

## INTEREST ON INCOME TAX REFUNDS AND QUICK RE- FUNDS OF INVESTMENT CREDIT CARRYBACKS

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

### R E P O R T

[To accompany H. R. 11660]

The Committee on Finance, to which was referred the bill (H. R. 11660) relating to interest on income tax refunds made within 45 days after the filing of the tax return, and for other purposes, having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

#### I. SUMMARY

H. R. 11660 makes two changes in the tax laws: First it amends present law to provide that no interest is to be paid with respect to the refund of an overpayment of income tax if the refund is made within 45 days after the date the return is actually filed. This will supplement present law which already provides that no interest is to be paid with respect to a refund made within 45 days after the last date prescribed for the filing of a tax return.

Second, the bill amends present law to extend to taxpayers with an investment credit carryback the quick refund procedure presently available to taxpayers with a net operating loss carryback. Under this provision, a taxpayer is to be permitted to file an application for a quick refund of tax to the extent he can use a carryback of the investment credit in any of the 3 prior years. The application, which must be filed within the year following the year in which the unused credit arises (or by December 31, 1966, if later), must be acted upon by the Internal Revenue Service within 90 days. An amendment related to this provision also provides that if a quick refund is made by reason of the carryback of either a net operating loss or an unused investment credit, a deficiency (to the extent of the refund) may be assessed

for the years to which the carryback applies for 3 years from the date the return is filed for the year in which the carryback arises.

The Treasury Department recommended the first of these provisions and does not object to the second.

## II. INCOME TAX REFUNDS MADE WITHIN 45 DAYS AFTER RETURN IS FILED

Under present law (sec. 6611), interest charges computed at the rate of 6 percent per annum are paid with respect to an overpayment of income tax not refunded within 45 days after the due date for filing the return. This is true even though the return is filed late—in some cases even more than 45 days late.

In the course of a review of the interest paid on certain tax refunds during the calendar years 1962 and 1963, the General Accounting Office concluded that this interest provision led to the payment of excessive interest in certain cases. This conclusion was reported to the Congress by the Comptroller General on May 25, 1965, in a report entitled "Excessive Interest Costs Incurred on Certain Tax Refunds." In the report the Comptroller General pointed out that excessive interest costs arise if—

(1) The taxpayer delays filing his tax return until such time as it become impossible for the Internal Revenue Service to refund any overpayment of tax within 45 days of the prescribed due date of the return (no civil penalty is provided in the case of such delay unless tax is due), or

(2) The taxpayer is granted an extension of time for filing his return which again makes it impossible for the Internal Revenue Service to refund an overpayment of tax within 45 days of the prescribed due date of the return. The Comptroller General recommended that the law be amended to correct this situation.

Like the Committee on Ways and Means of the house, the Committee on Finance agrees with the Comptroller General's conclusion. As a result, this bill provides that no interest is to be paid on a refund of an overpayment of income taxes, not only if the refund is made within 45 days of the prescribed due date of the return (as provided by present law) but also—where the return is filed after the due date—if the refund is made within 45 days after the return is filed. Where taxpayers delay filing their returns until after the due date, or if an extension of time for filing the return is granted, interest will not be paid on a refund of an overpayment unless the refund is made more than 45 days after the return actually is filed.

This amendment is to be effective with respect to refunds made more than 45 days after the date of enactment of this bill.

In the fiscal year 1965, the Internal Revenue Service paid interest amounting to \$77,419,000 as a result of refunds of tax. A portion of this cost will be saved in the future as a result of this bill.

### III. QUICK REFUNDS OF INCOME TAX ATTRIBUTABLE TO INVESTMENT CARRYBACK

Under normal administrative procedures, the refund of tax resulting from a carryback of either a net operating loss or an unused investment credit cannot usually be made until a considerable period of time has elapsed after the close of the taxable year in which the carryback arises.

A special procedure (sec. 6411) exists in the case of a net operating loss, however, which enables the taxpayer to apply for a quick refund based on a tentative carryback adjustment. The application for the carryback refund must be filed within the year following the year of the loss, but only after the return for the loss year is filed. This application must be acted upon by the Internal Revenue Service within 90 days after the application is filed, or within 90 days from the last day in the month the return for the loss year is due (including any extension of time granted the taxpayer), whichever is later. The application for a quick refund may be refused if in the judgment of the Secretary of the Treasury or his delegate it contains errors of computation which cannot be corrected within the 90-day period or if there are material omissions. Otherwise, the tax reduction resulting from the carryback is credited against unpaid taxes or refunded. No similar procedure is currently available for a quick refund of tax resulting from an investment credit carryback.

The provisions regarding the carryback and carryforward of unused investment credits are similar in essential respects to those regarding the carryback and carryforward of net operating losses. Moreover, in a business firm with a substantial unused investment credit may have as urgent a need for a prompt refund of tax as a firm with a net operating loss, since, generally speaking, unused investment credits are generated when the amount of investment in qualified property is large relative to business taxable income. Your committee therefore concluded, as did the House, that the provision for quick refunds, now available to taxpayers with net operating losses, should also be made available to taxpayers with unused investment credits.

As a result, the bill amends existing law (sec. 6411) to permit taxpayers to file application for a tentative carryback adjustment if the tax of a prior taxable year is affected by an investment credit carryback as well as by a net operating loss. The manner and time of filing, and all other aspects of the application, are to be governed by the existing provisions regarding application for quick refunds attributable to a net operating loss carryback.

This provision relating to investment credit carrybacks is to apply with respect to taxable years ending after December 31, 1961. Applications for refunds must be filed after the date of enactment of this bill. If the period for filing an application for an earlier year would expire before December 31, 1966, the period for filing the application is not to expire before December 31, 1966.

The transitional revenue loss due to the earlier payment of refunds attributable to investment credit carrybacks as provided by this bill will be minimal.

In its examination of the quick refund provision (sec. 6411) in connection with the study of the possible extension of the provision to investment credit carrybacks, the committee was apprised of a problem with this provision under existing law.

The Service's authority to assess additional taxes where there is a deficiency is circumscribed by the general rule (sec. 6501) that a tax must be assessed within 3 years after the date the return is filed, with certain exceptions of limited application.

Provision for quick refunds can, of course, result in the payment of larger refunds than would be paid if the Internal Revenue Service had more time to review the claim. Once refunded, in some instances, because of the 3-year limitation referred to above, these amounts cannot be recovered through deficiency procedures, except to the extent the deficiency is attributable to the carryback. Any amount erroneously refunded which is not attributable to the carryback may be recovered, however, by a suit to recover an erroneous refund.

To deal with the situation described above, the bill extends the period for assessing a deficiency when a quick refund has been made because of a carryback of either a net operating loss or an unused investment credit, even though the deficiency is not attributable to the carryback. Under this provision, a deficiency for a year, with respect to which a quick refund was made because of a tentative carryback, may be assessed at any time up to 3 years after the return is filed for the taxable year in which the carryback arose (provided this period is not further extended by other provisions of sec. 6501; i.e., where there was fraud involved, etc.). However, in such a case the deficiency assessment which may be made as the result of this provision cannot exceed the amount of the quick refund. (The deficiency assessment made as a result of this provision cannot exceed the amount of the original refund reduced by any deficiency attributable to the carryback.)

This amendment is to apply in the case of any application for a quick refund attributable to the carryback of a net operating loss, or an unused investment credit, made after the date of enactment of this bill.

### 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

##### SEC. 6411. TENTATIVE CARRYBACK ADJUSTMENTS.

(a) APPLICATION FOR ADJUSTMENT.—A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback [ ] provided in section 172(b), or by an investment credit carryback provided in section 46(b), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss or unused investment credit from which the carryback results and within a period of 12 months from the end of such taxable year, in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss or *unused investment credit*;

(2) The amount of the tax previously determined for the prior taxable year affected by such carryback, the tax previously determined being ascertained in accordance with the method prescribed in section 1314(a);

(3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The unpaid amount of such tax, not including any amount required to be shown under paragraph (5);

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year [of such loss] *from which the carryback is made*, as to which an extension of time for payment under section 6164 is in effect; and

(6) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations. An application under this subsection shall not constitute a claim for credit or refund.

(b) ALLOWANCE OF ADJUSTMENTS.—Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), for from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss or *unused investment credit* from which such carryback results, whichever is the later, the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary or his delegate may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss or *unused investment credit* the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) CONSOLIDATED RETURNS.—If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss or *unused investment credit* arises, or for the preceding taxable year affected by such loss or *credit*, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

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**SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.**

(n) **GENERAL RULE.**—Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

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(h) **NET OPERATING LOSS CARRYBACKS.**—In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss which results in such carryback may be assessed, or within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to such taxable year) issued under section 317 of the Trade Expansion Act of 1962, whichever is later.

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(j) **INVESTMENT CREDIT CARRYBACKS.**—In the case of a deficiency attributable to the application to the taxpayer of an investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed.

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(m) **TENTATIVE CARRYBACK ADJUSTMENT ASSESSMENT PERIOD.**—*In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback adjustments) by reason of a net operating loss carryback or an investment credit carryback to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.*

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SEC. 6611. INTEREST ON OVERPAYMENTS.

[Sec. 6611(a)]

(a) RATE.—Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 percent per annum.

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(e) INCOME TAX REFUND WITHIN 45 DAYS [OF DUE DATE OF TAX] AFTER RETURN IS FILED.—If any overpayment of tax imposed by subtitle A is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

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