

## POWERS OF APPOINTMENT

MAY 21 (legislative day, MAY 20), 1948.—Ordered to be printed

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

### REPORT

[To accompany H. J. Res. 395]

The Committee on Finance, to whom was referred the joint resolution (H. J. Res. 395) to extend the time for the release, free of estate and gift tax, of powers of appointment, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The committee amendment inserts a new section 3 in the bill, which provides as follows:

#### SEC. 3. EXTENSION OF TIME FOR ASSESSMENT OF DEFERRED EXCESS-PROFITS TAX

(a) Section 710 (a) (5) of the Internal Revenue Code is hereby amended by adding at the end thereof the following:

"Notwithstanding any other provision of law or rule of law, to the extent that any amount of tax remaining unpaid pursuant to this paragraph is in excess of the reduction in tax finally determined under section 722, such excess may be assessed at any time before the expiration of one year after such final determination."

(b) The amendment made by this section shall be effective as if made by section 222 (b) of the Revenue Act of 1942.

Section 3 amends section 710 (a) (5) of the Internal Revenue Code (relating to deferment of excess-profits-tax payment in case of abnormality) by extending the period during which taxes deferred under section 710 (a) (5) might be assessed. Section 710 (a) (5) permits a taxpayer in certain cases to reduce the excess-profits tax payable upon the filing of its return by a portion of that reduction in tax which it seeks through the application of section 722 (relating to the establishment of constructive average base period net income). Relief under section 722 is determined only by the action of the Commissioner in allowing in whole or in part, or disallowing, the taxpayer's application for relief under that section, subject to review by the Tax Court under section 732 if a refund of tax paid is sought by the application. In any case in which a deficiency relating to other matters is deter-

mined, or in which the period of limitations on assessment for the taxable year will expire before action on the application is completed, it is necessary for the protection of the revenue under existing law to assess as a deficiency the amount of tax deferred under section 710 (a) (5) even though the taxpayer's application for relief under section 722 has not been finally determined. In order to permit the Commissioner, in his discretion, to determine deficiencies not involving section 722 without regard to the deferment of tax under section 710 (a) (5), and to make it possible to defer the assessment of the tax unpaid pursuant to the provisions of section 710 (a) (5) until the application for relief under section 722 is finally determined, section 3 of the joint resolution gives the Commissioner at least 1 year after the final determination of the application for relief under section 722 in which to assess the unpaid tax which was deferred under section 710 (a) (5). If a deficiency for the taxable year involved is otherwise barred by reason of any period of limitations, the decision of any court (including the Tax Court), or any other provision or rule of law, the amount of tax unpaid by reason of section 710 (a) (5) may still be assessed after final determination of the taxpayer's claim under section 722. Thus, the amendment to section 710 (a) (5) extends the authority of the Commissioner by giving him additional time to make such assessments and is not a limitation on his authority under existing law. In cases in which the action of the Commissioner is subject to review by the Tax Court under section 732, the determination of a taxpayer's application for relief under section 722 is final upon the expiration of the period for filing a petition for redetermination of the tax by the Tax Court under section 732 (a) or, if such petition is filed, upon the decision of the Tax Court thereon becoming final. In other cases, the determination is final upon the sending of notice to the taxpayer by the Commissioner of his final action on the application. It may be that in certain unusual circumstances (other than the expiration of the period of limitations or the period for review), the Commissioner at the request of the taxpayer may agree to reconsider his action on an application, and in such cases the amendment made by this section refers to the final determination of the second action on the application.

Your committee adopts the report of the Committee on Ways and Means of the House of Representatives on sections 1 and 2 of the bill which is as follows:

Section 1 of the joint resolution extends to July 1, 1949, the period for tax-free release of powers of appointment created on or before October 21, 1942, the effective date of the Revenue Act of 1942. 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. Prior laws have extended the time for release of such powers to July 1, 1948. It is believed by your committee that the extension granted under the resolution will be ample to permit this whole matter to be considered in the early part of next year.

Section 2 provides that a power to appoint created by a will executed on or before October 21, 1942, shall be considered a power created on or before that date

if the person executing the will dies before July 1, 1949, without having republished the will by codicil or otherwise after October 21, 1942.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XII of the Rules of the House of Representatives, changes in existing law made by the joint resolution 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):

“REVENUE ACT OF 1942

“SEC. 403. POWERS OF APPOINTMENT \* \* \*

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“(d) Powers with respect to which amendments not applicable.—

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“(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 July 1, [1948] 1949, or within the time limited by paragraph (2) in cases to which such paragraph is applicable; or if the decedent dies before July 1, [1948] 1949, or within the time limited by paragraph (2) in cases to which such paragraph is applicable, and such power is not exercised.

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“SEC. 452. POWERS OF APPOINTMENT \* \* \*

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“(c) Release Before July 1, [1948] 1949.—

“(1) A Release of a Power to Appoint before July 1, [1948] 1949, 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 [1948] 1949, and to that part of the calendar year [1948] 1949 prior to July 1, [1948] 1949.

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