Calendar No. 980

96TH CONGRESS
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SENATE

REPORT
No. 96-898

OHIO WESLEYAN UNIVERSITY

AUGUST 18 (legislative day, June 12), 1980.—Ordered to be printed

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

REPORT

[To accompany H.R. 3317]

The Committee on Finance, to which was referred the bill (H.R. 3317) to provide for duty-free entry of an organ for Ohio Wesleyan University, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title, and recommends that the bill as amended do pass.

The amendments are shown in the text of the bill in italic.

House bill.—H.R. 3317, as it passed the House, provided for the duty-free entry of an organ for Ohio Wesleyan University.

Committee bill.—The committee amendment deletes the provision relating to the duty-free entry of an organ for Ohio Wesleyan University, and adds provisions relating to (1) refund of the excise tax on tread rubber, (2) private relief relating to the replacement period for nonrecognition of gain on the sale of a personal residence, and (3) disclosure of tax returns to State audit agencies.

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I. SUMMARY

As passed by the House, this bill provides for the duty-free entry of an organ for Ohio Wesleyan University. The committee approved the substance of the House-passed bill to be offered as an amendment to H.R. 3122, now pending on the Senate calendar.

In lieu of the House bill provision, the committee adopted an amendment to H.R. 3317 in the nature of a substitute with the following tax provisions.

Section 1. Refunds of Tread Rubber Excise Tax

Under present law, a 5 cents-per-pound manufacturers excise tax is imposed on tread rubber used for recapping or retreading tires of the type used on highway vehicles. No credit or refund of the tread rubber tax is available if the tax-paid tread rubber is wasted in the recapping process, contained in a recapped tire the price of which is adjusted under a warranty, or sold in conjunction with certain otherwise tax-exempt sales. In some situations, the tread rubber tax can be avoided by exporting a tire to be recapped outside the United States and then importing the retreaded tire.

This section provides for a refund or credit of the manufacturers excise tax on tread rubber if the rubber is (1) wasted in the recapping process, (2) contained in a recapped tire which is adjusted under a warranty, or (3) sold in conjunction with certain otherwise tax-exempt sales.

The provision also imposes the tread rubber excise tax on the tread rubber in tires which are exported for recapping and subsequently imported into the United States.

Section 2. Replacement Period for Nonrecognition of Gain on Sale of Residence

In general, gain on the sale of a taxpayer's principal residence will not be recognized for income tax purposes if a replacement residence is purchased or constructed and certain requirements are met within specified time periods.

This provision requires the Secretary of the Treasury, in limited circumstances, to extend to five years the present two-year period during which a taxpayer must occupy and use as a principal residence a newly constructed replacement residence. The provision is intended to benefit Mrs. Jane M. Cathcart of Virginia.

Section 3. Disclosure of Tax Returns to State Audit Agencies

Under present law, returns and return information may be disclosed to State agencies which are charged under State law with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws.

Under this provision, any returns or return information obtained by a State agency for tax administration purposes are made open to inspection by, or disclosure to, officers and employees of a State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State agency which obtained the returns or return information.

II. EXPLANATION OF THE BILL

A. Refunds of Tread Rubber Excise Tax (sec. 1 of the bill and secs. 4071, 6416, and 6511 of the Code)

Present law

Present law imposes a tax of 5 cents per pound on tread rubber used for recapping or retreading tires of the type used on highway vehicles (Code secs. 4071(a)(4), 4072(b), and 4073(c)). [1]

Tread rubber may be sold tax-free for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles; or a credit or refund (without interest) of the tread rubber tax may be obtained if the tax-paid tread rubber is used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (Code sec. 6416(b)(2)(G)).

There are several instances under present law where a manufacturers excise tax is imposed on tread rubber when in a similar situation a manufacturers excise tax is not imposed (or a credit or refund of the tax is allowed) on new tires.

First, rubber wasted in manufacturing new tires is not subject to tax because the tax is imposed when the completed tire is sold and only upon the material actually contained in the completed tire (sec. 4071(a)(1)). The tax on tread rubber, on the other hand, is imposed before the recapping or retreading of a used tire. Waste 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 tread rubber which is so wasted. [2]

Second, if the sale price of a retreaded tire is adjusted by reason of a warranty or guarantee, no credit or refund of the tread rubber tax is provided.[3]

Third, no credit or refund is available for the tread rubber tax when a recapped or retreaded tire is exported, sold to a State or local government, sold to a nonprofit educational organization, or used or sold

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[1] The tax on tread rubber is scheduled to expire on October 1, 1984 (sec. 4071(d)(3)). (Revenues from this tax go into the Highway Trust Fund.)

[2] In *Great Olympic Tire Co.* v. *U.S.*, 597 F. 2d 449, (5th Cir. 1979), the Fifth Circuit Court of Appeals held that tread rubber wasted in the recapping process is not subject to the section 4071(a)(4) manufacturers excise tax, and that highway-type tires returned under warranty after partial use are subject to the tax without allowance for a refund or credit of the tax previously imposed on the tread rubber remaining on the returned tire. In arriving at these conclusions, the court relied upon the fact that wasted rubber never became part of tires of the type used on highway vehicles and that rubber remaining in a returned tire had become part of a tire of the type used on highway vehicles. While the section 4071(a)(4) tread rubber tax does not refer to highway-type vehicle tires, as does the section 4071(a)(1) new tire tax, the court noted that the legislative history of the tread rubber tax clearly evidences an intention to limit the tax to such tires. *See.* H. Rept. No. 10660, 84th Cong., 2d Sess., 1956–2 C.B. 1312; Rev. Rul. 65–223, 1965–2 C.B. 420. *See also, Treadco Tires, Inc.* v. *U.S.*, 604 F. 2d 14 (5th Cir. 1979) (Rubber strip stock suppliers are not manufacturers within the meaning of section 4071(a)(4) when they furnish rubber strips to tire retreader for use in an Orbitread extrusion machine).

[3] *See* note 2, *supra.*

for use as supplies for vessels or aircraft (Code secs. 4221 and 6416(b)). The credit or refund is not available where a retreaded tire is mounted on a new vehicle that then is disposed of in any of the above ways.

While used and recapped or retreaded tires ordinarily are subject to the tire tax when imported, a different situation exists when a used tire which has been taxed in the United States is exported, is retreaded (other than from bead to bead) abroad, and then is shipped back into the United States.[4] Then there is neither a tax on the imported retreaded tire nor on the tread rubber used in the retreading, because the tire already has been taxed and the tread rubber is considered to have lost its identity.

Under present law, the general time by which a claim for credit or refund of a tax must be filed is 3 years from the time the tax return was filed or, if later, 2 years from the time the tax was paid (Code sec. 6511).

Reasons for change

The committee believes that it is appropriate to make the application of the excise tax on tread rubber more nearly equivalent to the application of the tax on new tires. Also, the committee concluded that the tax law should not create a competitive advantage for tires which are exported for retreading and then imported for sale in the United States.

Explanation of provision

Credit or refund of tread rubber tax

This provision of the bill makes a credit or refund of the tread rubber tax available in three situations. These changes are intended to permit a credit or refund of the tax on the tread rubber used on a recapped or retreaded tire, under the same circumstances where a credit or refund would be available for the tax on a new tire.

First, the credit or refund is available where rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process.

Second, the credit or refund is available where the tread rubber is used in the recapping or retreading of a tire if the sales price of the tire is later adjusted because of a warranty or guaranty. The overpayment (that is, the amount available for credit or refund) is the same proportion of the tax paid as the adjustment in the sales price of the retreaded tire to the immediate vendee by the tire retreader.

Third, a credit or refund of the tread rubber tax is provided to the manufacturer for the tread rubber on a recapped or retreaded tire if the tire is by any person (1) exported, (2) sold to a State or local government for its exclusive use, (3) sold to a nonprofit educational organization for its exclusive use, or (4) used or sold for use as supplies for a vessel or aircraft.

Finally, if a retreaded tire is sold by the retreader or by another manufacturer on or in conjunction with another article (for example,

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[4] Tires recapped from bead to bead are considered as having been newly manufactured and thus are taxable.

a truck) manufactured by it, the bill provides that a credit or refund of the tread rubber tax is to be allowed to the further manufacturer if the article is exported or sold by any person for any of the above purposes.

Tax on imported recapped or retreaded tires

The bill also provides that used tires which are exported from the United States, recapped or retreaded abroad (other than from bead to bead), and then imported into the United States are to be subject to the tax on tread rubber. For this purpose, the amount of tread rubber to be taken into account is to be determined as of the completion of the recapping or retreading of the tire. The amount so determined is either the amount which is established as actually used in recapping or retreading the tire or an average amount which is generally used on comparable tires in the industry, as determined by the Treasury Department (Code sec. 4071(c)).

If a retreaded tire is imported on a vehicle which is not itself subject to a manufacturers excise tax (e.g., a passenger car or a light-duty truck), then the importer of the vehicle is under existing law treated as the importer of the tire (Code sec. 4071(e)). However, as noted, if the tire is not taxable because it was exported and recapped abroad (except from bead to bead), the importer is not liable for tax on the tread rubber on the imported tire. This provision carries the process a step further and treats the importer of the vehicle as the importer of the tread rubber on a retreaded tire even though the sale of the tire is not otherwise subject to tax.

Warranty or guaranty adjustments

The provision also modifies the statute of limitations in cases where a claim for credit or refund of the tread rubber tax is filed as a result of a warranty or guaranty adjustment. The provision provides that in such a case a claim for credit or refund may be filed at any time before the date which is one year after the date on which the adjustment is made, if the period for filing the claim would otherwise expire before that later date.

In other words, under this provision, the manufacturer is assured that it will have one day less than a year after the time the adjustment is made (or deemed made) within which to file a claim for credit or refund of the relevant tax.

Effective date

The amendments made by this provision are effective on the first day of the first calendar month which begins more than 10 days after the date of the provision's enactment.

Revenue effect

It is estimated that this provision will reduce budget receipts by less than $100,000 in fiscal year 1980, and by less than $200,000 annually during each of the next 4 years. (These amounts would otherwise go into the Highway Trust Fund—through September 30, 1984.)

B. Nonrecognition of Gain on Sale of Residence (Sec. 2 of the bill and sec. 1034 of the Code)

Present law

In general, the entire amount of gain realized on the sale of real property is recognized for income tax purposes. If certain requirements are met, however, gain on the sale of a taxpayer's principal residence will not be recognized, except to the extent the adjusted sales price of the old residence exceeds the cost of the new residence (Code sec. 1034).

To qualify for nonrecognition under section 1034, the taxpayer must purchase or construct, and use a replacement residence within certain time limits. The purchase of a new residence must occur within eighteen months before or after the sale of the old residence, and the taxpayer must use the new residence as a principal residence within eighteen months after the sale of the old residence (sec. 1034(a)). The construction of a new residence must begin no later than eighteen months after the sale of the old residence, and the taxpayer must occupy and use the new residence as his principal residence no later than two years after the sale of the old residence (sec. 1034(c)(5)).

Reasons for change

The committee believes that the time limits established under present law are adequate in most circumstances and greatly simplify the administration of the nonrecognition provisions under Code section 1034. The committee believes, however, that the exceptional circumstances presented in this specific case warrant a narrow exception to the time limit applicable to the occupation and use of a newly constructed residence.

Explanation of provision

This provision requires the Secretary of the Treasury to extend to five years the present two-year period during which a taxpayer must occupy and use as a principal residence a newly constructed replacement residence, if certain conditions exist. The period is extended only if a taxpayer: (1) sold his principal residence in 1977; (2) bought land for a new residence; (3) began construction of a replacement residence in 1977, and the construction was terminated by the builder before completion; (4) suspended construction to preserve evidence against the builder; (5) sued and obtained a judgment against the builder; and (6) did not occupy the new residence within two years of the sale of the old residence because of the suspension of construction.

This provision is intended to benefit Mrs. Jane M. Cathcart of Virginia.

Effective date

This provision applies to taxable years beginning after December 31, 1976, and before January 1, 1983.

Revenue effect

It is estimated that this provision will reduce budget receipts by less than $10,000 in fiscal year 1980 or 1981.

C. Disclosure of Tax Returns to State Audit Agencies (sec. 3 of the bill and sec. 6103(d) of the Code)

Present law

Under present law (Code sec. 6103(d)), returns and return information may be disclosed to State agencies which are charged under the laws of the State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws. Section 6103(d) sets forth specific rules with which a State agency must comply in order to receive Federal tax information. For example, the request for disclosure must be made by the head of the State tax agency in writing and the actual disclosure of the tax information may be made only to the representatives of the State tax agency who are designated in the written request to receive the information. Also, the law provides that the tax information cannot be disclosed to the Governor of a State. In addition, return information may not be disclosed to the extent that the Secretary of the Treasury determines such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

Return information disclosed to State agencies is subject to strict safeguard, recordkeeping, and reporting requirements (Code secs. 6103(p)(3) and 6103(p)(4). These requirements provide assurances that Federal tax return information will be used only for the purposes authorized by law and provide a basis for determining when violations occur.

Present law allows State auditing agencies access to Federal tax return information only when the auditing agency actually is involved in the determination, assessment, collection, or refunding of taxes (that is, tax administration activities). Thus, a State auditing agency is not authorized access to Federal tax return information when the auditing agency's role is limited to general oversight of the taxing authority.

Reasons for change

The committee is concerned that present law, by denying State auditing agencies access to Federal return information, may seriously impede an audit agency's ability to exercise effectively its oversight responsibilities with respect to the State taxing authority. Accordingly, the committee believes that State taxing authorities should be permitted to disclose Federal tax returns and return information in their possession to State auditing agencies for the purpose of auditing the activities of the State taxing authority.

While the committee believes that State auditing agencies should be given access to tax returns and return information, the committee is concerned that safeguards required with respect to these disclosures be strictly maintained. Therefore, it is the intention of the committee that the Comptroller General report to the Congress both one and two years after implementation of this provision concerning the procedures established by State auditing agencies and State taxing authorities to protect taxpayer confidentiality.

Explanation of provision

The bill provides that any returns or return information obtained by a State agency pursuant to the provisions of Code section 6103(d) may be open to inspection by, or disclosure to, officers and employees of the State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State agency which obtained the returns or return information. Under the bill, a "State audit agency" is defined as any State agency, body, or commission which is charged under the laws of the State with the responsibility of auditing State revenues and programs.

In addition, a State audit agency which receives return information would be subject to the same safeguard, recordkeeping, and reporting requirements as apply to other State agencies which receive return information and would be subject to the confidentiality requirements imposed by section 6103(a) and the civil and criminal penalties applicable in the case of unauthorized disclosure of such return information.

Effective date

This provision becomes effective upon the date of enactment.

Revenue effect

This provision has no impact on Federal revenues.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL AS AMENDED

Budget Effect

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made about the effect on the budget of this bill, H.R. 3317, as amended. The committee estimates that the amendments contained in the bill will reduce budget receipts by less than $100,000 in fiscal year 1980 and by less than $200,000 per year in fiscal years 1981–1985.

The Treasury Department agrees with this statement.

New Budget Authority and Tax Expenditures

In accordance with section 308 of the Budget Act, after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill involve no new budget authority or new tax expenditures but would involve an increase in existing tax expenditures of less than $10,000 in fiscal year 1980 or 1981 (sec. 2 of the bill)

Consultation with Congressional Budget Office on Budget Estimates

The Committee has received the following letter from the Congressional Budget Office:

[Letter attached]

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 27, 1980.

Hon. RUSSELL B. LONG,
Chairman, Senate Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the Budget Act, the Congressional Budget Office has examined H.R. 3317, as amended by the Senate Finance Committee. The original bill, as it passed the House, would provide for the duty-free entry of an organ for Ohio Wesleyan University. The Senate Finance Committee reported version deletes the duty-free provision and substitutes an amendment having three provisions:

Section (1) Refunds of Tread Rubber Excise Tax,

Section (2) Replacement Period for Non-Recognition of Gain on Sale of Residence,

Section (3) Disclosure of Tax Returns to State Audit Agencies.

The original House substance of H.R. 3317 was incorporated into H.R. 3122 by the Senate Finance Committee.

In accordance with Section 403 of the Budget Act, the Congressional Budget Office estimates that the bill, as amended, will reduce budget receipts by less than $100,000 in fiscal year 1980 and by less than $200,000 per year for fiscal years 1981–1985.

The bill does not provide any new budget authority or any new tax expenditures, but will increase existing tax expenditures by less than $10,000 in fiscal year 1980 or in fiscal year 1981.

Sincerely,

ROBERT D. REISCHAUER
(For Alice M. Rivlin, Director).

Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made about the vote of the committee on the motion to report the bill, as amended. The bill, H.R. 3317, as amended, was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 5 of Rule XXIX of the Standing Rules of the Senate, the following statement is made concerning the regulatory impact that might be incurred in carrying out the provisions of this bill, H.R. 3317, as reported by the committee.

Individuals and businesses regulated and economic impact of regulation.—The bill does not regulate any individuals or businesses, but amends certain provisions of the tax law. Section 1 of the bill provides for a refund or credit of the manufacturers excise tax on tread rubber where the rubber is (1) wasted in the recapping process, (2) contained in a recapped tire which is adjusted under a warranty, or (3) sold in conjunction with certain otherwise tax-exempt sales. Section 1 also imposes the tread rubber excise tax on the tread rubber in tires which are exported for recapping and subsequently imported into the United States. Section 2 of the bill provides private relief for a taxpayer in Virginia, and section 3 allows disclosure of tax returns to State audit agencies.

Impact on personal privacy.—The provision in section 3 of the bill will involve limited impact on the privacy of those whose returns are audited by a State audit agency in reviewing a State's tax administration. The other provisions of the bill will have minimal impact on personal privacy.

Determination of paperwork involved.—The provisions in section 1 of the bill will involve some additional paperwork with respect to the claiming of the refund or credit of the manufacturers excise tax on tread rubber and for returns involving the excise tax on tread rubber in tires which are exported for recapping and subsequently imported into the United States. The other provisions will have little, if any, net effect on paperwork for taxpayers.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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, H.R. 3317, as reported by the committee).

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