

## AMENDING SECTION 3121 OF THE INTERNAL REVENUE CODE

JULY 12 (legislative day, JULY 10), 1947.—Ordered to be printed

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

### REPORT

[To accompany S. 1576]

The Committee on Finance, to whom was referred the bill (S. 1576) to amend section 3121 of the Internal Revenue Code, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of this bill is to confer upon the Commissioner of Internal Revenue the power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence at hearings authorized or required in connection with contemplated denials of applications for industrial alcohol permits and with the revocation of such permits. This power will be of material assistance in the administering of the industrial alcohol laws. In addition, it will conform permit-revocation proceedings to the provisions of section 7 (c) of the Administrative Procedure Act, concerning the character of evidence required in hearings subject to such section. It is considered advisable and desirable with respect to hearings on contemplated denials of applications for permits.

The revocation of industrial alcohol permits is provided for in subsection (b) of section 3114 of the Internal Revenue Code. The subsection requires the Commissioner or his agent to issue an order citing the permittee to show cause why his permit should not be revoked, the holding of a hearing pursuant to the citation, and a decision on the record of the hearing. The subsection also makes provision for review of the Commissioner's decision before a court of equity in the event the permit is revoked. The judicial review, however, does not involve a trial de novo but consists of a review of the record of the administrative hearing. The power of subpoena was not provided for proceedings to revoke industrial alcohol permits. It was, therefore, necessary to provide for the reception of evidence in affidavit form in such proceedings where the personal attendance of the witness was

not reasonably possible. Important and essential witnesses not under the control of the Government would frequently decline to appear in person at hearings although willing to execute affidavits covering their knowledge of the transactions involved. In view of the circumstances, the practice of receiving affidavits in such cases was sanctioned by the courts.

It is uncertain, however, whether the use of affidavits as evidence in proceedings for the revocation of industrial alcohol permits will continue to be sanctioned by the courts. This question arises from the fact that such proceedings are cases of "adjudication required by statute to be determined on the record after opportunity for an agency hearing" within section 5 of the Administrative Procedure Act. This section requires hearings in such cases to be in conformity with section 7 of the act. Section 7 (c) of the Administrative Procedure Act provides that any "oral or documentary evidence" may be received and that agency action must be supported by "reliable, probative, and substantial evidence." Section 7 (c) further provides that---

Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

It is possible that the subsection may be so interpreted as to preclude the use of affidavits as evidence. It follows that if the use of affidavits should be barred by the courts the Bureau of Internal Revenue will, in the absence of the power of subpoena, be seriously hampered in administering the industrial alcohol permit system.

Proceedings for the denial of applications for industrial alcohol permits are not deemed to be subject to the requirements of section 7 (c) of the Administrative Procedure Act. The reason for this is that such adjudications are not within section 5 of the act because there is no statute which requires them to be determined on the record after opportunity for an agency hearing. The statute (sec. 3114 (a), I. R. C.) providing for the denial of such applications makes provision for review of the Commissioner's decision before a court of equity but does not expressly require a hearing. It is an established administrative practice, however, to give the applicant a hearing in such cases and to base the decision upon the record of the hearing. The judicial review of administrative decisions in such cases, like the judicial review of administrative decisions revoking permits, does not involve a trial de novo. The hearings on the denial of applications for industrial alcohol permits thus bear a close analogy to hearings for the revocation of such permits. Under the circumstances, it would seem advisable and desirable to grant the power of subpoena for proceedings relating to the denial of applications for permits so that similar evidentiary standards may be employed in both types of cases.

The Secretary of the Treasury is now vested with the power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence at hearings on the contemplated denial of applications for beverage liquor permits under the Federal Alcohol Administration Act and for the revocation, suspension, and annulment of such permits. The Secretary of the Treasury is also vested with such subpoena power in matters within such act that are under investigation. This was done by making the provisions of sections 9 and 10 of the Federal Trade Commission

Act (U. S. C., title 15, secs. 49, 50) applicable to the jurisdiction, powers, and duties of the Secretary under the Federal Alcohol Administration Act and to any person subject to the provisions of the act. This bill would in like manner make the provisions of sections 9 and 10 of the Federal Trade Commission Act applicable to the jurisdiction, powers, and duties of the Commissioner under part II, subchapter C of chapter 26, of the Internal Revenue Code and to any person subject to the provisions of such part. This would give the Commissioner the same subpoena power in administering part II, subchapter C of chapter 26, of the Internal Revenue Code as that now authorized and exercised in administering the Federal Alcohol Administration Act. The grant of the subpoena power for investigative purposes under such part is not deemed essential, but it would be a useful aid in administering and enforcing its provisions.

