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# FOWLING NETS

JUNE 21, 1962.—Ordered to be printed

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

## REPORT

[To accompany H.R. 6682]

The Committee on Finance, to whom was referred the bill (H.R. 6682) to provide for the exemption of fowling nets from duty, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

### I. PURPOSE

The purpose of H.R. 6682 is to provide for the duty-free entry of nets or sections or parts of nets, finished or unfinished, of whatever material or materials composed, for use in taking wild birds under licenses issued by an appropriate Federal or State governmental authority.

Your committee has added two provisions to this bill. One of these provides for the period from October 1, 1952, through August 31, 1955, that under certain conditions television tubes could be purchased tax-free for incorporation in television tuners and similar nontaxable articles which subsequently are sold for use in taxable television sets. Second, your committee's bill provides that local (usually cooperative) advertising which may be excluded from the sales price to which the various manufacturers' excise tax rates apply may include advertising in magazines and on outdoor advertising signs or posters.

### II. GENERAL STATEMENT

H.R. 6682 would transfer from the dutiable to the free list of the Tariff Act of 1930 articles which are known as fowling nets. Fowling nets are used by organizations and persons engaged in banding of birds. The nets are used to temporarily capture birds and are designed to facilitate quick banding and release of the birds. Bird-banding activities, which are carried out primarily under the coordina-

tion and sponsorship of the U.S. Department of the Interior, assist interested parties in learning more about bird distribution, population, and migration and their determinants. For example, banding of blackbirds, which in some areas are exceedingly detrimental to cereal crops, has resulted in establishing the area from which the harmful birds originate, which in turn makes it now possible to apply control measures without indiscriminate destruction of blackbirds.

Birdbanding activities are primarily carried on by volunteer workers who receive no pay for their activities. The records obtained as a result of these activities are turned over to the U.S. Government and are used in research. The Government supplies the birdbands and the record forms. Each volunteer bander supplies his own traps or nets, bait, and other equipment necessary for him to perform the banding function.

The Department of Commerce has reported that it knows of no domestic production of fowling nets. The Departments of State, Treasury, Interior, and Commerce have reported favorably on the bill and no opposition has been made known.

## III. COMMITTEE AMENDMENTS

*A. Section 2. Excise tax on certain television tubes*

Under present law television parts, including tubes, may be sold free of tax for use in the manufacture of any other article. This rule was enacted by Public Law 367, 84th Congress, effective September 1, 1955. Prior to that time, such items could be sold tax free for use in the production only of articles subject to manufacturers' excise tax.

The problem with which this amendment is concerned is liability for manufacturers' excise tax on television tubes purchased for insertion in television tuners in the period October 1, 1952, to August 31, 1955. In an unpublished ruling the Service had held that television tuners were nontaxable articles on the grounds that they were not "chassis" or any of the other enumerated taxable television components. The Internal Revenue Service so held despite the fact that in a published ruling it had previously held radio tuners to be taxable as "chassis." Some television tuner manufacturers who had not received the private rulings relied on the published ruling and assumed that television tuners were taxable as "chassis" in the same manner as radio tuners, and, therefore, that tubes could be purchased tax free for use in their television tuners. Accordingly, they secured exemption certificates from the Internal Revenue Service with respect to their purchases of tubes.

In another unpublished ruling, apparently issued in 1954, the Internal Revenue Service held that tubes purchased by a manufacturer for television tuners lost their identity when inserted in a tuner and that, therefore, when a television set manufacturer purchased a television tuner it represented a nontaxed item even though it contained tubes which had been taxed. This prevented television set manufacturers from claiming a credit when they purchased a television tuner with respect to the tubes contained therein when the television set itself was taxed at the time of its sale. This meant that there was the imposition of a double tax with respect to these television tubes—once when the tube itself was sold to the television tuner manufacturer

and again when the television set containing the tuner and tubes was sold by the set manufacturer.

On the basis of these unpublished rulings, of which taxpayers generally cannot be assumed to have knowledge, to the effect that television tuners were not taxable items and that tubes when incorporated in such tuners, even though themselves taxed, were considered to be part of a nontaxed item, the Internal Revenue Service now seeks to collect tax from the television tuner manufacturers with respect to the tubes. Your committee believes that this is inappropriate, both because this results in the imposition of a double tax with respect to these tubes, once with respect to the tubes themselves and a second time with respect to the set including the tuner and the tubes, and also because television tuner manufacturers generally could not be expected to know that the Service considered television tuners to be a nontaxable item. Actually, it was not until 1958 that the Internal Revenue Service, long after the law had been changed by Public Law 367, published a ruling specifying that television tuners were nontaxable articles because they did not perform a "detection or demodulation function" which radio tuners did perform (Rev. Rul. 58-27, 1958-1 CB 414).

This amendment provides, for the period October 1, 1952, through August 31, 1955 (Public Law 367, 84th Cong., became effective September 1, 1955), that articles such as television tuners containing taxable tubes where the article was primarily adapted for use as a component of a television set, was not itself a taxable radio or television component or chassis and was sold for use to a television set manufacturer, the article is to be treated as having been taxed under the tax on radio and television sets, components, etc. By treating the tuner as a taxable component part of a television set, your committee's amendment validates the tax-free purchase of television tubes by the tuner manufacturer. Since the television set manufacturer paid the full tax on its sets at the time of their sale, one full tax will be collected with respect to these tubes. This precludes double taxation and the unjust enrichment of the Government in such cases.

*B. Section 3. Local advertising in the form of magazine and outdoor advertising*

Under existing law in determining the manufacturers' sales price for the various excise taxes, there is excluded from the base to which these excise tax rates apply certain amounts where the manufacturer makes a separate charge for local or cooperative advertising of the taxable article or reimburses the retailer or other distributor for part of or all of his expenses for local advertising of the taxable articles. Under present law the amount so excluded may not exceed 5 percent of the sales price of the article (excluding the local advertising charges), must be separately stated when the article is sold, and must be intended as a reimbursement of the retailer or other distributor for costs incurred for local advertising. Under existing law the local advertising expenses which may be excluded must meet three tests. First, it must be initiated or obtained by the retailer or other distributor. Second, the advertising must name the article in question and state the location at which it may be purchased at retail. Third, the advertising must consist of a broadcast over a radio station or television station or appear in a newspaper.

Your committee's amendment is concerned with this third feature of the definition of local advertising; namely, types of advertising eligible for this exclusion from the sales price. The attention of your committee has been directed to the fact that restricting eligible local advertising to radio or television broadcasts or newspaper advertisements discriminates against other forms of advertising frequently carried on jointly by a manufacturer and the retailer or other distributor. Therefore, your committee's amendment expands the media qualifying for the cooperative advertising exclusion to also include advertisements in magazines and advertising which is displayed by means of an outdoor advertising sign or poster. This latter category includes advertising on billboards, whether they are placed on land or affixed to buildings. The other two requirements within the definition of local adversting (i.e., initiation or obtaining by the retailer or other distributor, and the requirement that the article be named and the location at which it may be purchased at retail specified) will apply to magazine and outdoor advertising in the same manner and to the same extent as they presently apply to advertising by the other media. Similarly, the limitation to 5 percent, the requirement of the separate charge and the intention to reimburse the retailer or other distributor for the local advertising apply to the new forms of advertising qualifying to the same extent as the forms of advertising qualifying under existing law.

This amendment is to apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the enactment of this provision.

## 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):

## TARIFF ACT OF 1930

### TITLE II—FREE LIST

SECTION 201. That on and after the day following the passage of this Act, except as otherwise specially provided for in this Act, the articles mentioned in the following paragraphs, when imported into the United States or into any of its possessions (except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam), shall be exempt from duty:

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PAR. 1725. (*a*) Nets or finished sections of nets for use in otter trawl fishing, if composed wholly or in chief value of manila.

(*b*) *Nets or sections or parts of nets, finished or unfinished, of whatever material or materials composed, for use in taking wild birds under license issued by an appropriate Federal or State governmental authority.*

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## INTERNAL REVENUE CODE OF 1954

**SEC. 4216. DEFINITION OF PRICE.**

(a) CONTAINERS, PACKING AND TRANSPORTATION CHARGES.—In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary or his delegate in accordance with the regulations.

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(f) EXCLUSION OF LOCAL ADVERTISING CHARGE FROM SALE PRICE.—

(1) EXCLUSION.—In determining, for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) is a separate charge made when the article is sold, and

(C) is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

(2) AGGREGATE AMOUNT WHICH MAY BE EXCLUDED.—In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) The sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter, taking into account the items specified in subparagraphs (A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

(3) NO ADJUSTMENT FOR OTHER ADVERTISING CHARGES.—Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclusion from, or as a readjustment of, the price of any article.

(4) LOCAL ADVERTISING DEFINED.—For purposes of this section and section 6416(b)(1), the term "local advertising" means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station [or appears in a newspaper], *appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.*

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