

IMMUNITIES FOR INTERNATIONAL ORGANIZATIONS

DECEMBER 18 (legislative day, OCTOBER 29), 1945.—Ordered to be printed

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

REPORT

[To accompany H. R. 4489]

The Committee on Finance, to whom was referred the bill (H. R. 4489) to extend certain privileges, exemptions, and immunities to international organizations and to the officers and employees thereof, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

This bill as reported by the committee consists of two titles. Title I contains the provisions of the bill relating to privileges, exemptions, and immunities for international organizations and their officers and employees. Title II of the bill makes several amendments of an administrative or technical nature to the internal-revenue laws, which are noncontroversial and which should be enacted before the 1st of January.

TITLE I

PURPOSE OF THE LEGISLATION

The basic purpose of this title is to confer upon international organizations, and officers and employees thereof, privileges and immunities of a governmental nature. The definition of the term "international organization" received the special attention of the committee. Under the bill as reported, the benefits of this title will be extended only to those international organizations in which the United States participates with the sanction of Congress. There are excluded from the benefits of the title organizations of a private nature or public international organizations in which the United States does not participate. Furthermore, as a practical matter, the benefits will not be extended to organizations in which the United States does participate but which carry on activities entirely outside of the United States. A further committee amendment would authorize the President, in the light of the functions performed by

any particular international organization, to withhold or withdraw from such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title or to condition or limit the enjoyment by any organization or its officers or employees of any of such privileges, exemptions, or immunities. This provision will permit the adjustment or limitation of the privileges in the event that any international organization should engage, for example, in activities of a commercial nature. Provision is also made for the withdrawal of the benefits of the title entirely from organizations which abuse such benefits, and for the withdrawal of such benefits for other reasons which presumably would include the cessation of activities of a particular organization.

At the present time the Federal Government enjoys within the United States certain well-established privileges and immunities such as exemption from suit without its consent and certain specific tax immunities, as for example, exemption from social-security taxes. Under provisions of law and the comity of nations, furthermore, governments have traditionally granted to each other, and to the officials of each other, certain specific privileges, exemptions, and immunities with respect to these and other matters. However, in cases where this Government associates itself with one or more foreign governments in an international organization, there exists at the present time no law of the United States whereby this country can extend privileges of a governmental character with respect to international organizations or their officials in this country. It is to fill this need that this bill has been presented. The self-interest of this Government in legislation of this character is twofold since such legislation will not only protect the official character of public international organizations located in this country but it will also tend to strengthen the position of international organizations of which the United States is a member when they are located or carry on activities in other countries.

While the need for such legislation has existed for some time, the problem has become of pressing importance only in the last few years in connection with the increased activities of the United States in relation to international organizations. Provisions have been made with respect to the problem of privileges and immunities in the international conferences in connection with the creation of UNRRA, the International Monetary Fund and International Bank, the Food and Agriculture Organization of the United Nations, and others. The increased importance of the Pan American Union and its expanded activities, will also require the extension of privileges and immunities to this organization which has long had its headquarters in the United States.

The bill has been prepared primarily to meet the requirements of organizations such as those mentioned in the preceding paragraph. However, it will also be available to meet the needs of the United Nations Organization, the headquarters of which will in all probability be established in the United States. Although the establishment of the headquarters of that organization in this country may in due course require the negotiation of a special agreement covering matters beyond the scope of this legislation, all of the privileges and immunities provided for in this bill will have to be extended in any event to the United Nations Organization. In this sense it is considered to be basic legislation in this field, and the passage of this bill at

this time would be an important indication of the desire of the United States to facilitate fully the functioning of international organizations in this country. The committee understands that the provisions of the bill will satisfy in full the requirements of other international organizations conducting activities in the United States.

In this regard the committee is informed that the provisions of the bill are standard in the light of available precedents. The agreement between the Government of Switzerland and the League of Nations in connection with the establishment of the headquarters of the League in that country, and the Diplomatic Privileges (Extension) Act, 1944, whereby the British Government was authorized by its Parliament to extend privileges and immunities to international organizations, constitute important precedents for the legislation now before us and the British legislation is substantially similar in conception and content to the legislation under consideration. The committee has been advised that other governments, notably the Governments of Canada and the Netherlands, have taken action on the same problem in connection with activities of international organizations in their territories.

In general, as stated at the beginning of this report, the privileges and immunities provided in this legislation are similar to those granted by the United States to foreign governments and their officials. However, this legislation has the advantage of setting forth in one place all of the specific privileges which international organizations will enjoy. The privileges to which international organizations and their officials will be entitled are somewhat more limited than those which are extended by the United States to foreign governments. This is particularly true with respect of the following matters: (1) The exemption from customs duties to officers and employees of international organizations is limited to baggage and effects imported in connection with the arrival of the owner whereas the exemption enjoyed by diplomatic officials is considerably broader; (2) foreign governments and diplomatic officials enjoy substantially broader exemptions from excise taxes than those which would be extended to international organizations under this bill; (3) the immunity from suit to be extended to officers and employees of international organizations is limited to immunity for acts performed by them in their official capacity whereas diplomatic officers enjoy full immunity from legal processes in this country.

The committee is satisfied that this legislation will safeguard the interests of the United States while enabling this country to fulfill its commitments in connection with its membership in international organizations, and that it should therefore pass.

EXPLANATION OF TITLE I BY SECTIONS

Section 1 of the bill defines the term "international organization" for the purposes of the legislation in the restrictive sense discussed above. It also provides for the withholding or withdrawal of any specific privileges from any international organization or its officers and employees, or for the revocation of the designation of any international organization as being entitled to enjoy the benefits of the bill. These are basic provisions to which the committee has given close attention. The committee believes that the interests of the

United States are adequately protected by the restrictions which have been provided. The broad powers granted to the President will permit prompt action in connection with any abuse of privileges and immunities or the conduct by any such organization of activities of a type in which such organizations have not heretofore been engaged.

Section 2 sets forth certain general exemptions which would be extended to international organizations including immunity from suit, search, and confiscation, and inviolability of archives. With respect to immunity from suit, customs duties, and internal revenue taxes, imposed upon or by reason of importation, and procedures for collection and enforcement of these duties and taxes, the privileges, exemptions, and immunities extended international organizations are those accorded foreign governments under similar circumstances. Likewise with respect to the registration of foreign agents and the treatment of official communications, international organizations are put on the same basis as foreign governments.

Section 3 provides exemption from customs duties and internal revenue taxes, imposed upon or by reason of importation, with respect to the baggage and effects of alien officers and employees of international organizations, aliens designated by foreign governments to serve as their representatives in or to such organizations, and the families, suites, or servants of such officers, employees, or representatives. In order to receive the exemption, baggage and effects must be imported in connection with the arrival of the owner in this country.

Section 4 provides for amendments of the Internal Revenue Code in order to extend exemptions from Federal taxation to international organizations and their officers and employees.

International organizations are put on the same basis as foreign governments with respect to the exemption of income from sources within the United States. This provision is made effective for taxable years beginning after December 31, 1943.

Likewise, for taxable years beginning after December 31, 1943, exemption from income tax is extended to alien officers and employees of international organizations but not to American citizens. In this respect the exemption is similar to the exemption now provided for employees of a foreign government. However, there is no requirement that the services performed by the employee of an international organization shall be similar to those performed by Federal employees abroad, nor that an equivalent exemption shall be extended Federal employees. Provision with respect to reciprocity by foreign governments is made in section 9 of the bill. The exemption is limited to wages, fees, or salary received as compensation for official services to such international organizations so that the beneficiaries of the exemption are not relieved by the bill from taxes on income derived from commercial activities in the United States, speculation in securities, or other sources within the United States.

International organizations and all of their employees, including United States citizens as well as aliens, are exempted from social-security taxes and the collection of tax at the source on wages. International organizations and their employees are thus placed in precisely the same position with respect to these taxes as the United States Government and foreign governments.

International organizations are also exempted from the Federal communications taxes and taxes on transportation of persons and

property but neither they nor their officers and employees are exempted from any Federal excise or tax not specifically referred to in the bill.

Section 3797 (a) of the code is amended to include a definition of the term "international organization" for the purposes of the amendments to the code made by this bill. The term would include only such organizations as have been determined in the manner provided in section 1 of this bill to be entitled to the privileges, exemptions, and immunities provided for under this legislation. As provided in section 1 of the bill, the President could withhold or withdraw from any organization any of the tax exemptions provided for by the bill, or could withdraw entirely its designation as an international organization, in which case the international organization and its officers and employees would cease to be entitled to the tax exemptions provided by the bill.

Section 5 amends the Social Security Act to remove from covered employment services performed in the employ of an international organization, paralleling the employment-tax exemptions accorded by section 4. Provisions are made for refunding taxes collected prior to the effective date, January 1, 1946, of the exemptions and for excepting services rendered prior to that date.

Section 6 provides that international organizations shall be exempt from all property taxes imposed by or under the authority of any act of Congress, including such as are applicable to the District of Columbia. The committee has stricken from the bill a provision of section 6 which purported to extend to international organizations the same exemptions and immunities from State and local taxes as are enjoyed by the United States Government; the committee believes that this matter should be properly dealt with by the State and local authorities.

Section 7 provides that alien officers and employees of international organizations and representatives of foreign governments therein shall enjoy the same privileges as officials of foreign governments in respect of laws regulating entering into and departure from the United States, alien registration and fingerprinting, registration of foreign agents, and selective training and service. The immigration laws are amended accordingly and, under section 7 (d) and 8 (b), the same procedure for deportation is made applicable to alien officers and employees of international organizations as in the case of officials of foreign governments.

Under section 7 (b), all officials of international organizations, including American citizens, and representatives of foreign governments therein, would be granted immunity from suit and legal process for acts performed in their official capacity. It should be noted that under this provision and section 8 (c) there would not be extended full diplomatic immunity from judicial process as in the case of diplomatic officers.

Section 8 (a) provides the procedure for notification to and acceptance by the Secretary of State of the persons to be entitled to the benefits of the legislation. Section 8 (c) provides that no person shall by reason of the provisions of the legislation, receive diplomatic status or be entitled to any of the privileges incident thereto except as set forth in the bill.

Section 9 provides that the benefits of the legislation shall be granted notwithstanding the fact that similar privileges and immunities granted by the United States to a foreign government may be conditioned upon the extension of reciprocity by that government. This

provision is included to make it clear that the privileges and immunities may be extended to international organizations even though such organizations are not in a position to accord similar treatment to the United States; in substance the effect is to state that the reciprocity provisions which are contained in certain laws providing for privileges and immunities to foreign governments would not be applicable in this situation. However, this section also provides that the Secretary of State shall not be precluded from withdrawing privileges and immunities from nationals of any foreign country which fails to provide corresponding privileges to the citizens of the United States; this is an important sanction in which the committee places considerable importance.

TITLE II

SECTION 201. EXTENSION OF TIME FOR CLAIMING CREDIT OR REFUND WITH RESPECT TO WAR LOSSES

This section of the bill would extend the time for the filing of claims for credit or refund based upon overpayments resulting from the failure to take as deductions war losses described in section 127 of the Internal Revenue Code. This latter section, which was added to the code by the Revenue Act of 1942, sets forth the rules and conditions under which the taxpayer may determine that his property has been destroyed or seized for the purpose of taking an income tax deduction for the loss thereof. The two earliest years within which a war loss may be sustained under this section are 1941 and 1942. By virtue of section 3 of Public Law 511, Seventy-eighth Congress, the time for the filing of claims for credit or refund with respect to war losses sustained in 1941 will expire in the usual case on December 31, 1945. The time for the filing of claims for credit or refund for the year 1942 will ordinarily expire on March 15, 1946. It is believed that a number of taxpayers with war losses sustained in 1941 and 1942 have as yet failed to claim deductions for these losses. Inasmuch as a possible revision of the recovery provisions of section 127 may be incorporated in the next revenue bill, it seems desirable to grant further time within which claims for credit or refund relating to such war losses may be filed.

Accordingly, this section provides that in the case of a claim for credit or refund due to an overpayment of the tax arising from the failure of the taxpayer to take a deduction in respect of property deemed destroyed or seized under section 127 (a) for a taxable year beginning in 1941 or 1942, the 3-year period of limitation prescribed under section 322 (b) (1) shall not expire prior to December 31, 1946. Also, in the case of 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 overpayment attributable to such war-loss deduction.

SECTION 202. CONTRIBUTIONS TO PENSION TRUSTS

This section of the bill is designed to make a technical amendment to section 23 (p) (2) of the Internal Revenue Code, relating to deductions under prior income-tax acts for contributions to pension trusts. Under section 23 (p) of the Internal Revenue Code, prior to its amendment by the Revenue Act of 1942, and under prior revenue acts

beginning with the Revenue Act of 1928, an employer maintaining a pension trust for his employees which met the requirements of section 165 was allowed, in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year allowed as deductions under section 23 (a), a reasonable amount paid into the trust during the taxable year in excess of such contributions, but only if such amount was apportioned in equal parts over a period of 10 consecutive years beginning with the year in which the transfer or payment was made.

Section 23 (p) of the Internal Revenue Code, as amended by section 162 (b) of the Revenue Act of 1942, continues to allow deductions under prior income-tax acts, but with respect to deductions allowable under the Internal Revenue Code, it makes section 23 (p) (2) apply only to an amount that was apportioned to any taxable year beginning after December 31, 1942, from a contribution that was made during a taxable year beginning before January 1, 1943. Accordingly, a contribution apportioned to the taxable year beginning in 1942 would not be allowed as a deduction for that year. This section of the bill adjusts the dates appearing in section 23 (p) (2) in order to permit deductions allowable under section 23 (p) for taxable years beginning prior to January 1, 1942, which were apportioned under such section to any year beginning after December 31, 1941. This amendment would be applicable as though it had been a part of section 162 (b) of the Revenue Act of 1942.

SECTION 208. PETITION TO THE TAX COURT OF THE UNITED STATES

This section of the bill relates to the 90-day period within which a petition may be filed with The Tax Court of the United States (formerly the Board of Tax Appeals) for a redetermination of the liability in respect of certain taxes. Under the present law, in computing the period of 90 days, Sunday, or a legal holiday in the District of Columbia, is not counted as the ninetieth day. In view of a recent order of The Tax Court, dated September 7, 1945, to the effect that Saturdays constitute no part of the administrative workweek, it is desirable that Saturdays also be treated in a like manner.

Accordingly, this section amends section 272 (a) (1) (relating to the redetermination of a deficiency in respect of the tax imposed by ch. 1), section 732 (a) (relating to the redetermination of the excess-profit tax in the case of abnormalities under sec. 711 (b) (1) (H), (I), (J), or (K), sec. 721, or sec. 722), section 871 (a) (1) (relating to the redetermination of a deficiency in respect of the estate tax), and section 1012 (a) (1) (relating to the redetermination of a deficiency in respect of the gift tax), so that in the computation of the 90-day period for the filing of the petition Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the ninetieth day. This amendment would be effective on and after September 8, 1945, which is the first Saturday after the date of the order of the Tax Court declaring that there would be no business hours on Saturday.