was to be made in the case of State and local officers who filed claim after January 18, 1939, if the Commissioner found that to disallow the claim would be to apply the doctrine

of the *Gerhardt case*, which extended the classes of such persons subject to Federal income tax. The Senate amendment adds the cases of *Helvering v. Therrell* and *Graves v. O'Keefe*. The effect of the amendment is to permit the same relief to be given to the classes of persons as to whom the power to tax was extended by these cases as was given by the House bill to those classes who by reason of the doctrines of the *Gerhardt case* were brought within Federal taxing power. The House recedes.

Amendment No. 11: The Senate amendment provides that State and local taxing authorities shall not collect any tax after the date of the enactment of the act on the compensation received before January 1, 1939, by officers and employees of the United States or its agencies. An exception to the provision permits collection of tax on such compensation if the person is an officer or employee of a corporate agency or instrumentality of the United States the majority of the voting stock of which is not owned by or on behalf of the United States. There is no comparable provision in the House bill. The House recedes with an amendment which embodies the substance of the Senate amendment with clarifying changes. The first change is to make certain that the Territories and possessions (Hawaii, Puerto Rico, the Philippines, etc.) will not subject Federal officials to tax for years prior to 1939. The second change is one which is designed to define more precisely the corporate agencies of the United States whose employees may not be subjected to tax for back years. Under the conference agreement, in order for the employees to be relieved, the corporation must be one which is exempt from Federal income tax and also it must be either a corporation the majority of the stock of which is owned by the United States or a corporation a majority of the board of directors of which may be selected by the United States. It is believed that the effect of the conference agreement is to leave undisturbed the taxation of employees of instrumentalities of the United States which are essentially private corporations enjoying certain Federal privileges who have heretofore been generally regarded as subject to State taxation.

Amendment No. 12: The Senate amendment provides that after the Secretary of the Treasury has determined and proclaimed that it is the policy of any State to collect tax from persons who are officers or employees of the United States or its agencies, on account of compensation received by them prior to January 1, 1939, the relief granted by title II to the officers and employees of that State or its subdivisions or agencies shall no longer apply. In making the determination as to whether or not the State is taxing Federal employees, taxation by the State of officers or employees of a corporate agency or instrumentality a majority of the voting stock of which is not owned by or on behalf of the United States is to be ignored. Thus, taxing such persons by the State will not result in the denial of relief to State and local officers. There is no comparable provision in the House bill. The House recedes with an amendment similar to that made by the conference agreement under amendment No. 11, the effect of which is to describe more precisely the corporate agencies of the United States which are to be disregarded in ascertaining the policy of the State with respect to taxing Federal officials.

Amendment No. 13: The Senate amendment provides that judges of the Supreme Court and other constitutional judges who took office on or before June 6, 1932 (the date of the enactment of the Revenue Act of 1932), shall not be subject to income tax under the Revenue Act of 1938 or any prior revenue act. This is a clarifying amendment to make certain that Supreme Court and circuit and district judges (including the court of appeals and district court judges of the District of Columbia) will not be subject to Federal taxation for years prior to 1939. The taxation of judges of so-called legislative courts is unaffected by the amendment. There is no comparable provision in the House bill. The House recedes.

Amendment No. 14: The Senate amendment changes a section number. The House recedes with an amendment making a further change in section number.

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