

REFUNDS IN THE CASE OF CERTAIN USES OF TREAD
RUBBER; CERTAIN DISTILLED SPIRITS DRAWBACKS

DECEMBER 30 (legislative day, DECEMBER 28), 1970.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 18251]

The Committee on Finance, to which was referred the bill (H.R. 18251) to amend the Internal Revenue Code of 1954 to provide refunds in the case of certain uses of tread rubber, having considered the same, reports favorably thereon with amendment(s) and recommends that the bill (as amended) do pass.

I. SUMMARY

The bill, H.R. 18251, as it passed the House amends the tax laws to provide credits or refunds of the manufacturers excise tax on tread rubber where tax-paid tread rubber: (1) is wasted in the recapping or retreading process, (2) is used in the recapping or retreading of tires the sale of which is later adjusted, or (3) is used in the recapping or retreading of tires which are exported, are sold to State or local governments, are sold to nonprofit educational institutions, or are sold as supplies for vessels or aircraft.

The committee accepted the House-passed provision without change. The Treasury Department has indicated that it has no objection to enactment of this provision.

The committee added to the bill a provision dealing with an amendment enacted in the 90th Congress, relating to drawbacks of tax on distilled spirits used for nonbeverage purposes. The provision added by the committee makes the drawback amendment effective as to claims for drawback filed on or after the first day of the 90th Congress.

II. REASONS FOR THE BILL

Excise tax on tread rubber

There are several instances under present law where a manufacturers tax is imposed on tread rubber when in a similar situation a manufacturers tax would not be imposed in the case of a new tire.

First, the tire tax is imposed on the weight of the new tire after completion of the manufacturing process. Rubber wasted in manufacturing does not figure in the tax base for the new tire. The tax is imposed when the completed tire is sold and is imposed only on the material actually in the completed tire. In the case of the tax on tread rubber, the tax is imposed before the completion of a major manufacturing process—the recapping or retreading of the used tire. Wastage of tread rubber in that process occurs after the tread rubber tax liability has been determined, and under present law no refund or credit is provided for any portion of the tax imposed on the tread rubber which is wasted.

Second, under present law, where the sale of a new tire is adjusted on account of a tread mileage or road hazard guarantee or other similar arrangement, a credit is allowed for the portion of the tax equal to the proportion of the reduction in price of the replacement tire. However, if the sale of a retreaded tire is adjusted under the same circumstances, present law does not permit any credit or refund of the tread rubber tax.

Third, under present law, a credit or refund of the tax on new tires is available when the tire is exported, sold to a State or local government, sold to a nonprofit educational organization, or sold as supplies for a vessel or aircraft. A credit also is available on account of the tire tax when a new tire is mounted on a new automobile that is then disposed of in any of the above ways. However, no credit or refund is available for the tread rubber tax when a recapped or retreaded tire (or the car on which it is mounted) is disposed of in any of those ways.

The committee agreed with the House that the differences described above between the tread rubber tax and the new tire tax, are not warranted and, as a result, that it is desirable to provide for refunds in the above types of cases.

Effective date of distilled spirits drawback—refund

The committee has added to the bill a provision relating to an amendment enacted by the 90th Congress to extend from 3 months to 6 months the time by which a refund claim must be filed for drawbacks of distilled spirits for use in medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes. The 90th Congress agreed to extend the time for filing these claims for drawback because it concluded that the 3 months period allowed by prior law was too short, especially in light of the fact that the statute permits no exercise of discretion in the case of hardship. The committee believes that, since Congress concluded that the request for relief was meritorious and amended the law to grant relief, then Congress ought not to deny relief to those who brought the matter to Congress' attention. Precedents for such action are numerous—

in particular, the recently passed provision in H.R. 17473, relating to floor stock refunds under the Excise Tax Reduction Act of 1965.

III. GENERAL EXPLANATION

Excise tax on tread rubber

Under present law, a manufacturer's excise tax of 5 cents a pound is imposed on the sale of tread rubber (sec. 4071(a)(4)). A credit or refund of this tax is allowed if the tread rubber is used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway motor vehicles (sec. 6416(b)(2)(L)). The bill makes a credit or refund of the tread rubber tax available in three other situations.

The first situation in which the credit or refund is to be available is where rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process.

Second, the credit or refund is to be available where the tread rubber is used in the recapping or retreading of a tire if the sale price of the tire is later adjusted because of a warranty or guaranty. Where a sale of a retreaded tire is adjusted, the overpayment (that is, the amount available for credit or refund) is to be the same proportion of the tax as the adjustment in the sales price of the retreaded tire is of the sale price. For example, assume that a retreaded tire is returned because of road failure after being used only 40 percent of its guaranteed life. Under the guaranty, the owner of the tire in this case is entitled to reduce the price of a replacement tire by an amount equal to 60 percent of the price of the original tire. In this case, therefore, a credit or refund is allowable for 60 percent of the tread rubber tax paid on the returned retread tire.

Finally, where a retreaded tire is sold by a subsequent manufacturer on or in connection with another article (for example, a truck) manufactured by him, the bill provides that credit or refund of the tread rubber tax is to be allowed to the further manufacturer (in this example, the truck manufacturer) if the article (in this example, the truck) is by any person (1) exported, (2) sold to a State or local government for the exclusive use of a State or local government, (3) sold to a nonprofit educational organization for its exclusive use, or (4) used or sold for use as supplies for vessels or aircraft. In addition, a credit or refund of the tread rubber tax is to be available for the tread rubber on a recapped or retreaded tire resold for any of the uses listed above if it is exported or sold by any person for one of those purposes. Also, a credit or refund of the tread rubber tax is to be available to the manufacturer of the recapped or retreaded tire if that retreader sells the tire on or in connection with any other article manufactured by him, and that other article is exported or sold by any person for one of the purposes described above.

These changes are intended to permit credit or refund of the tax on the tread rubber used on a recapped or retreaded tire, under the circumstances where a credit or refund would be available under present law for a new tire.

The amendments made by this bill are to take effect on the first day of the first calendar month which begins more than 10 days

after the date of the bill's enactment. That is, they apply where, on or after the effective date, (1) tread rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process, (2) adjustments are made with respect to recapped or retreaded tires, and (3) recapped or retreaded tires (or the articles on or in connection with which they are sold) are exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft.

Effective date of distilled spirits drawback-refund

The provision added by the committee changes the effective date of a 90th Congress enactment. Public Law 90-615 (sec. 2(a)) amended the distilled spirits provisions of the internal revenue laws (sec. 5134(b)) to extend from 3 months to 6 months after the close of a calendar quarter, the time by which a claim for drawback of tax on distilled spirits used for nonbeverage purposes must be filed as to that calendar quarter. That provision (in sec. 2(b) of the act) applied the change to claims filed on or after the date of enactment—namely on and after October 21, 1968. The provision added by the committee to this bill applies the change to claims filed on or after January 10, 1967—the first day of the first session of the Congress that enacted Public Law 90-615.

IV. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

SECTION 6416 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES

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(b) SPECIAL CASES IN WHICH TAX PAYMENTS CONSIDERED OVERPAYMENTS.—Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) PRICE READJUSTMENTS.—If the price of any article in respect of which a tax, based on such price, is imposed by chapter 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(f) (2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. The preceding sentence shall not apply in the case of an article in respect of which tax was computed under section 5223(b) (2) ; but if the price for which such article was sold is readjusted by

reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) SPECIFIED USES AND REALES.—The tax paid under chapter 32 (or under section 4041(a) (1) or (b) (1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) exported (except in any case to which subsection (g) applies);

(B) used or sold for use as supplies for vessels or aircraft;

(C) sold to a State or local government for the exclusive use of a State or local government;

(D) sold to a nonprofit educational organization for its exclusive use;

(E) resold to a manufacturer or producer for use by him as provided in subparagraph (A), (B), (E), or (F) of paragraph (3);

(F) in the case of a tire or inner tube, resold for use as provided in subparagraph (C) of paragraph (3) (*or in the case of the tread rubber on a recapped or retreaded tire, resold for use as provided in subparagraph (D) of paragraph (3)*), and the other article referred to in such subparagraph is by any person exported or sold as provided in such subparagraph;

(G) in the case of a liquid taxable under section 4041, sold for use as fuel in a diesel-powered highway vehicle or as fuel for the propulsion of a motor vehicle, motorboat, or airplane, if before July 1, 1970 (i) the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid, or (ii) such liquid was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes;

(H) in the case of a liquid in respect of which tax was paid under section 4041 at the rate of 3 cents or 4 cents a gallon, used during any calendar quarter beginning before July 1, 1970, in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes; except that (i) this subparagraph shall apply only if the 60 per cent passenger fare revenue test set forth in section 6421 (b) (2) is met with respect to such quarter, and (ii) the amount of such overpayment for such quarter shall be an amount determined by multiplying 1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon of liquid so used by the percentage which such person's commuter fare revenue (as defined in section 6421 (d) (2)) derived from such scheduled service during such quarter was of his total passenger fare revenue derived from such scheduled service during such quarter;

(I) in the case of a liquid in respect of which tax was paid under section 4041 (a) (1) at the rate of 3 cents or 4 cents a gallon, used or resold for use as a fuel in a diesel-powered highway vehicle (i) which (at the time of such use or resale) is not registered, and is not required to be registered, for highway use under the

laws of any State or foreign country, or (ii) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(J) in the case of a liquid in respect of which tax was paid under section 4041(b) (1) at the rate of 3 cents or 4 cents a gallon, used or resold for use before July 1, 1970, otherwise than as a fuel for the propulsion of a highway vehicle (i) which (at the time of such use or resale) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a highway vehicle owned by the United States, is used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(K) in the case of any article taxable under section 4061(b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061(a));

[(L) in the case of tread rubber in respect of which tax was paid under section 4071(a) (4), used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072(c)), unless credit or refund of such tax is allowable under subsection (b) (3);]

(L) in the case of tread rubber in respect of which tax was paid under section 4071(a) (4)—

(i) used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072(c)),

(ii) destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process, or

(iii) used in the recapping or retreading of a tire the sale of which is later adjusted pursuant to a warranty or warranty, in which case the overpayment shall be in proportion to the adjustment in the sales price of such tire.

unless credit or refund of such tax is allowable under subsection (b) (c);

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(3) TAX-PAID ARTICLES USED FOR FURTHER MANUFACTURE, ETC.—If the tax imposed by chapter 32 has been paid with respect to the sale of any article by the manufacturer, producer, or importer thereof to a second manufacturer or producer, such tax shall be deemed to be an overpayment by such second manufacturer or producer if—

(A) in the case of any article other than an article to which subparagraph (B), (C), (D), or (E) applies, such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, another

article taxable under chapter 32 manufactured or produced by him;

(B) in the case of a part or accessory taxable under section 4061(b), such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, any other article manufactured or produced by him;

(C) in the case of a tire or inner tube taxable under section 4071, such article is sold by the second manufacturer or producer on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft;

(D) in the case of tread rubber in respect of which tax was paid under section 4071(a)(4) used in the recapping or retreading of a tire, such tire is sold by the subsequent manufacturer or producer on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft, unless credit or refund of such tax is allowable under subparagraph (C);

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(4) TIRES, INNER TUBES.—If—

(A) a tire or inner tube taxable under section 4071 or a recapped or retreaded tire in respect of which tax under section 4071(a)(4) was paid on the tread rubber used in the recapping or retreading is sold by the manufacturer, producer, or importer thereof on or in connection with, or with the sale of, any other article manufactured or produced by him, and

(B) such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft,

any tax imposed by chapter 32 in respect of such tire or inner tube which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.

PUBLIC LAW 90-615

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SEC. 2. (a) Section 5134(b) of the Internal Revenue Code of 1954 (relating to claims for drawback of distilled spirits taxes on account of certain nonbeverage uses) is amended by striking out in the last sentence thereof "3 months" and inserting in lieu thereof "6 months".

(b) The amendment made by subsection (a) shall apply with respect to claims filed on or after [the date of the enactment of this Act] January 10, 1967.

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