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SENATE }

REPORT
No. 1040

ELECTION UNDER SECTION 1372 OF THE INTERNAL REVENUE CODE OF 1954 BY THE AUGUSTA FURNITURE CO., INC., OF STAUNTON, VA.

JANUARY 25 (legislative day JANUARY 22), 1960.—Ordered to be printed

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

REPORT

[To accompany S. 2779]

The Committee on Finance, to whom was referred the bill (S. 2779) relating to the election under section 1372 of the Internal Revenue Code of 1954 by the Augusta Furniture Co., Inc., of Staunton, Va., having considered the same, report favorably thereon and recommend that the bill do pass.

In the Technical Amendments Act of 1958, Congress enacted a new subchapter S, sections, 1371 through 1377, inclusive, of the Internal Revenue Code of 1954. Under these provisions, the income of a qualifying small business corporation making the appropriate election is taxed directly to the shareholders of the corporation rather than to the corporation. In addition, the net operating losses of the corporation are passed through directly to the shareholders.

The provisions of subchapter S are available only if the election to have the provisions of subchapter S apply is filed within the required time period. Generally speaking, this election is required to be made during the first month of the taxable year for which the election is to apply or at any time during the month preceding that first month. However, special rules were provided for small business corporations having a taxable year beginning after December 31, 1957, and on or before September 2, 1958, the date of enactment of subchapter S, and ending after September 2, 1958. In the case of any small business corporation having such a taxable year the election was required to be filed within the 90-day period beginning on September 3, 1958, the day after the date of the enactment of subchapter S, or if the taxable year ended within that 90-day period, before the close of that taxable year.

Regulations setting out the temporary rules applying to subchapter S were contained in Treasury Decision 6317, which was published in the Federal Register on September 26, 1958, and in the Internal Revenue Bulletin of October 13, 1958.

Mr. S. W. Sterrett, vice president of the Augusta Furniture Co., Inc. of Staunton, Va., advises that he called the Staunton, Va. office of the Internal Revenue Service and was told that the deadline for filing the election was December 2, 1958, and that any election postmarked that date was in order. (Under sec. 7502 of the 1954 code, a document, other than a tax return, is generally considered to be filed on time if it is mailed and postmarked on or before the date prescribed for filing.) Stockholders of the Augusta Furniture Co. meeting on December 1, 1958, signed forms and on December 2, 1958, mailed the election to the Internal Revenue Service at Richmond, Va. Subsequently, the company was informed by the Richmond office of the Internal Revenue Service that it was 1 day too late as the deadline for filing the election was December 1, 1958, and that its papers were postmarked December 2, 1958. Mr. Sterrett advises that the error will cost the Augusta Furniture Co. \$6,700.

Although the Commissioner of Internal Revenue is authorized by section 6081(a) of the code to grant extensions of time for the filing of certain documents which a taxpayer is required to file, that authority does not apply in the case of an election permitted under the Code which specifies the filing date. There is no authority under existing law under which the late election of the Augusta Furniture Co. could be treated as having been timely filed.

Under these circumstances it appears reasonable to your committee that relief should be given in this case in the manner set forth in S. 2779 declaring in effect that the election under the provisions of section 1372 of the Internal Revenue Code of 1954 made by the Augusta Furniture Co., Inc. of Staunton, Va. and mailed to the District Director of Internal Revenue, Richmond, Va., on December 2, 1958, shall be deemed to have been filed with such district director on December 1, 1958.

