

## MARLIN-ROCKWELL CORP.

MAY 24, 1945.—Ordered to be printed

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

### REPORT

[To accompany H. R. 1044]

The Committee on Finance, to whom was referred the bill (H. R. 1044) for the relief of Marlin-Rockwell Corp., with respect to the jurisdiction of The Tax Court of the United States to redetermine its excessive profits for its fiscal year ending December 31, 1942, subject to renegotiation under the Renegotiation Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### GENERAL STATEMENT

The bill provides for an extension to and including July 27, 1944, of the time within which a petition may be filed with The Tax Court of the United States by Marlin-Rockwell Corp., a corporation organized under the laws of Delaware, having its principal place of business in Jamestown, N. Y., for a redetermination under the Renegotiation Act of its excessive profits for its fiscal year ending December 31, 1942, as determined by the Under Secretary of War under date of April 26, 1944. The bill also confers jurisdiction upon The Tax Court of the United States to hear and determine on the merits under the Renegotiation Act such petition as heretofore filed or hereafter amended.

The circumstances showing the need for this legislation are set forth in detail in the following letter from the Secretary of War addressed to the chairman of House Committee on Ways and Means:

WAR DEPARTMENT,  
Washington, May 2, 1945.

Hon. ROBERT L. DOUGHTON,  
Chairman, Committee on Ways and Means,  
House of Representatives, Washington, D. C.

DEAR MR. DOUGHTON: The War Department has no objection to the enactment of H. R. 1044, a bill for the relief of Marlin-Rockwell Corp. with respect to the jurisdiction of The Tax Court of the United States to redetermine its excessive profits for its fiscal year ending December 31, 1942, subject to renegotiation

under the Renegotiation Act, on which you have requested an expression of its views.

Generally, the policy of the War Department is that specific periods of limitation for the performance of certain acts under statutes, the responsibility for the administration of which rests upon the War Department, ought not to be extended retroactively. However, it appears from the facts presented that the case of the Marlin-Rockwell Corp. is distinguishable from the ordinary case in which a procedural step required by a statute to be taken within a specified period is not taken until the prescribed period has elapsed.

The facts in this case appear to be as follows: The determination of excessive profits was made in this case by unilateral determination dated April 26, 1944, and was applicable to the contractor's fiscal year ended December 31, 1942. Thus the 90-day period specified in subsection (e) (2) of the Renegotiation Act within which a petition may be filed with The Tax Court of the United States for a redetermination of the excessive profits expired with the close of July 25, 1944. The evidence indicates that the contractor's petition was mailed in Buffalo, N. Y., at 4:30 p. m. on July 25, 1944, although the envelope bore the post-office cancellation stamp of Buffalo, N. Y., at 7:30 p. m., July 25, 1944. While the determination of excessive profits in this case was made on April 26, 1944, the letter notifying the contractor of the determination bore the Washington mailing date of April 30, 1944, and was received by the contractor in Jamestown, N. Y., on May 1, 1944, 5 days after the determination was made.

Subsection (e) (1) of the Renegotiation Act, relating to taxable years ending after June 30, 1943, commences the 90-day period of limitation for the filing of petitions in The Tax Court with the mailing of the notice of the determination to the contractor. Subsection (e) (2), applicable to fiscal years ending before July 1, 1943, starts the 90-day period with the date of the determination of excessive profits rather than the date of the mailing of the notice to the contractor. From the facts presented it appears that the attorneys for the contractor mistakenly took the view that the date of the determination of excessive profits referred to in subsection (e) (2) was the date upon which the contractor was notified that the determination had been made rather than the date of the determination itself. This view was not concurred in by The Tax Court of the United States. The contractor's petition was dismissed upon the grounds that it was filed after the 90-day period specified in subsection (e) (2) had expired.

Had the fiscal year involved in this case been a fiscal year closing after June 30, 1943, the filing of the petition would have been timely since it was received by The Tax Court on July 27, 1944, or within 90 days from April 30, 1944, the date on which the notice of the determination in this case was mailed to the contractor. The Renegotiation Act of 1943 containing the provisions setting out the procedural steps to be followed in filing a petition with The Tax Court was not enacted until February 25, 1944, and consequently with respect to the filing of such petitions for 1942 cases, contractors and their attorneys had very little time to familiarize themselves with its provisions in this respect.

In view of these circumstances, the War Department does not object to the enactment of H. R. 1044. However, the expression of this view in this case should not be considered a controlling precedent, nor in prejudice of the expression of a contrary view in other cases which may arise in this field since the conclusion expressed here was reached only in the light of the particular circumstances outlined above.

For your consideration in connection with this case, the amount of excessive profits determined against the Marlin-Rockwell Corp. for the fiscal year in question, 1942, is \$9,750,000. Against this amount there is a tax credit under section 3806 of the Internal Revenue Code of \$8,005,072, leaving a net amount of \$1,744,928 to be refunded in excessive profits. Any action by The Tax Court in reduction of the amount of excessive profits determined would, of course, reduce this net amount correspondingly.

The War Department is unable to determine the fiscal effects of the enactment of this legislation beyond what is apparent from the foregoing figures.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

HENRY L. STIMSON, *Secretary of War.*

