

# Calendar No. 2178

81st CONGRESS }  
2d Session }

SENATE

} REPORT  
No. 2171

## AMENDING SECTION 322 (B) (3) OF THE INTERNAL REVENUE CODE

---

JULY 27 (legislative day JULY 20), 1950.—Ordered to be printed

---

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

### R E P O R T

[To accompany H. R. 9120]

The Committee on Finance, to whom was referred the bill (H. R. 9120) to amend section 322 (b) (3) of the Internal Revenue Code, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The bill would amend section 322 (b) (3) of the Internal Revenue Code to make clear that taxpayers who enter into an agreement with the Commissioner of Internal Revenue extending the time within which an assessment of income tax may be made do not thereby subject themselves to a reduction in the period of time otherwise available to them for the filing of a claim for credit or refund.

#### GENERAL STATEMENT

Prior to the enactment of the Revenue Act of 1942, section 322 (b) (1) of the Internal Revenue Code limited credits and refunds of income taxes to those in respect of which claims were filed by the taxpayer within 3 years from the time the return was filed by the taxpayer or within 2 years from the time the tax was paid. If no return was filed by the taxpayer, then claim for credit or refund had to be made within 2 years after the time the tax was paid.

Section 169 of the Revenue Act of 1942 made important changes in section 322 of the code. Section 169 (a) of that act added paragraph (3) to section 322 (b) of the code to provide certain exceptions to the usual statute of limitations in cases in which both the Commissioner and the taxpayer have, within the period prescribed for the filing of a claim for credit or refund, agreed in writing to extend the time within which the Commissioner may make an assessment. In such

## 2. AMEND SECTION 322 (B) (3) OF THE INTERNAL REVENUE CODE

cases, "the period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall be the period within which the Commissioner may make an assessment pursuant to such agreement or any extension thereof, and 6 months thereafter."

The 1942 amendment was explained in the report of the Committee on Ways and Means as follows:

Your committee has amended the existing law to permit the taxpayer to file a claim for credit or refund after the ordinary period of assessment has expired where the taxpayer and the Commissioner have by waiver extended the period for assessment of the tax. It seems only proper that if the Government is given the right by waiver to make assessments for the taxable year after the period for assessment has expired, the taxpayer should also have the right to additional time for filing refund claims for the same year (H. Rept. No. 2333, 77th Cong., 2d sess., p. 52).

In cases where the taxpayer has filed a waiver giving the Commissioner additional time to make an assessment, the Treasury has construed the 1942 amendment, however, as shortening the usual 2-year period after payment of tax for filing allowable refund claims from 2 years after payment to 6 months after the filing of the waiver. This was not the intent of Congress in enacting the 1942 amendment as that amendment was intended as a relief provision for the taxpayer and was not intended to shorten any period he had under the then existing law for filing refund claims.

This bill provides specifically that the period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall not expire prior to 2 years after the time the tax was paid. The bill also provides that, if a claim is filed more than 6 months after the expiration of the waiver period, the amount of the credit or refund shall not exceed the amount of tax paid during the 2 years immediately preceding the filing of the claim.

In order to effectuate the apparent intention of the Congress in the enactment of the Revenue Act of 1942, the amendment would be applicable to taxable years beginning after December 31, 1941, and in certain limited cases with respect to prior taxable years if at some time after February 24, 1944, the Commissioner of Internal Revenue, by reason of a waiver agreement with the taxpayer, was not precluded from the assessment of the deficiency in tax for such taxable years.

### TECHNICAL EXPLANATION OF THE BILL

Section 1 of the bill amends section 322 (b) (3) of the Internal Revenue Code by substituting for the last sentence thereof a new sentence to specify that the preceding provisions of paragraph (3) (granting to taxpayers who enter into a waiver agreement with the Commissioner an additional 6 months after the termination of the waiver period in which to file a claim for credit or refund, or within which credit or refund may be allowed or made) shall not reduce the 2-year period of limitation provided by paragraph (1) of section 322 (b), nor the limit on amount of credit or refund imposed by paragraph (2) of section 322 (b).

In certain cases under existing law, the period prescribed by section 322 (b) (3) for filing claims for refund may expire prior to 2 years after a payment of the tax. The amendment made by this bill provides that the period prescribed by the existing provisions of the first sen-

tence of section 322 (b) (3) for filing a claim shall, in such cases, be extended to include the period of 2 years after the payment of the tax. The amendment does not change the existing law in the case of a claim filed within the waiver period or within 6 months after the close of such period. Under existing law and under the amendment, such a claim is timely and the amount of refund allowable under such a claim is limited by the second sentence of section 322 (b) (3). In general, this limitation includes all amounts paid during 6 months after the waiver period, during the waiver period, and during a period of 2 or 3 years (dependent on the facts) prior to the waiver period. In the case of a claim filed more than 6 months after the waiver period, such claim is timely under existing law only if filed within 6 months after a payment of the tax, and the amount of refund in such case is limited to the tax paid within 6 months prior to the filing of the claim. Under the amendment made by this bill, a claim filed more than 6 months after the waiver period is nevertheless timely if filed within 2 years after a payment of tax, and the amount of refund in such case is limited to the tax paid within 2 years prior to the filing of the claim.

The amendment of section 322 (b) (3) would be applicable to taxable years beginning after December 31, 1941, and would also be applicable to taxable years beginning after December 31, 1923, and before January 1, 1942, subject to the conditions of the second sentence of section 169 (c) of the Revenue Act of 1942 (as added by sec. 509 (a) of the Revenue Act of 1943 and amended by sec. 2 of the bill).

#### CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, 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):

#### SECTION 322 (B) (3) OF THE INTERNAL REVENUE CODE

#### SEC. 322. REFUNDS AND CREDITS.

(a) \* \* \*

(b) LIMITATION ON ALLOWANCE.—

(1) \* \* \*

(2) \* \* \*

(3) EXCEPTIONS IN THE CASE OF WAIVERS.—If both the Commissioner and the taxpayer have, within the period prescribed in paragraph (1) for the filing of a claim for credit or refund, agreed in writing under the provisions of section 276 (b) to extend beyond the period prescribed in section 275 the time within which the Commissioner may make an assessment, the period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall be the period within which the Commissioner may make an assessment pursuant to such agreement or any extension thereof, and six months thereafter, except that the provisions of paragraph (1) shall apply to any claim filed, or credit or refund allowed or made, before the execution of such agreement. The amount of the credit or refund shall not exceed the total of the portions of tax paid (A) during the two years immediately preceding the execution of such agreement, or, if such agreement was executed within three years from the time the return was filed, during the three years immediately preceding the execution of such agreement, (B) after the execution of the agreement and before the expiration of the period within which the Commissioner might make an assessment pursuant to such agreement or any extension thereof, and (C) during six months after the expiration of such period, except that the provisions of paragraph (2) shall apply to any claim filed, or credit or refund allowed, before the execution

#### 4 AMEND SECTION 322 (B) (3) OF THE INTERNAL REVENUE CODE

of the agreement. [If any portion of the tax is paid after the expiration of the period within which the Commissioner might make an assessment pursuant to such agreement, and if no claim for credit or refund is filed after the time of such payment and before the end of six months after the expiration of such period, then credit or refund may be allowed or made if a claim therefor is filed by the taxpayer within six months from the time of such payment, or, if no claim is filed within such six-month period after the payment, if the credit or refund is allowed or made within such period, but the amount of the credit or refund shall not exceed the portion of the tax paid during the six months immediately preceding the filing of the claim, or, if no claim was filed (and the credit or refund is allowed after six months after the expiration of the period within which the Commissioner might make an assessment), during the six months immediately preceding the allowance of the credit or refund.] *Notwithstanding the foregoing provisions of this paragraph, the period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall not expire prior to two years after the time the tax was paid, but if a claim is filed, or credit or refund allowed or made if no claim is filed, more than six months after the expiration of the period within which the Commissioner may make an assessment pursuant to such agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or, if no claim is filed, immediately preceding the allowance of the credit or refund.*

#### SECTION 169 (c) OF THE REVENUE ACT OF 1942

#### SEC. 169. STATUTE OF LIMITATIONS ON REFUNDS AND CREDITS.

(a) \* \* \*

(b) \* \* \*

(c) **EFFECTIVE DATE OF AMENDMENT.**—The amendment inserting paragraph (5) of section 322 (b) shall be applicable to taxable years beginning after December 31, 1937. A provision having the effect of [the amendment inserting] section 322 (b) (3), *as amended*, of the Internal Revenue [Code,] *Code* and a provision having the effect of the amendment made by subsection (b) of this section, shall be deemed to be included in the revenue laws respectively applicable to taxable years beginning after December 31, 1923, but such [amendments] *provisions* shall be effective with respect to taxable years beginning prior to January 1, 1942, only if [on or] at some time after [the date of the enactment of the Revenue Act of 1943] *February 24, 1944*, the Commissioner may assess the tax for such taxable year solely by reason of having made (either before, on, or after [the date of the enactment of the Revenue Act of 1943] *February 24, 1944*) an agreement with the taxpayer pursuant to section 276 (b) of the Internal Revenue Code or the corresponding provision of the applicable prior revenue law to extend beyond the time prescribed in section 275 of *such code* or the corresponding provision of such prior revenue law the date within which the Commissioner may assess the tax.

