

SUSPENSION OF DUTIES ON CERTAIN FORMS OF
COPPER

AUGUST 1, 1974.—Ordered to be printed

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

REPORT

[To accompany H.R. 12281]

The Committee on Finance, to which was referred the bill (H.R. 12281) to continue until the close of June 30, 1975, the suspension of duties on certain forms of copper, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

House bill.—The House bill would continue until July 1975 the suspension of duties on certain forms of copper, with a “peril point” level of \$0.51 per pound. The committee bill does not modify the House bill, but includes an amendment unrelated to the subject matter of the House bill.

Committee amendment.—The committee amendment permits a corporation in a limited type of situation to deduct as a loss, its payment of a judgment against it as the successor to the business of a liquidated corporation, when the liquidation occurred before July 1, 1957. The amendment is intended to correct an inequity arising from the requirement of present law that the assumption of the liabilities of a corporation liquidated within two years after the purchase of its stock be capitalized, and as a result no deduction would be available when the accrual takes place. At the time of liquidation, in the case presented to the committee, the liability had been determined by the decision of a Federal Court of Appeals and then, after the liquidation had been completed, that same court reversed itself. In this case therefore the loss, which would have been deductible by the predecessor corporation, was no longer deductible but resulted instead in a basis adjustment. That disallowance has produced an inequitable result, in the opinion of the committee, because the liquidation of the former

corporation was carried out in reliance on the earlier decision of the Court of Appeals, and the court's reversal of its own holding was not foreseeable.

II. GENERAL STATEMENT

A. DUTY SUSPENSION ON CERTAIN FORMS OF COPPER

Legislation suspending the duty of imports of unwrought copper (except nickel copper), copper waste and scrap, copper articles imported to be used in remanufacture by smelting, and on the copper content of certain copper-bearing ores and materials was enacted in 1966, and, as a result of periodic extensions, was continued through June 30, 1972. Legislation introduced in April 1972, to continue the copper duty suspension was not passed and, therefore, duties were reimposed, effective July 1, 1972. Enactment of H.R. 2323 (Public Law 93-77) reinstated the copper duty suspension, effective for a period from July 1, 1973, until June 30, 1974.

The rate of duty which is presently suspended under Public Law 93-77, and which would remain suspended to June 30, 1975, under H.R. 12281, is 0.8 cents per pound on the copper content of the articles imported from countries accorded most-favored-nation treatment. Imports of copper from most Communist countries would continue to be dutiable at existing rates of duty.

The previous suspension of duties on copper, beginning in 1966, was enacted to relieve the domestic supply shortage and for national defense purposes. Market trends indicate that following the period from 1964 until mid-1970, increased copper production capacity, together with a decline in demand, resulted in a rapid worldwide buildup of copper stocks and lower world copper prices. However, world copper prices rose significantly during the fourth quarter of 1972 due to increased demand and disruptions in the supply of copper from several countries. The resulting shortage of copper relative to demand has continued to the present, with consumption plus exports exceeding production plus imports in each successive calendar quarter since mid-1972. As indicated in a recent report by the Bureau of Domestic Commerce, domestic copper production is not expected to increase measurably during 1974.

Because of this recurrent shortage in domestic copper supply, the Congress enacted and the President signed Public Law 93-214 on December 28, 1973, authorizing the sale of 251,600 tons of surplus copper from the national stockpile. It is anticipated that the sale of this surplus copper, which is equivalent to one-tenth of current annual consumption, will be absorbed without disruption to the market. As reported by the Department of the Interior, a first offering on 49,873 tons from the copper stockpile in February 1974, was sold at an average bid price of 85.3 cents per pound compared with a domestic producer price of 68 cents per pound.

Copper imports for 1973 totalled 402,000 tons valued at \$493 million, with the principal supplying countries being Canada, Peru, Chile, Mexico, and the Republic of South Africa. Net imports during the period 1967-1973 accounted for approximately 7 to 8 percent of domestic copper supply.

Major primary copper producers, many importers, exporters, dealers and merchants, and consumers of copper support the proposed copper duty suspension. Some U.S. firms have experienced difficulty in buying domestic copper, particularly during periods of tight supply, and must rely heavily on higher-price imports to meet demand.

The committee has been informed that the temporary suspension of duties on certain forms of copper as provided by H.R. 12281 would not adversely affect the domestic copper mining industry. Indeed, the committee is informed that the duty suspension would be likely to benefit employment in construction, transportation and electronics industries, which are major consumers of copper.

It is to be noted that the "peril point," under which the suspension of duty would no longer be applicable when the price of copper is below 51 cents per pound, would be continued.

B. BASIS ADJUSTMENT FOR PROPERTY RECEIVED IN THE LIQUIDATION OF A SUBSIDIARY PRIOR TO JULY 1, 1957

Under existing law, when the stock of a corporation is acquired by purchase and the acquired corporation is liquidated within two years, no gain or loss is recognized on the liquidation (sec. 332) and the basis of the acquired corporation's assets is taken to be the same as the acquiring corporation's basis in the purchased stock of the liquidated corporation (sec. 334(b)(2)). In the liquidation, liabilities of the liquidated corporation assumed by the acquiring corporation are capitalized and added to the acquiring corporation's basis for the assets, even though the liabilities might have been deductible by the liquidated corporation had it still been in existence. Capitalization of the liabilities is required even though the assumed liabilities may have been contingent at the time of liquidation.

Application of the rule has resulted in inequitable hardship in the case of the acquisition of the stock, and subsequent liquidation, of the States Steamship Company ("Old States"). To understand the inequity which the committee's provision is intended to correct, a brief summary of the facts in this case is necessary.

On January 9, 1952, a steamship owned by Old States was lost at sea with a cargo of wheat insured by the U.S. Government. When the United States sued to recover the value of the cargo from Old States, Old States took the position that its liability was limited to an amount less than the insurance on the cargo, with the result that they owed nothing. On November 17, 1955, the U.S. District Court (D. Ore.) held that Old States' liability was so limited.

In early 1956, a series of transactions took place, which resulted in the acquisition of all of the stock of Old States on July 11 by a newly formed corporation, State Lines, Inc. ("New States"). While Old States was still a wholly owned subsidiary of New States, the opinion of the District Court was affirmed by the Court of Appeals on May 31, 1957 (259 F. 2d 458 (9th Cir.)). In reliance on that decision, New States liquidated Old States on June 30, 1957, thereby acquiring all of its assets and assuming all of its liabilities.¹ The liquidation took place under the assumption that the Court of Appeals' decision on the liability question would be the final outcome of the case, since that

¹ Assumption of liabilities was required by State law.

decision affirmed the lower court's ultimate findings of fact as to Old States' liability.

However, on November 15, 1957, the Court of Appeals, on a petition for rehearing of the liability case, reversed itself and held that Old States was liable for the full amount of the Government's claim (259 F. 2d 463). After certiorari was denied by the Supreme Court in early 1959, New States paid the Government \$1,455,394 in full settlement of the liability case. The payment was deducted as a loss on the consolidated returns of New States and its affiliated corporations in 1959, and the deduction resulted in loss carrybacks to 1957 and 1958.

The Internal Revenue Service disallowed the deduction on the ground that it was a liability of Old States which, under the provisions of section 334(b)(2), had to be capitalized and added to the basis of the assets acquired by New States and therefore was not deductible. In subsequent litigation, the Tax Court (29 T.C.M. 133 (1970)) held the settlement deductible by New States on the ground that, in causing Old States to be liquidated, it had relied on the first decision of the Court of Appeals in the liability case. On appeal, the Court of Appeals reversed the Tax Court holding and held that the settlement had to be capitalized because of section 334(b)(2) *Pacific Transportation Co. & Subsidiaries v. Commissioner*, 483 F. 2d 209 (9th Cir. 1973).

The Court of Appeals in the latter case made clear its belief that its holding produced an inequitable result because of New States' reliance upon the court's decision in proceeding with the liquidation.² Had it been aware of the unforeseen possibility that the Court of Appeals would reverse itself, New States probably would have waited until final determination before completing the liquidation, thereby keeping Old States in existence and possibly permitting it to deduct the amount of the liability.³ In that case, because a consolidated return would have been filed for the entire group, whether or not the liquidation occurred, the tax result would have been the same as allowing New States to take the deduction in 1959, when the liability was finally determined.

Moreover, the reversal by the Court of Appeals of its own decision was unusual, particularly in this case where the issue involved the review of inferences drawn by the trial judge from his findings of fact. In such cases, a court rarely reconsiders its factual conclusions. The element of unforeseeability especially makes denial of the deduction hard to justify since New States clearly acted in reliance on the earlier decision.

The committee's provision permits New States to deduct the amount paid in settlement of the liability, instead of using it as a basis adjustment on the liquidation of Old States. The deduction is to be taken into account in determining the loss carrybacks of members of the affiliated group to earlier years.

² One judge, concurring in the result, observed: "It is with great hesitation and considerable reluctance that I join in the foregoing opinion. If logical support could be found in the adjudicated authorities, I would introduce into tax law, under circumstances such as these, a principle of equity which would not permit the revenue gathering branch of our government to take advantage of a taxpayer's well intentioned reliance on the action of another branch." 483 F. 2d 209, 215.

³ Even that result may not have been possible because liquidation must take place within two years for section 334(b)(2) to apply and the liability case was not finally resolved until mid-1959, about three years after New States had purchased the stock.

It is estimated that enactment of this provision will decrease corporation income tax liability by about \$1.4 million.

III. COSTS OF CARRYING OUT THE BILL AND EFFECT ON THE REVENUES OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out this bill and the effect on the revenues of the bill. The committee estimates that the extension of the existing suspension of duties on certain forms of copper provided by the bill will not result in any additional revenue loss or administrative costs.

It is estimated by the committee that the amendment permitting a deduction for a liability assumed in connection with the liquidation of a subsidiary prior to July 1, 1957, will decrease corporation income tax liability by about \$1.4 million.

IV. VOTE OF COMMITTEE ON REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act, as amended, the following statement is made relative to the vote of the committee on reporting the bill. This bill was ordered favorably reported by the committee without a roll call vote and without objection.

V. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).

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