

TAX ON FIREARMS

MAY 2, 1960.—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. 4029]

The Committee on Finance, to whom was referred the bill (H.R. 4029) to amend the Internal Revenue Code of 1954 to eliminate the proration of the occupational tax on persons dealing in machineguns and certain other firearms, to reduce occupational and transfer taxes on certain weapons, to make the transferor and transferee jointly liable for the transfer tax on firearms, and to make certain changes in the definition of a firearm, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

I. SUMMARY OF BILL

In general, this bill amends the special excise taxes in the Internal Revenue Code which relate to short-barreled firearms, machineguns and the so-called "any other weapon" category by making the following changes:

(1) It exempts from the special occupational and transfer taxes rifles with barrels between 16 inches and 18 inches in length (an exemption is already provided in the case of those with a caliber of .22 or smaller). These are primarily sporting guns which will, therefore, become taxable under the regular 11 percent manufacturers' firearms tax.

(2) It subjects to these occupational and transfer taxes (and also the so-called making tax) any weapons made from a rifle or shotgun if the modified weapon has an overall length of less than 26 inches (whether or not concealable).

(3) It lowers the manufacturer and dealer occupational taxes and the transfer tax with respect to "any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if the weapon is capable of being concealed on the person. At present the manufacturers' and dealers' occupational taxes

applicable to these weapons (other than certain handguns) generally are \$500 and \$200, and under the bill will be \$25 and \$10 respectively. The transfer tax under present law is \$200 in this case, and under the bill will be \$5.

(4) The dealers' taxes with respect to certain combination shotgun and rifles and also certain guns designed to be held in one hand are raised from \$1 to \$10 a year in the case of dealers and the applicable transfer taxes are raised from \$1 to \$5 per transaction.

(5) The occupational taxes are the same whether the individual involved is in the specified business for part, or all, of a year, or, in other words the proration feature of existing law is repealed.

(6) The transferor and transferee of the specified firearms are made jointly and severally liable for the transfer tax imposed.

II. COMMITTEE AMENDMENT

The effective date with respect to the changes in the occupational tax rates was necessarily changed by the Committee on Finance to June 30, 1960, instead of June 30, 1959, as originally proposed in the House-passed bill, so as to make its application prospective. The other provisions of the bill become effective as of the 1st of the month which begins more than 10 days after the date of enactment of the bill.

III. GENERAL STATEMENT

This bill is concerned with the sections of the Internal Revenue Code which originated in the National Firearms Act, approved June 26, 1934 (48 Stat. 1237). The primary purpose of that act was to make it more difficult for the gangster element to obtain certain types of weapons. The type of weapon with which these provisions are concerned are the types it was thought would be used primarily by the gangster-type element. The weapons presently included in the term "firearm" as it is defined (sec. 5448) for purposes of these sections are:

- (1) Shotguns or rifles having a barrel less than 18 inches in length (except rifles if the caliber is .22 or smaller and the barrel is 16 inches or more in length),
- (2) Weapons capable of being concealed on the person other than pistols or revolvers,
- (3) Machineguns, and
- (4) Mufflers and silencers for any firearm.

Special occupational taxes are imposed on persons in the business of importing, manufacturing, or dealing in (including pawnbrokers) these firearms and a special tax is imposed on their transfer or "making." In addition, registration is required by the manufacturers, dealers, pawnbrokers, and persons making firearms, and records must be furnished the Treasury with respect to the transfer, manufacture, and making of these firearms. These special National Firearms Act taxes are wholly separate from the 10- or 11-percent taxes applying to the manufacturer's or importer's sale of pistols, revolvers, and other ordinary firearms (sec. 4181).

Problems have been presented with respect to certain features of these national firearms taxes by gun collectors, rifle associations,

and others. It was made clear to this committee during the public hearings held on this bill on April 26, 1960, that these organizations do not want to interfere with the effective administration of the National Firearms Act taxes, but are concerned with what is believed to be unnecessary interferences with their avocations. The interested parties worked out the recommendations contained in this bill in conferences with representatives of the Internal Revenue Service and law enforcement agencies, with the purpose of finding solutions to the problems with which these organizations were concerned without interfering with the administration of the National Firearms Act.

The House Committee on Ways and Means added a number of features to this bill which are designed to aid in enforcement and simplify the administration of these provisions.

As indicated previously, a shotgun or rifle having a barrel of less than 18 inches in length under present law is classified as a "firearm" for purposes of these special taxes, except that in the case of rifles of a .22 or smaller caliber, the specified barrel length is only 16 inches. The purpose of this was, of course, to include within the category of weapons subject to these taxing and control provisions the sawed-off shotguns and sawed-off rifles likely to be used by the gangster element. However, it has been called to the attention of your committee that a number of popular sporting rifles have a barrel length just slightly under 18 inches with the result that they are classified as a "firearm" subject to these special taxes and control provisions. It is not believed that these guns constitute a type of weapon, such as a sawed-off rifle or shotgun, which is likely to be used by the criminal element.

The bill therefore redefines firearms for purposes of these special provisions to exclude from this definition all rifles if they have a barrel of 16 inches or more in length. However, the bill also expands the definition of firearm for purposes of these taxing and control provisions to include any weapon made from a rifle or shotgun if the weapon as modified has an overall length of less than 26 inches. This change which is supported by the Treasury Department will aid in the enforcement of the National Firearms Act and also ease administration, since it will no longer be necessary, in order to tax these weapons and require their registration, to determine whether they are capable of concealment on the person.

The effect of excluding the sporting rifles with barrels just under 18 inches in length from the definition of firearms and the inclusion within this definition of weapons made from rifles or shotguns having an overall length of less than 26 inches is to exclude in the first case, and include in the second case, these weapons in the category subject to the occupational taxes on manufacturers, dealers, and pawnbrokers of \$500, \$200, and \$300 a year respectively. Also, the rifles no longer included in the definition of firearms for this purpose will no longer be subject to the \$200-a-year transfer tax or to the special control provisions. The reverse, of course, will be true of the weapons made from shotguns or rifles where the overall length is less than 26 inches.

Another problem area under present law for the gun collector arises in the case of a category of gun referred to as—

any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person.

As has been indicated previously, these weapons are included in the definition of a firearm and are subject to the indicated occupational, transfer, and making taxes.

It is understood that firearms in the "any other weapon" category included gadget-type and unique weapons, which are often sought after by gun collectors. Moreover, it appears doubtful that criminal elements use these types of weapons to any significant extent in their criminal activities, particularly since the alternatives of a pistol or a revolver, neither of which is subject to this firearms tax, are available.

In view of these considerations, it was concluded that this "any other weapon" category should give rise to occupational taxes of \$10 a year in the case of dealers, or \$25 a year in the case of manufacturers. This is in lieu of the \$200-a-year tax presently applicable in the case of dealers of these guns and \$500-a-year tax in the case of manufacturers of these guns. It was also concluded that these "any other weapons" should upon sale be subject to a transfer tax of \$5 instead of the \$200 now generally applicable. However, this "any other weapon" category will continue to be subject to the present control provisions applicable to all firearms under present law. As a result, the safeguards of present law are maintained, while the applicable taxes are lowered to the level which makes it possible for gun collectors to obtain novel weapons in this category. In connection with these same changes the occupational tax was also raised with respect to dealers in—

guns with combination shotgun and rifle barrels, 12 inches or more but less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading.

Under present law this tax is \$1 a year and under H.R. 4029 will be \$10 a year. Similarly, the transfer tax with respect to this category of guns is raised from \$1 per transfer to \$5 per transfer. The same occupational tax increase and transfer tax increase is also provided under the bill in the case of—

guns designed to be held in one hand when fired and having a barrel 12 inches or more but less than 18 inches in length, from which only a single discharge can be made without manual reloading.

These slight increases in tax in the case of these special categories of guns are made to provide uniform treatment with the "any other weapon" category referred to above, and all of the taxes are raised to the levels indicated in order to give assurance that the administrative costs of issuing the stamps and recording the transfers will be covered by the fees received. The Treasury Department endorses these rate increases.

In connection with the exemption of rifles with barrels between 16 and 18 inches, and the rate reduction for "any other weapon," the report of the Treasury Department contained the following statement:

The proposed exemption of short-barreled rifles (rifles with barrels between 16 and 18 inches in length) and the rate reduction for "any other weapon" represent a liberalization of the control features of the National Firearms Act. Whether the changes would have undesirable effects is not entirely

clear. We understand that the International Association of Police Chiefs polled its members on the proposed exemption for short-barreled rifles and received a divided reaction as to whether such guns are of the type that would be used by criminals. The proposed reduction of taxes on guns in the "any other weapon" category does not affect the information requirements (including fingerprints and photographs of transferees) and penalties for violation of these and other requirements associated with the taxes. Insofar as these, rather than the rate of tax, are the significant deterrents to criminals from obtaining these weapons from others, the basic purpose of the law will be served. If a high tax rate, such as is intended to be retained on sawed-off shotguns, machineguns, and silencers, also has value in preventing purchase of weapons by criminals, then the tax reductions for "any other weapon" could be considered undesirable.

As to these two features of the bill, the Treasury Department is of the opinion that the possible inducement to criminal use of such weapons from the proposed changes is not such as to warrant its objecting to the changes.

The bill also makes two changes designed to ease administration and aid compliance with respect to these National Firearms Act taxes. Under present law the occupational taxes, those with respect to importers or manufacturers, dealers (other than pawnbrokers), and pawnbrokers are prorated where the taxpayer commences operations after the beginning of the taxable year. Thus, for example, where liability for the tax first occurs in the second month of the year, eleven-twelfths of the tax is payable, where it first occurs in the third month of the year, ten-twelfths of the tax is payable, and so on. In the interest of simplification, these taxes are made annual taxes by the bill with the full amount of the occupational tax payable where the individual falls in the category for any portion of the year. It is believed that the elimination of the proration of the occupational taxes also will make it more difficult for persons who are not actually engaged in the business as dealers to obtain firearms for their personal use without payment of the transfer taxes. Thus it will no longer be possible to wait until near the end of the year to enter into the transactions and pay only a small occupational tax while receiving an exemption from the transfer tax. This change has the support of the Treasury Department.

A change also has been made in the transfer tax in order to improve compliance. Under present law the transfer tax is payable by the transferor. H.R. 4029 amends this to provide that if a firearm is transferred without the payment of tax, both the transferor and the transferee are jointly and severally liable for the tax. It is believed that this will give the Internal Revenue Service a means of coping with illegal transfers of firearms of all types. This change is supported by the Treasury Department.

The amendments made by this bill generally are to take effect on the first day of the first month beginning more than 10 days after the date of the enactment of this bill. However, the changed rates of taxes with respect to the occupational taxes are to apply with respect to periods beginning after June 30, 1960, the beginning of the occupational tax year. Thus, where the tax rate applicable to a manu-

facturer or importer is reduced from \$500 to \$25, the taxpayer will become entitled to a refund of the difference on the effective date. Also, where the tax rate is increased (from \$1 to \$10 in the case of certain dealers, or from a prorated to a full amount in any case where the elimination of the proration feature of existing law applies) the difference will become due on the effective date.

The report of the Treasury Department stated:

The combined revenue effect of the proposed exemption, rate increases, and rate reductions in H.R. 4029 would be difficult to estimate but could hardly be of any real significance.

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

SEC. 5801. TAX.

(a) RATE.—On first engaging in business, and thereafter on or before the first day of July of each year, every importer, manufacturer, and dealer in firearms shall pay a special tax at the following rates:

- (1) IMPORTERS OR MANUFACTURERS.—Importers or manufacturers, \$500 a year *or fraction thereof*;
- (2) DEALERS OTHER THAN PAWNBROKERS.—Dealers, other than pawnbrokers, \$200 a year *or fraction thereof*;
- (3) PAWNBROKERS.—Pawnbrokers, \$300 a year *or fraction thereof*;

Provided, That manufacturers and dealers in guns with combination shotgun and rifle barrels, 12 inches or more but less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, [guns designed to be held in one hand when fired and having a barrel 12 inches or more but less than 18 inches in length, from which only a single discharge can be made without manual reloading, or guns of both types,] *and manufacturers and dealers in guns classified as "any other weapon" under section 5848(b)*, shall pay the following taxes: Manufacturers, \$25 a year *or fraction thereof*; dealers, [\$1] \$10 a year or [any part] *fraction thereof*.

[(b) COMPUTATION OF TAX].—Where the tax is payable on the first day of July in any year it shall be computed for 1 year; where the tax is payable on any other day it shall be computed proportionately from the first day of the month in which the liability to the tax accrued to the first day of July following. This subsection shall not apply to the special tax imposed at the rate of \$1 a year or any part thereof.]

[(c)](b) CROSS REFERENCE.—

For license to transport, ship, or receive firearms or ammunition under the Federal Firearms Act, see section 3 of the Act of June 30, 1938 (52 Stat. 1251; 15 U.S.C. 903).

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SEC. 5811. TAX.

(a) **RATE.**—There shall be levied, collected, and paid on firearms transferred to the United States a tax at the rate of \$200 for each firearm: *Provided*, That the transfer tax on any gun with combination shotgun and rifle barrels, 12 inches or more but less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, [or any gun designed to be held in one hand when fired and having a barrel 12 inches or more but less than 18 inches in length from which only a single discharge can be made without manual reloading,] and on any gun classified as “any other weapon” under section 5848(5), shall be at the rate of [1] \$5. The tax imposed by this section shall be in addition to any import duty imposed on such firearm.

(b) **BY WHOM PAID.**—Such tax shall be paid by the transferor: *Provided*, That if a firearm is transferred without payment of such tax the transferor and the transferee shall become jointly and severally liable for such tax.

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SEC. 5848. DEFINITIONS.

For purposes of this chapter—

(1) **FIREARM.**—The term “firearm” means a shotgun [or rifle] having a barrel or barrels of less than 18 inches in length, or a rifle having a barrel or barrels of less than 16 inches in length, or any weapon made from a rifle or shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition [but does not include any rifle which is within the foregoing provisions solely by reason of the length of its barrel if the caliber of such rifle is .22 or smaller and if its barrel is 16 inches or more in length].

(2) **MACHINE GUN.**—The term “machine gun” means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger.

(3) **RIFLE.**—The term “rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(4) **SHOTGUN.**—The term “shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(5) **ANY OTHER WEAPON.**—The term “any other weapon” means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy

of an explosive, but such term shall not include pistols or revolvers or weapons designed, made or intended to be fired from the shoulder and not capable of being fired with fixed ammunition.

(6) **IMPORTER.**—The term “importer” means any person who imports or brings firearms into the United States for sale.

(7) **MANUFACTURER.**—The term “manufacturer” means any person who is engaged within the United States in the business of manufacturing firearms, or who otherwise produces therein any firearm for sale or disposition.

(8) **DEALER.**—The term “dealer” means any person not a manufacturer or importer, engaged within the United States in the business of selling firearms. The term “dealer” shall include wholesalers, pawnbrokers, and dealers in used firearms.

(9) **INTERSTATE COMMERCE.**—The term “interstate commerce” means transportation from any State or Territory or District, or any insular possession of the United States, to any other State or to the District of Columbia.

(10) **TO TRANSFER OR TRANSFERRED.**—The term “to transfer” or “transferred” shall include to sell, assign, pledge, lease, loan, give away, or otherwise dispose of.

(11) **PERSON.**—The term “person” includes a partnership, company, association, or corporation, as well as a natural person.

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SEC. 5685. PENALTY AND FORFEITURE RELATING TO POSSESSION OF DEVICES FOR EMITTING GAS, SMOKE, ETC., EXPLOSIVES AND FIREARMS, WHEN VIOLATING LIQUOR LAWS.

(a) **PENALTY FOR POSSESSION OF DEVICES FOR EMITTING GAS, SMOKE, ETC.**—Whoever, when violating any law of the United States, or of any Territory or possession of the United States, or of the District of Columbia, in regard to the manufacture, taxation, or transportation of or traffic in distilled spirits, wines, or beer, or when aiding in any such violation, has in his possession or in his control any device capable of causing emission of smoke, gas, or fumes, and which may be used for the purpose of hindering, delaying, or preventing pursuit or capture, any explosive, or any firearm (as defined in section 5848), except a machine gun, or a shotgun [or rifle] having a barrel or barrels less than 18 inches in length, *or a rifle having a barrel or barrels less than 16 inches in length*, shall be fined not more than \$5,000 or imprisoned not more than 10 years, or both, and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession or control of such device, firearm, or explosive.

(b) **PENALTY FOR POSSESSION OF MACHINE GUN, ETC.**—Whoever, when violating any such law, has in his possession or in his control a machine gun, or any shotgun [or rifle] having a barrel or barrels less than 18 inches in length, *or a rifle having a barrel or barrels less than 16 inches in length*, shall be punished by imprisonment for not more than 20 years; and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession and control of such machine gun, shotgun, or rifle.

(c) **FORFEITURE OF FIREARMS, DEVICES, ETC.**—Every such firearm or device for emitting gas, smoke, or fumes, and every such explosive, machine gun, shotgun, or rifle, in the possession or control of any person when violating any such law, shall be seized and shall be forfeited and disposed of in the manner provided by section 5862.

(d) **DEFINITION OF MACHINE GUN.**—As used in this section the term “machine gun” means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger.

