
REMOVING THE MANUFACTURERS' EXCISE TAX FROM THE SALES OF CERTAIN COMPONENT PARTS FOR USE IN OTHER MANUFACTURED ARTICLES, AND TO CONFINE TO ENTERTAINMENT-TYPE EQUIPMENT THE TAX ON RADIO AND TELEVISION APPARATUS

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

REPORT

[To accompany H. R. 7024]

The Committee on Finance, to whom was referred the bill (H. R. 7024) to remove the manufacturers' excise tax from the sales of certain component parts for use in other manufactured articles, and to confine to entertainment-type equipment the tax on radio and television apparatus, having considered the same, report thereon with amendments and recommend that the bill, as amended, do pass.

SECTIONS 1, 2, AND 3. REMOVAL OF MANUFACTURERS' EXCISE TAX FROM CERTAIN ARTICLES

The first section of this bill would provide that parts, accessories, or components subject to manufacturers' excise taxes may be sold free of tax if the purchaser uses or resells them "as material in the manufacture or production of, or is a component part of," any other articles whether or not these other articles are subject to a manufacturers' excise tax.

Section 2 of this bill provides that the 10-percent excise tax on radios, television sets, phonographs, automobile radio or television sets, and combinations of radio, television, or phonograph sets, is to apply only if the article is of the "entertainment type." The bill, would make no change in the type of radio or television components which are taxable when sold separately from a set. Thus, under the bill, as well as under present law, the following radio and television components will continue to be subject to tax: chassis, cabinets, tubes, speakers, amplifiers, power-supply units, antennas of the built-in type, and phonograph mechanisms. These components will continue to be subject to tax when sold as repair or replacement

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parts whether or not the set in which the part is to be used is of the entertainment type.

Parts, accessories, or components presently subject to manufacturers' excise tax are automotive parts or accessories, refrigeration components, radio and television components, and camera lenses. Presently radio and television components and camera lenses are taxable if sold to a manufacturer for incorporation in an article not subject to a manufacturers' excise tax, or if sold for resale to such a manufacturer. Refrigerator components, as the result of a special provision in the code, are not taxable if sold for incorporation in, or as components of, refrigeration equipment whether or not such equipment is subject to a manufacturers' excise tax. Under a ruling of the Internal Revenue Service issued in 1932, automotive parts and accessories (other than spark plugs, storage batteries, leaf springs, coils, timers, and tire chains) may be sold free of tax by one manufacturer to another manufacturer even though they are to be used in the manufacture of nontaxable articles. On the other hand, if these parts or accessories are sold on a tax-paid basis, no credit or refund may be claimed if they are used in the manufacture of nontaxable articles.

The first section of this bill would provide a single rule for all of these parts, accessories, or components, exempting them from tax where they are sold for incorporation in other end articles, whether or not these other end articles are taxable. This is accomplished by establishing a new exemption category in section 4220 for these parts, accessories, or components. Paragraph (2) of this section provides an exemption for automobile parts or accessories, refrigerator components, radio or television components, and camera lenses for use by the purchaser, or for resale by him for use, in the manufacture or production of, or as a component part of, any article. Section 6416 (b) (3) (B) is amended to provide a credit or refund for these parts, accessories, or components when purchased by a manufacturer and used by him as material in the manufacture of, production of, or as a component part of, any article. The exemption in present law for refrigerator components sold for use by a manufacturer of refrigerating equipment, or sold to a purchaser for resale to such a manufacturer (secs. 4112 (b) and 4113), is repealed as no longer necessary with the general provision provided by this section.

The adoption of a single rule exempting parts, accessories, or components from tax, except where they are sold for repair or replacement use, will provide greater equity and simplify administration and compliance. Providing for tax-free sales where the end products are not taxable also will prevent the indirect taxation of articles which Congress has not considered it desirable to subject to direct excise taxation. Furthermore, where there are tax-free substitute components for use in these nontaxable end articles, the change made by the first section of this bill would remove the discrimination against manufacturers of taxable parts or components. This provision will also have the effect of removing the indirect tax sometimes required to be paid by States and municipalities, or with respect to articles produced for export, where these parts or components are purchased by manufacturers for incorporation in other articles.

Section 2 (a) of this bill would amend section 4141 to provide that the tax on radio and television receiving sets, automobile radio or

television receiving sets, phonographs, and combinations of any of these would apply only to articles of the entertainment type. The tax on radio and television components and on phonograph records will continue to apply whether or not the articles are of the entertainment type.

The change described above would make it possible to remove provisions in present law providing a special exemption (sec. 4143) and a special credit or refund (sec. 6416 (b) (2) (G)) for communication, detection, and navigation receivers when sold to the United States Government. These receivers, upon the enactment of this bill, will in any case be exempt from tax since they are not of the "entertainment type."

The excise tax on radios, television sets, etc., would be limited under the bill to items of the entertainment type because your committee sees no reason for singling out for excise-tax levy special communication, detection, and navigation equipment used by businesses. This change is in conformance with similar actions taken by Congress in recent years in revising the tax basis of the excises on photographic apparatus and film and electric, gas, and oil appliances. Moreover, this change would considerably ease administrative and compliance problems.

The amendments made by these sections generally are to take effect on the first of the month beginning more than 10 days after the enactment of this bill. The committee amendment to this section makes it clear that there is an overpayment of tax where a communication, detection, or navigation receiver of the type used in commercial, military, or marine installations with respect to which tax has been paid is resold after the effective date to the United States for its exclusive use. The amendment also makes it clear that there is an overpayment of tax where the articles described in section 6416 (b) (3) (B) of the Internal Revenue Code of 1954, as amended by the bill, were purchased before the effective date and are used by a manufacturer or producer on or after the effective date as material in the manufacture of, production of, or as a component part of, any article.

It is estimated that the combined effect of the changes made by sections 1, 2, and 3 will reduce revenues by approximately \$1 million in a full year of operation.

SECTIONS 4 AND 5. RELATING TO BURDEN OF PROOF IN CERTAIN PROCEEDINGS BEFORE THE TAX COURT

Section 4 of this bill amends the Internal Revenue Code of 1954 to provide that the burden of proof in certain cases involving the accumulated-earnings tax will be on the Government rather than the taxpayer. Under this provision, the burden will be on the Government in cases involving taxable years to which the Internal Revenue Code of 1939 applies in the case of proceedings tried on the merits after the date of enactment of this bill if the burden of proof would have been on the Government had the deficiency been such that section 534 of the 1954 Code (as originally enacted) applied.

The relief that this provision will grant to taxpayers can be shown by comparison of the provisions for burden of proof under the 1939 Code as compared with the 1954 Code. Under the 1939 law if the Commissioner of Internal Revenue proposed a deficiency on the ground that the taxpayer had accumulated earnings and profits in

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excess of the reasonable needs of the business, the taxpayer had the burden of proof as to the reasonableness of the accumulation. If earnings and profits were accumulated in excess of the reasonable needs of the business, the accumulation was deemed to be for the purposes of tax avoidance unless the taxpayer proved otherwise by the clear preponderance of the evidence.

Under the 1954 Code the taxpayer may, upon receipt of notice of a proposed deficiency with respect to the accumulated earnings tax, file a statement of the grounds (together with sufficient facts to show the basis for the statement) on which the taxpayer relies to establish the reasonableness of the accumulation. If the taxpayer submits such a statement within the proper time, the burden of proof will be upon the Government as to whether the accumulation is in excess of the reasonable needs of the business. If the taxpayer does not file such a statement, it must bear the burden of proof as under prior law. Moreover, if the taxpayer's statement of the grounds relied upon fails to set forth the facts which show the basis thereof, the burden of proof with respect to these grounds must be borne by the taxpayer. If the Secretary or his delegate fails to give the taxpayer notification prior to the issuance of a notice of deficiency, then the Government must bear the burden of proof even though the taxpayer has filed no statement.

The amendment made to section 534 of the 1954 Code by sections 4 and 5 of this bill will apply the provisions of the 1954 Code to all cases in which the proceedings are tried on the merits after the date of enactment of this 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):

INTERNAL REVENUE CODE OF 1954

SEC. 534. BURDEN OF PROOF.

* * * * *
(b) NOTIFICATION BY SECRETARY.—Before mailing the notice of deficiency referred to in subsection (a), the Secretary or his delegate may send by registered mail a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531. *In the case of a notice of deficiency to which subsection (e) (2) applies and which is mailed on or before the 30th day after the date of the enactment of this sentence, the notification referred to in the preceding sentence may be mailed at any time on or before such 30th day.*
* * * * *

(c) [EFFECTIVE DATE.—This section shall apply only with respect to a notice of deficiency for a taxable year to which this subchapter applies which is mailed more than 90 days after the date of enactment of this title.] *APPLICATION OF SECTION.—*

(1) *Notwithstanding any other provision of law, this section shall apply with respect to taxable years to which this subchapter applies and (except as provided in paragraph (2)) to taxable years to which the corresponding provisions of prior revenue laws apply.*

(2) *In the case of a notice of deficiency for a taxable year to which this subchapter does not apply, this section shall apply only in the case of proceedings tried on the merits after the date of the enactment of this paragraph.*
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CHAPTER 32—MANUFACTURERS EXCISE TAXES

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SUBCHAPTER A—AUTOMOTIVE AND RELATED ITEMS

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PART I—MOTOR VEHICLES

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SEC. 4063. EXEMPTIONS.

(a) SPECIFIC ARTICLES EXEMPT FROM TAX ON AUTOMOBILES.—The tax imposed under section 4061 (a) (2) shall not apply in the case of house trailers or tractors.

(b) SALES TO MANUFACTURERS.—Under regulations prescribed by the Secretary or his delegate, the tax under section 4061 shall not apply in the case of sales of bodies [or parts or accessories by] the manufacturer, producer, or importer to a manufacturer or producer of automobile trucks or other automobiles to be sold by such vendee. For the purposes of section 4061, such vendee shall be considered the manufacturer or producer of such bodies [, or parts or accessories].

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SUBCHAPTER B—HOUSEHOLD TYPE EQUIPMENT, ETC.

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PART I—REFRIGERATION EQUIPMENT

SEC. 4111. Imposition of tax.

SEC. 4112. [Definitions] *Definition of refrigerator components.*

[SEC. 4113. Exemptions for manufacturers.]

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SEC. 4112. [DEFINITIONS] DEFINITIONS OF REFRIGERATOR COMPONENTS

[(a) REFRIGERATOR COMPONENTS.—]As used in section 4111, the term “component” means cabinets, compressors, condensers, condensing units, evaporators, expansion units, absorbers, and controls for, or suitable for use as parts of or with, household-type refrigerators or quick-freeze units of the kind described in section 4111 except when sold as component parts of complete refrigerators, refrigerating or cooling apparatus, or quick-freeze units (hereinafter referred to as “refrigerating equipment”).

[(b) CERTAIN VENDEES CONSIDERED PRODUCERS.—]If any of the refrigerator components defined in section 4112 (a) are resold by the manufacturer or producer to whom sold or resold tax free as provided in section 4113 otherwise than on or in connection with, or with the sale of, complete refrigerating equipment manufactured or produced by him, then for the purposes of this part such manufacturer or producer shall be considered the manufacturer or producer of the refrigerator components so resold by him.

[Under regulations prescribed by the Secretary or his delegate, the tax under

[SEC. 4113. EXEMPTIONS FOR MANUFACTURERS.

section 4111 shall not apply in the case of sales of any such refrigerator components by the manufacturer, producer, or importer to

[(1) a manufacturer or producer of refrigerating equipment, or

[(2) a vendee for resale to a manufacturer or producer of refrigerating equipment if such components are in due course so resold.]

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SUBCHAPTER C—ENTERTAINMENT EQUIPMENT

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PART I—RADIO AND TELEVISION SETS, PHONOGRAPHS AND RECORDS

SEC. 4141. Imposition of tax.

SEC. 4142. Definition of radio and television component.

[SEC. 4143. Exemptions for sales to United States.]

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SEC. 4141. IMPOSITION OF TAX.

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles (including in each case parts or accessories therefor sold on or in connection with the sale thereof), a tax equivalent to 10 percent of the price for which so sold:

- Radio receiving sets.
- Automobile radio receiving sets.
- Television receiving sets.
- Automobile television receiving sets.
- Phonographs.
- Combinations of any of the foregoing.
- Radio and television components.
- Phonograph records.

Except in the case of radio and television components and phonograph records, the tax imposed by this section shall apply only to articles of the entertainment type.

SEC. 4142. DEFINITION OF RADIO AND TELEVISION COMPONENT.

【As used in section 4141 the term "radio and television components" means chassis, cabinets, tubes, speakers, amplifiers, power-supply units, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of any of the articles enumerated in section 4141, whether or not primarily adapted for such use.】

SEC. 4142. DEFINITION OF RADIO AND TELEVISION COMPONENT.

As used in section 4141, the term "radio and television components" means cabinets and tubes for any of the articles taxable under section 4141.

SEC. 4143. EXEMPTIONS FOR SALES TO UNITED STATES.】

【(a) COMMUNICATION, DETECTION, AND NAVIGATION RECEIVERS.—No tax shall be imposed under section 4141 with respect to the sale to the United States for its exclusive use of a communication, detection, or navigation receiver of the type used in commercial, military, or marine installations.

【(b) COMPONENTS OF COMMUNICATION RECEIVERS, ETC.—Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under section 4141 with respect to the sale of any article for use by the vendee as material in the manufacture or production of, or as a component part of, communication, detection, or navigation receivers of the type used in commercial, military, or marine installations if such receivers are to be sold by the vendee to the United States for its exclusive use. If any article sold tax free to such vendee is not so used by him, or being so used the receiver is not so sold, the vendee shall be considered as the manufacturer or producer of such article.】

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SUBCHAPTER F—SPECIAL PROVISIONS APPLICABLE TO MANUFACTURERS TAX

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SEC. 4218. USE BY MANUFACTURER OR IMPORTER CONSIDERED SALE.

(a) GENERAL RULE.—If—

(1) any person manufactures, produces, or imports an article other than a tire, inner tube, or automobile radio or television receiving set taxable under section 4141 and other than an automobile part or accessory taxable under section 4061 (b), a refrigerator component taxable under section 4111, a radio or television component taxable under section 4141, or a camera lens taxable under section 4171 and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him which will be taxable under this chapter or sold free of tax by virtue of section 4220 or 4224, relating to tax-free sales), or

(2) any person manufactures, produces or imports a tire, inner tube, or automobile radio or television receiving set taxable under section 4141 and sells it on or in connection with, or with the sale of, an article taxable under section 4061, relating to the tax on automobiles, or uses it,

he shall be liable for tax under this chapter in the same manner as if such article was sold by him, and the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Secretary or his delegate.

【(b) EXCEPTION.—This section shall not apply with respect to the use by the manufacturer, producer, or importer of articles described in section 4141 if such

articles are used by him as material in the manufacture or production of, or as a component part of, communication, detection, or navigation receivers of the type used in commercial, military, or marine installations if such receivers are to be sold to the United States for its exclusive use.]

(b) EXCEPTION.—This section shall not apply with respect to the use by the manufacturer, producer, or importer of an automobile part or accessory taxable under section 4061 (b), a refrigerator component taxable under section 4111, a radio or television component taxable under section 4141, or a camera lens taxable under section 4171, if such part, accessory, component, or lens is used by him as material in the manufacture or production of, or as a component part of, any article.

SEC. 4220. EXEMPTION FOR SALES OR REALES TO MANUFACTURERS.

Under regulations prescribed by the Secretary or his delegate, no tax under this chapter shall be imposed with respect to the sale of [any article]—

[(1) for use by the vendee as material in the manufacture or production of, or as a component part of, an article enumerated in this chapter;

[(2) for resale by the vendee for such use by his vendee, if such article is in due course so resold,

[For the purposes of this chapter, the manufacturer or producer to whom an article is sold under paragraph (1) or resold under paragraph (2) shall be considered the manufacturer or producer of such article. The provisions of paragraphs (1) and (2) shall not apply with respect to tires, inner tubes, or automobile radio or television receiving sets taxable under section 4141.]

(1) any article (other than an automobile part or accessory taxable under section 4061 (b), a refrigerator component taxable under section 4111, a radio or television component taxable under section 4141, or a camera lens taxable under section 4171)—

(A) for use by the vendee as material in the manufacture or production of, or as a component part of, an article enumerated in this chapter; or

(B) for resale by the vendee for such use by his vendee, if such article is in due course so resold; or

(2) an automobile part or accessory taxable under section 4061 (b), a refrigerator component taxable under section 4111, a radio or television component taxable under section 4141, or a camera lens taxable under section 4171—

(A) for use by the vendee as material in the manufacture or production of, or as a component part of, any article; or

(B) for resale by the vendee for such use by his vendee, if such article is in due course so resold.

For purposes of this chapter, the manufacturer or producer to whom an article is sold under paragraph (1) (A) or (2) (A) or resold under paragraph (1) (B) or (2) (B) shall be considered the manufacturer or producer of such article.

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

SUBCHAPTER B—RULES OF SPECIAL APPLICATION

SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) CONDITION TO ALLOWANCES.— * * *

(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.— Under regulations prescribed by the Secretary or his delegate credit or refund, without interest, shall be made of the overpayments determined under the following paragraphs:

(1) PRICE READJUSTMENTS.— * * *

(2) SPECIFIED USES AND REALES.—The tax paid under subchapter E of chapter 31 or chapter 32 in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) * * *;

[(G) In the case of a communication, detection, or navigation receiver of the type used in commercial, military, or marine installations, resold to the United States for its exclusive use;]

(H) In the case of gasoline, used in production of special motor fuels referred to in section 4041 (b).

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(3) **TAX-PAID ARTICLES USED FOR FURTHER MANUFACTURE.**—If the tax imposed by chapter 32 has been paid with respect to the sale of—

(A) Any article (other than a tire, inner tube, or automobile radio or television receiving set taxable under section 4141 *and other than an automobile part or accessory taxable under section 4061 (b), a refrigerator component taxable under section 4111, a radio or television component taxable under section 4141, or a camera lens taxable under section 4171*) purchased by a manufacturer or producer and used by him as material in the manufacture or production of, or as a component part of, an article with respect to which tax under chapter 32 has been paid, or which has been sold free of tax by virtue of section 4220 or 4224, relating to tax-free sales;

[(B) Any article described in sections 4142 and 4143 (b) purchased by a manufacturer or producer and used by him as material in the manufacture or production of, or as a component part of, communication, detection, or navigation receivers of the type used in commercial, military, or marine installations if such receivers have been sold by him to the United States for its exclusive use;]

(B) *An automobile part or accessory taxable under section 4061 (b), a refrigerator component taxable under section 4111, a radio or television component taxable under section 4141, or a camera lens taxable under section 4171, purchased by a manufacturer or producer and used by him as material in the manufacture of, production of, or as a component part of, any article;* such tax shall be deemed an overpayment by such manufacturer or producer.

