

HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC.

JUNE 29, 1955.—Ordered to be printed

Mr. JOHNSON of Texas (for Mr. BYRD), from the Committee on Finance, submitted the following

R E P O R T

[To accompany H. R. 4182]

The Committee on Finance, to whom was referred the bill (H. R. 4152), for the relief of the Highway Construction Company of Ohio, Inc., having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out the provisos beginning on line 10, on page 1, and ending on page 2, line 4, and insert in lieu thereof the following:

Provided, That in making such determination of the excessive profits of the Highway Construction Company, the Tax Court of the United States may take into consideration the affiliation of that company with any other company; but the findings of such court shall be limited to determining only the amount, if any, of the excessive profits of the Highway Construction Company and such court shall have no authority under this Act to redetermine the amount, if any, of the excessive profits of any company affiliated with such Highway Construction Company; *Provided further*, That the Tax Court shall have jurisdiction to determine the excessive profits of the Highway Construction Company under this Act only if such company files a petition with such court for redetermination within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the date of enactment of this Act.

The committee appointed a subcommittee to consider this bill, which consisted of Senator Wallace F. Bennett, of Utah, chairman, and Senator Frear, and Senator Williams of Delaware. The subcommittee report, which was approved unanimously by the committee, is as follows:

The subcommittee wishes to make a report on H. R. 4182, a bill for the relief of the Highway Construction Co. of Ohio, Inc. The bill gives the Highway Construction Co. the right to go to the Tax Court of the United States to have a redetermination of its excessive profits for the calendar year 1942 as made by the War Department Price Adjustment Board. The company, which is a subcontractor, did not file a petition for review of the determination of the War

2. HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC.

Department Price Adjustment Board, with the Tax Court within the statutory period of limitation for filing such petition. The reason that this petition was not filed within the statutory period was because the subcontractor felt it had a right to have the matter determined in the Federal courts and the Government did not commence suit against the company in the Federal court until August 24, 1950, although the order was entered by the War Department Price Adjustment Board on May 9, 1945.

Our subcommittee heard the subcontractor's representatives and received further statements from them as well as from the Department of Defense.

As stated the order fixing the determination of excessive profits was made by the War Department Price Adjustment Board, a voluntary board created administratively in the Office of the Secretary of War. At the time the order was rendered on May 9, 1945, it was thought by many that a contractor or subcontractor had a right to ask for a redetermination of the order of the Secretary in the Federal district courts. On that same date suit was commenced by the Government in the district court in the Lichter case. This matter was not resolved until the Lichter case had been decided by the Supreme Court on June 14, 1948 (304 U. S. 742). The majority opinion in the Lichter case held that the Tax Court had exclusive jurisdiction over appeals relating to 1942 renegotiation and that the Federal courts could not determine the case on the merits. Justice Douglas wrote a dissenting opinion to the effect that the Congress intended the contractor or subcontractor to have a right of review in the district courts as to the 1942 determinations by the Secretary. At the time of the Supreme Court decision in the Lichter case the period for filing a petition for review with the Tax Court by the Highway Construction Co. had expired. The Highway Construction Co. thereby lost its opportunity to have its case decided on the merits by any court since both the district court and the Federal court of appeals refused to take jurisdiction in the matter. This bill permits the subcontractor to have his case redetermined in the Tax Court of the United States if a petition for review is filed with that court within 90 days after the enactment of this act. Thus it will give the Tax Court the right to review this case on the merits. Under the bill, the Tax Court's determination of excessive profits may be greater, equal to, or less than the determination of the War Department Price Adjustment Board.

In the Lichter case the Congress passed a special act similar to the bill now before the Finance Committee, giving Lichter the right to have its case determined on the merits by the Tax Court.

In the opinion of the subcommittee the Highway Construction Co. case is similar in principle to the Lichter case. There the contractor did not file a petition with the Tax Court but appealed from the suit filed by the Government in the district court and subsequently went to the court of appeals and finally to the Supreme Court. Highway contested the War Department Price Adjustment Board's decision in both the district court and the court of appeals but did not request certiorari to the Supreme Court because that Court had already decided the matter of jurisdiction in the Lichter case. Both cases involved determinations of excessive profits for 1942 and both cases involved determinations from the order of the Secretary of War. While the Highway case determination was made by the War Department Price Adjustment Board, that Board was merely a voluntary board in the Office of the Secretary of War. The War Department Price Adjustment Board being an arm of the Secretary of War was not the statutory War Contract Price Adjustment Board created under the 1943 act to which Justice Douglas referred in his dissenting opinion in the Lichter case.

The subcommittee is unanimous in the opinion that H. R. 4182 should be reported out by this committee with amendments. The Highway Construction Co. was affiliated with the Horvitz Co. The Highway company for many years operated a general contracting business. Following some difficulties with the State of Ohio in 1936 the Horvitz Co. was formed under the same ownership to engage in the contracting business. From that time on the Highway Construction Co. restricted its business to receiving rents from the Horvitz Co. who carried on the contracting business. Under the rental agreement Horvitz agreed to pay the expenses of overall and general upkeep of the engineering equipment and Highway was to receive a certain rental. Both companies were controlled by the same interests. Mr. S. A. Horvitz, who owned a controlling interest in the Highway Construction Co., was its president and treasurer and also owned 80 percent

of the stock of the Horvitz Co, and occupied the same offices. Practically all the remaining stock of both companies was owned by L. Horvitz, who was also vice president and secretary of both companies. The Horvitz Co. has been renegotiated for 1942 and has been cleared of any excessive profits. Because of the close affiliation of these companies, your committee believes that the Tax Court should have a right in redetermining the excessive profits of the Highway Construction Co. to consider its affiliation with the Horvitz Co.

