

NET OPERATING LOSS CARRYBACKS RESULTING FROM
RENEGOTIATION

AUGUST 11, 1959.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 2906]

The Committee on Finance, to whom was referred the bill (H.R. 2906) to extend the period for filing claims for credit or refund of overpayments of income taxes arising as a result of renegotiation of Government contracts, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

At the end of the bill insert the following new section:

SEC. 2. Notwithstanding any period of limitation otherwise applicable, the Secretary of the Treasury or his delegate is authorized and directed to allow credit or refund of an overpayment of \$383.64 (claimed on an amended joint return for the calendar year 1951 made June 7, 1954, by Dexter Phillips and Jeanette H. Phillips and disallowed August 4, 1954, by the examining internal revenue officer) to the extent that such overpayment is attributable to the erroneous inclusion in the gross income shown on their original joint return for such year, made March 11, 1952, of any amount received by Dexter Phillips in final distribution of his grandfather's estate.

SECTION 1. NET OPERATING LOSS CARRYBACKS RESULTING FROM
RENEGOTIATION

Section 1 of this bill, which was adopted by your committee without amendment, amends the 1939 Code and the 1954 Code by extending the period of limitations for filing claims for credit or refund of overpayments of income taxes which arise as a result of a renegotiation of Government contracts. The period for filing a claim for credit or

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refund for an overpayment of taxes, to the extent attributable to the creation of, or an increase in, a net operating loss carryback resulting from the elimination of excessive profits by a renegotiation of a Government contract is not to expire before the end of 1 year after the month in which the agreement or order for the elimination of the excessive profits becomes final. The amendment to the 1954 Code applies to all 1954 Code years. The amendment to the 1939 Code applies with respect to claims resulting from renegotiations for taxable years ending after December 31, 1952. In no case will the period of limitations expire before September 1, 1959.

The general rule provided by the Internal Revenue Code with respect to claims for credit or refund of income taxes is that such claims must be filed within 3 years from the time the return is filed or 2 years from the time the tax is paid, whichever period expires later (sec. 6511(a)). However, there is a special rule in the case of the carryback of net operating losses, since otherwise the period allowed under the general rule for the income year may have expired before the amount of the loss which should be carried back (and offset against the income of that year) is determined. Under existing law (sec. 6511(d)(2)(A)), if a claim for a credit or refund relates to an overpayment of tax attributable to the carryback of a net operating loss, the period in which the claim must be filed is the period which ends on the 15th day of the 40th month (39th month in the case of a corporation) following the end of the taxable year in which the net operating loss arose. A similar provision is contained in section 322(b)(6) of the 1939 Code.

The special rule applicable in the case of net operating loss carrybacks generally provides adequate time for the filing of a claim for credit or refund. However, where the net operating loss arises as a result of the restoration of excessive profits pursuant to renegotiation, the period may not be adequate since the renegotiation may become final more than 38½ months (or 39½ months in the case of an individual) after the end of the year in which the net operating loss arose, and under existing law the period provided by the special rule for filing a claim for credit or refund would have expired. In such a case, your committee agrees with the House, it is unfair for the Government to require the restoration of excessive profits on the one hand and, at the same time, deny the taxpayer a credit or refund of the taxes paid with respect to such profits where the renegotiation decreases his tax liability.

Section 1 of the bill amends both the 1954 Code and the 1939 Code to provide that where the elimination of excessive profits by renegotiation creates a net operating loss, or increases an already existing net operating loss, the period for filing a claim for credit or refund for that portion of an overpayment attributable to the carryback of the created loss, or the increase in the loss, is not to expire until 12 months after the month in which the agreement or order for the elimination of the excessive profits becomes final. This new period of limitation for a net operating loss carryback is not to cut short the period provided by present law in the case of a net operating loss carryback. Thus, in no case will the period of limitations expire before the 15th day of the 40th month (39th month in the case of a corporation) following the end of the taxable year in which the net operating loss arises if this is later than the 12th month after a renegotiation agreement or order becomes final.

The amendments apply only to that portion of the overpayment for any taxable year which is attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by renegotiation. There will be no extension, by reason of this bill, for any portion of the overpayment which is not so attributable.

The amendment to the 1954 Code (to sec. 6511(d)(2)(A)) is to apply to claims for taxable years beginning after December 31, 1953, and ending after August 16, 1954 (the general effective date of the 1954 Code). The amendment made to the 1939 Code (to sec. 322(b)(6)) is to apply to claims resulting from renegotiations for taxable years ending after December 31, 1952. The bill provides that the period of limitations will in no case expire before September 1, 1959.

SECTION 2. ALLOWANCE OF CREDIT OR REFUND FOR OVERPAYMENT OF TAX NOTWITHSTANDING PERIOD OF LIMITATION IN THE CASE OF DEXTER PHILLIPS AND JEANETTE H. PHILLIPS

Section 2 of this bill, which was added by your committee, provides that, notwithstanding any period of limitation otherwise applicable, the Secretary of the Treasury or his delegate is authorized and directed to allow credit or refund of an overpayment of \$383.64 (claimed on an amended joint return for the calendar year 1951 made June 7, 1954, by Dexter Phillips and Jeanette H. Phillips and disallowed August 4, 1954, by the examining internal revenue officer) to the extent that such overpayment is attributable to the erroneous inclusion in the gross income shown on their original joint return for such year, made March 11, 1952, of any amount received by Dexter Phillips in final distribution of his grandfather's estate.

Your committee is informed that the facts with respect to this matter are as follows:

Dexter Phillips and Jeanette H. Phillips filed, within the statutory period, a joint U.S. income tax return for the calendar year 1951 showing a total income of \$7,335.95, of which \$2,002.13 was reported as received from an estate. The tax reported was \$995.72, payment of which was effected by withholding in the amount of \$677.91 and a remittance with the return in the amount of \$317.81. On June 8, 1954, an amended return was filed by Dexter Phillips and Jeanette H. Phillips for the year 1951 showing income of \$5,333.82 and tax due of \$612.08. Refund of \$383.64 was requested. The refund requested was based upon the erroneous inclusion in income of the amount of \$2,002.13 received from the estate.

An office audit of the return for 1951 was made and on August 4, 1954, the report of the examining officer states that:

Taxpayer filed "amended" return eliminating amount received from final distribution of grandfather's estate construing same to be a gift, but which is fully taxable.

It is recommended that the claim filed in the amount of \$383.64 for the year 1951 be disallowed in full.

The report of the examining officer was approved on August 5, 1954, by the group chief, and on December 10, 1954, a copy of the report was sent to the taxpayers. It appears further that Dexter Phillips, for himself and his wife, agreed to the findings of the agent.

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The grandfather of Dexter Phillips died on or about July 6, 1950. The records concerning the probate of the grandfather's estate disclose that the assets of the decedent, valued at \$8,046.87, were sold for \$8,013.47, or at a loss of \$33.40. Distribution of the assets of the estate was made on December 10, 1951. During 1950 and 1951 income in the amounts of \$399.91 and \$335.65, respectively, was collected. Accordingly, the total receipts of the estate aggregated \$8,749.03. During administration the following disbursements were made:

Clerk of district court—court costs.....	\$21. 80
Appraiser's fees.....	22. 50
Personal taxes.....	29. 25
Appraisal fees on specified property.....	75. 00
Attorney fees.....	294. 98
Administrator's fees.....	294. 98
Total.....	738. 51

The balance available for distribution (\$8,010.52) was distributed as follows: \$2 additional court costs, one-half of remainder to decedent's son, one-fourth each to two of decedent's grandchildren (one of whom was Dexter Phillips).

The circumstances of this case, as outlined above, indicate that there was an erroneous inclusion in income of an amount received as a bequest, that a timely claim for refund was made, and that this claim was erroneously rejected by the examining officer and his superior. In view of these circumstances, your committee is of the opinion that relief should be given in this case for the particular taxpayers who, following the conclusions of the Government's representatives concerned, did not further prosecute their claim within the period of limitations.

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):

SECTION 322(b)(6) OF THE INTERNAL REVENUE CODE OF 1939

SEC. 322. REFUNDS AND CREDITS.

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(b) **LIMITATION ON ALLOWANCE.—**

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(6) **SPECIAL PERIOD OF LIMITATION WITH RESPECT TO NET OPERATING LOSS CARRY-BACKS AND UNUSED EXCESS PROFITS CREDIT CARRY-BACKS.—**If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back, in lieu of the three-year period or limitation prescribed in paragraph (1), the period shall be that period which ends with the expiration of the fifteenth day of the thirty-ninth month following the end of the taxable year of the net operating loss or the unused excess profits credit which results in such carry-back, or the period prescribed in paragraph (3) in respect of such taxable year, whichever

expires later; except that, with respect to an overpayment attributable to the creation of or an increase in a net operating loss carry-back as a result of the elimination of excessive profits by a renegotiation (as defined in section 3806(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in paragraph (2) or (3), whichever is applicable, to the extent of the amount of the overpayment attributable to such carry-back.

SECTION 6511(d)(2)(A) OF THE INTERNAL REVENUE CODE OF 1954

SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

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(d) SPECIAL RULES APPLICABLE TO INCOME TAXES.—

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(2) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO NET OPERATING LOSS CARRYBACKS.—

(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that, with respect to an overpayment attributable to the creation of or an increase in a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) (2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.