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AMENDING THE INTERNAL REVENUE CODE OF 1954

AUGUST 7 (legislative day, JULY 8), 1957.—Ordered to be printed

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

REPORT

together with

INDIVIDUAL VIEWS

[To accompany H. R. 232]

The Committee on Finance, to whom was referred the bill (H. R. 232) to amend the Internal Revenue Code of 1954 with respect to the readjustment of tax in the case of certain amounts received for breach of contract, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

I. GENERAL STATEMENT

Sections 1–3 of the bill, except for a minor technical amendment, were contained in the House bill. They provide that a taxpayer who receives or accrues an award in a civil action for breach of contract or breach of fiduciary duty or relationship may spread the amount of the award over the period during which it would have been received except for the breach of contract or duty if this results in a lesser tax than would result from including the entire award in gross income of the current year. Provision is also made for the allowance of all credits or deductions the taxpayer would have received had he received the income in the absence of a breach of contract or a breach of fiduciary duty or relationship.

Section 4, added by your committee, severely restricts the authority of the Office of Defense Mobilization to issue certificates for rapid amortization of emergency facilities. Under present law a taxpayer who constructs a facility is permitted to charge off some portion of the cost of the facility over a period of 5 years, instead of over the full useful life, if it is certified by the Office of Defense Mobilization that the investment is "necessary in the interest of national defense." Under this provision the Office of Defense Mobilization has continued

to certify numerous investments with more or less indirect defense connection even after the termination of hostilities in Korea. These certifications have included such varied items as electric-power facilities and railroad freight cars.

Under your committee's amendment certificates for 5-year amortization can be issued after August 22, 1957, only for new or specialized defense facilities, as defined in the bill, and for research and development facilities for defense. The authority to issue rapid amortization certificates is terminated completely after December 31, 1959.

In the last year the Office of Defense Mobilization has narrowly restricted the classes of investment which have been certified for rapid amortization. To a large extent your committee's amendment restricts the issuance of certificates in a manner similar to the administrative curtailment of the program. The amendment will prevent any future extension of the program to investments with only indirect defense connection or to investments of an ordinary character even though defense-connected.

II. Reasons for the House Bill

Under existing law, averaging of certain receipts, such as those from back pay and patent infringement, is permitted. However, in the case of a breach of contract, or breach of fiduciary duty or relationship, the injured party may receive a judicial award for the loss of income which ordinarily would have been received over a period of years. Under present law, the taxpayer in this case is required to include the total award in gross income for the year in which the award was received. This may, and frequently does, result in a substantially higher tax than would be imposed if the taxpayer had received the equivalent income spread over the period in which the breach of contract or duty occurred.

Furthermore, the character of the income has sometimes been held to be changed by the fact of its lump-sum receipt as an award from a breach of contract or duty. For example, see *Parr* v. *Scofield* ((D. C. Texas, 1950), 89 F. Supp. 98 (aff'd C. A. 5, 1950), 185 F. 2d 535, certiorari denied March 26, 1951), where it was indicated that an award for breach of contract involving a failure to pay over oil royalties does not give rise to a percentage depletion deduction.

This bill restores the taxpayer to the position he would have been in had no breach of contract or breach of fiduciary duty or relationship occurred. It provides for spreading the award over the years to which it is attributable, and it makes clear that the taxpayer may take such credits or deductions as he would have been entitled to in the absence of a breach of contract or duty.

III. Reasons for the Amendment

Five-year amortization of defense facilities was first enacted during World War II, reenacted during the Korean war, and continued during the period of intensive defense preparations following the Korean war. Since 1953 the stated objective of amortization was to encourage the construction of facilities which might be needed in a future war. Necessarily, such estimates are highly speculative and subject to frequent changes. When a certain goal of expansion is reached today it may be modified tomorrow. Despite the vagueness of this objec-

tive, 6,000 certificates of necessity have been issued since the end of the Korean war, covering new facilities costing in total $13 billion and permitting the rapid amortization of $7 billion of this cost.

Your committee believes that, in principle, this method of encouraging additional investment is highly undesirable. The selection of the particular investments which are to be benefited by rapid amortization is left to the judgment of the administrative agency despite the fact that particular decisions may involve tax benefits worth many millions of dollars. When, as in the past few years, certificates are granted to industries such as electric power and railroads which have primarily civilian markets, there are bound to be very significant competitive inequalities between companies that are favored and those not favored. One company may receive favorable tax treatment merely by virtue of having gotten its application for certification on record a few days earlier than its competitor. There will be dislocations of normal relationships and unfair advantages involving both firms and whole industries.

The program of rapid amortization is very expensive from the standpoint of the Federal Government. It is estimated that between the years 1950 and 1960 there was a net postponement of over $5 billion in Federal tax revenue as a result of amortization certificates that have been issued since the beginning of the Korean war. To the extent that we have been able to maintain a balance in Federal budgets in recent years it has only been at the expense of imposing some of this burden on other taxpayers. While the holders of rapid amortization certificates will pay higher taxes in the future, after they have charged off the cost of their facilities, the entire postponement imposes a considerable interest cost on the Federal Government, which has been estimated to be in the neighborhood of $3 billion.

Your committee's amendment provides that the present broad authority of the Office of Defense Mobilization to certify defense facilities for rapid amortization will be limited to certificates made on or before August 22, 1957. Certifications made after August 22, 1957, will be limited to two categories, namely, facilities—

(1) to produce new or specialized defense items or components of new or specialized defense items; or

(2) to provide research, developmental or experimental services for the defense program.

The language eliminates completely the use of emergency certificates to encourage the construction of facilities to produce civilian articles or services which might at some future time be important for defense purposes. In addition, the new language prevents the use of emergency certificates in connection with facilities for producing defense items of a routine character, such as standard-size shells or standard-design rifles. The program is to be limited in the future to producing facilities for defense items which are sufficiently new or specialized to require construction of different facilities. It is in this area that inadequate cost experience and uncertain future defense requirements will make the determination of an appropriate contract price difficult. It is believed that the amendment made by your committee will reduce the authority to grant certificates under existing law by over 80 percent.

The issuance of certificates for emergency amortization is terminated completely after December 31, 1959.

IV. Technical Explanation of the Bill

SECTIONS 1–3—BREACH OF CONTRACT

Subsection (a) of the new section 1305, added by the first section of the bill, provides a rule for the taxability of certain amounts representing damages received by a taxpayer as the result of an award in a civil action for breach of contract or breach of fiduciary duty or relationship. The amount of such an award covered by this subsection has to be an amount which would be includible in gross income in the current year and which, but for the breach of contract or breach of fiduciary duty or relationship, would have been received or accrued by the taxpayer in a prior taxable year or years. Thus, the subsection (a) is limited to awards for loss of income attributable to years prior to the receipt or accrual of such award and cannot be applied to the part of such awards compensating for loss of earnings related to years subsequent to the receipt or accrual. It is provided that the tax attributable to including the part of the award, relating to prior taxable years, in gross income for the current taxable year is not to be greater than the aggregate increase in taxes which would have resulted if the taxpayer had received or accrued such part in prior taxable years and included it in gross income for those years. The allocation of these amounts to prior taxable years is to be determined upon the facts of each case and, of course, need not be a pro rata allocation.

Subsection (b) of the new section 1305 is intended to make it clear that for the purpose of computing credits and deductions for depletion and other items the award is to have the same character as the income which would have been received or accrued except for the breach of contract or duty. Thus, if an award is made for the loss of oil royalties on production that actually took place, these royalties would give rise to a depletion deduction.

In determining the proper tax attributable to the award, the taxpayer is required to make two computations under subsection (a). The lesser tax resulting from these computations is the tax attributable to the award. One computation is based upon including the amount of the award in the taxpayer's gross income for the current taxable year. In this computation the taxpayer computes the percentage depletion deduction with reference to the gross and taxable income from the property as if it were all attributable to that year. Similarly, in the computation of tax for the prior years in which the income would have been received or accrued, but for the breach of contract, the taxpayer computes the percentage depletion deduction with reference to the gross and taxable income from the property for those years taking into account the allocation back to those years.

The credits, deductions, or other items to which the taxpayer is entitled (referred to in subsec. (b)) include only deductions for expenditures actually made by the taxpayer and credits or deductions arising from actual use of capital or receipt of income. Thus, if the taxpayer receives an award for a breach of contract which represents gross income which the taxpayer should have received but did not, less costs and expenses which the taxpayer would have paid, but did not, these costs and expenses would not again be deductible.

Further, the taxpayer is not entitled to deductions or credits attributable to property unless they are calculated with respect to the

taxpayer's share of income arising from the actual operation of such property. Accordingly, if property is subject to depreciation on the units-of-production method and the taxpayer receives an award based upon certain units of production which the paying party should have, but did not produce, the taxpayer would not be entitled to a depreciation deduction with respect to such units not produced.

It is also intended by the second sentence of subsection (b) to allow deductions based upon the amount of gross income that would have been received by the taxpayer from the operating property had there been no breach. For example, where an award is received by the taxpayer representing the gross income from mineral property less expenses that would have been imposed upon the taxpayer but for the breach, the deduction for percentage depletion will be computed with reference to both the reconstructed gross income and taxable income from the property.

Subsection (c) limits the application of subsection (a) to amounts of $3,000 or more received or accrued in a taxable year, which result from a single award for breach of contract or duty.

Where the amounts involved in a particular breach of contract or breach of duty are also covered by the particular terms of another section in part I of subchapter Q (secs. 1301 and following), the rule for such other section will apply since those sections are directed to more specific situations than the general language of this section.

Section 3 of the bill provides that the new section 1305 will apply to taxable years ending after December 31, 1954, but only with respect to amounts received or accrued after that date as the result of awards made after that date.

SECTION 4—LIMITATION ON EMERGENCY AMORTIZATION

Section 4 of the bill amends section 168 of the Internal Revenue Code of 1954, which relates to the rapid amortization of emergency facilities. Subsection (a) amends subsection (e) (1) of section 168, which contains the authorization for the certifying authority designated by the President to certify for emergency amortization such facilities as are "necessary in the interest of national defense during the emergency period." The amendment limits this broad authorization to certifications made on or before August 22, 1957. This termination will have no effect on the status of certificates issued prior to that date. If a taxpayer who was granted a certificate prior to August 22, 1957, then acquires a facility so different from the facility described in the original certificate as to require, under regulations of the Office of Defense Mobilization a new application for an amended certificate then the new application, if acted upon after August 22, 1957, will be subject to paragraph (2). Similarly, renewal, after August 22, 1957, of a certificate which has expired prior to its renewal will be subject to paragraph (2).

Subsection (b) inserts a new paragraph (2) in section 168 (e) to provide the conditions upon which certifications for rapid amortization may be made after August 22, 1957. In general, the new subsection (2) follows the concepts of the present subsection (1) except that more specific conditions for certifiability are inserted in lieu of the present concept "necessary in the interest of national defense." For certification after August 22, the facilities must be planned to produce new or

specialized defense items (as defined in par. 4), or components thereof, during the emergency period, or to provide research, developmental or experimental services for the Department of Defense or one of its components or for the Atomic Energy Commission in connection with their national defense programs. The certifications for facilities to perform research, developmental or experimental services may not be made for facilities connected with the civil functions of the Defense Department or in connection with work on peacetime usage of atomic energy that might be undertaken by the Atomic Energy Commission.

The last sentence of the new paragraph (2) deals with the formality of a timely filing of an application under the new conditions for certifiability. Under present law as under the amendment an application for a certificate will have no effect unless it is filed within 6 months of the beginning of work on the new facility. It is anticipated that some applicants for rapid amortization certificates may have applied for certification before August 22, 1957. If the Office of Defense Mobilization has not acted on the application prior to that date it is still possible that the facility will qualify for rapid amortization under the new conditions provided under the amendment. To determine this eligibility the Office of Defense Mobilization may require a new application providing additional information. The last sentence of paragraph (2) provides that the fact that the second application may be submitted later than 6 months after the beginning of work on the facility will not be disqualifying if the original application was made within the 6 months' period.

Subsection (b) also amends the present paragraph (2) of section 168 (e) by renumbering it as paragraph "(3)" and making conforming amendments in order to refer to paragraph (1) or (2) in lieu of the present reference to paragraph (1).

Subsection (b) also adds a new paragraph (4) to section 168 (e), which provides definitions of the terms "new or specialized defense item" and "component of new or specialized defense item". The term "new or specialized defense item" is defined both in terms of the prospective customer and in terms of the character of the product. The item must be one which is expected to be sold exclusively to the Department of Defense or one of the component departments of the Department of Defense or to the Atomic Energy Commission for use in the national defense program. Thus the definition would not apply to a plant designed to produce a new metal or new metal alloy if it is expected from the beginning to have a substantial civilian sale, even though the Defense Department may expect to take over half of the output.

It is also provided that the term "new or specialized defense item" is restricted to an item for the production of which existing productive facilities are unsuitable because of its newness or because of its specialized defense features. A product does not lose its newness because pilot models have already been constructed and tested. An article will be considered new if it was not in regular production before January 1, 1957. It is recognized that many products ordered by the defense agencies will be in fact variations of earlier models rather than completely new items. In these areas the bill involves the test of whether or not the new item could be turned out by existing facilities. The mere fact that existing facilities are inadequate in quantity will not alone justify certification. If the variations of the end item are

such as to require a substantial replacement of the existing facilities it would be proper to certify new facilities for rapid amortization. It is also possible that the defense program may require that particular facilities be available in a place where they were not heretofore available and this could be a specialized defense feature justifying rapid amortization. Thus, for example, if new sources of uranium ore are required to be developed by the Atomic Energy Program and these require primary ore processing facilities near the site of the ore, where they are not presently available, these may be certified for rapid amortization as involving a specialized defense feature.

It is specifically provided that a new defense item may in no case include a service, such as electricity or transportation.

A "component of a new or specialized defense item" can mean only an item which is or will become a physical part of a new or specialized defense item. In order to qualify for rapid amortization a component of a new or specialized defense item must also meet the test that existing facilities for its production are unsuitable because of its newness or because of its specialized defense features. Ordinarily, rapid amortization will be allowed to a component which constitutes a significant or perhaps the most important part of the end item. Thus, facilities to produce the electronic equipment for a new guided missile will be eligible for rapid amortization if this equipment cannot be produced by existing facilities.

Subsection (c) of section (4) of the bill redesignates the present cross reference of subsection (i) of section 168 as a new subsection (k), and inserts a new subsection (i) which provides that no certificate for rapid amortization shall be made with respect to any emergency facility after December 31, 1959.

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 italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

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SEC. 168. AMORTIZATION OF EMERGENCY FACILITIES.

(a) GENERAL RULE.—Every person, at his election, shall be entitled to a deduction with respect to the amortization of the adjusted basis (for determining gain) of any emergency facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month

of such period within the taxable year, equal to the adjusted basis of the facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction above provided with respect to any month shall, except to the extent provided in subsection (f), be in lieu of the depreciation deduction with respect to such facility for such month provided by section 167. The 60-month period shall begin as to any emergency facility, at the election of the taxpayer, with the month following the month in which the facility was completed or acquired, or with the succeeding taxable year.

(b) ELECTION OF AMORTIZATION.—The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility was completed or acquired, or with the taxable year succeeding the taxable year in which such facility was completed or acquired, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

(c) TERMINATION OF AMORTIZATION DEDUCTION.—A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction with respect to such emergency facility.

(d) DEFINITIONS.—

(1) EMERGENCY FACILITY.—For purposes of this section, the term "emergency facility" means any facility, land, building, machinery, or equipment, or any part thereof, the construction, reconstruction, erection, installation, or acquisition of which was completed after December 31, 1949, and with respect to which a certificate under subsection (e) has been made. In no event shall an amortization deduction be allowed in respect of any emergency facility for any taxable year unless a certificate in respect thereof under this paragraph shall have been made before the filing of the taxpayer's return for such taxable year.

(2) EMERGENCY PERIOD.—For purposes of this section, the term "emergency period" means the period beginning January 1, 1950, and ending on the date on which the President proclaims that the utilization of a substantial portion of the emergency facilities with respect to which certifications under subsection (e) have been made is no longer required in the interest of national defense.

(e) DETERMINATION OF ADJUSTED BASIS OF EMERGENCY FACILITY.—In determining, for purposes of subsection (a) or (g), the adjusted basis of an emergency facility—

(1) [There] *CERTIFICATIONS ON OR BEFORE AUGUST 22, 1957.—In the case of a certificate made on or before August 22, 1957, there*

shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority designated by the President by Executive order, has certified as necessary in the interest of national defense during the emergency period, and only such portion of such amount as such authority has certified as attributable to defense purposes. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a certificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations, but in no event shall such certificate have any effect unless an application therefor is filed before March 24, 1951, or before the expiration of 6 months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition, whichever is later.

[(2) After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1), shall not be applied in adjustment of the basis of such facility, but a separate basis shall be computed therefor pursuant to paragraph (1) as if it were a new and separate emergency facility.]

(2) CERTIFICATIONS AFTER AUGUST 22, 1957.—In the case of a certificate made after August 22, 1957, there shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority designated by the President by Executive order, has certified is to be used—

(A) to produce new or specialized defense items or components of new or specialized defense items (as defined in paragraph (4)) during the emergency period, or

(B) to provide research, developmental, or experimental services during the emergency period for the Department of Defense (or one of the component departments of such Department), or for the Atomic Energy Commission, as a part of the national defense program,

and only such portion of such amount as such authority has certified is attributable to the national defense program. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a certificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations but in no event shall such certificate have any effect unless an application therefor is filed before the expiration of 6 months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition. For purposes of the preceding sentence, an application which was timely

filed under this subsection on or before August 22, 1957, and which was pending on such date, shall be considered to be an application timely filed under this paragraph.

(3) SEPARATE FACILITIES; SPECIAL RULE.—After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) or (2) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1) or (2), shall not be applied in adjustment of the basis of such facility, but a separate basis shall be computed therefor pursuant to paragraph (1) or (2), as the case may be, as if it were a new and separate emergency facility.

(4) DEFINITIONS.—For purposes of paragraph (2)—

(A) NEW OR SPECIALIZED DEFENSE ITEM.—The term "new or specialized defense item" means only an item (excluding services)—

(i) which is produced, or will be produced, for sale to the Department of Defense (or one of the component departments of such Department), or to the Atomic Energy Commission, for use in the national defense program, and

(ii) for the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense features.

(B) COMPONENT OF NEW OR SPECIALIZED DEFENSE ITEM.—The term "component of a new or specialized defense item" means only an item—

(i) which is, or will become, a physical part of a new or specialized defense item, and

(ii) for the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense features; and

(f) DEPRECIATION DEDUCTION.—If the adjusted basis of the emergency facility (computed without regard to this section) is in excess of the adjusted basis computed under subsection (e), the depreciation deduction provided by section 167 shall, despite the provisions of subsection (a) of this section, be allowed with respect to such emergency facility as if its adjusted basis for the purpose of such deduction were an amount equal to the amount of such excess.

(g) PAYMENT BY UNITED STATES OF UNAMORTIZED COST OF FACILITY.—If an amount is properly includible in the gross income of the taxpayer on account of a payment with respect to an emergency facility and such payment is certified as provided in paragraph (1), then, at the election of the taxpayer in its return for the taxable year in which such amount is so includible—

(1) The amortization deduction for the month in which such amount is so includible shall (in lieu of the amount of the deduction for such month computed under subsection (a)) be equal to the amount so includible but not in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amortization deduction for such month). Payments referred to in this subsection shall be payments the amounts of which are certified, under such regulations as the

President may prescribe, by the certifying authority designated by the President as compensation to the taxpayer for the unamortized cost of the emergency facility made because—

(A) a contract with the United States involving the use of the facility has been terminated by its terms or by cancellation, or

(B) the taxpayer had reasonable ground (either from provisions of a contract with the United States involving the use of the facility, or from written or oral representations made under authority of the United States) for anticipating future contracts involving the use of the facility, which future contracts have not been made.

(2) In case the taxpayer is not entitled to any amortization deduction with respect to the emergency facility, the depreciation deduction allowable under section 167 on account of the month in which such amount is so includible shall be increased by such amount, but such deduction on account of such month shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amount allowable, on account of such month, under section 167 or this paragraph).

(h) LIFE TENANT AND REMAINDERMAN.—In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(i) TERMINATION.—No certificate under subsection (e) shall be made with respect to any emergency facility after December 31, 1959.

[(i)**]** *(j)* CROSS REFERENCE.—

For special rule with respect to gain derived from the sale or exchange of property the adjusted basis of which is determined with regard to this section, see section 1238.

Subchapter Q—Readjustment of Tax Between Years and Special Limitations

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PART I—INCOME ATTRIBUTABLE TO SEVERAL TAXABLE YEARS

SEC. 1301. COMPENSATION FROM AN EMPLOYMENT.

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SEC. 1305. BREACH OF CONTRACT DAMAGES.

(a) GENERAL RULE.—If an amount representing damages is received or accrued by a taxpayer during a taxable year as a result of an award in a civil action for breach of contract or breach of a fiduciary duty or relationship, then the tax attributable to the inclusion in gross income for the taxable year of that part of such amount which would have been received or accrued by the taxpayer in a prior taxable year or years but for the breach of contract, or breach of a fiduciary duty or relationship, shall not be greater than the aggregate of the increases in taxes which would

have resulted had such part been included in gross income for such prior taxable year or years.

(b) CREDITS AND DEDUCTIONS ALLOWED IN COMPUTATION OF TAX.—The taxpayer in computing said tax shall be entitled to deduct all credits and deductions for depletion, depreciation and other items to which he would have been entitled, had such income been received or accrued by the taxpayer in the year during which he would have received it, except for such breach of contract or for such breach of a fiduciary duty or relationship. The credits, deductions, or other items referred to in the prior sentence, attributable to property, shall be allowed only with respect to that part of the award which represents the taxpayer's share of income from the actual operation of such property.

(c) LIMITATION.—Subsection (a) shall not apply unless the amount representing damages is $3,000 or more.

SEC. [1305] *1306*. RULES APPLICABLE TO THIS PART.

(a) FRACTIONAL PARTS OF A MONTH.—For purposes of this part, a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it should be considered as a month.

(b) TAX ON SELF-EMPLOYMENT INCOME.—This part shall be applied without regard to, and shall not affect, the tax imposed by chapter 2 relating to self-employment income.

(c) COMPUTATION OF TAX ATTRIBUTABLE TO INCOME ALLOCATED TO PRIOR PERIOD.—For the purpose of computing the tax attributable to the amount of an item of gross income allocable under this part to a particular taxable year, such amount shall be considered income only of the person who would be required to include the item of gross income in a separate return filed for the taxable year in which such item was received or accrued.

(d) EFFECTIVE DATE OF CERTAIN SUBSECTIONS.—Subsection (c) of section 1301 and subsection (c) of this section shall apply only to amounts received or accrued after March 1, 1954. Notwithstanding any other provision of this title, section 107 of the Internal Revenue Code of 1939 shall apply to amounts received or accrued as a partner on or before March 1, 1954, under this section and to the computation of tax on amounts received or accrued on or before March 1, 1954.

INDIVIDUAL VIEWS

Several members of the Finance Committee, particularly the distinguished chairman of the committee, Senator Byrd, have expressed deep concern with the extent, scope, and number of rapid amortization certificates issued under section 168 of the Internal Revenue Code. I have been among those members.

By recommending the added section 4 to H. R. 232, the committee has undertaken to limit the purposes for which certificates can be issued and to prohibit the issuance of any such certificates after December 31, 1959. To the extent that the amendment restricts the broad grant of authority in existing law for the issuance of rapid amortization certificates, the committee is to be commended and I find myself in agreement.

What is needed, however, is outright repeal of this rapid tax writeoff law which has been the source of so much abuse and favoritism. Termination nearly 2½ years from now is not enough; it should be terminated now. Even if extension of the law could be justified, as proposed, then surely it should terminate by June 30, 1958, thus requiring specific justification for any further extension.

The language of the proposed amendment is so inexact and so loosely drawn that an untold number of certificates may be issued under its terms. For instance, a certificate may be issued—

> to provide research, developmental, or experimental services during the emergency period for the Department of Defense (or one of the component departments of such Department), or for the Atomic Energy Commission, as a part of the national defense program.

Now I submit that there are literally thousands of projects or undertakings which may be said to provide "research, developmental, or experimental services." Furthermore, a certificate may be granted for a facility "to produce new or specialized defense items, or components of new or specialized defense items. * * *" If one is confused as to what may be "new defense items" or "specialized defense items" or "components" thereof, then he may be sure that the scope is broadened by the definition of the term "new or specialized defense items" which is provided in the amendment. By definition, such an item can be any item—

> which is produced, or will be produced, for sale to the Department of Defense (or one of the component departments of such Department), or to the Atomic Energy Commission, for use in the national defense program, and for the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense faetures.

There is not even the requirement that the items or the components of such items, or the facility to produce them be used exclusively for the Department of Defense and/or the Atomic Energy Commission.

Literally hundreds of project undertakings and production facilities could qualify for a rapid amortization certificate under the proposed language. Even if section 168 should be retained at all, which I challenge, then surely the purposes for which certificates can be issued should be specifically and narrowly limited. The amendment recommended by the majority falls far short of these criteria.

The majority of the committee has clearly recognized that there is no basis upon which the retention of section 168 of the Internal Revenue Code in its present form can be supported. Yet the majority has concluded that the authority to issue certificates should be retained until December 31, 1959, under language which purportedly restricts but which, as I have shown, leaves many doors wide open. Indeed, it is claimed only that the amendment conforms to current practices by the ODM. This, I submit, is not enough.

Section 168 (e) now authorizes the issuance of certificates with respect to facilities which are certified as "necessary in the interest of national defense during the emergency period." When originally enacted during the World War II period, and when reenacted during the Korean conflict, this section was intended by the Congress to provide an incentive for the construction of productive capacity which was essential to the national defense and for which there was no foreseeable use after the termination of armed conflict. We have seen the criterion "in the interest of national defense" expanded by administrative interpretation to include all sorts of things, from electric generating plants to railroad rolling stock.

Admittedly, the language of the amendment is more restrictive than existing law. Nevertheless, the language is sufficiently broad and its exact meaning sufficiently uncertain as to permit wide latitude to the officials of the executive agency who will administer it. Any facility connected with the atomic energy program, whether devoted to the weapons program, designed to promote the peaceful uses of atomic energy, or to produce plutonium as a byproduct, would apparently be eligible under the proposed language. The Congress has already authorized varying forms of subsidies and incentives to private firms participating in a program to harness the energy of the atom. In my view, it is unnecessary to provide yet another form of subsidy through the means of a rapid amortization certificate.

Though the proposed amendment obviously attempts to restrict the use of emergency certificates to facilities which are more or less directly related to national defense, in my opinion the language fails to do so. For reasons set forth above, almost any type of facility could conceivably come within its terms. It will be recalled that the meaning of "national defense" as used in existing law has been greatly expanded by administrative interpretation.

It should be noted that the majority report undertakes to be more restrictive than the language of the proposed amendment. I submit however, that the clear language of legislation takes precedence over a committee report. If there is doubt as to the meaning of legislation, then a committee report and debate on the floor of Congress will be looked to as casting a light upon legislative intent. The first presumption, however, is that Congress intended to do what it did do. From a careful reading of the language of the proposed amendment, it is unmistakably clear that certificates for rapid amortization will be authorized under innumerable circumstances, for countless projects

and for unpredictable combinations of "components" or "items" for sale to the Government and "to provide research, developmental, or experimental services * * *."

We hear a lot about the eagerness of private enterprise to provide essential services for the Government. Yet there seems to be an almost equally strong argument about the necessity of providing "incentives" to encourage private enterprise to provide such services.

The authorization to grant certificates on a selective basis lends itself to possible abuse, at best. It is possible that a case can be made for such a measure during a period of all-out defense mobilization. But surely no such case can be made under conditions as they exist today.

ALBERT GORE.

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