

## REDUCTION OF INTEREST ON DELINQUENT TAXES

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

### REPORT

[To accompany S. 2296]

The Committee on Finance, to whom was referred the bill (S. 2296) to reduce the interest rate on delinquent taxes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended be passed.

The reasons for the enactment of the bill are set forth in the attached letter from the Secretary of the Treasury, and the committee amendment carries out the suggestions made therein.

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TREASURY DEPARTMENT,  
Washington, May 24, 1935.

HON. PAT HARRISON,  
*Chairman Committee on Finance, United States Senate.*

MY DEAR MR. CHAIRMAN: I have your letter dated March 20, 1935, requesting a report on S. 2296 (74th Cong., 1st sess.), a bill to reduce the interest rate on delinquent taxes.

It has been the experience of the Department that practically all taxpayers prefer to pay their taxes as promptly as they are able in order to avoid payment of interest and that those most affected by the existing rate of 1 percent a month prescribed for delinquency in payment of taxes are least able to pay. While it might be argued that the provision for interest at the rate of 1 percent a month operates to discourage unnecessary delay in the payment of taxes, it is my opinion that such rate is of minor importance as an aid to collection. The Supreme Court has held that interest at the rate of 1 percent a month accrued because of delinquency in paying a Federal tax is not a penalty but interest "clearly intended to compensate the delay in payment of the tax—the detriment of its nonpayment, to be continued during the time of its nonpayment—compensation, not punishment" (*United States v. Childs*, 266 U. S. 304). If this be so, the existing rate of 1 percent a month is out of line with the present trend of interest rates generally and, in my opinion, should be reduced.

The proposed interest rate of one-half of 1 percent a month is probably above the average market rate and it is my belief would as effectively serve to discourage undue delay in the payment of taxes as the present rate and, at the same time, amply compensate the Government for the delay in payment. Under the

provisions of section 3187 and related sections of the Revised Statutes and the Revenue Act of 1934, the collector is given ample power to proceed with collection by means of distraint and sale of the taxpayer's assets where the taxpayer neglects or refuses to pay his taxes within 10 days after notice and demand from the collector. The idea of charging interest at the rate of 1 percent a month where a payment is not made within 10 days from notice and demand seems to be based on the proposition that this will materially assist in forcing collection and avoid the necessity for use of distraint and sale. No doubt this high rate does have this effect in certain instances but, in my opinion, they are so remote as to be hardly worthy of a legislative provision.

An additional reason for reducing the interest rate on delinquent internal-revenue taxes is the limited authority given to the Department to compromise penalties and interest imposed on account of delinquencies of the taxpayer. The Attorney General, in an opinion rendered October 24, 1933, held that penalties and interest could be compromised only where there is doubt as to liability or collectibility, whereas in prior opinions the Attorney General has held that penalties and interest could be compromised on the basis of equity and public policy (31 Op. A. G. 459; 29 Op. A. G. 217; 17 Op. A. G. 213).

The proposed bill also has the merit of making all interest provisions with reference to deficiencies and delinquencies of internal-revenue taxes uniform as far as the rate of interest is concerned. Under existing provisions, interest is assessed on deficiencies of income, excess-profits, estate, and gift taxes, at the rate of 6 percent per annum, and the deficiency with interest thereon to date of assessment is not subject to interest at 1 percent per month until 10 days (30 days in the case of estate taxes) after notice and demand, whereas the interest on deficiencies of miscellaneous excise taxes is 1 percent per month from the due date of the tax.

At the present time the only law providing for the collection of interest on customs duties is section 963 of the Revised Statutes, which provides that "Upon all bonds, on which suits are brought for the recovery of duties, interest shall be allowed, at the rate of 6 percent a year, from the time when said bonds became due." Suits under bonds for the recovery of customs duties are comparatively few, the majority of recoveries under customs bonds being for liquidated damages incurred under the redelivery provisions therein. Except in those cases where section 963 of the Revised Statutes is applicable, the legal rate of interest allowed by the laws of the State of importation may be collected on delinquent customs duties, interest to be computed from the date of demand (*United States v. Mexican International Railroad Co.*, 154 Fed. 519). The interest rate varies in different jurisdictions and it would not seem equitable to require an importer to pay a higher rate of interest in one jurisdiction than in another.

For the reasons above stated, I am in accord with the legislation proposed in S. 2296, but recommend that the language of the bill be changed to read substantially as follows:

"That notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of enactment of this Act upon any delinquent internal-revenue tax or customs duties shall be at the rate of 6 per centum per annum."

In its present form the bill would apparently reduce the liability for interest already incurred for delinquency but not yet paid and would discriminate against taxpayers who have recently been obliged to pay at the rate of 1 percent a month. The change in form is suggested to avoid discrimination and simplify administration by giving the legislation prospective application. The revised suggested form would be broader in its application in that it would apply to delinquent deficiency estate taxes under the 1918 and 1921 acts where the interest is fixed at 10 per cent per annum. It is also suggested that the interest be fixed at 6 percent per annum instead of one-half of 1 percent a month so as to make the delinquency interest uniform with the interest on deficiency of income taxes.

In the event that further correspondence relative to this matter is necessary, please refer to IR:GC:A-283648.

Very truly yours,

H. MORGENTHAU, Jr.,  
Secretary.

