

## AMENDING SECTION 124 OF THE INTERNAL REVENUE CODE

SEPTEMBER 29, 1941.—Ordered to be printed

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

### REPORT

[To accompany H. J. Res. 235]

The Committee on Finance, to whom was referred the joint resolution (H. J. Res. 235) to amend section 124 of the Internal Revenue Code by extending the time for applications, and changing the procedure, for certification of national-defense facilities and contracts for amortization purposes, having considered the same, report favorably thereon with amendments and recommend that the joint resolution as amended do pass.

The committee amendments are as follows:

On page 2, beginning in line 4, strike out "and subject to such policies and procedures as may be prescribed from time to time by the President, or by such agency or officer as he may designate" and insert in lieu thereof a comma and the words "with the approval of the President".

On page 2, line 10, insert, before the period, the words "and by striking out 'February 6, 1941' and insert in lieu thereof 'December 1, 1941'".

On page 2, line 17, after the word "behalf", insert "after December 31, 1939,".

On page 3, line 23, strike out "February 6, 1941" and insert in lieu thereof "December 1, 1941".

On page 4, beginning with line 7, strike out "Navy which regulations shall be subject to such policies and procedures as may be prescribed from time to time by the President, or by such agency or officer as he may designate" and insert in lieu thereof "Navy, with the approval of the President".

Representatives of the War Department and the Navy Department appeared before the committee and urged the speedy enactment of this legislation. They pointed out that the various agencies concerned with the administration had agreed upon the changes proposed.

The purposes of the proposed legislation are to make certain changes in the procedure for applying for amortization based on experience obtained in the administration of section 124 and to clarify the meaning of certain provisions of said section. It is believed that the proposed amendments will greatly simplify the administration of this section and expedite the carrying out of the defense program.

Section 1 of the joint resolution proposes to strike out the requirement in the existing law that the Advisory Commission to the Council of National Defense act as a joint certifying agency for necessity certificates. When the present law was enacted the Advisory Commission to the Council of National Defense was an active functioning body. At the present time its other functions have been taken over by other governmental agencies. The War Department and the Navy Department are presently equipped to act upon applications for amortization privileges, and have secured the cooperation and assistance of other governmental agencies. Experience has shown that considerable uncertainty and delay is created by the necessity for joint action of two governmental agencies in passing upon applications for certification.

In lieu of required action by the Advisory Commission, it is now proposed that certifications be made only by the Secretary of War or the Secretary of the Navy, as the case may be, but under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy. Under the House language, such regulations were to be subject to such policies and procedures as may be prescribed from time to time by the President or by such agency or officer as he may designate. As heretofore, noted, your committee, in the interest of simplification, struck out the House provision and amended the resolution to provide that such regulations shall be subject to the approval of the President. It is thought that by this means control of the policy and procedure as to certification for tax purposes will be as effective as previously provided by requiring joint certification by the Advisory Commission with the Secretary of War or the Secretary of the Navy, but without the inherent delay resulting from duplication of effort by requiring in each case an agency outside of the Army or Navy to join in the certification.

Section 2 of the joint resolution proposes to change from 60 days to 6 months as the time, after the beginning of construction, installation, or acquisition of the emergency facilities, within which applications for necessity certificates must be filed. Experience has shown that in many cases it is impossible for the applicant to identify the facilities sought to be certified with any degree of accuracy within the time now prescribed. This is due to the fact that expanding emergency facilities under present conditions require the constant change of items due to the difficulty in securing some, and the changing requirements of the Government as to others. Accordingly, under the present law it is necessary for many applicants to file numerous supplemental and new applications with additional appendixes, describing items of facilities in the process of construction. This occasions a great amount of work on the part of the applicant and a tremendous amount of time and effort on the part of Government officials. The experience of the certifying units justifies the belief that these difficulties will be obviated by extending the period for filing to 6 months after the beginning of the construction without prejudice to the interest of the Government. In addition to the change to 6 months, which was included

in the resolution as it passed the House, your committee has amended the resolution to change from February 6, 1941, to December 1, 1941, the alternate date for the filing of applications. This act was passed in October 1940 and was amended in January 1941 to provide that the applications must be filed before February 6, 1941, or within the above-mentioned 60-day period, whichever was later. Owing to the short time between the date of this amendment and February 6, 1941, some taxpayers were unable to file their application within the time specified, and it is now proposed that the alternate time for filing be extended to a date subsequent to the enactment of this joint resolution, namely, December 1, 1941, so as to give an opportunity for all proper taxpayers to file timely applications.

In section 3, provision is made for clarification of the meaning of certain provisions of the existing law relating to nonreimbursement and Government protection certificates, and changing the procedure to be followed in applying for such certificates. The following indicates the changes to be effected:

(a) The joint resolution proposes to eliminate the necessity of certifying contracts under \$15,000. In the absence of a certificate of Government protection, the present statute denies amortization deduction if the taxpayer has been reimbursed (beyond normal exhaustion, wear, and tear) by the United States for the cost of all or any part of emergency facilities pursuant to any contract with the United States regardless of amount. A large number of applications have been filed requesting certification that contracts or purchase orders, many insignificant in amount, do not so reimburse. This has necessitated a vast amount of work on the part of the War Department and the Navy Department, as well as other agencies of the Government in collecting and reviewing the facts in reference to said contracts in order to determine this question. The provision eliminating the necessity for certification of contracts under \$15,000 would dispense with a large amount of work wholly unnecessary to adequately protect the interests of the Government and will eliminate unnecessary expense.

In addition to the contracts under \$15,000, which were eliminated from the scope of the examination by the joint resolution as it passed the House, the committee amended the joint resolution also to exempt from such examination contracts made prior to January 1, 1940. This is deemed advisable to make certain that contracts antedating the adoption of the amortization principle need not be examined.

(b) The joint resolution proposes to limit the contracts required to be examined for reimbursement to those made on behalf of the United States with the War Department, the Navy Department, the United States Maritime Commission, or any other department or agency which the President may designate. The present law requires examination of all the applicant's contracts with all departments or agencies of the Government. The vast majority of these contracts with the departments other than the War Department, Navy Department, and the Maritime Commission, are for routine supplies having no connection with the defense program, and there is very little, if any, possibility of reimbursement therein for the cost of emergency facilities. Since in the future there may be certain departments other than the War Department, Navy Department, and the Maritime Commission whose contracts might involve such reimbursement, it is proposed to

provide for the inclusion of the contracts of such departments or agencies as the President may designate.

(c) The joint resolution proposes to clarify the meaning of indirect reimbursement by providing that the test should be whether the contract recognizes that in fixing the price to be paid, the return of cost of facilities in excess of normal exhaustion, wear, and tear was used by the United States as a factor. The insertion of the words "by the United States" is believed to be in line with the original intent of the statute. The present wording of the statute raises the question as to whether it is necessary to ascertain the state of mind of the contractor. Establishing proof of such state of mind is difficult in any one case and, in view of the fact that many thousands of contracts have been submitted for certification, presents an extremely difficult problem of administration.

(d) A proviso has also been inserted to the effect that a return of cost greater than normal exhaustion, wear, and tear shall not be deemed to have been used as a factor in the fixing of the price "when the negotiating or contracting officer reports that after careful consideration he is satisfied that such greater return was not included in the price." These reports are to be subject to regulations discussed below.

(e) The joint resolution proposes to strike out the requirement of the existing law that the Advisory Commission to the Council of National Defense should act as a joint certifying agency for nonreimbursement and Government protection certificates. The reasons given above for this proposal in connection with necessity certificates apply with even greater force to certificates of nonreimbursement and Government protection.

(f) The joint resolution proposes to change the provisions for certification as to Government protection by providing that such certification shall be made with reference to the emergency facilities instead of with reference to each contract. The reason for this proposal is to eliminate the possible requirement of continued examination of later supply contracts. If the original contract, under which reimbursement is made for facilities, adequately protects the Government's interest in the future use and disposition of the facilities and is so certified, the making of subsequent supply contracts will not deprive the Government of the protection, which has been afforded under the original contract.

(g) The joint resolution proposes to add a provision for issuance of a certificate of Government protection in cases in which the taxpayer has not been or will not be reimbursed, as well as in cases in which it has been reimbursed. This proposed change will make it possible for a taxpayer, who claims he has not been or will not be reimbursed, to obtain amortization by granting to the Government control over the future use and disposition of the facilities.

(h) The joint resolution as passed in the House proposed to extend the time for filing applications for nonreimbursement certificates and Government protection certificates from 60 days to 6 months after the making of the contract for which certification is requested, or before the expiration of 60 days after the issuance of a necessity certificate, whichever is later. There appears to be no more reason for a shorter period for filing applications for Government protection and nonreimbursement certificates than in the case of necessity certificates.

The existing requirement that the application be filed within 60 days compels taxpayers to file a large number of separate applications which involve unnecessary work and expense in the departments. There are also instances in which the contractors should be entitled to file applications covering contracts which were entered into more than 60 days and possibly even more than 6 months prior to the time of constructing or acquiring emergency facilities, and the proposed provision permits filing of such applications within 60 days after the issuance of a necessity certificate. Your committee has amended the joint resolution to provide that applications for the certificates of Government protection and nonreimbursement provided for in subsection (i) may be filed in time before December 1, 1941. This amendment corresponds to the amendment made by your committee in section 2 of the joint resolution.

(i) Consistent with the proposed change with regard to certification of necessity of facilities, it is proposed to provide that reports of negotiating and contracting officers and certificates of adequate Government protection and certificates of nonreimbursement provided for in the act shall be issued under such regulations as may be prescribed from time to time by the Secretary of War and the Secretary of the Navy. Conforming with the action of the committee with respect to the amendment made to section 1 of the joint resolution, a similar amendment is made with regard to these regulations.

Section 4 of the resolution would require that the amendments to section 124 contained in the resolution have the same force and effect as if a part of the existing law as of the date of its original enactment. By this means, it will be possible to preserve to the taxpayer the same privileges with respect to selecting the year in which to take the amortization deduction as if the certificate had been secured in accordance with the procedure provided in the present law and to preserve to taxpayers the benefit of applications filed under the limitations provided by the present law.

