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SENATE

} REPORT
No. 1833

AMENDING SECTION 112 (N) OF THE INTERNAL REVENUE CODE
(RELATING TO NONRECOGNITION OF GAIN FROM SALE OR EX-
CHANGE OF RESIDENCE) WITH RESPECT TO PERSONS SERVING
ON ACTIVE DUTY WITH THE ARMED FORCES OF THE UNITED
STATES

JUNE 26 (legislative day, JUNE 21), 1952.—Ordered to be printed

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

REPORT

[To accompany H. R. 8270]

The Committee on Finance, to whom was referred the bill (H. R. 8270) to amend section 112 (n) of the Internal Revenue Code (relating to nonrecognition of gain from sale or exchange of residence) with respect to persons serving on active duty with the Armed Forces of the United States, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

GENERAL STATEMENT

Section 318 of the Revenue Act of 1951 amended the Internal Revenue Code to eliminate the imposition of a capital gains tax on the difference between the adjusted basis and the sale price of a taxpayer's principal residence when the proceeds of sale are used by the taxpayer to purchase a substitute residence. In order for a taxpayer to be entitled to this more favorable tax treatment the new residence must be acquired within a period of 1 year prior to or subsequent to the sale of the old residence or construction of the new residence must begin before the expiration of 1 year subsequent to the sale of the old residence and be completed not later than 18 months after the date of such sale.

The purpose of H. R. 8270 is to suspend the running of the 1-year or 18-month period during the time a taxpayer is serving on active duty with the Armed Forces of the United States during the present emergency. Unless the running of this period is suspended during the time of active military service of a taxpayer a substantial number of our veterans will be deprived of the tax benefit accorded other tax-

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payers under the amendment to the code made by section 318 of the 1951 act.

The Treasury Department has no objection to the enactment of this legislation.

TECHNICAL EXPLANATION

Section 112 (n) of existing law, relating to the nonrecognition of gain upon the sale of an old residence and the purchase of a new residence, requires that the new residence be acquired prior to the expiration of 1 year after the date of the sale of the old residence or that construction of the new residence begin before the expiration of such 1 year and be completed not later than 18 months after the sale of the old residence. The bill adds a new paragraph (8) to section 112 (n) in order to provide that such 1-year or 18-month period, as the case may be, shall be extended to include the period during which the taxpayer serves on extended active duty in the Armed Forces after the date of sale of the old residence and before January 1, 1954. The period, however, cannot be extended beyond the date which falls 4 years after the date of the sale of the old residence.

The extension covers not only the Armed Forces service of the taxpayer, but if the taxpayer and his spouse used both the old and the new residences as their principal residence, then the extension applies in like manner to the time the taxpayer's spouse is on extended active duty with the Armed Forces.

The time during which the running of the period is suspended is a part of the period. Thus, construction costs during such time are included under section 112 (n) (2) (D).

The 1-year period referred to in section 112 (n) (2) (F) (relating to the use by the taxpayer of more than one residence during such period) is not extended by the bill. Thus, if the taxpayer is on extended active duty from January 1, 1951, to January 1, 1954, if he sells his old residence on January 1, 1951, acquires a new second residence 13 months later on February 1, 1952, sells that residence on March 1, 1953, and acquires a new third residence on November 1, 1954, section 112 (n) may apply to the sale of the first residence and the acquisition of the second, and also may apply a second time to the sale of the second residence and the acquisition of the third residence. It may be noted in this example that the new paragraph (8) would apply to bring the sale of the first and the purchase of the second residence within the period specified in section 112 (n) (1). It would also bring the sale of the second and the purchase of the third residence within such period. It would not, however, apply so as to bring section 112 (n) (2) (F) into operation.

Section 112 (n) (2) (G) refers to the 1-year period specified in section 112 (n) (2) (F), and provides that in certain cases such period shall be 18 months. Section 112 (n) (8), as added by the bill, does not apply to section 112 (n) (2) (F) whether or not section 112 (n) (2) (G) is also applicable to section 112 (n) (2) (F). Thus, if subparagraph (G) is not applicable, the period under subparagraph (F) is 1 year and is not subject to extension under paragraph (8). Similarly, if subparagraph (G) is applicable to subparagraph (F), the period under subparagraph (F) is 18 months, and such 18-month period is not subject to any extension by reason of paragraph (8) of section 112 (n).

Furthermore, since the 1-year period referred to in section 112 (n) (3) occurs prior to the date of sale of the residence, such 1-year period is not extended by reason of the provisions of new paragraph (8) of section 112 (n).

Paragraph (8) is applicable for the purpose of determining the period referred to in section 112 (n) (7) relating to the statute of limitations. Thus, the period referred to in section 112 (n) (7) (A) (ii) and (iii) is the period under paragraph (1) (including 1 year after the sale of the old residence, or if section 112 (n) (2) (G) is applicable, 18 months after the sale) as extended by the provisions of paragraph (8) of section 112 (n).

The term "extended active duty" is defined by the bill to mean any period of active duty which is served pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period. If the call or order is for a period of more than 90 days, the time served pursuant to such order is within section 112 (n) (8) even though such time may, by reason of a change in orders after the beginning of such duty, be less than 90 days.

The amendment made by this bill is applicable to taxable years ending after December 31, 1950, but only with respect to the sale of a residence after December 31, 1950.

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):

SEC. 112. RECOGNITION OF GAIN OR LOSS.

(n) GAIN FROM SALE OR EXCHANGE OF RESIDENCE.—

* * * * *

(8) *MEMBERS OF ARMED FORCES.*—*The running of any period of time specified in paragraph (1) or (2) (other than the one year referred to in paragraph (2) (F) of this subsection) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence and before January 1, 1954, except that any such period as so suspended shall not extend beyond the date four years after the date of the sale of the old residence. For the purpose of this paragraph, the term "extended active duty," means any period of active duty pursuant to a call or order to such duty for a period in excess of ninety days or for an indefinite period.*

