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{ REPORT
{ No. 1219

AMENDMENT TO THE TRADING WITH THE ENEMY ACT, AS AMENDED

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

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

REPORT

[To accompany S. 852]

The Committee on Finance, to whom was referred the bill (S. 852) to amend section 24 of the Trading with the Enemy Act, as amended, having considered the same, report favorably thereon, and as so amended recommend that the bill do pass.

The committee amendment strikes out "internal-revenue" in line 8 and inserts in lieu thereof "income, war-profits, or excess-profits".

It will be shown by the following letters from the General Counsel of the Alien Property Custodian and the Secretary of the Treasury that there is no question as to the merit of the claims and the duty of the Government to correct its admitted errors:

ALIEN PROPERTY CUSTODIAN,
Washington, May 26, 1934.

Hon. PAT HARRISON,
United States Senator, Washington, D.C.

MY DEAR SENATOR HARRISON: Answering your letter of this date enclosing copy of S. 852, a bill to amend section 24 of the Trading with the Enemy Act, as amended, you will please be advised that it is the opinion of this office, heretofore expressed to the Chairman of the Committee on Ways and Means, House of Representatives, that the amendment is entitled to favorable consideration.

As stated, however, in a supplemental letter written to the Chairman of the Committee on Ways and Means on March 8, 1934, it is the understanding of this office that the proposed amendment may not in any way be construed as affecting the provisions of section 18 of the Settlement of War Claims Act of March 10, 1928, which provides that no interest shall be credited or paid in respect of any such credit or refund as is provided for in the proposed amendment.

While the Custodian sees no objection to permitting the 48 taxpayers to be allowed refund in the principal amount of such refund, it is the opinion of this office that no interest should be allowed on these or any other refunds to enemies.

Thanking you for your reference of the bill to this office for its opinion and recommendation, I am,

Respectfully yours,

J. J. GREENLEAF, *General Counsel.*

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TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 3, 1933.

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

MY DEAR MR. CHAIRMAN: I have your letter of March 29, 1933, requesting an expression of the views of this Department on S. 852, a bill to amend section 24 of the Trading with the Enemy Act, as amended.

The bill would amend the Trading with the Enemy Act so as to authorize the making or allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected if claim was filed with the Commissioner of Internal Revenue by the Alien Property Custodian on or before February 15, 1933.

This Department has no objection to offer to the enactment of the bill, provided the amendment be limited to the "credit or refund of any income, war-profits, or excess-profits tax erroneously or illegally assessed or collected" and not be allowed to extend to the "credit or refund of any internal-revenue tax erroneously or illegally assessed or collected." Strong equities exist for extending the period of limitation for filing claim for credit or refund in the case of income and profits taxes, since the taxpayer whose property was seized by the Alien Property Custodian had no way of knowing that income or profits taxes had been paid by the Alien Property Custodian and had no opportunity of protecting his rights against the running of the statute of limitations. This is not true, however, as to internal-revenue taxes generally, and for that reason it is believed that there should be no statutory extension of the period of limitation except in the case of income and profits taxes.

Very truly yours,

W. H. WOODIN,
Secretary of the Treasury.

The following excerpts from the report of the Committee on Ways and Means of the House of Representatives (H.Rept. No. 1720, 73d Cong., 2d sess.) on H.R. 4798, similar to the bill reported by your committee, explains the purpose and effect of the proposed legislation:

The bill as amended merely extends the period of limitations with respect to claims filed with the Commissioner of Internal Revenue by the Alien Property Custodian on or before February 15, 1933, for refund or credit of income, war-profits, or excess-profits taxes erroneously or illegally assessed or collected by the Commissioner of Internal Revenue out of property seized by the Alien Property Custodian. It limits the extension to some 52 claims which the Alien Property Custodian has heretofore considered to be just and for which refund has been sought by him.

It may be stated briefly that these claims are based on the erroneous determination of ownership of seized property by the Alien Property Custodian, that is property that stood in the name of other than the actual owners. The Commissioner of Internal Revenue, after seizure by the Alien Property Custodian, examined the records of the Alien Property Custodian and took his determination of ownership as a basis of determining the taxpayer and the taxes were accordingly computed, levy made upon the Custodian and paid. In the case of German, Austrian, and Hungarian nationals the actual ownership of the property was not known by the Alien Property Custodian or the Commissioner of Internal Revenue until the statutes of limitations for filing claims for refund had expired as a full accounting of the property of these nationals was not authorized until March 10, 1928.

The Commissioner of Internal Revenue in computing taxes determined that certain taxpayers who were partnerships were corporations in the purview of the revenue acts, and that certain corporations, due to their title on the records of the Alien Property Custodian, were partnerships, and in some cases partnerships which were dissolved prior to seizure were determined by the Commissioner, from the records as they then stood, as corporations.

In some cases taxes were assessed against persons whom it subsequently developed were not the owners of the property, whereas the actual owners of the property proved that there was no profit or income growing out of the transactions (particularly liquidations) taking place prior and subsequent to seizure, where the Custodian either liquidated or shared in the proceeds of liquidation.

The actual taxpayer and the persons whose money was used to pay erroneous taxes could only secure a day in court by the indulgence of the Custodian, as in

the cases of Germans, Austrians, and Hungarians; they were not entitled to an accounting until the passage of the settlement of the War Claims Act of March 10, 1928. Had the Custodian known the actual ownership, the Commissioner of Internal Revenue would, undoubtedly, have collected the correct taxes, or, at least, he would have levied taxes against the proper taxpayers even though the taxes were computed improperly.

In other words, the object of this bill is to permit the correction of errors made by the Alien Property Custodian and Commissioner of Internal Revenue which have done great injustices to parties who had no right, whatsoever, to defend themselves during the time the property was in the trusteeship of the United States Government through the Alien Property Custodian and it seems reasonable to ask the Congress to permit the two Government Departments to right acts done by them premised on erroneous knowledge. To empower the correction of these errors will be giving a right and proper account of the trusteeship of the United States with respect to enemy property which cannot be done without authority of the Congress.

It is apparent from the testimony of the representatives of the Treasury Department and of the Alien Property Custodian, that the Commissioner of Internal Revenue took his determination of ownership and the nature of the owners, whether personal, partnership, or corporation, from the records of the Alien Property Custodian. The taxes were paid without the knowledge of the alien, and without possibility for him to know the amount of such tax assessment or payment. In each case the period of limitation, namely, 4 years from the payment of the tax, had run before the Alien Property Custodian or the owner of the property knew that there had been an erroneous or illegal payment of such tax. Immediately upon being properly advised, in each instance, the Alien Property Custodian filed application for credit or refund. In each instance, the application was rejected because it was filed after the expiration of the 4-year period from the payment of the tax. So, in brief, we have the illegal collection of taxes out of property seized and beyond control of its owner, and when the error of the Alien Property Custodian is discovered, the right to his day in court on behalf of the owners of the seized property is barred by technical plea of the statute of limitations.

It is the conclusion of your committee that as a matter of good faith and simple honesty, the bar of the statute of limitations should be raised for the limited number of claimants in order that they may have their day in court. It may be said that Germany did not assess or collect any taxes whatsoever upon the property owned by American nationals and seized by it. It should be stated that while the amount of the claims here involved totals \$370,215.21, this amount will be reduced by more than \$100,000 on account of taxes legally due from the rightful owners of the seized property. Failure of the claimants to prove the merits of the claims they have made will further materially reduce the amount to be credited or refunded. Further additional taxes due for later years will be assessed against these claimants and the amount thereof will be used to reduce any refunds finally made. This legislation permits a just and honest adjudication of the limited number of claims involved.

The committee amendment limits the refunds and credits to income, war-profits, and excess-profits taxes. No interest will be paid or allowed with respect to such refunds and credits for under the provisions of subsection (e) of the same section no interest is allowed in the ordinary case and these claims would have no superior privilege.

