

EXTENDING THE TIME FOR RELEASE OF POWERS OF APPOINTMENT AND FOR PERFORMING CERTAIN OTHER ACTS FOR THE PURPOSES OF CERTAIN PROVISIONS OF THE INTERNAL REVENUE CODE

DECEMBER 7 (legislative day, NOVEMBER 21), 1944.—Ordered to be printed

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

REPORT

[To accompany H. R. 5543]

The Committee on Finance, to whom was referred the bill (H. R. 5543) extending the time for the release of powers of appointment for the purposes of certain provisions of the Internal Revenue Code, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

As its title indicates the purpose of this bill is to extend the time for release of powers of appointment and for performing certain other acts for the purposes of certain provisions of the Internal Revenue Code.

A detailed explanation of the amendments to the internal revenue laws made by this bill is contained in the report of the House Committee on Ways and Means which is appended hereto.

It was the opinion of your committee that the extension granted in the House bill to March 15, 1945, to enable amendments to be made to pension plans put in effect prior to January 1, 1945, was insufficient to permit compliance with the requirements of the statute. Accordingly, your committee has amended the House bill by extending the time with respect to such plans to June 30, 1945.

[H. Rept. No. 2017, 78th Cong., 2d sess.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 5543) extending the time for the release of powers of appointment for the purposes of certain provisions of the Internal Revenue Code, and for other purposes, having had the bill under consideration, report it back to the House without amendment and recommend that the bill do pass.

Section 1 of the bill extends to July 1, 1945, the period for releasing certain powers of appointment without incurring liability for estate or gift taxes. The

Revenue Act of 1942 made a number of significant changes in the treatment, under the estate and gift taxes, of property which is subject to a power of appointment created by a person other than the holder of the power. However, in order to enable holders of previously created powers to adjust their affairs in the light of the new legislation, it was simultaneously provided that such persons could release their powers within a stated period of time without incurring any tax liability. This grace period has been extended on several occasions since the enactment of the 1942 act because of the difficulties persons have encountered in making the desired adjustments and the need for additional time to study possible changes in the 1942 legislation, particularly in connection with preexisting powers. Opportunity will be afforded during this additional period of time for the consideration of any desirable changes.

Section 2 of the bill amends section 162 (d) of the Revenue Act of 1942, relating to pension, stock bonus, profit-sharing, and annuity plans. Subsections (a) and (b) of section 2 extend to March 15, 1945, the time in which plans adopted prior to January 1, 1945, may be adjusted to meet the requirements of paragraphs (3), (4), (5), and (6) of section 165 (a) of the Internal Revenue Code. These paragraphs deal with requirements as to coverage, contributions, and benefits and prohibit discrimination in favor of officers, stockholders, highly paid and supervisory employees. Under present law, such requirements must be met by December 31, 1944, and the provisions of any plan which are necessary to meet such requirements must be made effective for all purposes as of January 1, 1944, or the effective date of the plan if it became effective after January 1, 1944. Because the statutory requirements are necessarily technical, many employers may have to make changes in their plans. Accordingly, there is likely to be a number of applications for rulings as to their taxable status pending before the Bureau on December 31, 1944. The amendment makes it possible for employers to obtain rulings in such cases and to make any necessary retroactive amendments to their plans within the extended period without forfeiture of tax benefits for the taxable year 1944 and earlier taxable years affected by the 1942 amendments.

Subsection (b) of section 2 also makes a somewhat similar provision with respect to plans adopted on or after January 1, 1945. In such cases compliance with the requirements of section 165 (a) (3), (4), (5), and (6) will have to be effected before the fifteenth day of the third month following the close of the taxable year of the employer in which the plan is first put into effect. The provisions necessary to such compliance will have to be made retroactive for all purposes to the effective date of the plan.

Section 3 of the bill provides an extension of time in the case of claims for credit or refund based upon an overpayment of the tax as a result of the failure to take a deduction for a war loss as described in section 127 of the Internal Revenue Code. This latter section, which was added to the code by the Revenue Act of 1942, prescribes the rules under which a taxpayer may determine when and under what circumstances his property may be deemed destroyed or seized for the purpose of taking a tax deduction for the loss thereof. The earliest year within which a war loss may be sustained under this section is 1941, and the time for the filing of a claim for credit or refund with respect to such year expires in the usual case on March 15, 1945. It is understood by your committee that a number of taxpayers with war losses sustained in 1941 have as yet failed to take deductions for such losses or to file claims therefor. A reexamination of the recovery provisions of section 127, looking toward a possible revision of this section insofar as it relates to the taxation of recoveries, may be desirable. Pending this study, it seems appropriate that taxpayers who have sustained war losses in 1941 be granted further time within which claims for credit or refund relating to such losses may be filed. Therefore this section provides that in the case of a claim for credit or refund which relates to an overpayment of the tax resulting from the failure of the taxpayer to take a war-loss deduction in respect of property deemed destroyed or under seized section 127 (a) for a taxable year beginning in 1941, the 3-year period of limitation prescribed under section 322 (b) (1) shall not expire prior to December 31, 1945. This section further provides that with respect to any such claim filed on or before such date, the amount of the credit or refund will not be subject to the limitations provided by section 322 (a) (2) or (3) to the extent of the amount of the overpayment attributable to such war-loss deduction.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in the Revenue Act of 1942 made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SEC. 403. POWERS OF APPOINTMENT.

* * * * *
 (d) POWERS WITH RESPECT TO WHICH AMENDMENTS NOT APPLICABLE.—
 * * * * *

(3) The amendments made by this section shall not apply with respect to any power to appoint created on or before the date of the enactment of this Act if it is released before [January 1, 1945] *July 1, 1945*, or within the time limited by paragraph (2) in cases to which such paragraph is applicable; or if the decedent dies before [January 1, 1945] *July 1, 1945*, or within the time limited by paragraph (2) in cases to which such paragraph is applicable, and such power is not exercised.

SEC. 452. POWERS OF APPOINTMENT.

* * * * *
 (c) RELEASE BEFORE [JANUARY 1, 1945] *JULY 1, 1945*.—

(1) A release of a power to appoint before [January 1, 1945] *July 1, 1945*, shall not be deemed a transfer of property by the individual possessing such power.
 (2) This subsection shall apply to all calendar years prior to 1945 and to that part of the calendar year 1945 prior to *July 1, 1945*.

SEC. 162. PENSION TRUSTS.

* * * * *
 (d) TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.—The amendments made by this section shall be applicable as to both the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942. * * *
 (B) such a plan shall be considered as satisfying the requirements of section [165 (a), (3), (4), and (5)] *167 (a), (3), (4), (5), and (6)* for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending [December 31, 1944] *March 15, 1945*, if the provisions thereof satisfy such requirements by [December 31, 1944] *March 15, 1945*, and if by that time [such provisions are made effective for all purposes as of a date not later than January 1, 1944.] *all provisions of such plan which are necessary to satisfy such requirements are in effect and have been made effective for all purposes with respect to the portion of such period after December 31, 1943.*

* * * * *
 [(2) In the case of a stock bonus, pension, profit-sharing or annuity plan put into effect after September 1, 1942, such a plan shall be considered as satisfying the requirements of section 165 (a) (3), (4), (5), and (6) for the period beginning with the date such plan is put into effect and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than the effective date of such plan or January 1, 1944, whichever is the later.]

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(2) *A stock bonus, pension, profit-sharing, or annuity plan—*

(A) put into effect after September 1, 1942, and prior to January 1, 1945, shall be considered as satisfying the requirements of section 165 (a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with March 15, 1945, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the portion of such period after December 31, 1943;

(B) put into effect after December 31, 1944, shall be considered as satisfying the requirements of section 165 (a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period.

