

AMENDING THE INTERNAL REVENUE CODE OF 1939 WITH RESPECT
TO THE PERIOD OF LIMITATION FOR FILING CLAIMS BY CER-
TAIN TRANSFEREES AND FIDUCIARIES FOR CREDIT OR REFUND
OF INCOME TAXES

JANUARY 12, 1956.—Ordered to be printed

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

R E P O R T

[To accompany H. R. 5428]

The Committee on Finance, to whom was referred the bill (H. R. 5428) to amend the Internal Revenue Code of 1954 to provide that chapter 71 relative to transferees and fiduciaries shall apply with respect to any tax imposed by the Internal Revenue Code of 1939, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this action, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

PURPOSE OF BILL

The bill as reported amends the Internal Revenue Code of 1939 to provide that an agreement extending the period within which the liability of a transferee or fiduciary with respect to income taxes may be assessed also extends the period with respect to credit or refund of such liability. This amendment is to be effective in all circumstances in which it would be effective if it had been enacted on August 17, 1954, with respect to income taxes imposed under the 1939 code.

REASONS FOR BILL

Under section 311 of the 1939 code, the period of limitations for assessment of an income-tax liability of a transferee or fiduciary could be extended by an agreement between such transferee or fiduciary and the Commissioner of Internal Revenue. However, this agreement did not extend parity of treatment by granting an extension of the time for the filing of a claim for credit or refund of income tax by the transferee or fiduciary in most cases. This inequity was remedied in the 1954 code with respect to the liability of a transferee or fiduciary

but only in the case of taxes imposed by that code. The bill would grant similar treatment to a transferee or fiduciary with respect to income taxes imposed by the 1939 code, as if it had been enacted on August 17, 1954.

EXPLANATION OF BILL

The bill as reported provides that an agreement (and any extension of the agreement) between the Commissioner of Internal Revenue and a transferee or fiduciary extending the period for assessment of income-tax liability of the transferee or fiduciary is to be considered as an agreement and an extension of time for filing a claim for (or allowing or making) a credit or refund in the manner, and to the extent, provided for taxpayers in general by section 322 (b) (3) of the 1939 code. The agreement is made applicable to the periods prescribed in section 322 (b) (3) for the filing of a claim for credit or refund (or for the allowance of credit or making refund where no claim is filed) with respect to overpayments made by the transferee or fiduciary and also with respect to overpayments made by a transferor to which the transferee or fiduciary is legally entitled.

In the case of such an agreement, section 322 (b) (3) limits the amount of any credit or refund to the amount of tax paid within a period of time specified in the section. Where the agreement is made after the period of time for assessment against the taxpayer has expired, the periods prescribed under section 322 (b) (3), relating to the limitation on the amount of credit or refund which may be made, are also increased by the period of time which elapsed between the date of expiration of the period for assessment against the taxpayer and the date of the agreement.

This is the same treatment as is provided under the 1954 code.

As amended by your committee, the period for credit or refund is extended only as to the liability of a transferee or fiduciary with respect to income taxes.

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 are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1939

* * * * *

SEC. 311. TRANSFERRED ASSETS.

* * * * *

(b) **PERIOD OF LIMITATION.**—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the taxpayer;

(2) In the case of the liability of a transferee of a transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three years after the expiration of the period of limitation for assessment against the taxpayer;—

except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively,—then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.

(3) In the case of the liability of a fiduciary,—not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later;

(4) (A) Where before the expiration of the time prescribed in paragraph (1), (2), or (3) for the assessment of the liability, both the Commissioner and the transferee or fiduciary have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

“(B) For the purpose of determining the period of limitation on credit or refund to the transferee or fiduciary of—

“(i) overpayments of tax made by such transferee or fiduciary, or

“(ii) overpayments of tax made by the transferor of which the transferee or fiduciary is legally entitled to credit or refund.

the agreement referred to in subparagraph (A) and any extension thereof shall be deemed an agreement and extension thereof referred to in section 322 (b) (3).

“(C) If the agreement referred to in subparagraph (A) is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee or fiduciary arises, then, in applying the limitations under section 322 (b) (3) on the amount of the credit or refund, the periods specified in section 322 (b) (3) shall be increased by the period from the date of such expiration to the date of the agreement.”

