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SUMMARY OF MINOR HOUSE-PASSED TAX, TARIFF, AND VETERANS BILLS PENDING BEFORE THE COMMITTEE ON FINANCE

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RUSSELL B. LONG, *Chairman*

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CONTENTS

Part One—Miscellaneous Tax Bills

Page

1. Wagering tax (S. 1624) ... 3
2. Interstate taxation (H.R. 7906) ... 5
3. Distilled spirits (H.R. 10517) ... 7
   Amendment suggested by Senator Holland ... 11
   Proposed amendment; text of S. 2468 ... 12
4. Tax treatment of interest on Farmers Home Administration insured loans (H.R. 15979) ... 14
5. Working capital fund, Department of the Treasury (H.R. 16199) ... 15
6. Cemetery corporations (H.R. 16506) ... 16
7. Manufacturers claims for floor stocks refunds (H.R. 17473) ... 17
8. Skyjacking; airline tickets and advertising (H.R. 19444) ... 18
9. Extension of highway trust fund (title III of H.R. 19504) ... 19

Part Two—Miscellaneous Tariff Bills

1. Articles intended for preventing conception (H.R. 4605) ... 25
2. Duty suspension on manganese ores (H.R. 6049) ... 25
3. Bells for Smith College (H.R. 6854) ... 26
4. Duty on parts of stethoscopes (H.R. 7311) ... 27
5. Duty-free treatment for certain sample materials (H.R. 9183) ... 27
6. Shrimp vessels (H.R. 16745) ... 28
7. Duty suspension on certain electrodes (H.R. 16940) ... 29
8. Duty treatment on certain previously exported aircraft (H.R. 17068) ... 29

Part Three—Miscellaneous Veterans Bills

1. Investment of national service life insurance trust funds in Veterans' Administration-financed housing (H.R. 18253) ... 33
2. Group mortgage insurance for severely disabled veterans eligible for special housing benefits (H.R. 18448) ... 37

PART ONE
Miscellaneous Tax Bills

1. Wagering Tax

(S. 1624)

(Reported by the Senate Judiciary Committee on May 5, 1970)

Present law.—Under present law, a 10 percent excise tax is imposed on certain types of wagers and an annual occupational tax of $50 is imposed on various individuals engaged in businesses involving such wagers. Information submitted to the Internal Revenue Service pursuant to the provisions of these taxes is made available to local and Federal law enforcement agencies.

Problem.—In 1968, the Supreme Court, in *Marchetti* v. *United States*, 390 U.S. 39 and *Grosso* v. *United States*, 390 U.S. 63, held that persons engaged in criminal gambling activities may validly refuse to comply with the wagering taxes by asserting the self-incrimination privilege of the fifth amendment to the Constitution. Although a modification in applicable law was made subsequent to the decisions in *Marchetti* and *Grosso* which arguably cleansed the wagering taxes of their unconstitutional aspects, the Internal Revenue Service has taken the position that most persons subject to the wagering taxes can still validly invoke the constitutional privilege, and the Service has thus virtually ceased enforcement activities with respect to the taxes.

Solution proposed in the bill.—S. 1624 was introduced on March 20, 1969, by Senator Hruska and was referred to the Committee on the Judiciary, which reported it, with amendments, on May 5, 1970, whereupon it was referred to the Committee on Finance. H.R. 322, 5223, 6199, 7599, 10087, and 10790 are identical with S. 1624 as introduced by Senator Hruska.

The most significant feature of the bill is its prohibition of disclosure of wagering tax information received by Treasury Department personnel, except in connection with the administration or enforcement of the wagering taxes. This prohibition should cure the constitutional infirmities found by *Marchetti* and *Grosso*.

Additionally, the bill makes the following other changes in existing law:

1. The annual occupational tax is increased from $50 to $1,000. Additional categories of persons (pickup men, punchboard operators and other employees of a gambling enterprise) not presently subject to this tax are made subject to an annual tax of $100.

2. State or locally licensed gambling which is subject to a State or local excise tax is exempted from the 10 percent wagering tax and is not treated as wagering for purposes of the occupational tax.

3. The bill provides severer criminal penalties for noncompliance than those contained in existing law, and requires the sentencing judge to set forth his reasons for imposing any sentence which does not include incarceration. The proposal would make any willful failure to pay the wagering taxes a felony punishable by up to five years imprisonment and/or a fine of up to $10,000 or three times the tax due, whichever is greater. Additionally, the mere nonpayment of

taxes would be punishable as a misdemeanor by imprisonment of up to one year and/or a fine of up to $5,000 or twice the tax due, whichever is greater.

4. The bill provides immunity from prosecution for testimony which is compelled over an objection based on the self-incrimination privilege.

Problems presented in the bill.—The principal problem presented by the bill deals with the exemption for licensed gambling which is subject to a State or local excise tax. It has been pointed out that under the provision as written, the imposition of a nominal State excise tax could prevent the collection of a substantial amount of Federal tax. The Administration has contended that the exemption is irrational and also may present constitutional problems under the doctrine of *United States* v. *Constantine*, 296 U.S. 287 (1935).

An Administration-favored alternative is to provide a credit against Federal tax for any State or local excise taxes paid which are similar to the wagering taxes. This alternative has been opposed by legitimate bookmaking operations located in Nevada. These interests point out that they are the only legitimate form of gambling presently subject to the tax, and they contend that, since they collect the tax from the bettors, the tax has the effect of reducing their business and helping the business of illegal bookies who do not pay the Federal tax.

Rebuttal of this argument may be made on two grounds. First, the wagering tax, since its inception in 1951, has always applied to legitimate bookmakers and the history of their profitability indicates that their businesses were not greatly hurt by the application of the tax. Secondly, it is highly doubtful that the exemption of legitimate bookmakers from the tax would serve to eliminate illegal bookmaking, since illegal bookmakers would retain the competitive advantage they presently have of being able to extend credit to bettors.

The Internal Revenue Service is presently studying the problem of exemption versus credit, and the staff expects to receive a report shortly.

A second problem with respect to the proposed legislation arises from the fact that section 6107 of the code was repealed on October 22, 1968. This section (which was repealed after the decisions in *Marchetti* and *Grosso*) provided for the public inspection of the names of all persons who paid any of the special taxes under subtitle D or E, which included the occupational tax on wagering. The committee report with respect to the repeal of this section noted that this provision was subjected to criticism in the Supreme Court decisions in *Marchetti* and *Grosso*. The report in part states that the repeal of this section was intended to make it clear that it was not the desire or intent of Congress that the system of Federal taxation be rendered ineffectual because a State or local jurisdiction has a law rendering aspects of the activity illegal.

This (and subsequent statements in the report) suggests that perhaps the repeal of section 6107 has removed the constitutional problems involved in the enforcement of the wagering taxes. In the *Marchetti* and *Grosso* cases, the Government had argued that the court should permit continued enforcement of the wagering taxes by imposing judicial restrictions on the use of information obtained through compliance with the taxes. The court had imposed such restrictions in the past with respect to other matters but refused to do so in the

case of the wagering cases apparently because of the existence of section 6107, which specifically provided for the public inspection of the names of those paying the occupational taxes. The court apparently discerned a congressional pattern in the legislation and refused to modify the pattern for fear that this would do more harm to congressional intent than would the striking down of the entire statutory scheme. The repeal of section 6107 should indicate to the court that its view in this matter was not in accord with the congressional view and it might well, if the matter were reconsidered now that section 6107 has been repealed, decide to impose judicial restrictions rather than strike down the entire statutory scheme.

Administration position.—The Internal Revenue Service recognizes the possibility set forth above but apparently even with the repeal of section 6107 prefers the new legislation rather than seeking prosecution of a new test case under existing law. As previously indicated the administration prefers the tax credit approach, rather than an exemption, for State and local taxes imposed on legal gambling.

2. Interstate Taxation

(H.R. 7906)

(Passed the House on June 25, 1969)

Present law.—In two companion cases decided in 1959, the Supreme Court held that a company engaged exclusively in interstate commerce in a State could be required to pay an income tax to that State. Shortly thereafter the Court declined to review a State court decision which upheld an income tax on a company whose only contacts in the State were the solicitation of orders. In response to these decisions, Public Law 86–272 was passed which prohibited State income taxation in situations involving the mere solicitation of orders in a State by salesmen or independent contractors. This legislation also authorized a congressional study of this problem.

The next year, 1960, the Supreme Court decided the *Scripto* case which held that a seller who has only independent representatives soliciting orders in a State may be required to collect a use tax on sales. This decision prompted the enactment of Public Law 87–17 which expanded the previously authorized congressional study of State taxation from income taxes to all taxes.

Problem.—Those who support legislation in this area contend it is necessary for Congress to establish jurisdictional standards in order to obtain a national policy regarding State and local taxation of multi-State business. These standards are needed, it is urged, to resolve conflicting laws and to remove burdens which have been placed on interstate commerce. Proponents of legislation regulating multistate business have also stated that in some instances under present law, the cost of compliance with State and local tax laws actually exceeds the amount of the tax liability involved, and that small businesses located in one State are at times subjected to taxes by States in which they do not own property or have any employees.

Solution proposed in the bill.—Under jurisdictional limitations established in the bill unless a taxpayer has a "business location" in a State the State would not be allowed to: (1) impose a net income tax, a franchise tax measured by net income, or a capital stock tax (on other than an excluded corporation); (2) require a person to collect a sales

or use tax with respect to sales of tangible personal property, or (3) impose a gross receipts tax with respect to sales of tangible personal property. (However, persons making household deliveries in a State could be required to collect a sales and use tax.)

An excluded corporation—which would not be protected by a jurisdictional limitation on income, franchise, or capital stock taxes—is defined as any corporation that has an average annual income in excess of $1 million, is a personal holding company, or receives more than 50 percent of its ordinary gross income from utility or transportation services, insurance contracts, banking, or from dividends, interest or royalties.

A person would be regarded as having a business location in a State if he owned or leased real property in a State, had one or more employees "located" in the State, or regularly maintained stock or tangible personal property in the State for sale in the ordinary course of business. An employee would be regarded as being located in a State if his service is entirely performed within the State, his service is performed within and outside of the State (but the service outside the State is incidental to service within the State), or his service is not performed entirely or primarily in the State (but some service is performed in the State and his base of operations is in the State).

Possible alternatives.—The Council of State Governments has proposed a Multistate Tax Compact which generally calls for voluntary State action with respect to interstate taxation. The Compact would establish a Multistate Tax Commission to handle matters of administration and arbitration, and would provide taxpayers an election to apportion income under either the method provided by State law or by use of a model act, the Uniform Division of Income for Tax Purposes Act (which is substantially adopted by the Compact). A group of State tax administrators and business representatives, known as the Ad Hoc Committee, has drafted a bill which would make a number of modifications in the Compact which is intended to codify existing jurisdictional standards and to provide: (1) an optional uniform apportioning formula for income and capital stock taxes; (2) standards for consolidation or combination of affiliated corporations for income tax purposes; (3) standards for sales and use taxes; and (4) procedures for the settlement of disputes, with the Multistate Tax Compact providing the means for administration of the Federal legislation. It now appears that the so-called Ad Hoc Bill is not regarded as a satisfactory solution by at least some State tax administrators.

A number of bills dealing with this subject have been introduced including—

(1) S. 916 introduced by Senator Ribicoff. This bill, while similar to H.R. 7906, is designed to remove the distinction that the bill makes between large and small corporations by not limiting the application of the bill to corporations whose average annual income does not exceed $1 million. Another major difference between this bill and the House-passed bill is that it would not permit the application of what is called the unitary business concept—which requires that income from an affiliate be included in the measure of tax income even though the affiliate is not itself subject to the jurisdiction of the taxing State.

(2) S. 2804 introduced by Senator Magnuson for himself and Senators Anderson, Bennett, Burdick, and Jackson. This bill is

designed to permit the several States to enter into a compact relating to interstate taxes, to provide a formula for taxing multistate taxpayers for States not entering into the compact, and to require certain sellers to collect sales and use taxes.

(3) S. 3368 jointly introduced by Senators Murphy and Cranston. This bill is designed to provide a uniform system for the application of sales and use taxes to interstate commerce. Under its provisions, a State or political subdivision could not require a person to pay or collect a sales or use tax with respect to interstate sales of tangible personal property unless that person, (1) has a business location in the State, or (2) regularly solicits orders for the sale of tangible personal property by salesmen, solicitors, or representatives in the State—unless his activity in the State consists solely of solicitation by direct mail or advertising in newspapers, by radio or television, or (3) regularly engages in the delivery of property in the State other than by common carrier or U.S. mail.

3. Distilled Spirits

(H.R. 10517)

(PASSED THE HOUSE ON JULY 6, 1970)

The bill makes a series of amendments to the distilled spirits provisions of the Internal Revenue Code. In general, the changes are designed to remove restrictions that are no longer needed for effective enforcement of the revenue and regulatory aspects of the Code.

1. Accidental losses of distilled spirits

Present law.—The internal revenue tax on distilled spirits generally is determined when the spirits are withdrawn from bond. Refund (credit, abatement or remission) of this tax may be made when distilled spirits which are withdrawn for rectification or bottling are lost, either by accident during removal to the bottling premises or by flood, fire, or other disaster before removal from the premises of the distilled spirits plant (to which the spirits were removed from bond). In addition, refund, etc., may be made as to losses (including those from accidents or evaporation) occuring before the completion of the bottling process if they resulted from authorized rectifying or bottling procedures.

Problem.—It is believed that present law is unnecessarily restrictive with regard to losses occurring on the distilled spirits plant premises.

Solution proposed in the bill.—The bill would allow refund, etc., of the basic distilled spirits tax ($10.50 per gallon, imposed by sec. 5001(a)(1)) if an accidental loss occurs on the distilled spirits plant premises in those cases where the loss from a single accident amounts to at least 10 proof gallons. As a practical matter, the most significant effects of this change would be to permit refund, etc., of the tax whether or not the loss is incident to the bottling process, and also even though the loss may occur after completion of that process.

2. Voluntary destruction of distilled spirits

Present law.—Present law permits the Internal Revenue Service to refund (credit, abate or remit) the $10.50 per gallon distilled spirits tax where voluntary destruction of distilled spirits occurs before, but not after, the completion of bottling. The destruction may occur only where the proprietor finds the spirits unsuitable for use.

Voluntary destruction may be accomplished under these provisions only after application to the Internal Revenue Service for the destruction, after gauging to accurately determine the amount to be destroyed, and where the destruction occurs under Service supervision.

Problem.—It is believed that the present provisions regarding voluntary destruction of tax-paid or tax-determined distilled spirits are unnecessarily restrictive, in light of the existing authority of the Service to require advance application, gauging, and supervision.

Solution proposed in the bill.—The bill would remove the requirement that the decision to destroy the distilled spirits must be made before completion of bottling, but continues to require that at the time of destruction the distilled spirits be on the bottling premises to which they had been removed from bond for the refund, etc., to be available. Voluntary destruction is to be permitted whether those distilled spirits are on the bottling premises because: (1) bottling had not been completed (as under present law); (2) bottling had been completed but the bottled distilled spirits had not been removed from the premises; or (3) the distilled spirits had been removed but were returned to the bottling premises to which they had been originally removed from bond. To facilitate administration the bill retains the requirement that the distilled spirits be on the bottling premises to which they were removed from bond, rather than on other bottling premise.

Present law permits refund, etc., of only the basic $10.50-per-gallon distilled spirits tax (sec. 5001(a)(1)) in the case of voluntary destruction. The bill provides that the rectification tax (30 cents-per-gallon or $1.92-per-gallon, depending upon the applicable provisions) also may be refunded, etc., in the case of voluntary destruction, in addition to the basic tax.

3. Returning of distilled spirits

Present law.—Under present law, distilled spirits returned to bottling premises are not eligible for refund (or credit, abatement or remission) of taxes on account of the various types of losses allowed under present law (sec. 5008). Moreover, at present distilled spirits may be returned to bonded premises (i.e., the point before which a tax is determined or paid) only if they had been withdrawn in bulk containers, are later found unsuitable before removal from their original containers, and, immediately upon return, are destroyed, redistilled, denatured, or mingled.

Problem.—It is believed that appropriate administration of the distilled spirits tax and regulatory provisions does not require such stringent limitations on the return of distilled spirits to bonded premises. So long as there is an opportunity for adequate supervision by Internal Revenue Service personnel and proper gauging and recordkeeping of the distilled spirits returned, the returns ought to be permitted and, in general, treated thereafter as though the returned distilled spirits had never left the bonded or bottling premises.

Solution proposed in the bill.—The bill would permit distilled spirits returned to bottling premises to be treated, for purposes of the various loss provisions (under sec. 5008(c)) as though they had not been removed from the bottling premises. The bill also permits distilled spirits to be returned to bonded premises (with refund etc., of tax under sec. 5008(d) of the code) and thereafter to generally be treated

as though they had not left the bonded premises. Distilled spirits to qualify under this provision are to be returned only to the bottling premises from which they were removed.

4. Distilled spirits for use of foreign embassies, legations, etc.

Present law.—Distilled spirits may be withdrawn from bond tax-free for export. Distilled spirits upon which tax has been paid or determined may be exported and the owner may receive repayment of the tax by way of drawback.

Imported distilled spirits are subject to the same taxes that would have been paid on those items had they been produced in the United States. However, items may be imported tax-free for the official or family use of foreign governments, public international organizations, and certain individuals associated with those governments and organizations. This exemption from tax on imported items does not extend to exemption from the internal revenue taxes on a domestically produced item of the same or similar type.

Problem.—Presently, if a bottle of distilled spirits is exported and then returned to the United States and withdrawn from customs by representatives of a foreign government, then neither the internal revenue tax nor the customs duty need be paid. However, it normally is not economically feasible to export an item and then import it. Also, such transactions on a significant scale would cast doubt upon the bona fides of the original exportation and might result in a determination that the distilled spirits should have been taxed in the first place.

In contrast, a bottle of distilled spirits produced in a foreign country, imported into the United States, and withdrawn for proper purposes by a representative of a foreign government would bear less transportation costs and would clearly be exempt from both customs duties and our internal revenue taxes on distilled spirits. The result is that representatives of foreign governments find it significantly less expensive to import foreign distilled spirits than to buy domestic distilled spirits.

Solution proposed in the bill.—The bill specifies that distilled spirits bottled in bond may be withdrawn from bonded premises and transferred to customs bonded warehouses without payment of tax for the use of foreign governments, public international organizations, and individuals who are entitled to withdraw imported distilled spirits from these warehouses free of tax. Distilled spirits upon which tax has been paid (or determined) also may be entered into one of these warehouses for the same purpose. Where this is done they are to be treated as having been exported (and thus eligible for drawback of tax) at the time they are entered into the warehouses.

Domestic distilled spirits which have been entered into customs bonded warehouses under these provisions may be withdrawn from those warehouses free of tax for consumption in the United States by representatives of the foreign governments, etc., who are entitled to withdraw from such warehouses free of customs duties.

Problems presented in the provision.—The District of Columbia Retail Liquor Dealers Association has been concerned with this provision, apparently, because of the possibility that the domestic distilled spirits withdrawn by the embassies free of Internal Revenue tax may find their way into taxable commerce by lesser employees in

the embassies reselling the distilled spirits illegally. The same problem, of course, exists now in the case of imported distilled spirits which presently can be obtained free of tax in any volume embassy personnel desire. A problem has to some extent existed in this area in the past but it is not clear why making domestic distilled spirits available to the embassies free of tax would worsen the problem. Conceivably, this might make it somewhat easier for embassy employees to obtain distilled spirits (although this is not at all certain). The Retail Liquor Dealers Association also pointed out that in England and Italy our Embassy personnel, apparently, obtain alcoholic beverages free of tax only under a quota system.

It would appear that the problem raised by the Retail Liquor Dealers Association could be met by a statement in the committee report requiring the Internal Revenue Service to keep a record of distilled spirits (domestic or imported) which the embassies obtain free of tax, and if any unusual volume was obtained free of tax to investigate the matter to see whether any of the alcohol is finding its way into taxable commerce.

5. Involuntary liens on distilleries, etc.

Present law.—The basic $10.50-per-gallon tax on distilled spirits is a first lien on the distillery used for producing the distilled spirits, the stills, vessels, and fixtures in the distillery, the land on which the distillery is located, and any buildings on the land. If any part of that property is encumbered by any other lien, then the distiller is required to file a penal bond in an amount equal to the appraised value of the property subject to that other lien, up to a maximum of $300,000. This filing has the effect of lifting the statutory lien.

Problem.—A consequence of the present law is that if property subject to the tax lien on the distillery (described above) is encumbered by a judgment lien for any amount, even if very small in comparison with the value of the property and even if the judgment is almost certain to be satisfied entirely out of other assets of the distiller, then the distiller must file a bond for up to $300,000. This penal bond provision results at times in requiring expenditures to secure a bond in an amount that is unreasonable relative to the protection needed by the Government. For example, a $100 mechanic's lien may result in payment of many times that amount in order to secure a $300,000 bond.

Solution proposed in the bill.—The bill provides that if a judgment or other lien is imposed on the distillery property upon which the United States has a first lien (under sec. 5004(b)(1) of the code) for the $10.50-per-gallon distilled spirits tax, and this judgment or other lien is imposed without the consent of the distiller, then the distiller may satisfy the additional penal bonding requirement to protect the United States by filing a bond in the amount of the judgment or other lien.

This would have no effect in the case of judgments or other liens larger than $300,000. However, in the case of smaller judgments or liens it would permit the distiller to file (and to pay the cost of) a commensurately smaller bond so long as the bond is large enough to assure that the interests of the United States have not been decreased by the judgment or other lien.

6. *Bottling in bond*

Present law.—Although most bottling of distilled spirits is done on the bottling premises after the distilled spirits have been withdrawn from bond on payment (or determination) of tax, present law permits bottling in bond under certain circumstances. The bottling of distilled spirits in bond must be done under the supervision of assigned Internal Revenue Service personnel, the spirits must be at least 100 proof if for domestic use and at least 80 proof if for export, the spirits must have been kept in bond in wooden containers at least 4 years, and the other conditions and requirements of section 5233 of the code must be met.

Problem.—Many distillers do not have a sufficient volume of operations to economically maintain bottling facilities within the bonded premises in addition to, and separate from, the facilities on their bottling premises.

Solution proposed in the bill.—The bill would permit a product to be stamped and labeled as distilled spirits bottled on bonded premises even though a proprietor of a distilled spirits plant uses bottling facilities outside of his bonded premises, but only if the bottling occurs under the same supervision required for, and in accordance with the conditions and requirements applicable to, distilled spirits bottled in bond. The taxes on distilled spirits bottled under these provisions will continue to be determined on withdrawal from bonded premises and before bottling.

Administration position.—The Treasury Department has no objection to the enactment of this bill.

Transfer of Distilled Spirits Imported or Brought Into the United States

(Amendment suggested by Senator Holland)

Present law.—In general, both customs duty and internal revenue taxes on imported distilled spirits are paid when those spirits are withdrawn from customs custody. However, present law (sec. 5253 of the Code) permits the withdrawal from customs custody without the payment of internal revenue taxes if they are transferred in these bulk containers (or by pipeline) to internal revenue bonded premises of a distilled spirits plant. This permits the deferral of the time for payment of the distilled spirits tax in the case of imports until removal from internal revenue bond rather than from customs custody.

Problem.—This provision applies to distilled spirits "imported" into the United States but does not apply to distilled spirits brought into the United States from Puerto Rico and the Virgin Islands, since this is not classified as an import.

Solution proposed in the amendment.—The amendment would conform the treatment of distilled spirits brought into the United States from Puerto Rico and the Virgin Islands with distilled spirits brought into the United States from elsewhere. In effect, this amendment treats distilled spirits brought into the United States from Puerto Rico and the Virgin Islands as imported. This treatment would be similar to that accorded tobacco products under the tobacco tax provisions (sec. 5704(c) of the Code).

Administration position.—Internal Revenue Service personnel have no objection to the enactment of this amendment.

Taxes and Regulatory Provisions Regarding Beer

(Proposed Amendment; Text of S. 2468)

This bill, S. 2468, deals with a number of the Internal Revenue Code regulatory provisions regarding beer. In general, it removes or liberalizes those regulatory restrictions which are believed to be no longer necessary for proper enforcement of the beer tax provisions.

1. Research and development

Present law.—Present law permits removal of beer from a brewery without payment of tax for laboratory analysis.

Problem.—Under present law, if beer is removed from a brewery for research and testing of processes, systems, materials, or equipment relating to beer or brewery operations, then a tax is required to be paid even though the beer would never be used in commerce.

Solution proposed in the bill.—The bill would permit beer to be removed from breweries, without payment of tax, for use in research, development, or testing of processes, systems, materials, or equipment relating to beer or brewery operations. The removals would be subject to such conditions as the Internal Revenue Service would prescribe and could not be used for consumer testing and other market analysis.

2. Returns of beer

Present law.—Present law requires that beer be returned to the same brewery from which it was removed in order for the brewer to obtain back the taxes he had paid on removal. If the beer is returned the same day, then the brewer may offset the returns from the amounts treated as removed on that day; if the beer is returned on another day, then the brewer must file a claim for credit or refund.

Problem.—At times, return to another brewery of the same brewer may involve less transportation cost and make for more efficient operation than return to the same brewery from which the beer was removed. However, in such a case the brewer is not entitled to receive back the taxes imposed upon the original removal from the brewery. Also, under present law two methods are used to make the brewer whole for the taxes imposed upon the removal from the brewery, depending upon whether the return to the brewery is on the same day or on a different day. Because of the greater simplicity of the offset procedure, and also due to the fact that the benefit of an offset may be obtained much more quickly than a claim for refund or credit, the present procedure results in attempts to return excess orders to a brewery before the close of business of the day the truck left the brewery with the excess beer.

Solution proposed in the bill.—The bill would facilitate efficient transportation arrangements by permitting returns to be made to any brewery owned by the brewer who had removed the beer and by using the offset procedure to permit the brewer to recover the taxes imposed at the time of removal, whether or not the return was on the same day as the removal.

3. Thefts, etc.

Present law.—Under present law, no credit or refund of tax is permitted in the case of thefts of beer. Credit or refund of tax is permitted in the case of other losses or destruction before transfer of title to any other person.

Problem.—It is suggested that these provisions are unduly restrictive in two respects. First, it is difficult to see why the beer must be actually destroyed in those cases where it is rendered unmerchantable. Second, it would appear appropriate to allow a credit or refund of the tax where there is a theft of the beer which does not involve either the brewer or persons with whom he deals in the sale of the beer.

Solution proposed in the bill.—The bill would permit credit or refund where the beer is rendered unmerchantable by fire, casualty, or Act of God, even though the beer is not actually destroyed. The bill also permits credit or refund in the case of theft where the theft occurs without the involvement of the brewer or persons he deals with in regard to that beer or employees of any such persons.

4. Bonds

Present law.—Under present law, a brewer is required to file a new bond for tax liability every four years.

Problem.—The continuation of an existing bond would normally be expected to provide the same protection to the Government as would a new bond. Usually, it is more costly to obtain a new bond than it is to continue an existing bond.

Solution proposed in the bill.—The bill would permit the bonding requirement to be satisfied by continuation of an existing bond, with such continuation being subject to Government approval in the same manner as is the case with regard to a new bond.

5. Proximity of facilities

Present law.—Present law provides that a brewery consists of the land or buildings described in the brewer's notice. Regulations prescribe that certain requirements must be met as to continuity or proximity of facilities; they also allow reasonably proximate loading facilities under control of the brewer to be approved as part of the brewery if the revenue would not thereby be jeopardized.

Problem.—It is believed that the statute should be conformed to the regulations in this regard in order to remove any doubt that might exist as to whether the regulations may properly be as liberal as they now are. In addition, it is suggested that the same considerations which now permit loading facilities to be approved as part of the brewery, similarly justified permitting packing or storage facilities would be approved as part of the brewery.

Solution proposed in the bill.—The bill essentially codifies the regulations described above except that it permits packing and storing facilities to be approved as part of the brewery under the same circumstances that apply under present regulations to loading facilities.

6. Bottling facilities

Present law.—Under present law, bottling of beer and cereal beverages (but not filling of casks or barrels) must be done in a separate portion of the brewery designated for that purpose.

52-187—70——3

Problem.—This requirement at times results in uneconomic physical arrangements of brewery facilities, to an extent not required for oprper administration of the tax provisions.

Solution proposed in the bill.—The bill would eliminate the requirement of separate facilities for bottling of beer and cereal beverages and would make other minor definitional changes to simplify the present statutory provisions without changing the substance of those provisions. The bill also would eliminate definitions of "bottle" and "bottling" and would add in their place definitions of "package" and "packaging". These new definitions would be needed because of the elimination of the provisions requiring separate bottling facilities but not separate facilities for filling barrels or casks.

7. Pilot brewing facilities

Present law.—At the present time regulations provide for the establishment of experimental breweries. The statute does not deal directly with this matter.

Problem.—It is felt that any question of the Government's discretion to permit such pilot brewing facilities off the brewery premises should be resolved by statute.

Solution proposed in the bill.—The bill would permit the establishment at the discretion of the Internal Revenue Service of pilot brewing plants off the brewery premises for research, analytical, experimental or developmental purposes with regard to beer or brewery operations.

Administration position.—Apart from some suggested technical corrections, the Treasury has no objection to enactment of this bill.

4. Tax Treatment of Interest on Farmers Home Administration Insured Loans

(H.R. 15979)

(Passed the House on July 6, 1970)

Present law.—Under present law (sec. 306(a)(1) of the Consolidated Farmers Home Administration Act of 1961), the Farmers Home Administration is authorized to make conservation, land use, water, waste disposal, and recreational loans both to governmental units and to private bodies, and then to resell this debt to private parties as federally insured loans. Under this program, the Farmers Home Administration makes a loan to the unit or body and receives in return a note or bond bearing an interest rate which by law cannot exceed 5 percent. The FHA then resells the note to private lenders, insuring the bond's principal and interest, and pays out of its own funds the cost of any differential between the interest rate at which the insured securities are sold and the 5 percent or lower interest rate specified by the securities which were acquired by FHA.

The Internal Revenue Service has ruled that in those cases where the security originates with a local governmental unit, the interest or other income paid on it continues to be exempt from Federal tax even after it is resold as a loan insured by the Federal Government.

Problem.—In recent years FHA has greatly curtailed its program of insuring and reselling loans to local governmental units, because the Federal Government concluded that federally guaranteed tax-exempt obligations involve a needlessly costly and inequitable method of

financing. It was concluded that, while the tax exemption makes it possible to resell the insured loans at a lower interest rate than would otherwise be possible, the loss of tax revenue resulting from the exemption more than offsets the benefits of the lower interest payments. Additionally, it was concluded that the sale of bonds which are both tax exempt and insured by the Federal Government would give these bonds a competitive advantage over both State and local securities which are tax exempt but not federally insured, and also Federal securities which are subject to Federal income tax.

Solution proposed in the bill.—The bill deals with the above problems by providing (in an amendment to the Consolidated Farmers Home Administration Act) that interest or other income paid to an insured holder on an insured loan sold out of the Agricultural Credit Insurance Fund is for income tax purposes to be included in gross income of the recipient of the interest. This is to be effective with respect to insured loans sold by the Federal Government after the date of enactment of this bill.

Problems presented in the bill.—It has been suggested by representatives of State and municipal governments that, although the purpose of the bill is not objectionable, the approach of the bill might be construed as a departure from the policy of not taxing interest on State and municipal obligations. This group suggested that the bill be amended to make the taxability of FHA insured loans a matter of contract between FHA and the purchaser of the obligation. As an alternative a statement could be added to the Finance Committee report on the bill indicating that the interest is taxable because: (1) the purchase of the bond from FHA is considered to be the equivalent of a contract between FHA and the purchaser to report the interest for tax purposes; and (2) it is interest paid by a Federal agency and not by a State or local governmental unit (even though a portion of the interest payment is in effect reimbursed by interest received by the agency on tax exempt municipal bonds).

Administration position.—The Treasury Department and the Department of Agriculture recommend the enactment of this bill.

5. Working Capital Fund, Department of the Treasury (H.R. 16199)

(PASSED THE HOUSE ON MAY 19, 1970)

Present law.—At the present time the Department of the Treasury is performing through its "Salaries and expenses" appropriation for the Office of the Secretary, on a reimbursable basis, various centralized services which benefit a number of Treasury bureaus financed by separate appropriations.

On the other hand, a number of other agencies of the Government, including the Departments of Agriculture, Commerce, Health, Education and Welfare, Interior, Labor and State utilize the working capital fund method of financing for centralized services.

Problem.—On the basis of the experience of those Departments which use the working capital fund method for managing and financing centralized services, it appears that this method allows these services to be placed on a more systematic and businesslike basis, and assists the Department in presenting a more accurate cost-based budget, than does the method presently employed by the Treasury Department.

Solution proposed in the bill.—The bill would provide a working capital fund for the Treasury Department. This would be a revolving fund of working capital employed to finance administrative service operations servicing more than one appropriation or activity. The fund would finance the central buying of materials, supplies, labor, and other services; the holding and issuing of materials and supplies; and the processing of materials into other forms for use. The supplies, materials, and services would be sold on order to customer activities on the basis of actual cost and the fund reimbursed. The working capital fund would provide a means for accumulating reserves to cover the cost of repairing and replacing equipment and the stocking of supplies under the most advantageous conditions.

The centralized services initially proposed by the Department of the Treasury include printing and duplicating, procurement of supplies, materials and equipment, and telecommunication services. Other services would be added as specifically determined by the Secretary of the Treasury with the approval of the Director of the Bureau of the Budget. All such services must meet the test of being more advantageous and economically performed as central services.

The bill places a limitation of $1 million on the capital in the working fund which will be made up of inventories and equipment and other assets, including any appropriations which may be made for this purpose. The fund is expected to revolve several times during a fiscal year.

In 1967, the Finance Committee reported a bill (H.R. 4890) which contained provisions identical to this bill and which also contained the Honest Elections Act of 1967. That bill was not acted on by the Senate.

Problems presented in the bill.—The bill presently refers to the Director of the Bureau of the Budget. In view of the recent reorganization of that office, the reference should be changed to "Director of the Office of Management and Budget."

Administration position.—The bill embodies a recommendation of the Treasury Department.

6. Cemetery Corporations

(H.R. 16506)

(Passed the House on June 22, 1970)

Present law.—Present law provides tax-exempt status to a cemetery corporation which is chartered solely for burial purposes if it is not permitted by its charter to engage in any business not necessarily incident to its burial purpose and if no part of the earnings of the corporation benefits any private individual.

Problem.—The Internal Revenue Service in 1969 ruled that the operation of a crematorium was not necessarily incident to a burial purpose and thus caused an exempt cemetery corporation operating a crematorium to lose its tax-exempt status.

The operation of a crematorium, however, would appear to be of the same nature as the activity which an exempt cemetery corporation presently is permitted to carry on. In other words, human bodies may be disposed of either by burial or by cremation; these are merely alternative forms of accomplishing the same purpose. It does not seem appropriate for the exempt status of a cemetery corporation to depend upon which of these methods of disposing of bodies it utilizes.

Solution proposed in the bill.—The bill modifies the tax exemption provided by the Internal Revenue Code for cemetery corporations to permit a cemetery corporation to operate a crematorium (either alone or in conjunction with burial) and qualify for tax-exempt status.

The amendment made by the bill is to apply to taxable years ending after the date of enactment of the bill.

Problems presented in the bill.—(1) Present law provides a separate exemption for cemetery "companies" operated exclusively for the benefit of their members or not operated for profit. However, the bill deals only with cemetery "corporations" chartered solely for burial purposes which do not engage in unrelated activities, no part of the net earnings of which inure to the benefit of shareholders. The provision relating to cemetery "companies" is not amended by the bill. It has been suggested that the committee report accompanying this bill should clarify the fact that cemetery companies presently may operate crematoriums.

(2) It also has been suggested that the committee report accompanying this bill should clearly indicate the bill is not intended to affect, either favorably or adversely, the status of activities carried on by cemeteries, other than the operation of crematoriums.

Administration position.—The Treasury Department has no objection to the enactment of this bill.

7. Manufacturers Claims for Floor Stocks Refunds

(H.R. 17473)

(PASSED THE HOUSE ON JUNE 22, 1970)

Present law.—In the Excise Tax Reduction Act of 1965 (Public Law 89–44) the Congress repealed various manufacturers excise taxes as of June 22, 1965, and other manufacturers excise taxes as of January 1, 1966. Floor stocks refunds were provided for previously untaxed items that dealers held for sale on the date the tax was repealed. Refunds to the dealers were to be made by the manufacturers, who were then to be reimbursed by the Treasury.

For the items on which the tax was repealed as of June 22, 1965 (or January 1, 1966, as the case may be), the dealer was to submit a request to the manufacturer before January 1, 1966 (or July 1, 1966), and the manufacturer was required to file a claim for refund by February 10, 1966 (or August 10, 1966). By February 10, 1966 (or August 10, 1966), the manufacturer was required either to have reimbursed the dealer for the tax that had been originally passed on to the dealer or to have secured the dealer's written consent to the allowance of the refund to the manufacturer.

Problem.—It appears that in several instances the 40 days allowed by the Excise Tax Reduction Act of 1965 between the deadline for obtaining requests from dealers and the deadline for filing of refund claims by manufacturers was too short. In some instances, it appears that delay was occasioned by difficulties in properly classifying the dealers' requests in the available time, especially because of the large number of separate taxes that were repealed by the one Act.

Solution proposed in the bill.—The bill would permit a manufacturer who complied with all the requirements of the Excise Tax Reduction Act of 1965 with regard to floor stocks refunds, except that he did not file his claim by February 10, 1966 (or August 10, 1966, as the case

may be), to file such a claim for refund by the ninetieth day after the date of enactment of the bill.

Administration position.—The Treasury Department has no objection to the enactment of this bill.

8. Skyjacking; Airline Tickets and Advertising (Finance Committee Hearing Held Oct. 6, 1970)

(H.R. 19444; see S. 4637, S. 4383)

(PASSED THE HOUSE ON SEPT. 30, 1970)

H.R. 19444 deals with two related subjects: (1) tax rates on amounts charged for transportation of persons by air and permissible uses of Airport and Airway Trust Fund moneys ("skyjacking") and (2) statements on airline tickets and in advertising regarding the amount of the air ticket taxes.

1. Skyjacking

Present law.—A tax of 8 percent is imposed upon the amount paid for transportation of persons by air in the United States and a tax of $3 is imposed upon the transportation of any person by air in the case of international departures. These taxes are paid into the Airport and Airway Trust Fund, created by the Airport and Airway Revenue Act of 1970. Under present law, expenditures may be made from the Trust Fund only for the purposes specified in the Act (sec. 208(f)). However, the Act does not permit expenditures for guards to accompany aircraft.

Problem.—In response to the increasing occurrence and violence of aircraft hijacking and other danger caused to airline passengers, the Administration has decided to provide guards to accompany aircraft operated by United States air carriers and currently is doing so.

The Administration believes, and the House agrees, that the cost of training and providing the guards should be borne by the persons who are being protected by the guards and that this cost should not reduce the money available for the other purposes for which the Trust Fund was created.

Solution proposed in the bill.—The House bill would permit Airport and Airway Trust Fund money to be expended for the training, salaries, and other expenses of guards having the same powers as United States marshals to accompany aircraft operated by United States air carriers. This authority extends only to obligations incurred before July 1, 1972.

To finance the cost of the guards the bill would increase the domestic air ticket taxes from 8 percent to 8.5 percent and the international departure tax from $3 to $5 for the period November 1, 1970, through June 30, 1972.

Difference in two versions of the bill.—H.R. 19444 proceeds on the assumption that the Department of Transportation has authority to provide guards on aircraft and merely furnishes a method of financing the exercise of the authority. S. 4383, which was the first version of the Administration proposal and which has been referred to the Committees on Finance and Commerce jointly, includes a provision specifically authorizing the Secretary of Transportation to provide such guards. The guards, in fact, are already on the planes.

Problem presented in the bill.—The bill increases the air ticket taxes as of November 1, 1970. That date having passed, it is apparent that a later effective date is required.

2. Airline tickets and advertising

Present law.—Present law prohibits the showing on an airline ticket of the amount of the 8-percent tax; also, advertising for air transportation must not state the amount of the air ticket taxes.

Problem.—The purposes of the provision enacted as part of the Airport and Airway Revenue Act of 1970 prohibiting statement of the amount of tax on airline tickets and advertising, were to assure that air travelers would be fully informed as to the total cost of their transportation and also to speed up passenger service at the airport. However, concern has been expressed that that law may have the unintended effect of hiding the tax from the purchaser of the ticket.

Solution proposed in the bill.—The bill would require that the airline ticket show the total price the passenger is to pay (i.e., the total of the amount charged for transportation plus the amount of the tax). The bill also provides that any advertising which states the cost of the transportation must show this same total price. The bill would remove from the law any prohibition on additionally stating on the ticket or in the advertising, how much of the total price is tax and how much is the basic charge.

Problems presented in the bill.—Under the House bill provision as to ticket taxes on advertising, it remains possible for the advertiser to emphasize the basic fare to be charged and thereby to mislead the potential air traveler who "fails to read the fine print". S. 4367, which has been referred to the Committee on Finance, provides that if any such advertising states separately the amount to be paid for transportation or the amount of the tax, then it also must state the total amount to be paid by the traveler "at least as prominently as the more prominently stated of the amount to be paid for such transportation or the amount of such taxes"; the House bill contains no such provision.

3. Administration position

In order to emphasize that the taxes have been set aside by law for the benefit of the air traveler, S. 4367 would also require, in such a case, that the taxes be described substantially as "user taxes to pay for airport construction and airway safety and operations"; the House bill contains no such statement.

Although the Administration's bill, S. 4383, differs from H.R. 19444 in several respects (described above), the Administration fully endorses H.R. 19444.

9. Extension of Highway Trust Fund

(Title III of H.R. 19504 [1])

Present law.—Under present law, revenues from a series of highway user excise taxes are placed in the highway trust fund: the manufacturers' taxes on gasoline and lubricating oil for highway use, trucks and buses, truck and bus parts, and tires, tubes and tread rubber for highway use; the retailers' taxes on diesel and special fuels for highway use; and the tax on use of heavy highway motor vehicles. These taxes

[1] The House highway trust fund bill is not yet before the Committee on Finance, but the bill is expected to be considered on the floor of the House shortly after the recess. This discussion is based on the Ways and Means Committee title of the House bill, as reported by the House Public Works Committee.

are expected to raise approximately $5.2 billion in revenue for the trust fund in the fiscal year 1971, and $5.4 billion in the fiscal year 1972.

The trust fund is used to finance the Federal Government's share of the Interstate System (90 percent of the cost), the ABC primary and secondary road systems (50 percent of the cost), and certain other highway-related programs.

The highway trust fund is scheduled to expire on September 30, 1972; that is, tax liabilities arising after that date for the highway user taxes listed in table 1 (for those taxes that continue in effect) will be paid into the general fund (as they were prior to the Revenue Act of 1956) instead of the trust fund.[2]

As indicated in table 1, most of the highway user taxes presently paid into the trust fund will continue in effect at reduced rates after September 30, 1972. These reduced taxes would be expected to produce about 40 percent as much in revenues as would be derived from the current schedule and rates of the highway trust fund taxes.[3]

TABLE 1.—EXCISE TAXES ALLOCATED TO HIGHWAY TRUST FUND, UNIT OF TAX BY EFFECTIVE DATE OF RATES UNDER PRESENT LAW

Type of tax	Unit of tax	Present rates	Rates effective after Sept. 30, 1972
Manufacturers:			
Gasoline	Per gallon	4 cents	1½ cents.
Lubricating oil	do	6 cents	6 cents.
Trucks, buses, etc	Manufacturers' price	10 percent	5 percent.
Truck, bus, etc. parts	do	8 percent	Do.
Tires	Per pound	10 cents	5 cents.
Tubes	do	do	9 cents.
Tread rubber	do	5 cents	None.
Retailers: Diesel fuel and special fuels	Per gallon	4 cents	1½ cents.
Other: Highway motor vehicle use tax (vehicles over 26,000 pounds.)	Per 1,000 pounds	$3	None.

Problem.—It is apparent, from a communication from the Department of Transportation and in testimony before the Congress,[4] that the Interstate Highway System cannot be completed by the present expiration date of the highway trust fund. Estimates indicate that the likely completion date of the Interstate System will extend at least until 1977 or 1978. The need for the extension of the trust fund in order to complete the Interstate System results from the increase in costs and also from the addition of 1,500 miles to the system in the 1968 legislation.

The funding of the Interstate System and the ABC road systems is of immediate concern due to the 1972 termination date of the trust fund because of the timing involved in the apportionment authorization procedures. Apportionment for a fiscal year of amounts available for highway construction for the States from the trust fund

[2] Taxes collected after this date on account of pre-October 1972 liabilities will continue to be paid into the trust fund for 9 months after September 1972 (or until June 30, 1973); however, moneys in the trust fund can be spent for Federal-aid highways only until September 30, 1972.

[3] The taxes on tread rubber and on the use of heavy highway motor vehicles are to expire after that date, while the tax on lubricating oil will continue at the present rate.

[4] "A Revised Estimate of the Cost of Completing the National System of Interstate and Defense Highways," communication from the Secretary of Transportation, April 21, 1970, H. Doc. 91-317.

must be made by the Federal Highway Administration at least 6 months prior to the start of that fiscal year (i.e., the apportionment for the fiscal year 1972 must be made before the end of 1970). Moreover, there must be sufficient future moneys in the trust fund to cover later disbursements resulting from obligations due to the apportionment of a fiscal year authorization. However, due to the present 1972 termination date of the trust fund, sufficient revenues will not be available to cover the apportionment of the total trust fund authorizations planned for the fiscal year 1972. Further, even the fraction of fiscal 1972 authorization amounts that could be apportioned would give rise to disbursements after the September 30, 1972, cutoff date for expenditures from the trust fund.

Solution proposed in the bill.—The revenue portion of the House bill (title III of H.R. 19504, "The Federal-Aid Highway Act of 1970") provides for the extension of the operation of the highway trust fund for 5 years, generally from September 30, 1972, to September 30, 1977. Accordingly, the rate reductions (and expirations) of the highway user taxes allocated to the trust fund currently scheduled for October 1, 1972, are postponed for 5 years. Receipts from these taxes allocated to the trust fund are estimated to be $30.1 billion during the 5-year extension period, of which about $12.3 billion represents revenue which otherwise would be general fund revenue during this period. Thus, the House bill does not make any change with respect to the current base or rate of the highway user taxes listed in table 1.

The authorization part of the House bill extends the authorizations for the completion of the Interstate System from June 30, 1974, to June 30, 1978. The 5-year extension of the highway trust fund and the taxes allocated to it, however, will provide sufficient revenues for full-year apportionment of authorizations through fiscal year 1976 (see table 3, H. Rept. 91–1554, p. 40).

The Senate-passed highway-aid bill (S. 4418) provides for the extension of the authorizations for the Interstate System to June 30, 1976, but it does not contain any provision for the extension of the highway trust fund. Both the House and Senate highway-aid bills provide that some additional highway-related expenditures be financed from the highway trust fund that were previously financed from the general fund.

Problem presented in the bill.—A technical problem in the House bill is that while the trust fund will continue to receive revenues from pre-expiration date tax liabilities for 9 months following the expiration date, expenditures may be made only until the expiration date (this is the same as in present law). The Committee may wish to make these dates coincide (i.e., allow expenditures from the trust fund for pre-expiration date obligations for the same 9-month period following the expiration date).

Administration position.—The administration proposed to extend the highway trust fund taxes from September 30, 1972, through February 28, 1977, an extension of 4 years and 5 months. The administration proposed also to amend the highway trust fund provisions to remove the cut-off date for making payments from the trust fund for the purposes of the fund. The administration proposed also to add 5 specified categories of additional programs for which trust fund monies could be expended.

PART TWO
Miscellaneous Tariff Bills

1. Articles Intended for Preventing Conception

(H.R. 4605)

(PASSED THE HOUSE ON JUNE 22, 1970)

Present Law: Existing statutes completely prohibit the importation, interstate transportation, and mailing of contraceptive materials, or the mailing of advertisement or information concerning how or where such materials may be obtained or how conception may be prevented.

Problem: Court decisions have made it permissible to disseminate contraceptive information. It has become Government policy to foster family planning in connection with foreign aid programs and with welfare programs. The executive branch feels it would be consistent with this policy if the present prohibitions on importing and advertising contraceptive materials were modified.

House Bill: The House bill would amend section 305(a) of the Tariff Act of 1930 to remove the present prohibition against the importation of articles for preventing conception. It would also amend sections 552, 1461, and 1462 of title 18 of the United States Code to remove the prohibitions against importing, transporting, mailing, or advertising with respect to such articles. The House bill also amends section 4001 of title 39 of the United States Code, relating to nonmailable matter, to limit the unsolicited mailing of articles for preventing conception or of advertisements of any such articles to certain authorized parties such as licensed physicians and surgeons, nurses, pharmacists, druggists, hospitals and clinics.

Executive Comments: The Department of Commerce noted that there are at least 12 domestic manufacturers of contraceptives and the Department noted that the proposed legislation would have little if any practical effect on the production or sale of the subject articles in the United States. The Department does not object to enactment of H.R. 4605. The Post Office had no objection while the Treasury was "noncommittal." The Departments of State and Health, Education, and Welfare support the legislation.

Staff Comments: The staff notes that subsequent to the passage of this legislation by the House, the Postal Reform Act modified certain provisions of the code which this legislation affects. Therefore a technical amendment is needed which would conform the present law to the purpose of the House bill.

2. Duty Suspension on Manganese Ores

(H.R. 6049)

(PASSED THE HOUSE ON JUNE 22, 1970)

Present Law: Under present law, imports of manganese ore which has been concentrated by roasting or sintering (generally involving chemical change) are considered to be dutiable as "other metal-bearing

materials" under item 603.70 of the tariff schedules at a rate of 10 percent ad valorem; however, ores of iron, lead, copper, and zinc which have been concentrated by roasting or sintering are defined as "metal-bearing ores" and the duty on which (17 cents per pound on manganese content) is temporarily suspended.

Problem: There is little domestic production of manganese ore and imports account for over 95 percent of total new supply in this country. At present time imports of roasted or sintered manganese ore are believed to be very small. It is understood, however, that deposits of manganese ore which require roasting or sintering are being developed in Mexico. These deposits provide the primary basis for the current concern with the dutiable status of roasted or sintered manganese ore.

House Bill: The House bill would provide for the same type of tariff treatment for manganese ores which have been concentrated by roasting or sintering as now is provided for such imported ores of iron, lead, copper, and zinc. The statutory rate of duty would be reduced from 10 percent ad valorem to 17 cents per pound of manganese content. By 1972 this will be reduced further to 12 cents per pound in accordance with the Kennedy Round Agreement. However, under Public Law 91-306 the duty on metal bearing ore has been suspended until June 30, 1973. This bill will extend the same treatment to manganese ore.

Executive Comments: The Departments of Treasury and Commerce favor enactment of this bill. The Department of State has no objection to its enactment. The Department of Interior favors enactment.

3. Bells for Smith College

(H.R. 6854)

(PASSED THE HOUSE ON MAY 19, 1970)

Present Law: Under item 725.34 of the Tariff Schedules, a peal of eight bells imported for use by Smith College was entered and subject to a duty of 9 percent ad valorem.

Problem: The House report states that the committee was informed that the peal of eight bells desired by Smith College was not available from domestic producers. Thus, the tariff of 9 percent did not protect any domestic industry, but merely served as adding extra costs to the college. Similar relief measures dealing with such bells have been enacted into law in recent years.

House Bill: The House bill would provide for duty-free entry of a peal of eight bells for use of Smith College, Northampton, Mass.

Executive Comments: The Department of Commerce reports that there is no domestic production of tuned bells, except musical handbells. The major domestic producers of handbells and electronic carillons have informed the Department that they do not oppose the reduction or removal of import duties on sets of tuned bells, with this exception of musical handbells. Secondly, the Department favors legislation to provide duty-free entry for all sets of tuned bells known as chimes, peals, or carillons, except musical handbells.

The Department of the Treasury does not favor the private relief nature of H.R. 6854, but sees no administrative difficulty in general legislation to provide duty-free entry for tuned bells, whether chimes, peals, or carillons.

The Office of Management and Budget also recommends general legislation.

4. Duty on Parts of Stethoscopes

(H.R. 7311)

(Passed the House on August 24, 1970)

Present Law: Stethoscopes are presently dutiable under tariff schedule item 709.10 at 13 percent ad valorem, the third stage of a five-stage reduction from 19 percent to 9.5 percent ad valorem. Parts of stethoscopes are presently classified under item 709.27 at 25 percent ad valorem, the third stage of a five-stage reduction from 36 to 18 percent pursuant to the Kennedy Round agreement.

Problem: The existing differential between the dutiable status of stethoscopes and parts of stethoscopes was created by a U.S. Customs Court decision in 1963. The Technical Amendments Act of 1965, reflecting this decision, reduced the rate of duty on stethoscopes from 36 percent to 19 percent. Before 1965, the duty on stethoscopes and stethoscope parts was the same.

House Bill: The House bill would provide that the rate of duty on stethoscope parts be reduced to equal the rate of duty on stethoscopes. At the end of the five-stage reductions stemming from the Kennedy Round, the rate of duty on stethoscopes and parts of stethoscopes will be 9.5 percent under his bill.

Executive Comments: The committee received "no objection" reports from the Departments of Treasury and Commerce. The Department of State favors its enactment, with a suggestion to delete subsection (c) in order to make clear that stethoscope parts will be subject to the same staged duty reductions agreed to for stethoscopes in the Kennedy Round.

5. Duty-Free Treatment for Certain Sample Materials

(H.R. 9183)

(Passed the House on June 22, 1970)

Present law.—There is no specific provision for imported articles on which duties have been paid, which are subsequently exported and returned to the United States due to failure of the articles to meet sample or specification in the foreign country.

Problem.—The House committee report indicated that in one specific instance an article was imported and the normal duty was paid. Thereafter, the articles were sold and exported to a customer in a foreign country who subsequently rejected them for the reason that they did not conform to specifications. Upon return to the United States the articles were again subject to duty under the tariff laws. In effect this amounts to double liability for duty payment on the same imported articles.

House bill.—The House bill would insert a new duty-free tariff classification provision—item 801.00—which would permit duty-free entry for articles previously imported with respect to which the duty

was paid upon such previous importation under certain conditions. Such articles could be entered free of duty if:

1. Exported within 3 years after the date of such previous importation; 2. reimported without having been advanced in value or improved in condition; 3. reimported for the reason that such articles do not conform to sample or specifications; and 4. reimported by or for the account of the persons who imported them into and exported them from the United States.

Executive comments.—The Department of State and the Office of Management and Budget have no objection to enactment of this bill. The Department of Treasury submitted a noncommittal report and the Tariff Commission submitted an analysis of the bill.

Proposed Amendment.—On July 13, Senator Yarborough introduced an amendment to H.R. 9183, which would provide that upon the exportation of jet aircraft engines that have been overhauled or rebuilt in the United States with the use of imported merchandise, there shall be refunded the duties which have been paid on the merchandise. The amendment is prospective and no past refunds are involved. The Departments have not commented on the Yarborough amendment.

6. Shrimp Vessels

(H.R. 16745)

(Passed the House on June 22, 1970)

Present Law: Under section 3114 of the Revised Statutes of the United States a vessel documented under the laws of the United States to engage in the foreign or coastal trade, or a vessel intended to be employed in such trade, is required to pay an ad valorem duty of 50 percent on the cost of repairs made to, and equipment purshased for, vessels in a foreign country.

Problem: U.S. vessels which are engaged in the shrimp industry off the northeast coast of South America generally remain on station for long periods of time (3 to 5 years). During this time necessary repairs and equipment are obtained in nearby foreign ports because the voyage back to the United States would involve a lengthy period of absence from the station on the fishing grounds and comparable loss of income for the owners, operators, and crew of a shrimp vessel. The 50 percent ad valorem tax does not prevent these repairs from being made in foreign ports but only serves as a penalty for U.S. shrimp operators which must compete with foreign shrimp vessels.

House Bill: H.R. 16745 provides an exemption for U.S. vessels primarily used for the catching of shrimp from the 50 percent ad valorem duty imposed under section 3114 of the Revised Statutes except for the purchase of fish nets and netting.

Executive Comments: The executive branch comment generally tended to favor this legislation but suggested that it should apply to other type U.S. vessels which have similar circumstances. The Treasury Department specifically singled out oil-drilling vessels as coming within this category.

Staff Comments: The Committee had been advised that the shipbuilders opposed the House bill. Subsequently, the staff was able to work out an amendment which, in effect, would provide the duty-free treatment for those vessels which stayed away from U.S. ports for

more than 2 years except on any repairs made in foreign ports during the first 6 months of any voyage. It was felt that this would insure that the duty-free privileges would not be abused by those ships which could otherwise use U.S. shipyards for repairs.

7. Duty Suspension on Certain Electrodes

(H.R. 16940)

(Passed the House on May 19, 1970)

Present Law: The present duty suspension on electrodes used in producing aluminum expires on December 31, 1970. If the temporary duty suspension is not extended electrodes used in producing aluminum would be dutiable at 7 percent ad valorem in 1971 and 6 percent beginning on January 1, 1972.

Problem: There appears to still be an inefficient supply of the electrodes used by aluminum companies in the electrolysis process in transforming alumina into aluminum.

House Bill: H.R. 16940 would continue the temporary duty suspension on aluminum electrodes until December 31, 1972.

Executive Comments: The Department of Commerce favors the enactment of this bill; the Department of Treasury favors enactment with a technical amendment. The State Department and Office of Management and Budget offer no objection.

8. Duty Treatment on Certain Previously Exported Aircraft

(H.R. 17068)

(Passed the House on July 6, 1970)

Present Law: Under existing law when an aircraft is produced in the United States with foreign parts the duty on the foreign parts is forgiven when the aircraft is exported. This result may be accomplished either by paying the duty and getting a drawback or refund when a new plane is exported, or importing the aircraft parts under bond which insures that the duty will be paid if the parts are used for domestic aircraft. However, if aircraft sold abroad under these circumstances are returned in the future to the United States as a trade-in on new aircraft, the aircraft taken as trade-ins will be subject to a higher duty where the bonding procedure rather than the drawback procedure was originally used. Under present law the entire value of the aircraft is subject to duty if the bonding procedure was used while where the drawback procedure was used only the duty that would have originally been owed on the foreign parts must be paid.

House Bill: The House bill would equalize the treatment of reimported aircraft whether or not the bonding procedure or the drawback procedure was used. The proposed legislation would apply with respect to aircraft the entry of which was made on or after the date of enactment.

Executive Comments: The Department of Commerce favors enactment of this legislation and suggests that if other similar cases arose with respect to other commodities it would favor extending this privilege to those commodities. Other Departments have offered no comments on this legislation.

PART THREE
Miscellaneous Veterans Bills

1. Investment of National Service Life Insurance Trust Funds in Veterans' Administration-Financed Housing

(H.R. 18253, S. 3008)

(Passed the House on July 20, 1970)

BACKGROUND

Growth of the Veterans' Administration home loan guarantee program has been hampered somewhat in recent years as funds for investment in housing have dropped. Under the VA home loan guarantee program, the guarantee of the Federal Government is substituted for the investment protection afforded under conventional mortgage terms by substantial downpayment requirements and relatively shorter terms of loan. Thus, eligible veterans are enabled to finance home purchases even though they may not have the resources to qualify for conventional loans.

Home loans may be guaranteed up to 60 percent of the amount of the loan, with a maximum guarantee of $12,500. This guarantee makes it extremely unlikely that a lending institution will suffer a loss if a loan is defaulted.

Under present law, the reserves of the national service life insurance fund are deposited in a trust fund whose assets (other than those required for immediate operations) must be invested in U.S. Treasury securities. It has been proposed that the yield of these assets could be increased by investing them in VA guaranteed home loans.

LEGISLATIVE DEVELOPMENTS IN 1969

S. 3008 and H.R. 9476.—Two similar bills introduced in 1969, S. 3008 and H.R. 9476, would establish a new revolving fund, the national service life insurance investment fund. Up to $1 billion per fiscal year could be transferred from the national service life insurance trust fund from fiscal year 1970 through fiscal year 1974 (a total of up to $5 billion). The investment fund could use the money to purchase guaranteed GI loans of up to $30,000 secured by single-family dwellings.

The national service life insurance trust fund represents the reserves for that insurance program. The fund now holds about $6.3 billion of investments in U.S. Treasury securities, which today yield about 4.2 percent on the average.

The Subcommittee on Veterans' Legislation held hearings on S. 3008 in November 1969. Finance Committee action was postponed when the House Committee on Veterans' Affairs favorably reported H.R. 9476 early in December 1969. However, the House Committee was unable to obtain a rule on the bill. The administration opposed the bill in the strongest terms; its opposition related to two major issues:

(1) The bill could require the Treasury to redeem securities held by the NSLI trust fund before the securities have matured;

(2) The investment of NSLI trust funds in housing would represent a budget expenditure but would be outside of the appropriation process; and

(3) Any NSLI trust funds not invested in U.S. Treasury securities would require the Treasury to borrow an equivalent amount in the open market.

LEGISLATIVE DEVELOPMENTS IN 1970

When the House Veterans' Affairs Committee found itself unable to obtain a rule on H.R. 9476, it reported out a new bill, H.R. 18253, which passed the House on July 21. This bill met two of the administration's major objections to the earlier bill: under H.R. 18253, the Treasury Department could not be required to redeem any securities before their maturity, and any investment of NSLI trust funds would have to be authorized in an appropriation act. A more detailed description of H.R. 18253 appears in appendix A on the following page.

ADMINISTRATION POSITION

The Veterans' Administration has not submitted a report on H.R. 18253.

AMENDMENTS FOR COMMITTEE CONSIDERATION

1. *Servicing of mortgages.*—Under H.R. 18253, mortgages would be purchased by the Veterans' Administration and serviced by the Veterans' Administration, although they would be permitted to contract out for servicing as long as the cost was not higher than VA administrative costs would be. Under this arrangement, the VA's housing policy could at times differ considerably from the policy of the Government National Mortgage Association (GNMA). It would seem appropriate that funds be transferred for investment to GNMA which would probably contract with the Federal National Mortgage Association (FNMA) for actual purchasing of mortgages. The committee may also wish to require that servicing be handled in the same way as it is handled by FNMA, through a servicing fee paid to a mortgage banker.

2. *Minimum discount rate.*—Under the House bill the Veterans' Administration is to purchase the home loan at a discount based on recent FNMA experience, but in no case less than 96 percent of par. In recent times the discount has been as high as 7 percent. Setting a maximum discount of 4 percent at a time when other conventional mortgages are discounted by a greater amount would place a substantial premium on VA-financed mortgages. For example, if conventional mortgages are discounted 7 percent, any seller would prefer to sell to a veteran because of the lower discount. The committee may wish to consider removing the discount limitation in the bill.

3. *Administrative expenses.*—Under the House bill, administrative expenses in connection with the new program would be paid out of general funds. There appears to be little reason why administrative expenses should not be borne from the trust funds so that the program would be completely self-financing; in any case, the yield to the trust funds will be greater than under present law.

4. *Earnings of NSLI trust fund.*—Under H.R. 18253, the NSLI trust fund, as a return on its investment, would be paid 1 percent less than the average interest rate on loans purchased. Since the bill requires the establishment of a reserve in the newly created NSLI

investment fund, there appears to be no reason why the NSLI trust fund should not be paid the full yield on investments; that is, the interest on the loans minus administrative costs and other expenses.

Appendix A

Summary and Analysis of H.R. 18253

Summary

The bill would establish a new revolving fund, the national service life insurance investment fund. Investments of the national service life insurance trust fund maturing during each fiscal year could be transferred from the trust fund from fiscal year 1971 through fiscal year 1974 (the 4-year total could not exceed $5 billion). The investment fund could use the money to purchase guaranteed GI home loans of up to $30,000 secured by single family dwellings.

The national service life insurance trust fund represents the reserves for that insurance program. The fund now holds about $6.3 billion invested either in U.S. Treasury securities, or in the investments today which yield about 4.2 percent on the average.

Section-by-section analysis

Page of bill	*Provision*
1	*Section 1* of the bill establishes a national service life insurance investment fund under a new sec. 1828 of title 38 (veterans' benefits) of the U.S. Code and states what its funds may be used for.
1–4	*Section 1828(a)* authorizes VA to promise a lending institution that it will purchase a VA-guaranteed home loan made by the lender within 6 months from the date the loan is made. The VA commitment cannot be assigned by the lending institution to another party. The commitment is stated as a percentage of the face amount of the loan; this percentage is based on recent FNMA experience, but it cannot be less than 96 percent nor more than 100 percent of par. A nonrefundable fee of one-half of 1 percent of the loan is charged for the VA commitment. The VA can purchase the loan at the price it committed itself to only if (1) the lender has not been able to sell the loan for at least the VA price, and (2) the lender has not charged (and will not charge) the seller of the property more than (a) the difference between the VA price and the face amount of the loan, plus (b) the fee the lender paid the VA for VA's commitment to buy the loan. VA is directed, to the extent practicable, to purchase loans in areas where money is tightest.
4	*Section 1828(b)* establishes a national service life insurance investment fund as a revolving fund to accomplish the purposes of the bill. The investment fund may not, however, pay for administrative costs. Investments from the NSLI trust fund may be transferred to the investment fund until June 30, 1974, subject to these limitations: (1) The funds transferred may not exceed the sum of the trust fund's investments which mature in any fiscal year; (2) The cumulative transfers may not exceed $5 billion; and (3) All transfers must be authorized in appropriation acts.

Page of bill	*Provision*
4–6	*Section 1828(c)* relates to operations involving the investment fund. Until June 30, 1974, all repayments will be deposited in the investment fund, available for further purchase of loans; interest and commitment fees shall also be deposited in the investment fund. The national service life insurance trust fund will be paid interest on all funds transferred from it to the investment fund; the interest rate shall be set at 1 percent less than the average interest rate on loans purchased and Treasury securities held by the investment fund. The VA must establish within the investment fund an adequate reserve. After June 30, 1975, all loan repayments and interest will be deposited in the national service life insurance trust fund, except an amount needed as a reserve for losses. Any money in the investment fund not currently needed to purchase loans could be invested in U.S. Treasury securities.
7	*Section 1828(d)* authorizes the use of funds from the VA loan guaranty revolving fund to make up any deficiency in the investment fund's reserves for expenses and losses.
7	*Section 1828(e)* permits the VA to sell any loan held by the investment fund, at a price not lower than the remaining principal on the loan (discounted by the same percentage as the original VA discount when the loan was purchased) plus accrued interest.
7–8	*Section 1828(f)* authorizes the VA to sell loans held by the investment fund through the participation certificate method.
8–9	*Section 1828(g)* directs the VA to invest its funds under the bill "in loans which will represent a broad spectrum of the veteran homebuying population in respect to age, income and location of the properties which will constitute the loan securities." The investment fund can only be used to purchase loans of $30,000 or less on single-family dwellings. VA can contract out for servicing the loans purchased as long as the cost is not higher than it would be if VA serviced the loans themselves.
9	*Section 2* of the bill is entirely unrelated to the rest of the bill. This section prohibits the VA from making a direct loan to a veteran in an area where private funds are available at a discount not greater than either the average recent FNMA discount or 4 percent, whichever is lower.
9–10	*Section 3* of the bill is complementary to Sec. 1; it authorizes the transfer of funds from the national service life insurance trust fund to the new investment fund, and guarantees the transfers both as to principal and interest to assure the protection of the NSLI trust fund.

How H.R. 18253 Would Work, Using a $20,000 Home Loan as an Example

The veteran applies for a VA home loan at a lending institution (say a bank), just as he does under present law.

The bank asks VA to make a commitment to buy the loan within 6 months after it is made. VA commits itself to buy the loan (if it

cannot otherwise be sold) at 96 percent of par, or $19,200. The bank pays VA a nonrefundable fee of $100 (one-half of 1 percent of the loan amount) for this commitment.

The bank either retains the loan as an investment or seeks to sell it to a private investor for at least $19,200. If it cannot do so, it asks VA to fullfill its commitment and purchase the loan for $19,200. VA first insures that the seller has not been charged and will not be charged more than $1,000 by the bank for making the loan:

The difference between the $20,000 face amount and the $19,200 VA price	$800
Fee paid for VA's commitment	200
Total	1, 000

VA buys the loan for $19,200. The loan may either be held until paid in full, or it may be sold again. If it is sold, VA cannot charge less than the remaining principal (discounted as was the original VA purchase of the loan) plus interest due since the last payment. For example, suppose the mortgage payments have reduced the principal from the original $20,000 to $15,000. The minimum sale price would be $14,400 (96 percent of $15,000) plus the interest due.

2. Group Mortgage Insurance for Severely Disabled Veterans Eligible for Special Housing Benefits

(H.R. 18448)

(Passed the House on September 21, 1970)

BACKGROUND

Under present law, disabled veterans whose disability is related to their military service may be entitled to a grant for a "wheelchair home" especially adapted to their needs, if they are receiving disability compensation due to the loss or loss of use of a leg or foot. Eligible veterans may receive a grant of half of the cost of the home, up to a maximum grant of $12,500. The grant may be used to pay part of the cost of building or buying such a home, or to pay up to the full cost of remodeling an existing dwelling to meet the special requirements of the disabled veteran.

PROVISIONS OF THE BILL

H.R. 18448 would authorize the Administrator of Veterans' Affairs to purchase policies from a commercial insurer to provide mortgage protection life insurance for seriously disabled veterans who have been granted assistance as described above.

The initial amount of the insurance could not exceed $30,000 or the amount of the mortgage loan, whichever was lower. The amount of the insurance would be reduced as the mortgage was amortized. The insurance would be payable only to the holder of the mortgage loan and no insurance would be payable if the mortgage was paid off prior to the death of the veteran. No insurance protection would extend beyond age 70.

Eligible veterans would be automatically insured unless they either elected in writing not to be insured, or failed to furnish the Administrator information on which their premiums could be based. Veterans who elected not to be insured could later elect to be insured under certain conditions.

The premiums charged eligible veterans would cover only the cost of insuring standard lives. The Government would bear the cost of the excess mortality attributable to the veterans' disabilities, as well as the administrative costs. In general, the veterans' premiums would be deducted from their compensation while the Government's contributions to the cost of the insurance would be made from appropriated funds.

Cost.—The Veterans' Administration estimates that death claims under the bill would average about $1.6 million per year; it is estimated that the income from premiums paid by disabled veterans would amount to about 10 percent of this total. In addition, the VA estimates that administrative costs would total $200,000 in the first year (during which the program would be set up), and about $38,000 for years thereafter. These amounts are shown in table 1 below:

TABLE I.—*Cost of H.R. 18448*

	First full year	Following years
Death claims	$1, 600, 000	$1, 600, 000
Premiums paid by disabled veterans	160, 000	160, 000
Government share	1, 440, 000	1, 440, 000
Administrative cost	200, 000	38, 000
Total Federal cost	1, 640, 000	1, 478, 000

Administration position.—The administration opposes enactment of H.R. 18448 on the following grounds:

1. When a disabled veteran living in a "wheelchair home" dies, his survivors do not need the modifications and special features and facilities incorporated in the home because of the veteran's disability. Frequently the survivors do not wish to continue living in the specially adapted house. The Veterans' Administration's experience has shown that with rare exceptions theses houses are readily marketable without loss.

2. Veterans whose disability is service-connected are already eligible for substantial amounts of subsidized insurance:

(*a*) A disabled veteran is eligible for $10,000 in national service life insurance, with no premium at all if he is totally disabled (as is the case with all veterans eligible for "wheelchair home" grants).

(*b*) Disabled veterans serving after September 1965 may convert servicemen's group life insurance to a permanent plan policy at standard premium rates regardless of his disability. Servicemen's group life insurance had a value of $10,000 until June of this year when the amount was increased to $15,000.

Thus, most veterans covered by the bill who have been discharged since September 1965 are already eligible for $20,000 or $25,000 in largely subsidized insurance coverage.

3. H.R. 18448 is discriminatory in that severely disabled veterans who do not qualify for "wheelchair home" grants (because their disability does not affect their feet or legs) face just as great a difficulty in purchasing insurance as the disabled veterans to whom H.R. 18448 would apply.

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