

Calendar No. 1209

85TH CONGRESS }
2d Session

SENATE }

REPORT
No. 1184

REFUNDS OF ALCOHOL AND TOBACCO TAXES

JANUARY 23, 1958.—Ordered to be printed

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

R E P O R T

[To accompany H. R. 8216]

The Committee on Finance, to whom was referred the bill (H. R. 8216) to amend the Internal Revenue Code of 1954 to prevent unjust enrichment by precluding refunds of alcohol and tobacco taxes to persons who have not borne the ultimate burden of the tax, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments made by your committee in general apply the provisions of this bill to credits or refunds made on or after May 1, 1958, instead of to those made on or after October 1, 1957, as provided by the bill as it passed the House. Similarly, it changes the references to September 30, 1957 and 1958 to April 30, 1958 and 1959 in connection with the requirements for the filing of claims and in connection with the date for not extending barred claims.

I. PURPOSE OF THE BILL

H. R. 8216 adds a new section 6423 to the Internal Revenue Code to provide that 1 of 2 basic conditions must be met before any refund (or other allowance of a claim) of an alcohol (except occupational taxes) or tobacco tax can be made. These conditions are designed to prevent unjust enrichment by limiting the cases in which refund will be made in general to those where the claimant bore the ultimate burden of the tax or repaid the amount of the tax to the person who bore the ultimate burden. This provision will not apply to claims for drawbacks; for credits or refunds where a commodity is withdrawn from the market, returned to bond, or lost or destroyed; or for amounts claimed where a commodity has been lost where a suit has been filed before June 15, 1957. The provision, as amended by your committee, is to be effective with respect to credits or refunds allowed or made on or after May 1, 1958.

The bill also provides that new claims need not be filed in the case of pending suits. Instead, a procedure is set up whereby the conditions to the allowance of the refund in such cases can be established in the court action.

II. REASONS FOR THE BILL

Under existing law a taxpayer who overpays a retailer's or manufacturer's excise tax, and is not the ultimate purchaser, before obtaining a credit or refund usually must show that he bore the ultimate burden of the tax, that he has repaid the amount of the tax to the purchaser or ultimate purchaser (or in certain cases has repaid or agreed to repay the tax to the ultimate seller) or that he has obtained the consent to the refund of the purchaser or ultimate purchaser (or ultimate seller). Somewhat similar limitations apply in the case of the excise taxes on most admissions, club dues, communications, and transportation. The purpose of these limitations is to prevent the taxpayer from realizing a windfall gain from a refund or credit where someone else actually bore the burden of the tax because the price charged for the taxed article, service, or facility included the tax.

Until recently there appeared to be no particular need for limitations on allowance of credits or refunds in the case of alcohol and tobacco taxes such as those provided for most other excise taxes. The claims for credits or refunds with respect to the alcohol or tobacco taxes have ordinarily arisen in situations where the taxed product was lost or destroyed while held by the producer or by the warehouseman, or where the taxed product was withdrawn from the market by the producer. In these cases the taxpayer is not in a position to obtain any special benefit from the refund or credit. However, recently there has been filed with the Internal Revenue Service a series of claims which allege the unconstitutionality of provisions of the taxing statutes relating to alcohol and tobacco taxes. A tabulation through February 28, 1957, indicates that 2,871 such claims have been filed and that the amount involved in these claims is about \$830 million. More recent (but incomplete) data indicate that as of January 1, 1958, more than 3,000 claims have now been filed and that the amount involved in these claims is in excess of \$1,378 million. For the most part these refund claims represent cases where the taxes paid were reflected in the prices charged consumers, and, therefore, are comparable to the situations under the other excise taxes where the conditions to the allowance of the refunds or credits are applicable.

Your committee in providing the conditions contained in this bill is in no way attempting to express any view as to the point in litigation. However, it sees no reason, if claims should be allowed, for granting refunds or credits to taxpayers who have shifted the burden of the tax to someone else, unless the benefits of the credits or refunds also can be shifted forward to such persons. Title VII of the Revenue Act of 1936, the "unjust enrichment tax" after which the provisions of this bill were patterned, in fact represents a precedent for the action taken by your committee in this bill. The purpose of that act was to preclude payments to persons seeking refunds on the basis of the unconstitutionality of the taxing provisions of the Agricultural Adjustment Act of 1933, unless they established that they bore the ultimate economic burden of the tax. The commodities subject to the processing taxes, like the present alcohol and tobacco

taxes, were in general sold at prices which included the amount of such taxes. The validity of limitations on claims for refund of these unjust enrichment taxes was upheld in *Anniston Mfg. Co. v. Davis* (301 U. S. 337). Your committee believes that the same reasons which impelled the Congress to act in 1935 and 1936 to prevent windfalls to the milling industry warrant action now to preclude any possibility of windfalls to the distilling industry and other alcohol and tobacco taxpayers.

Your committee has amended the bill as it passed the House to advance the effective date of the bill and the time for filing claims for refund. The effective date of the bill has been advanced from October 1, 1957, to May 1, 1958, in order to provide the Internal Revenue Service with adequate time to prepare regulations under the new provisions. Similar changes have been made in the time for filing claims for refunds in order to accord taxpayers with sufficient time to comply with the provisions of the bill.

III. EXPLANATION OF THE BILL

Section 1 of the bill adds a new section 6423 to subchapter B of chapter 65 of the Internal Revenue Code of 1954 (relating to rules of special application for abatement, credits, and refunds).

Subsection (a) of this section 6423 specifies conditions to the making or allowance of credit or refund of alcohol or tobacco taxes. It denies a credit or refund unless the claimant establishes that he bore the ultimate burden of the amount claimed, or establishes that he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of the amount claimed.

This subsection also makes provision for cases where the taxpayer is not the owner of the taxed commodity. For example, in the case of distilled spirits withdrawn from internal revenue bond, the tax is paid by the warehouseman holding the spirits, and the warehouseman is therefore the only person entitled to file claim for refund of such tax. However, in many instances he is not the owner of the spirits. In such cases the owner is likely to supply the warehouseman with the amount of the tax to secure the release of the spirits from bond. This subsection recognizes the equities of the owner under these circumstances even though he was not the taxpayer. It permits the warehousemen in these cases to claim the refund or credit where the owner has given his written consent to allowance of the refund to the claimant warehouseman if the owner bore the ultimate burden of the tax or has unconditionally repaid the amount claimed by the person who bore the ultimate burden of the tax.

Interest will be allowed or paid with respect to any amount to which subsection (a) is applicable only with respect to the actual amount of a refund or credit which is made or allowed.

Subsection (b) as a general rule precludes the credit or refund of any amount to which subsection (a) applies unless the claimant files a claim after April 30, 1958, and within the time prescribed by law (in the bill as passed by the House this date was September 30, 1957). All evidence relied on in support of such claim is to be clearly set forth and submitted with the claim. The conditions to allowance would apply in suits for recovery of any amount to which subsection (a) applies, whether brought against the United States or against the collection officer.

Where a claim has been filed on or before April 30, 1958, subsection (b) provides for the filing of a claim, in conformity with the provisions of this section, after April 30, 1958, and before May 1, 1959, which will supersede any prior claim which was not barred from allowance on April 30, 1958. (In the bill as passed by the House, such claims were to be filed after September 30, 1957, and before October 1, 1958, and superseded prior claims which were not barred from allowance on September 30, 1957.) The effect of this provision is to preserve the existing rights of claimants, but to preclude any credit or refund of any amount to which subsection (a) applies unless one of the prescribed conditions to allowance is met.

An exception, however, is provided to this requirement for the filing of a new claim. Any claimant who instituted suit before June 15, 1957, for the recovery of any amount to which subsection (a) applies, is not to be barred by the new section 6423 (b) from the maintenance of such action as to any amount claimed in such action on such date if in such action he establishes one of the conditions to allowance required under subsection (a) with respect to such amount.

Subsection (c) makes it clear that the period of limitations is not extended or opened as to any suit or proceeding which is barred, or as to any claim which is barred from any allowance.

Subsection (d) provides that the new section is not to apply to any claim for drawback, any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed, or to any amount claimed with respect to a commodity which has been lost and where a suit or proceeding was instituted before June 15, 1957. It is not believed necessary to make the conditions to allowance applicable in these circumstances. In the case of the drawback the normal competition in business transactions operates to give the purchaser the benefit of the drawback; where products have been lost, destroyed, or withdrawn from the market, the taxpayer is not in a position to obtain an unjust enrichment.

Subsection (e) states the meaning of the terms "alcohol or tobacco tax," "tax," and "ultimate burden" for the purposes of this section.

The terms "alcohol or tobacco tax" and "tax" are broadly defined to include all amounts paid or collected as tax (other than occupational taxes) with respect to distilled spirits, wines, beer, and tobacco products. They include any amount previously collected as alcohol or tobacco tax, as well as such amounts which may be collected after the date of enactment of the bill.

This subsection states the conditions under which the claimant is to be treated as having borne the "ultimate burden" of an amount of an alcohol or tobacco tax for the purposes of subsection (a) (1), and the conditions under which the owner referred to in subsection (a) (3) is to be treated as having borne such burden for the purposes of such subsection. It provides that the claimant (or owner where subsection (a) (3) is applicable) is to be treated as having borne the burden of the tax only if he has not, directly or indirectly, been relieved of the tax or shifted it to someone else and only if there is no understanding or agreement as to such relief or shifting. In fact, this subsection is intended to prevent any refund or credit to which subsection (a) applies if the claimant in any manner whatsoever has shifted the burden of the amount claimed or is in a position where such burden can be shifted.

The subsection also provides that, where the taxed commodities have not yet been marketed, the claimant must agree not to shift the burden, or to seek relief from it, and must post bond to assure compliance with this agreement.

Section 2 of the bill is a technical amendment to the table of sections in subchapter B of chapter 65 of the code.

Section 3, as amended by your committee, provides that the amendments made by this bill are not to apply to any credit or refund allowed or made before May 1, 1958. (This date was October 1, 1957, under the bill as it passed the House.) The bill thus applies to any credit or refund of any amount to which subsection (a) of the new section 6423 applies, which is made or allowed on or after May 1, 1958, whether in pursuance of a court decision or otherwise, and whether the claim arose on, or before, or after the enactment of this bill.

IV. 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 (new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

SUBCHAPTER B OF CHAPTER 65 OF THE INTERNAL REVENUE CODE OF 1954

Chapter 65.—Abatements, Credits, and Refunds

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SUBCHAPTER B.—RULES OF SPECIAL APPLICATION

- Sec. 6411. Tentative carryback adjustments.
- Sec. 6412. Floor stocks refunds.
- Sec. 6413. Special rules applicable to certain employment taxes.
- Sec. 6414. Income tax withheld.
- Sec. 6415. Credits or refunds to persons who collected certain taxes.
- Sec. 6416. Certain taxes on sales and services.
- Sec. 6417. Coconut and palm oil.
- Sec. 6418. Sugar.
- Sec. 6419. Excise tax on wagering.
- Sec. 6420. Gasoline used on farms.
- Sec. 6421. Gasoline used for certain nonhighway purposes or by local transit systems.
- Sec. 6422. Cross references.
- Sec. 6423. *Conditions to allowance in the case of alcohol and tobacco taxes.*

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SEC. 6423. CONDITIONS TO ALLOWANCE IN THE CASE OF ALCOHOL AND TOBACCO TAXES.

(a) *CONDITIONS.*—*No credit or refund shall be allowed or made, in pursuance of a court decision or otherwise, of any amount paid or collected as an alcohol or tobacco tax unless the claimant establishes (under regulations prescribed by the Secretary or his delegate)—*

- (1) *that he bore the ultimate burden of the amount claimed; or*
- (2) *that he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount; or*
- (3) *that (A) the owner of the commodity furnished him the amount claimed for payment of the tax, (B) he has filed with the Secretary or his delegate the written consent of such owner to the allowance to the*

claimant of the credit or refund, and (C) such owner satisfies the requirements of paragraph (1) or (2).

(b) **FILING OF CLAIMS.**—No credit or refund of any amount to which subsection (a) applies shall be allowed or made unless a claim therefor has been filed by the person who paid the amount claimed, and, except as hereinafter provided in this subsection, unless such claim is filed after April 30, 1958, and within the time prescribed by law, and in accordance with regulations prescribed by the Secretary or his delegate. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim. Any claimant who has on or before April 30, 1958, filed a claim for any amount to which subsection (a) applies may, if such claim was not barred from allowance on April 30, 1958, file a superseding claim after April 30, 1958, and on or before April 30, 1959, conforming to the requirements of this section and covering the amount (or any part thereof) claimed in such prior claim. No claim filed before May 1, 1958, for the credit or refund of any amount to which subsection (a) applies shall be held to constitute a claim for refund or credit within the meaning of, or for purposes of, section 7422 (a); except that any claimant who instituted a suit before June 15, 1957, for recovery of any amount to which subsection (a) applies shall not be barred by this subsection from the maintenance of such suit as to any amount claimed in such suit on such date if in such suit he establishes the conditions to allowance required under subsection (a) with respect to such amount.

(c) **PERIOD NOT EXTENDED.**—Any suit or proceeding, with respect to any amount to which subsection (a) applies, which is barred on April 30, 1958, shall remain barred. No claim for credit or refund of any such amount which is barred from allowance on April 30, 1958 shall be allowed after such date in any amount.

(d) **APPLICATION OF SECTION.**—This section shall apply only if the credit or refund is claimed on the grounds that an amount of alcohol or tobacco tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This section shall not apply to—

- (1) any claim for drawback,
- (2) any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed, and
- (3) any amount claimed with respect to a commodity which has been lost, where a suit or proceeding was instituted before June 15, 1957.

(e) **MEANING OF TERMS.**—For purposes of this section—

(1) **ALCOHOL OR TOBACCO TAX.**—The term "alcohol or tobacco tax" means—

(A) any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) in the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax.

(2) **TAX.**—The term "tax" includes a tax and an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

(3) *ULTIMATE BURDEN.*—*The claimant shall be treated as having borne the ultimate burden of an amount of an alcohol or tobacco tax for purposes of subsection (a) (1), and the owner referred to in subsection (a) (3) shall be treated as having borne such burden for purposes of such subsection, only if—*

(A) he has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(B) no understanding or agreement exists for any such relief or shifting, and

(C) if he has neither sold nor contracted to sell the commodities involved in such claim, he agrees that there will be no such relief or shifting, and furnishes such bond as the Secretary or his delegate may require to insure faithful compliance with his agreement.

