

EXCLUSION OF LOCAL ADVERTISING CHARGES FROM MANUFACTURERS SALES PRICE

August 30, 1960.—Ordered to be printed

Mr. MILLS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 12536]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12536) relating to the treatment of charges for local advertising for purposes of determining the manufacturers sale price, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 1 and 3 and agree to the same.

Amendment numbered 2:

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 5. (a) The Iron Workers' Mid-America Pension Fund, which was established by an indenture executed on January 30, 1957, as a result of an agreement between various locals affiliated with the International Association of Bridge, Structural, and Ornamental Iron Workers and three employer associations, and which has been held by the Internal Revenue Service to constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1954, and to be exempt from taxation under section 501(a) of such Code, for years ending on or after December 17, 1958, shall be held and considered to have been a qualified trust under such section 401(a), and to have been exempt from taxation under such section 501(a), for the period beginning on January 30, 1957, and ending on December 16, 1958, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not

in this period been operated in a manner which would jeopardize the interests of its beneficiaries.

(b) *The Pattern Makers' Pension Trust Fund of Chicago, which was established by an agreement and declaration executed on April 28, 1958, between the Pattern Makers' League of North America, Chicago Association, and the Pattern Manufacturers' Association of Chicago and Vicinity, and which has been held by the Internal Revenue Service to constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1954, and to be exempt from taxation under section 501(a) of such Code, for years ending on or after February 25, 1959, shall be held and considered to have been a qualified trust under such section 401(a), and to have been exempt from taxation under such section 501(a), for the period beginning on April 28, 1958, and ending on February 24, 1959, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not in this period been operated in a manner which would jeopardize the interests of its beneficiaries.*

(c) *The Pipe and Refrigeration Fitters Local 537 Pension Fund of Boston, Massachusetts, which was created on September 1, 1955, as a result of an agreement between Local 537 of the United Association of Pipe Fitters and Refrigeration Fitters and the Heating, Piping, and Air Conditioning Contractors, Boston Association (now known as Mechanical Contractors Association of Boston), and which has been held by the Internal Revenue Service to constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1954, and to be exempt from taxation under section 501(a) of such Code, for years ending on or after November 10, 1959, shall be held and considered to have been a qualified trust under such section 401(a), and to have been exempt from taxation under such section 501(a), for the period beginning on March 1, 1956, and ending on November 9, 1959, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not in this period been operated in a manner which would jeopardize the interests of its beneficiaries.*

(d) *The Annuity Plan of the Electrical Switchboard and Panelboard Manufacturing Industry of New York City, which was created May 16, 1956, as a result of an agreement between Local Union Numbered 3, International Brotherhood of Electrical Workers, American Federation of Labor and Congress of Industrial Organizations, and the Electrical Manufacturers of New York, Incorporated, and which has been held by the Internal Revenue Service to constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1954, and to be exempt from taxation under section 501(a) of such Code, shall be held and considered to have been a qualified trust under such section 401(a), and to have been exempt from taxation under such section 501(a), for the period beginning May 16, 1956, and ending May 22, 1957, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not in this period been operated in a manner which would jeopardize the interests of its beneficiaries.*

(e) *The District Council No. 19 Welfare Fund, now known as Painters District Council No. 19 Welfare and Pension Fund, which was first created as of May 1, 1947, as a result of an agreement between Painters District Council No. 19, Brotherhood of Painters, Decorators and Paperhangers of America, of the State of New Jersey and painting contractors signatory to the union agreement, and which has been held by the Internal Revenue Service to constitute a qualified trust under section 401(a) of the*

Internal Revenue Code of 1954, and to be exempt from taxation under section 501(a) of such Code, shall be held and considered to have been a qualified trust under such section 401(a), and to have been exempt from taxation under such section 501(a) and under section 165(a) of the Internal Revenue Code of 1939, for the period beginning January 1, 1954, and ending August 6, 1956, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not in this period been operated in a manner which would jeopardize the interests of its beneficiaries.

(f) The Local Union Numbered 377 Pension Fund, which was created October 13, 1952, as a result of an agreement between Local Union Numbered 377, Brotherhood of Painters, Decorators and Paperhangers of America, of the State of New Jersey and Painting and Decorating Contractors of America, Hudson County Employers Chapter, and which has been held by the Internal Revenue Service to constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1954, and to be exempt from taxation under section 501(a) of such Code, shall be held and considered to have been a qualified trust under such section 401(a), and to have been exempt from taxation under such section 501(a) and under section 165(a) of the Internal Revenue Code of 1939, for the period beginning October 13, 1952, and ending April 1, 1958, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not in this period been operated in a manner which would jeopardize the interests of its beneficiaries.

And the Senate agree to the same.

W. D. MILLS,
AIME J. FORAND,
CECIL R. KING,
NOAH M. MASON,
JOHN W. BYRNES,

Managers on the Part of the House.

HARRY F. BYRD,
ROBT. S. KERR,
J. ALLEN FREAR, Jr.,
RUSSELL B. LONG,

By HARRY F. BYRD,

JOHN J. WILLIAMS,
FRANK CARLSON,

Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12536) relating to the treatment of charges for local advertising for purposes of determining the manufacturers sale price, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

ELECTION AS TO BASE FOR DETERMINING PERCENTAGE DEPLETION DEDUCTION IN THE CASE OF MINERALS USED IN MAKING CEMENT

Amendment No. 1: To determine the percentage depletion allowance under present law, it is necessary to multiply the percentage rate applicable to the particular mineral by the value of the mineral at the point at which the mining process ends. This point is referred to as the "cutoff point." In the case of many mineral industries, this cutoff point has been the subject of uncertainty and litigation. Included in this group is the cement industry.

In order to resolve the cutoff question for 1961 and future years, Congress in the Public Debt and Tax Rate Extension Act of 1960 modified section 613(c) of the Internal Revenue Code of 1954. As amended, this statutory provision established specific cutoff points for numerous minerals, including those used in the manufacture of cement. This cutoff point for cement-producing minerals (except for preheating of the kiln feed) occurs just prior to the introduction of the kiln feed into the kiln. This cutoff point is derived from a ruling published by the Treasury Department in 1953.

Although the recent legislation determines the cutoff point for the cement industry for future years, it does not settle this question for any open years prior to 1961. Senate amendment No. 1 permits taxpayers mining minerals used in making cement to elect to apply, for the years prior to 1961, the cutoff provisions adopted in the Public Debt and Tax Rate Extension Act of 1960. If a taxpayer fails to make the election, the cutoff point in his case for these years would be determined under existing law.

Under the amendment, if the taxpayer makes the election, it will apply to all of his mineral properties used in making cement and, in general, to all of his taxable years beginning before 1961 which are open on the date of the enactment of the bill. However, the making of the election resolves only the point at which the cutoff occurs and does not deal with any other matters which may be in issue, such as the method of computing the gross income at that point. The election must be made by the taxpayer on or before the date which is 60 days after the date of the publication of final regulations on this provision. Once made, the election is irrevocable.

The House recesses.

INCOME TAX EXEMPTION AND DEDUCTIONS FOR CERTAIN PENSION PLANS

Amendment No. 2: Under present law, a pension trust is qualified for income tax exemption only if it meets certain requirements relating to coverage of employees and nondiscrimination of contributions or benefits. Where the pension trust is properly qualified, not only is it exempt from Federal taxation with respect to its income, but contributions paid to it by an employer on behalf of his employees are deductible for Federal income tax purposes. Senate amendment No. 2 provides that certain pension trusts shall be deemed to constitute qualified trusts, and to be exempt from tax, under the Federal income tax laws for the period of time specified in the amendment with respect to each such trust. The trusts are as follows:

- (1) The Iron Workers' Mid-America Pension Fund.
- (2) The Pattern Makers' Pension Trust Fund of Chicago.
- (3) The Pipe and Refrigeration Fitters Local 537 Pension Fund of Boston, Mass.
- (4) The Annuity Plan of the Electrical Switchboard and Panelboard Manufacturing Industry of New York City.
- (5) The District Council No. 19 Welfare Fund, now known as Painters District Council No. 19 Welfare and Pension Fund.
- (6) The Local Union No. 377 Pension Fund.

Under the conference agreement, the House recedes with an amendment under which each trust specified in the Senate amendment is to be deemed to constitute a qualified trust (and be exempt from tax) for the period specified in the Senate amendment, but only if it is shown to the satisfaction of the Secretary of the Treasury or his delegate that the trust has not in this period been operated in a manner which would jeopardize the interests of its beneficiaries.

LIMITATION ON ACCELERATION OF ACCRUAL OF TAXES

Amendment No. 3: This amendment adds a new subsection (d) to section 461 of the Internal Revenue Code of 1954 (relating to general rule for taxable year of deduction). Paragraph (1) of the new subsection (d) provides the general rule that, in the case of a taxpayer whose taxable income is computed under an accrual method of accounting, to the extent that the time for accruing taxes is earlier than it would be but for any action of any taxing jurisdiction taken after December 31, 1960, then, under regulations prescribed by the Secretary of the Treasury or his delegate, such taxes are to be treated as accruing at the time they would have accrued but for such action by such taxing jurisdiction.

Paragraph (2) of the new subsection (d) provides that, under regulations prescribed by the Secretary of the Treasury or his delegate, paragraph (1) is to be inapplicable to the extent that its application would (but for such par. (2)) prevent all persons (including successors in interest) from ever taking such item into account.

Amendment No. 3 also provides that the new section 461(d) is to apply to taxable years ending after December 31, 1960. In this respect it is to be noted that the rule of law that a tax liability is accruable on a certain date such as the assessment or lien date has developed over a long period of years through court decisions and is a

basic concept which the Internal Revenue Service has recognized in numerous rulings. Several States in recent years have changed this accrual date from January 1 to December 31 in order to provide an extra accrual date for State taxes. This amendment, which would be effective for years after 1960 and thus put the States and taxpayers on proper notice, would change the law to provide for only one accrual for State taxes in any one taxable year where the State legislature has changed the accrual date, and would thus eliminate the additional deduction available under existing law. This legislation is prospective so that taxpayers who have acted in good faith in taking such deductions in the past under existing law will be treated uniformly and not be subjected to retroactive action on the part of the Treasury Department.

The House recesses.

W. D. MILLS,
AIME J. FORAND,
CECIL R. KING,
NOAH M. MASON,
JOHN W. BYRNES,
Managers on the Part of the House.

