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AMERICAN-LAFRANCE & FOAMITE CORPORATION OF NEW YORK

MAY 28 (calendar day, JUNE 1), 1934.—Ordered to be printed

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

REPORT

[To accompany S. 2156]

The Committee on Finance, to whom was referred the bill (S. 2156) for the relief of the American-LaFrance & Foamite Corporation of New York, having considered the same, report it back to the Senate without amendment and recommend that the bill do pass.

The following statement from the report of this committee on a similar bill (S. 4260, 71st Cong.) explains the facts and circumstances of the case:

From 1917 to April 1925, inclusive, the Internal Revenue Bureau erroneously and illegally collected from the American-LaFrance Fire Engine Co., a manufacturer of self-propelled fire-fighting apparatus, approximately $850,000 upon the erroneous theory that fire-fighting apparatus constituted automobiles within the meaning of the excise tax law as contained in the Revenue Act of 1917, Revenue Act of 1918, the Revenue Act of 1921, and the Revenue Act of 1924.

The United States Court of Appeals, Second Circuit, in the case of the *American LaFrance Fire Engine Co.* v. *Riordan, Collector* (6 Fed. Rep., 2d series, p. 964), held that it was not the intent of Congress to tax fire-fighting apparatus and, therefore, that fire-fighting apparatus was not included within the excise-tax laws imposing taxes upon automobiles, automobile trucks, and automobile accessories. The Internal Revenue Bureau accepted the opinion of the Circuit Court of Appeals as good law and returned to claimant, the successor of the American-LaFrance Fire Engine Co. approximately $700,000, leaving about $150,000 due claimants and not returned for the reasons stated below.

The Internal Revenue Bureau dealt with fire-fighting apparatus in a series of rulings confusing and wholly inconsistent with each other. The American-LaFrance Fire Engine Co. of Elimra, N.Y., is the largest manufacturer of fire-fighting apparatus, and in January 1918 the Treasury Department ruled that a self-propelled pumping engine, being the instrument which actually pumps the water through the hose and on the fire, was not an automobile, but that other fire-fighting apparatus should be classed as automobiles or automobile accessories and taxed at 5 percent. In May 1918 the Commissioner of Internal Revenue, by Regulations 44, article 7, announced that articles sold to a State or political subdivision thereof for use in carrying on its governmental operations were not

subject to excise taxes. Approximately 90 percent of the fire-fighting apparatus manufactured by the American-LaFrance Fire Engine Co. and other fire-engine companies is sold to municipalities, and while this ruling was in force, the Internal Revenue Bureau collected taxes only on fire-fighting apparatus sold to individuals, firms, or private corporations, and thereafter the Government in some instances refunded to the American-LaFrance Fire Engine Co. taxes paid under former rulings. Under date of May 5, 1919, Regulations 47 construing the Revenue Act of 1918 was announced, and article 10 of Regulations 47 repeated the regulation that articles sold to a State or municipal subdivision thereof by a manufacturer for use in carrying on its governmental operations were not subject to the tax.

In the month of July 1919, the Commissioner of Internal Revenue promulgated Treasury Decision No. 2897, which reversed the above-mentioned regulations and decisions in regard to sales to States and municipalities, and further provided that such reversal should have a retroactive effect. That thereafter and by Treasury Decision No. 2930 issued October 7, 1919, the Treasury Department again apparently ruled that pumping engines and perhaps other kinds of fire-fighting apparatus were not subject to the excise tax, but this ruling was so confusing that its meaning was doubtful. A sentence in said ruling reads as follows:

"A self-propelled fire engine, if designed to carry only such persons as are necessary to drive it and to operate the pumping engine, is not taxable."

This ruling was formally published as article 11 of Regulations 47. Such fire-fighting apparatus as was allowed to be taxable was taxed as a pleasure automobile at 5 percent.

These rulings necessarily resulted in the greatest confusion with respect to what taxes, if any, would be demanded. Conferences were held by representatives of the American-La France Fire Engine Co. with Treasury officials concerning the situation. Then later the Treasury Department notified the American-La France Fire Engine Co. that they were still uncertain with respect to the tax liability of fire-fighting apparatus and that the whole situation would be reviewed in an additional ruling. In the meantime they were informed that the Internal Revenue Bureau would accept claims in abatement with respect to excise taxes claimed and not paid due to the existing confusion.

Thereafter and by Treasury Decision No. 2989 issued March 3, 1920, the Internal Revenue Bureau reversed and modified the above ruling, to wit, Treasury Decision 2930, and promulgated articles 11, 12, and 13 of Regulations 47, and ruled therein that all fire-fighting apparatus of every kind and nature should be regarded as automobile trucks and should be taxable at 3 percent instead of 5 percent as in the case of ordinary automobiles. This ruling was made retroactive, and the American-La France Fire Engine Co. was informed that they must now pay excise taxes at the rate of 3 percent with respect to all sales, whether made to a city, county, State, person, or corporation, and with respect to every kind of fire-fighting apparatus, including pumping engines.

The foregoing shows the confused condition in the Treasury Department relating to the collection of excise taxes on fire-fighting apparatus.

This ruling, to wit, articles 11, 12, and 13 of Regulations 47, very seriously affected the finances of all manufacturers of fire-fighting apparatus. The Internal Revenue Bureau, using the ruling as authority, suddenly called for excise taxes now claimed to be due for previous years and months and for periods of time when according to Internal Revenue Bureau rulings no taxes were due, and with respect to certain kinds of fire-fighting apparatus, which had not heretofore been taxed. Moreover, this ruling came in a period of great depression and it was very hard to raise money. The result was that some of the smaller manufacturers of fire-fighting apparatus were forced to the wall.

The American-LaFrance Fire Engine Co. was suddenly called upon to pay approximately $340,000 of alleged back excise taxes when all the time it had been trying to observe Treasury rulings, and it found itself in a very distressing situation. It was only by the curtailment of expenses, the rapid cutting down of inventories, and by resorting very largely to the point of exhaustion of its credit at the banks that the American-LaFrance Fire Engine Co. was able to pay these alleged taxes, which afterward the United States courts held to be illegally collected.

Each time a tax was paid by the American-LaFrance Fire Engine Co. it protested the tax under oath upon the ground that fire-fighting apparatus could not be regarded as automobiles, and that it was not the intention of Congress to include fire-fighting apparatus when it provided for the excise tax upon automobiles, automobile trucks, and automobile accessories.

Thereupon the American-LaFrance Fire Engine Co. brought a suit in the circuit court of the United States, western district of New York, to recover sums paid as excise taxes during three of the preceding months. The suit was carried to the circuit court of appeals, second circuit, and by decision no. 159 decided April 6, 1925, the circuit court of appeals held that fire-fighting apparatus could not be classed as automobiles or automobile trucks within the meaning of any of the excise tax laws previously enacted; and that Congress did not intend to tax fire-fighting apparatus since fire-fighting apparatus was used solely for the purpose of extinguishing fires and that such apparatus was purchased almost entirely by municipalities or for State purposes.

Thereupon the Treasury Department accepted the above-mentioned decision of the circuit court of appeals, second circuit, and proceeded to make refunds with respect to claims filed by the American-LaFrance Fire Engine Co. and other fire-engine companies covering taxes paid by them.

Due to the confusion explained above, which necessarily resulted from the action of the Government in promulgating retroactive, conflicting, and inconsistent rulings with respect to fire-fighting apparatus, the American-LaFrance Fire Engine Co. was about 15 days too late in filing refund claims with respect to certain payments of approximately $150,000 made in 1920, and as these claims were not filed within the period of limitation then existing, the Government refused to return to the American-LaFrance Fire Engine Co. approximately $150,000 of the sums which the Government had erroneously and illegally collected despite the protests duly and emphatically made. It is submitted, therefore, that since the Government illegally collected the above moneys, when no part of it was due or owing, that in all fairness provision should now be made for the return to the American-LaFrance Fire Engine Co. of the sums to which it is entitled.

Due to the existing depression, employment at the factory of the American-LaFrance & Foamite Corporation is low. The company is anxious to return more men to the pay rolls. For the 9 months ending September 1930 the company suffered a deficit of $116,000. By passing Senate bill 4260 help would be given, at a needed time, to a worthy corporation anxious to do its part in restoring business conditions to normal.

The following is a letter from the Treasury Department with reference to the case:

TREASURY DEPARTMENT,
Washington, February 17, 1934.

Hon. PAT HARRISON,
Chairman Committee on Finance, United States Senate.

MY DEAR MR. CHAIRMAN: Reference is made to your communication of January 11, 1934, requesting a report of the Treasury Department on bill S. 2156 now pending before your committee for the relief of the American-La France and Foamite Corporation of New York.

You are advised that bill S. 2156 is in all respects similar to bill S. 4342 introduced in the Senate on May 3, 1928 (70th Cong., 1st sess.), bill S. 4260 introduced in the Senate on April 21, 1930 (71st Cong., 2d sess.), and bill S. 1717 introduced in the Senate on December 14, 1931 (72d Cong., 1st sess.), concerning which the Treasury Department has rendered reports to your committee.

The case is this: Under section 600 (a) of the Revenue Act of 1917 and section 900 (a) of the Revenue Act of 1918, the sale of an automobile truck or automobile wagon by the manufacturer, producer, or importer thereof was subject to a tax amounting to 3 percent of his selling price. In its regulations interpreting the law the Bureau of Internal Revenue took the position that automotive hook and ladder trucks, hose carts, and certain self-propelled fire engines were taxable as automobile trucks. This position was sustained under date of November 3, 1923, by the United States District Court for the Western District of New York, but was reversed by the decision of the United States circuit court of appeals for the second circuit rendered March 7, 1925. No appeal was taken from the decision of the circuit court of appeals, and the Bureau of Internal Revenue amended its regulations and refunded to the American-La France Fire Engine Co. more than $1,000,000 which had been paid as tax on sales of fire apparatus. However, payments totaling $154,402.83 had been made more than 4 years prior to the date the company filed claims for their refund, and this sum was, therefore, rejected as being barred by the statute of limitations imposed by section 1012, Revenue Act of 1924.

With respect to the merits of this bill, it would appear the amount referred to above was erroneously paid on nontaxable sales. However, the delay in filing claims for refund was apparently due to the company's oversight or neglect, since it had protested the correctness of the Bureau's position from the beginning but did not file claim for refund of the above amount until December 29, 1924, which was some time after the decision had been rendered by the United States District Court in the suit brought for later payments. If the bill were enacted into law, a precedent would be established for numerous cases of a like nature. The effect of such precedent will be that, although a taxpayer does not protect his interests by filing claim within the statutory period, Congress will, by legislative enactment, reimburse him for the loss occasioned through such failure.

It has been the policy of Congress to include in the revenue acts limitation provisions by the operation of which after a certain period of time it becomes impossible for the Government to assert additional liabilities, or for the taxpayer to assert a claim for a refund. It not infrequently happens that a taxpayer finds himself barred by the operation of the statute of limitations from securing a refund of an amount of tax paid in excess of what was due. In such cases the taxpayer often feels that he is entitled to get back the amount overpaid notwithstanding that the statute of limitations has run, and bills are often introduced into Congress seeking such relief. The ground for relief asserted in such cases is always that the amount of tax was in fact overpaid, and that it is unjust for the Government to retain the money. The considered answer of this Department has invariably been that to grant relief in such cases would be contrary to the policy of the statute of limitations, and would open the door to relief in all cases where the statute operated to the prejudice of a particular taxpayer, while leaving the door closed to the Government in those cases in which the statute operated to the disadvantage of the Government in a particular case. The position which this Department has taken, and which Congress has sanctioned, is that it was sound to have statutes of limitation, and that the policy upon which statutes are based must be adhered to, notwithstanding hardship in particular cases.

For these reasons the Treasury Department must adhere to its opposition to the passage of the bill S. 2156.

In the event that further correspondence relative to this matter is necessary please refer to MT:ST:RWJ.

Very truly yours,

STEPHEN B. GIBBONS,
Acting Secretary.

It should be noted that on three former occasions the bill for the relief of this claimant has been reported favorably, twice from the House Committee on Claims and once from this committee. (See H.Rept. 743, 72d Cong., 1st sess.; H.Rept. 738, 73d Cong., 2d sess.; and S.Rept. 1666, 71st Cong., 3d sess.)

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