

GASOLINE AND LUBRICATING OIL TAX CREDITS

OCTOBER 9, 1968.—Ordered to be printed

Mr. LONG of Louisiana, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 17332]

The Committee on Finance, to which was referred the bill (H.R. 17332) to amend the Internal Revenue Code of 1954 regarding credits and payments in the case of certain uses of gasoline and lubricating oil, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. SUMMARY

The committee accepted the House provision without change but has added an amendment relating to another matter. H.R. 17332 as passed by the House extends the time for claiming a credit or refund of excise tax on gasoline used on a farm, for other nonhighway purposes, and by local transit systems and of excise tax on lubricating oil used for nonhighway purposes. Generally, this bill will make the time for filing these claims similar to the time presently available for claiming other income tax credits; in most cases approximately 3¼ years after the year in which the payment is made. The bill makes several technical (conforming and clarifying) changes and also makes a corresponding change regarding transfers out of the highway trust fund on account of those refunds or credits.

The Treasury Department has indicated that it has no objections to the enactment of the provisions described above.

The amendment added by the committee changes the effective date of a provision in a bill previously passed by the House and Senate (sec. 2(b) of the act entitled "An Act to Continue for Three Years the Existing Suspension of Duties on Certain Alumina and Bauxite, and for Other Purposes"). The amendment contained here provides that the provision extending from 3 to 6 months the period in

which a refund claim can be filed for drawback of taxes on distilled spirits used in medicines, medicinal preparations, food products, flavors or flavoring extracts which are unfit for beverage purposes is to be effective January 10, 1967, instead of the date of enactment of that act.

II. GASOLINE AND LUBRICATING OIL TAX CREDITS

Reasons for change.—Present law (secs. 6420, 6421, and 6424 of the code) provides for refund or credit to the ultimate purchaser of excise tax on gasoline used on a farm, for other nonhighway purposes, and by local transit systems and of excise tax on lubricating oil used for nonhighway purposes. Most taxpayers obtain these claims by credits on their income tax returns against income tax otherwise due (as provided by sec. 39 of the code). The claim for credit, or refund, must be filed no later than the time prescribed by law for filing the income tax return.¹

This short time limit for claiming credits or refunds, basically 2½ months for corporations and 3½ months for individuals (3 months after end of quarter in the case of \$1,000 claims), is in contrast to the normal income tax procedure, where a refund can be claimed within 3 years after the return is filed. As a result, a late-filed claim is barred notwithstanding circumstances that might excuse the late filing of an income tax return on which the credit may be claimed.

The short period for claiming these credits or refunds predated the enactment of the Excise Tax Reduction Act of 1965, which added the procedure allowing a credit against income tax. For calendar year taxpayers this procedure first became effective for credits filed with 1966 income tax returns. As a result, when in 1967 taxpayers for any reason filed their income tax returns on which these credits were claimed after the due dates for those returns, they found their claims were denied no matter how reasonable the delay for filing their income tax return. The committee agrees with the House that it is confusing to taxpayers to have a shorter period for claiming these credits than the period generally applicable to the income tax returns on which the credits are usually claimed. Accordingly, this bill extends the time for claiming a credit or refund of these taxes and generally makes it consistent with the time period for claiming income tax refunds or credits.

General explanation.—The bill permits credits against income tax for payments of excise tax on gasoline used on a farm, for other nonhighway purposes, and by local transit systems and of excise tax on lubricating oil used for nonhighway purposes (sec. 39 of the code) to be claimed within the time available generally for filing income tax refund claims. In general, where a return has been timely filed, this is within 3 years after the due date for filing the income tax return on which the credit may be claimed or 39½ months after the close of the taxable year for individuals and 38½ months for corporations.² An extension of time for filing the income tax return will normally result in extending the time by which the refund claim may be filed.

¹ Claims for at least \$1,000 with respect to any of the first three quarters of the taxable year may be made within 3 months of the end of that quarter, in the case of gasoline and lubricating oil used for nonhighway purposes and gasoline used by local transit systems.

² The gasoline and lubricating oil taxes are treated as having been paid on the last day for filing the appropriate income tax return. As a result, the special 2-year rule for late-paid taxes (see sec. 6511(a) of the code) will not, as a practical matter, apply in this situation.

This change is not to affect the 3-month limit on filing claims for refunds of \$1,000 or more which may be made quarterly during the calendar year in which the excise tax payment is made. Other claims for gasoline or lubricating oil excise tax refunds (under secs. 6420, 6421, or 6424) made by governmental bodies and exempt organizations (which ordinarily do not file income tax returns on which these excise credits may be taken) may be filed within 39 months after the end of the taxable year, instead of 3 months after the end of the year as at present. This will make the filing of full-year claims (but not the quarterly claims) for refunds or credits (under secs. 6420, 6421, and 6424) similar to the new rule for claims for credits against income tax (under sec. 39).

Under the bill credits against income tax for gasoline or lubricating oil tax (sec. 39) are to give rise to interest on overpayments as in the case of other income tax credits. On the other hand, credits or refunds under the excise tax provisions (secs. 6420, 6421, and 6424) for the gasoline or lubricating oil taxes, as in the case of other excise taxes (and as under present law), are made without interest being paid to the taxpayer.

A technical amendment included in the bill (sec. 6513(b)(4)) provides that the amount allowable as a credit against income tax for the gasoline and lubricating oil taxes is to be considered as having been paid by the taxpayer on the due date of the income tax return. This is provided in order to give assurance of the same period of limitations for the credits against income tax for these two excise taxes as is available generally for other credits claimed on income tax returns.

The longer period for claiming credits or refunds of the gasoline or lubricating oil taxes provided by this bill applies to gasoline used after June 30, 1965, and lubricating oil placed in service after December 31, 1965. These are essentially the same effective dates as were provided by the 1965 act for the procedure which permitted these overpayments of excise tax to be claimed as credits on income tax returns.

The bill also makes a technical change in the Highway Revenue Act of 1956. This act authorizes transfers out of the highway trust fund on account of refunds or credits made with respect to the gasoline tax because of use on a farm, for nonhighway purposes, or by a local transit system (secs. 6420 and 6421) but only if the payments are made before July 1, 1973 (since the program for which the fund was established is scheduled to be completed by September 30, 1972). The Excise Tax Reduction Act of 1965, which covered revenues from the tax on lubricating oil into the highway trust fund to the extent used in highway motor vehicles, treated claims for refunds or credit of this tax (under sec. 6424) in the same manner as the gasoline tax claims (under secs. 6420 and 6421). However, payments out of the highway trust fund with respect to credits claimed on income tax returns (sec. 39) for either the gasoline or lubricating oil taxes under the 1965 act were not limited as to the time during which transfers out of the highway trust fund could be made.

The bill strikes out the present July 1, 1973, deadline for transferring funds from the highway trust fund on account of refunds or credits under sections 6420, 6421, and 6424 of the code, making that provision essentially the same as the one dealing with transfers out of the high-

way trust fund on account of the allowance of credits under section 39 of the code.

III. EFFECTIVE DATE OF PROVISION FOR FILING DRAWBACK CLAIM ON DISTILLED SPIRITS TAXES

In the bill, H.R. 7735, passed by the Senate earlier this year, an amendment was added to permit claims for drawbacks of taxes on distilled spirits used in the production of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes to be filed within 6 months after the calendar quarter in which the spirits are so used rather than within 3 months after the spirits are so used as previously was provided. This provision as passed by the Senate was effective for all claims filed after the beginning of the current Congress; namely January 10, 1967. In the conference on the bill in question the House conferees agreed that the 3-month period for filing drawback claims was too short and that 6 months should be allowed instead. However, they agreed that this change be made only in the case of distilled spirits so used on or after the enactment of that act.

In general, the conferees on the part of the House were objecting to a retroactive date in the case of the Senate provision. However, in the case of problems arising in connection with statutes of limitation it is virtually impossible for the Congress to act to relieve discriminatory situations until after the statute has run with respect to taxpayers. While the committee generally does not recommend legislation with a retroactive effective date, nevertheless instances such as those involving statutes of limitation sometimes necessitate retroactive dates if relief is to be given to those who called the problem to the attention of the Congress. This was true, for example, in the case of the provision described above and passed by the House applying to refund claims of farmers and others for gasoline and lubricating oil taxes. The amendment added in this bill, while applying to an earlier year, does not predate the beginning of the current Congress.

IV. 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, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Internal Revenue Code of 1954

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SEC. 39. CERTAIN USES OF GASOLINE AND LUBRICATING OIL.

(a) **GENERAL RULE.**—There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

(1) under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes (determined without regard to section 6420(h)),

(2) under section 6421 with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service (determined without regard to section 6421(i)), and

(3) under section 6424 with respect to lubricating oil used during the taxable year otherwise than in a highway motor vehicle (determined without regard to section 6424(g)).

(b) **TRANSITIONAL RULE.**—For purposes of paragraphs (1) and (2) of subsection (a), a taxpayer's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year. For purposes of paragraph (3) of subsection (a), a taxpayer's first taxable year beginning after December 31, 1965, shall include the period after December 31, 1965, and before the beginning of such first taxable year.

(c) **EXCEPTION.**—Credit shall not be allowed under subsection (a) for any amount payable under section ~~6421~~ 6421(c) or ~~6424,~~ 6424(b) if a claim for such amount is timely filed ~~],~~ and under section 6421(i) or 6424(g) is payable, under such section~~].~~

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SEC. 6420. GASOLINE USED ON FARMS.

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[(b) TIME FOR FILING CLAIM; PERIOD COVERED.—

[(1) GASOLINE USED BEFORE JULY 1, 1965.—Except as provided in paragraph (2), not more than one claim may be filed under this section by any person with respect to gasoline used during the one-year period ending on June 30 of any year. No claim shall be allowed under this paragraph with respect to any one-year period unless filed on or before September 30 of the year in which such one-year period ends.

[(2) GASOLINE USED AFTER JUNE 30, 1965.—In the case of gasoline used after June 30, 1965—

[(A) not more than one claim may be filed under this section by any person with respect to gasoline used during his taxable year; and

[(B) no claim shall be allowed under this section with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing an income tax return for such taxable year.

For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year.]

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(h) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

(1) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under subsection (a) with respect to gasoline used after June 30, 1965, only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

[(2) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

For allowance of credit against the tax imposed by subtitle A for gasoline used after June 30, 1965, see section 39.]

(2) LIMITATIONS.—*In the case of a person described in paragraph (1)—*

(A) not more than one claim may be filed under this section with respect to gasoline used during its taxable year, and

(B) no claim may be filed after the close of the 39th month which begins after the close of such taxable year.

(3) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

For allowance of credit against the tax imposed by subtitle A for gasoline used on a farm for farming purposes, see section 39.

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SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.

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[(c) TIME FOR FILING CLAIMS; PERIOD COVERED.—

[(1) GASOLINE USER BEFORE JULY 1, 1965.—Except as provided in paragraphs (2) and (3), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during the one-year period ending on June 30 of any year. No claim shall be allowed under this paragraph with respect to any one-year period unless filed on or before September 30 of the year in which such one-year period ends.

[(2) EXCEPTION.—Except as provided in paragraph (3), if \$1,000 or more is payable under this section to any person with respect to gasoline used during a calendar quarter, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed.

[(3) GASOLINE USED AFTER JUNE 30, 1965.—

[(A) IN GENERAL.—In the case of gasoline used after June 30, 1965—

(i) except as provided in subparagraph (B), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during his taxable year; and

(ii) no claim shall be allowed under this subparagraph with respect to gasoline used during any taxable year

unless filed by such person not later than the time prescribed by law for filing an income tax return for such taxable year.

For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year.

[(B) EXCEPTION.—If \$1,000 or more is payable under this section to any person with respect to gasoline used during any of the first three quarters of his taxable year, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this subparagraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.**]**

(c) QUARTERLY CLAIMS.—If \$1,000 or more is payable under this section to any person with respect to gasoline used during any of the first 3 quarters of his taxable year, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this subsection shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

(i) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

(1) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under subsections (a) and (b) with respect to gasoline used after June 30, 1965, only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

[(2) EXCEPTION.—Paragraph (1) shall not apply to a payment of a claim filed under subsection (c)(3)(B).**]**

[(3) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

[For allowance of credit against the tax imposed by subtitle A for gasoline used after June 30, 1965, see section 39.**]**

(2) EXCEPTION FOR QUARTERLY CLAIMS.—Paragraph (1) shall not apply to a payment of a claim filed under subsection (c).

(3) LIMITATIONS.—In the case of a person described in paragraph (1)—

(A) not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), with respect to gasoline used by such person during its taxable year, and

(B) no claim may be filed after the close of the 39th month which begins after the close of such taxable year.

For purposes of subparagraph (A), any claim filed under subsection (c) shall not be taken into account.

(4) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

For allowance of credit against the tax imposed by subtitle A for gasoline used as provided in this section, see section 39.

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SEC. 6424. LUBRICATING OIL NOT USED IN HIGHWAY MOTOR VEHICLES.

(a) PAYMENTS.—Except as provided in subsection (g), if lubricating oil (other than cutting oils, as defined in section 4092(b), and other than oil which has previously been used) is used otherwise than in a highway motor vehicle, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such lubricating oil an amount equal to 6 cents for each gallon of lubricating oil so used.

[(b) TIME FOR FILING CLAIMS; PERIOD COVERED.—

[(1) GENERAL RULE.—Except as provided in paragraph (2), not more than one claim may be filed under subsection (a) by any person with respect to lubricating oil used during his taxable year. No claim shall be allowed under this paragraph with respect to lubricating oil used during any taxable year unless filed by such person not later than the time prescribed by law for filing an income tax return for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after December 31, 1965, shall include the period after December 31, 1965, and before the beginning of such first taxable year.

[(2) EXCEPTION.—If \$1,000 or more is payable under this section to any person with respect to lubricating oil used during any of the first three quarters of his taxable year, a claim may be filed under this section by such person with respect to lubricating oil used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.]

(b) QUARTERLY CLAIMS.—*If \$1,000 or more is payable under this section to any person with respect to lubricating oil used during any of the first 3 quarters of his taxable year, a claim may be filed under this section by such person with respect to lubricating oil used during such quarter. No claim filed under this subsection shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.*

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(g) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

(1) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under subsection (a) only to—

(A) the United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

[(2) EXCEPTION.—Paragraph (1) shall not apply to a payment of a claim filed under subsection (b)(2).

(3) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

[For allowance of credit against the tax imposed by subtitle A for lubricating oil used, see section 39.]

(2) EXCEPTION FOR QUARTERLY CLAIMS.—Paragraph (1) shall not apply to a payment of a claim filed under subsection (b).

(3) LIMITATIONS.—In the case of a person described in paragraph (1)—

(A) not more than one claim may be filed under subsection

(a) with respect to lubricating oil used by such person during its taxable year, and

(B) no claim may be filed after the close of the 30th month which begins after the close of such taxable year.

For purposes of subparagraph (A), any claim filed under subsection (b) shall not be taken into account.

(4) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

For allowance of credit against the tax imposed by subtitle A for lubricating oil used as provided in this section, see section 39.

SEC. 6513. TIME RETURN DEEMED FILED AND TAX CONSIDERED PAID.

(a) EARLY RETURN OR ADVANCE PAYMENT OF TAX.—For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

(b) PREPAID INCOME TAX.—For purposes of section 6511 or 6512—

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(3) Any tax withheld at the source under chapter 3 shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing the return under section 6012 for the taxable year (determined without regard to any extension of time for filing) with respect to which such tax is allowable as a credit under section 1462. For this purpose, any exemption granted under section 6012 from the requirement of filing a return shall be disregarded.

(4) The amount allowable as a credit under section 39 for any taxable year shall be deemed to be allowable on account of a payment of tax

on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

Section 209 of the Highway Revenue Act of 1956

SEC. 209. HIGHWAY TRUST FUND.

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(f) EXPENDITURES FROM TRUST FUND.—

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(3) TRANSFERS FROM TRUST FUND FOR GASOLINE USED ON FARMS AND FOR CERTAIN OTHER PURPOSES.—The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid [before July 1, 1973,] under sections 6420 (relating to amounts paid in respect of gasoline used on farms) and 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems) of the Internal Revenue Code of 1954 on the basis of claims filed for periods beginning after June 30, 1956, and ending before July 1, 1972.

AN ACT To continue for three years the existing suspension of duties on certain alumina and bauxite and for other purposes (H.R. 7735, 90th Congress)

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SEC. 2. (a) Section 5134(b) of the Internal Revenue Code of 1954 (relating to claims for drawback of distilled spirits taxes on account of certain nonbeverage uses) is amended by striking out in the last sentence thereof "3 months" and inserting in lieu thereof "6 months".

(b) The amendment made by subsection (a) shall apply with respect to claims filed on or after [the date of the enactment of this Act].
January 10, 1967.

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