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AMENDING SECTION 124 OF INTERNAL REVENUE CODE BY EXTENDING TIME FOR CERTIFICATION OF NATIONAL-DEFENSE FACILITIES AND CONTRACTS FOR AMORTIZATION PURPOSES

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JANUARY 27, 1941.—Ordered to be printed

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

## REPORT

[To accompany H. J. Res. 80]

The Committee on Finance, to whom was referred the joint resolution (H. J. Res. 80) to amend section 124 of the Internal Revenue Code by extending the time for certification of national-defense facilities and contracts for amortization purposes, having considered the same, report it favorably without amendment and recommend that the joint resolution do pass.

The purpose of House Joint Resolution 80 is fully explained in the report of the House Committee on Ways and Means accompanying the joint resolution, which is attached hereto and made a part of this report.

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[H. Rept. No. 11, 77th Cong., 1st sess.]

The Committee on Ways and Means, to whom was referred the resolution (H. J. Res. 80) to amend section 124 of the Internal Revenue Code by extending the time for certification of national-defense facilities and contracts for amortization purposes, having had the same under consideration, report it back to the House without amendment and recommend that the resolution do pass.

Representatives of the War Department, the Navy Department, and the Advisory Commission to the Council of National Defense appeared before your committee and urged the speedy enactment of this legislation. They pointed out that in order properly to discharge their duties in this respect each application for certificates, a prerequisite to the amortization allowance, must be carefully investigated and that these applications were being filed in such numbers as to make it impossible for certificates to be issued for all of them before the dead lines contained in existing law.

The legislation is purely procedural in character, having to do only with extending the time within which effective certification can be made, and makes no change in the substantive provisions of existing law.

## PROCEDURAL PROVISIONS OF EXISTING LAW

*Facilities.*—The law now allows rapid tax amortization with respect to facilities, the construction of which has been completed, or which were acquired, after June 10, 1940; provided, however, that such construction or acquisition is certified as necessary in the interest of national defense by the Advisory Commission and either the Secretary of War or the Secretary of the Navy. Certification of the necessity for the facilities must be made before construction is begun or before the acquisition is effected, except that certificates made before February 5 are effective for construction already begun or acquisition already made. Consequently, the statute as it presently stands places a burden upon the Advisory Commission and the War and the Navy Departments to make certification before February 5 of construction begun and acquisitions already effected if the taxpayer making application for such certification is to secure its tax privilege.

*Contracts.*—The law presently provides that contracts between the taxpayer and the United States which reimburse the taxpayer directly or indirectly for the cost of facilities with respect to which it is seeking this tax privilege must be certified as containing provisions protecting the public interest in the use and disposition of the facilities. The law requires that such certificates shall be made within 90 days after the date of execution of the contract or before February 6, whichever date is later. Consequently, the law requires that the Advisory Commission and the War and Navy Departments certify before February 6 the adequacy of the protective terms in such contract executed before November 7, 1940, or else the taxpayer applying for such a certificate will have lost its opportunity to take the tax privilege.

The law places a similar dead-line restriction upon the issuance of certificates, to the effect that a contract does not directly or indirectly reimburse the taxpayer for the cost of facilities. Such contracts must be certified as to nonreimbursement either within 90 days after the date of execution or before February 6, 1941, whichever is later.

## PROPOSED AMENDMENT

*Facilities.*—It is proposed to amend subsection (f) of section 124 so that the Advisory Commission and the War and Navy Departments may effectively certify the necessity for facilities, provided the application for such a certificate is filed before February 6, 1941, or within 60 days after acquisition or the beginning of construction, whichever is later. It is further proposed to provide, however, that such certification shall not be effective to support a taxpayer's election to take the amortization deduction unless the certificate is issued before the expiration of the due date for filing the return for the taxable year in which the taxpayer elects to begin the 60-month amortization period or before February 6, 1941, whichever is later.

*Contracts.*—It is proposed to amend subsection (i) of section 124 so as to provide that the Advisory Commission and the War and Navy Departments may effectively certify a contract, provided that application for such certificate is filed within 60 days after the date of execution of the contract or before February 6, 1941, whichever is later.

## EXPLANATION OF THE AMENDMENTS

*Removal of the February 5 and 6 dead lines on filing applications for certificates.*—The amendments with respect to the change in the dead line provided in the present statute proceed on the theory that the time limitation should be imposed, not upon certification by the Government agencies, but upon application by the taxpayer.

This is imperative in order to insure thorough and careful administration of the certification functions. Under the present law, the Advisory Commission and the War and Navy Departments are presently faced with a rush of applications just preceding the February 5 dead line. A large number of applications relating to construction already commenced and acquisitions already made are still being filed. If these applications are to be thoroughly examined and the issues presented properly resolved, the pressure for the issuance of certificates before February 6 should be removed.

Moreover, it is believed that it is unfair to a taxpayer to cause it to lose its certification because the certifying agencies are unable to perform adequately their duties within the time specified in the statute, a fact over which the taxpayer has no control.

For these reasons the amendments require the taxpayer which has begun construction of, or acquired, any facility for which it seeks a certificate to file its application for certification either before February 6, 1941, or within 60 days after the date of the beginning of construction, or acquisition of, such facility, whichever date is later. Following the same principle applicants for contract certificates are required by the proposed amendments to file applications for such certificates within 60 days after making of the contract or before February 6, 1941, whichever date is the later. In either case the effectiveness of the certificate, if issued, will depend upon the date upon which the application is filed by the taxpayer and not upon the date on which the certificate is made.

It is not clear under the present law whether a taxpayer which elects in its return to take the amortization deduction and begin the 60-month period is entitled to such deduction if the facilities which it desires to amortize have not been certified at the time the return is filed but are certified sometime after the expiration of the time for filing the return. If in such case the taxpayer is entitled to begin the amortization period at the time signified in its return, the Commissioner of Internal Revenue might be compelled to assert a deficiency against the taxpayer pending issuance of the certificate of necessity, and the taxpayer, after paying the deficiency, might then be forced to file a claim for refund after the certificate was issued. In order to relieve the Commissioner of Internal Revenue of this administrative burden, the proposed amendments contain a provision making it clear that the amortization deduction will not be allowed for any taxable year unless the required certificate of necessity has been issued prior to the expiration of the due date for filing its return for such year or before February 6, 1941, whichever is later.

It should be noted that presently the law establishes two dead-line dates, February 5 for facilities certificates and February 6 for contract certificates. This difference resulted from minor language differences in the law. There is no substantive reason for retaining this difference, and in order to avoid confusion the proposed amendments would establish a single date of February 6, 1941, applicable in all cases.

*Need after February 5 for certification of facilities after construction thereof is begun or acquisition made.*—The requirement in the present law that certificates be issued prior to the beginning of construction or the making of the acquisition has in some instances threatened delay in the construction and acquisition of facilities vital to national defense. This situation has been most frequently met in cases involving acquisition of tooling and other similar equipment to meet the demands of future supply orders. Expeditious handling of these future supply orders will often require that the supplier place his orders for equipment well in advance of his actual production program. At this early stage it is difficult for the supplier to prepare a definite and specific application for a necessity certificate and equally difficult for the Advisory Commission and the War or Navy Department to determine the propriety of issuing such a certificate. It is proposed, therefore, that in such cases, the orderly and expeditious handling of the certification functions without delaying the procurement program will be greatly advanced by amending the law so that such acquisitions, in some cases also involving construction, can be made and preliminary steps taken before the date on which either a certificate must be made or the right to a certificate foreclosed.

It is believed that the threat of delay from this cause may be avoided by removing the requirement that certification must be made before construction is begun or acquisition is effected. Instead the amendments merely require that application for such certification must be made within 60 days after the beginning of the construction or the making of an acquisition.

The proposed amendment has a further advantage in that it will permit the taxpayer to describe more definitely than it is possible for him to do under the present law facilities which he is proposing to construct or acquire and which he avers are necessary for national defense.

#### RETROACTIVE EFFECT OF THE PROPOSED BILL

Section 4 of the resolution would require that the amendment of section 124 contained in the resolution have the same force and effect as if it were provided in the present law. By this means it will be possible to preserve to the taxpayer his same privileges with respect to selecting the year in which he is to deduct his amortization as if he had secured his certificate in accordance with the procedure provided in the present law.

## AMEND THE INTERNAL REVENUE CODE

## CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the joint resolution are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

## INTERNAL REVENUE CODE, SECTION 124 (F) AND (I)

## "SEC. 124. AMORTIZATION DEDUCTION.

\* \* \* \* \*  
 "(f) DETERMINATION OF ADJUSTED BASIS OF EMERGENCY FACILITY.—In determining, for the purposes of subsection (a) or subsection (h), the adjusted basis of an emergency facility—

"(1) There shall be included only so much of the amount otherwise constituting such adjusted basis as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after June 10, 1940, as the Advisory Commission to the Council of National Defense and either the Secretary of War or the Secretary of the Navy have certified [ , within the time specified in paragraph (3) of this subsection, and] under such regulations as the President may prescribe, as necessary in the interest of national defense during the emergency period;

"(2) After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1), shall not be applied in adjustment of the basis of such facility and shall be considered as an expenditure with respect to a new emergency facility; and

"(3) [The certificate provided for in paragraph (1) shall have no effect unless made before whichever of the following dates is the later: (A) The beginning of such construction, reconstruction, erection, or installation, or the date of such acquisition, or (B) the one hundred and twentieth day after the date of the enactment of the Second Revenue Act of 1940.] *The certificate provided for in paragraph (1) shall have no effect unless an application therefor is filed before the expiration of sixty days after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition, or before February 6, 1941, whichever is later: Provided, That in no event and notwithstanding any of the other provisions of this section, no amortization deduction shall be allowed in respect of any emergency facility for any taxable year unless a certificate in respect thereof under paragraph (1) of this subsection shall have been made prior to the making of the election, pursuant to subsection (b) and (d) (4) of this section, to take the amortization deduction and begin the sixty month period in or with such taxable year, or before February 6, 1941, whichever is later.*

\* \* \* \* \*  
 "(i) PROTECTION OF THE UNITED STATES.—If the taxpayer has been or will be reimbursed by the United States for all or a part of the cost of any emergency facility pursuant to any contract with the United States, either—

"(1) directly, by a provision therein dealing expressly with such reimbursement, or

"(2) indirectly, because the price paid by the United States (insofar as return of cost of the facility is used as a factor in the fixing of such price) is recognized by the contract as including a return of cost greater than the normal exhaustion, wear, and tear,

no amortization deduction with respect to such emergency facility shall be allowed for any month after the end of the month in which such contract is made, unless [before the expiration of ninety days after the making of such contract or one hundred and twenty days after the date of the enactment of the Second Revenue Act of 1940, whichever of such periods expires the later,] the Advisory Commission to the Council of National Defense, and either the Secretary of War or the Secretary of the Navy certify to the Commissioner that such contract adequately pro-

protects the United States with reference to the future use and disposition of such emergency facility. A certificate by the Advisory Commission to the Council of National Defense and either the Secretary of War or the Secretary of the Navy, made to the Commissioner [before the expiration of ninety days after the making of a contract or one hundred and twenty days after the date of the enactment of the Second Revenue Act of 1940, whichever of such periods expires the later,] to the effect that, under such contract, reimbursement for all or a part of the cost of any emergency facility is not provided for within the meaning of clause (1) or clause (2), shall be conclusive for the purposes of this subsection.

*"The certificates provided for under this subsection shall have no effect unless an application therefor is filed before the expiration of sixty days after the making of such contract, or before February 6, 1941, whichever is later.*

*"The terms and conditions of contracts with reference to reimbursement of the cost of emergency facilities and the protecting of the United States with reference to the future use and disposition of such emergency facilities shall be made available to the public."*

