

## CALVERT DISTILLING CO.

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MARCH 21 (legislative day, MARCH 5), 1946.—Ordered to be printed

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

## REPORT

[To accompany H. R. 4208]

The Committee on Finance, to whom was referred the bill (H. R. 4208) for the relief of the Calvert Distilling Co., having considered the same, report favorably thereon, without amendment, and recommend that the bill be passed.

In explanation of the committee's action, the following is quoted from the report from the Committee on Ways and Means of the House of Representatives:

## GENERAL STATEMENT

The purpose of this bill is to give relief to the Calvert Distilling Co. for a clerical error made in connection with its Federal capital-stock-tax return for the year ending June 30, 1945, as a result of which the declared value of the corporation's capital stock was fixed at \$12,000,000, instead of the actual \$120,000,000, with the result that the corporation, unless relief is given, will incur a substantial overpayment of taxes.

The circumstances of this clerical error are as follows:

Some time prior to July 31, 1945, the due date for filing the capital-stock return, Calvert's accounting department prepared data to determine what value should be reported on their capital-stock-tax returns, and the value of its affiliated companies, some 35 in number. This data was given to an employee of the taxpayer, who prepared a lengthy schedule showing the names of the various companies, their estimated incomes for the fiscal year ended July 31, 1945, the suggested value to be declared on their capital-stock returns, and other data. The employee prepared a sheet in his own handwriting, which may be called the first sheet. On this sheet the figure suggested for the declared value of the taxpayer's capital stock was \$120,000,000. The employee showed the sheet to his superiors, who approved it and asked that, for convenience in typing, it be condensed, eliminating all information except that necessary for the preparation of the returns. Accordingly, the employee prepared in his handwriting another sheet, which may be called the second sheet, to which he transferred the necessary figures from the first sheet. The suggested declared values on the second sheet were identical with those on the first sheet, with the exception that on the second sheet the employee erroneously and inadvertently inserted as the declared value of the capital stock of the Calvert Distilling Co. the figure "\$12,000,000" instead of the proper figure, "\$120,000,000," appearing on the first sheet. The second sheet, with this mistake, was used as the basis for preparing the capital-stock return.

The return was filed on July 31, 1945, with the collector of internal revenue for, the third district of New York. Shortly thereafter the mistake was discovered and on August 15 an amended return was prepared showing the actual declared value of \$120,000,000. A check for the additional tax resulting therefrom was

submitted, with the amended return, to the collector of internal revenue for the third district of New York. However, the collector, and subsequently, the Commissioner, have taken the position that under the law they cannot accept the amended return. The mistake will result in the corporation being subject to declared-value excess-profits tax for the year ending July 31, 1945, on all of its income in excess of \$1,200,000 (10 percent of the declared value of \$12,000,000). Unless legislative relief is granted, the taxpayer will be subject to declared-value excess-profits tax for the year ending July 31, 1945, of over \$1,000,000, whereas it would not have been subject to any declared-value excess-profits tax if it had declared the actual value of \$120,000,000, and would have had to pay an additional \$135,000 capital-stock tax. Since the declared-value excess-profits tax is deductible in computing the corporation's normal and surtax and excess-profits tax, the net cost to the corporation is about \$140,000.

From the foregoing, it is apparent that the error was purely a clerical error. There was no mistake of judgment involved nor is there any question of "second guessing." As further proof of this, the record shows that for the 3 years preceding June 30, 1945, the taxpayer, the Calvert Distilling Co., filed capital-stock-tax returns showing a declared value of \$95,000,000, \$100,000,000, and \$85,500,000, respectively.

There is no question but that under the law the Treasury Department could not have accepted the amended return. Hence the only possible relief for the taxpayer is through special legislation.

The bill H. R. 4208 was submitted to the Treasury Department for its opinion and under date of February 7, 1946, the Secretary of the Treasury wrote to the Honorable R. L. Doughton, chairman of the Committee on Ways and Means, as follows:

TREASURY DEPARTMENT,  
Washington 25, February 7, 1946.

Hon. R. L. DOUGHTON,  
Chairman, Committee on Ways and Means,  
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: I have your letter of October 11, 1945, transmitting a copy of H. R. 4208 (79th Cong., 1st sess.), a bill for the relief of the Calvert Distilling Co., 405 Lexington Avenue, New York 17, N. Y.

H. R. 4208 provides that, notwithstanding the declaration of value made in its capital-stock tax return for the year ended June 30, 1945, the declared value of the Calvert Distilling Co. shall be deemed to be \$120,000,000 for the purpose of determining its liability under chapter 6 of the Internal Revenue Code for the year ended June 30, 1945, and for the purpose of determining its liability under section 600 of the Internal Revenue Code for the fiscal year ended July 31, 1945.

The value declared by the corporation on its return filed July 31, 1945, was \$12,000,000. On August 17, 1945, a second return was submitted showing a declared value of \$120,000,000, with the explanation that the previous value was erroneous and resulted from a mistake on the part of the accountant in transcribing the figures of one work sheet to another. The taxpayer was advised that the second return was not acceptable under the specific provisions of the law and regulations and the decisions of the Supreme Court in the cases of *The Scaife Company v. Commissioner* (314 U. S. 459), and *Commissioner v. Lerner Stores Corporation* (Md.) (314 U. S. 463), which held that an amended declaration of value reported on a return received by the collector after the close of the filing period is not effective. The 1945 filing period closed on July 31, 1945, and the return showing the amended declaration of value was not received until August 17, 1945.

It seems to be established beyond doubt that the error of the company in its capital-stock-tax return was purely clerical. The error was promptly discovered, and called to the attention of the Government. The Treasury Department has, of course, consistently opposed any discrimination between taxpayers whereby a particular taxpayer might obtain a relief or advantage not available generally. Nevertheless, it seems appropriate to grant relief in cases where the particular facts here present are conclusively demonstrated. The Department, therefore, does not object to the passage of this bill.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Very truly yours,

FRED M. VINSON,  
Secretary of the Treasury.

For these reasons it is recommended that the bill be passed.