

NET OPERATING LOSS CARRYOVERS FOR CERTAIN REGULATED TRANSPORTATION CORPORATIONS

SEPTEMBER 13, 1962.—Ordered to be printed

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

R E P O R T

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 12526]

The Committee on Finance, to whom was referred the bill (H.R. 12526) to amend section 172 of the Internal Revenue Code of 1954 to provide a 7-year net operating loss carryover for certain regulated transportation corporations, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY OF BILL

Corporations generally may carry net operating losses back 3 years and then, if there is any remaining unused loss, forward for 5 years. This bill provides that regulated transportation corporations, in addition to the 3-year carryback, are to have a 7-year, instead of a 5-year, carryforward of net operating losses. This longer period to carryforward net operating losses is to be available to these corporations with respect to losses occurring in years, or portions of years, occurring since December 31, 1955.

This bill has been reported unanimously by your committee. This bill in large measure follows the recommendation of the President in his message on transportation. In that report he recommended a 7-year, instead of a 5-year, carryforward period for the losses of regulated public utilities.

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REASONS FOR THE BILL

The President in his message to Congress on April 5, 1962, relating to the transportation system of our Nation, stressed the importance of an efficient and dynamic transportation system to aid in obtaining domestic economic growth, productivity, and progress. As he indicated, our transportation system affects the cost of every commodity we consume or export and is equally vital to our ability to compete abroad. One recommendation of the President in his transportation message was as follows:

In addition, I recommend that the Internal Revenue Code be amended to increase from 5 to 7 years the period during which regulated public utilities, including those in transportation, can apply prior year losses to reduce current income for tax purposes.

The regulated transportation companies, particularly the railroads, have greater need for long carryforwards of net operating losses than other companies because they tend to have relatively lower rates of earnings. Because of these lower earnings, such companies when they have losses require a longer period of time, than do most other companies, before these losses can be offset in full against earnings of other years. The fact that these companies are regulated in the price they can charge also tends to make it more difficult for them to recoup these losses in earnings' years. This has been an especially important problem in the case of the railroads whose earnings have declined over 40 percent in the period between 1955 and 1959, with further declines having occurred since that time. In fact, your committee has been informed that at least seven railroads have unused net operating loss carryforwards which lapse at the end of this year. These are the Pennsylvania, the New York Central, the Erie-Lackawanna, the New York, New Haven & Hartford, the Boston & Maine, the Chicago & North Western, and the Lehigh Valley Railroads. In view of these considerations, your committee's bill provides that for losses occurring in taxable years, or a portion of a year, after December 31, 1955, these regulated transportation companies are to have 7 years, rather than the usual 5-year period, over which losses may be carried forward.

GENERAL EXPLANATION

Corporations generally may carry a net operating loss back to the three immediately prior taxable years and then if any loss still remains, this amount may be carried forward to each of the 5 succeeding years. This bill provides, however, that a net operating loss from any taxable year ending after December 31, 1955, in the case of a "regulated transportation corporation" may be carried forward 7 years instead of 5. This is in addition to the 3-year carryback which is generally applicable. For corporations with loss years partially in 1955 and partially in 1956 a special rule described below limits the benefit of the longer loss carryforward to the portion of the year in 1956.

A regulated transportation corporation, for purposes of this 7-year net operating loss carryover includes any corporation receiving 80 percent or more of its gross income (without regard to dividends and capital gains and losses) from the furnishing or sale of certain specified

types of transportation. The forms of transportation which are included are—

(1) Transportation by common carrier by a railroad subject to the jurisdiction of the Interstate Commerce Commission;

(2) Other transportation on an intrastate, suburban, municipal, or interurban electric railroad or trackless trolley system if its rates are established or approved by a governmental body or agency;

(3) Transportation on a municipal or suburban bus system if its rates are established or approved by a governmental body or agency;

(4) Other transportation by motor vehicle if the rates had been established or approved by a regulated body or agency;

(5) Transportation by common carrier by air subject to the jurisdiction of the Civil Aeronautics Board; and

(6) Transportation by common carrier by water subject to the jurisdiction of the Interstate Commerce Commission or Federal Maritime Board under the Intercoastal Shipping Act.

Also included are railroad corporations which have leased their railroad properties to another railroad and parent corporations of railroads. Finally, a corporation is included if it is a member of a "regulated transportation system." A regulated transportation system for this purpose is any corporation which is a member of an affiliated group filing a consolidated return if 80 percent of the aggregate gross income is derived from sources described in the listing Nos. 1 to 6 above or from a lessor railroad or common parent railroad. "Aggregate gross income" means the combined gross income of all of the members of the group without any eliminations for intercompany transactions.

The bill provides that for the net operating loss carryover to be available for the sixth year, the taxpayer involved must be a "regulated transportation corporation" for that year. For a loss to be carried to its seventh year the taxpayer involved must have been a "regulated transportation corporation" for both the sixth and the seventh years.

The bill also provides a proration formula which limits the loss which can be carried over from a year beginning in 1955 and ending in 1956. The formula provides that any loss carried over the sixth year in such cases is to be the same proportion of any loss remaining at the end of the fifth year which the number of days in the taxpayer's 1955-56 year which were in the calendar year 1956 bears to the total number of days in that year. Any of this partial loss remaining after the offset against income in the sixth year may then be carried forward and offset against income in the seventh year.

DEPARTMENTAL VIEWS

The Treasury Department has no objection to 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 are shown as follows (existing law proposed to be omitted is enclosed in

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black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

SECTION 172 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

(1) YEARS TO WHICH LOSS MAY BE CARRIED.—A net operating loss for any taxable year [ending after December 31, 1957, shall be]—

(A) *ending after December 31, 1957, shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of [such] the loss, and*

(B) *ending after December 31, 1955, shall (except as provided in subparagraph (C)) be a net operating loss carryover to each of the 5 taxable years following the taxable year of such [loss.] loss, or*

(C) *ending after December 31, 1955, in the case of a taxpayer which is a regulated transportation corporation (as defined in subsection (j)(1)), shall (except as provided in subsection (j)) be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss.*

(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—Except as provided in [subsection (i)] *subsections (i) and (j)*, the entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the [8] taxable years to which (by reason of [subparagraphs (A) and (B) of] paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other [7] taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable [year] *years* shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (6) thereof; and

(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter.

and the taxable income so computed shall not be considered to be less than zero.

(c) NET OPERATING LOSS DEFINED.—For purposes of this section, the term "net operating loss" means (for any taxable year ending after December 31, 1953) the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) **MODIFICATIONS.**—The modifications referred to in this section are as follows:

(1) **NET OPERATING LOSS DEDUCTION.**—No net operating loss deduction shall be allowed.

(2) **CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.**—In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

(B) the deduction for long-term capital gains provided by section 1202 shall not be allowed:

(3) **DEDUCTION FOR PERSONAL EXEMPTIONS.**—No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) **NONBUSINESS DEDUCTIONS OF TAXPAYERS OTHER THAN CORPORATIONS.**—In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business, shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1), (2)(B), and (3) shall be taken into account; and

(C) any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account.

(5) **SPECIAL DEDUCTIONS FOR CORPORATIONS.**—No deduction shall be allowed under section 242 (relating to partially tax-exempt interest) or under section 922 (relating to Western Hemisphere trade corporations).

(6) **COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED, ETC.**—The deductions allowed by sections 243 (relating to dividends received by corporations); 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a)(1)(B) of such section.

(e) **LAW APPLICABLE TO COMPUTATIONS.**—In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year. The preceding sentence shall apply with respect to all taxable years, whether they begin before, on, or after January 1, 1954.

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(f) **TAXABLE YEARS BEGINNING IN 1953 AND ENDING IN 1954.**—In the case of a taxable year beginning in 1953 and ending in 1954—

(1) In lieu of the amount specified in subsection (c), the net operating loss for such year shall be the sum of—

(A) that portion of the net operating loss for such year computed without regard to this subsection which the number of days in the loss year after December 31, 1953, bears to the total number of days in such year, and

(B) that portion of the net operating loss for such year computed under section 122 of the Internal Revenue Code of 1939 as if this section had not been enacted which the number of days in the loss year before January 1, 1954, bears to the total number of days in such year.

(2) The amount of any net operating loss for such year which shall be carried to the second preceding taxable year is the amount which bears the same ratio to such net operating loss as the number of days in the loss year after December 31, 1953, bears to the total number of days in such year. In determining the amount carried to any other taxable year, the reduction for the second taxable year preceding the loss year shall not exceed the portion of the net operating loss which is carried to the second preceding taxable year.

(3) The net operating loss deduction for such year shall be, in lieu of the amount specified in section 122(c) of the Internal Revenue Code of 1939, the sum of—

(A) that portion of the net operating loss deduction for such year, computed as if subsection (a) of this section were applicable to the taxable year, which the number of days in such year after December 31, 1953, bears to the total number of days in such year, and

(B) that portion of the net operating loss deduction for such year, computed under section 122(c) of the Internal Revenue Code of 1939 as if this paragraph had not been enacted, which the number of days in such year before January 1, 1954, bears to the total number of days in such year.

(4) For purposes of the second sentence of subsection (b)(2), the taxable income for such year shall be the sum of—

(A) that portion of the net income for such year, computed without regard to this paragraph, which the number of days in such year before January 1, 1954, bears to the total number of days in such year, and

(B) that portion of the net income for such year, computed—

(i) without regard to paragraphs (1) and (2) of section 122(d) of the Internal Revenue Code of 1939, and

(ii) by allowing as a deduction an amount equal to the sum of the credits provided in subsections (b) and (h) of section 26 of such Code,

which the number of days in such year after December 31, 1953, bears to the total number of days in such year.

(g) **SPECIAL TRANSITIONAL RULES.**—

(1) **LOSSES FOR TAXABLE YEARS ENDING BEFORE JANUARY 1, 1954.**—For purposes of this section, the determination of the taxable years ending after December 31, 1953, to which a net

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operating loss for any taxable year ending before January 1, 1954, may be carried shall be made under the Internal Revenue Code of 1939.

(2) **LOSSES FOR TAXABLE YEARS ENDING AFTER DECEMBER 31, 1953.**—For purposes of section 122 of the Internal Revenue Code of 1939—

(A) the determination of the taxable years ending before January 1, 1954, to which a net operating loss for any taxable year ending after December 31, 1953, may be carried shall be made under subsection (b)(1)(A) of this section; and

(B) in determining the amount of the carryback to the first taxable year preceding the first taxable year ending after December 31, 1953, the portion of the net operating loss carried to such year shall be such net operating loss reduced by—

(i) the net income for the second preceding taxable year computed as if the second sentence of section 122

(b)(2)(B) of the Internal Revenue Code of 1939 applied, or

(ii) if smaller, the portion of the net operating loss which by reason of subsection (f) of this section is carried to the second preceding taxable year.

(3) **TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953, AND ENDING BEFORE AUGUST 17, 1954.**—In the case of a taxable year which begins after December 31, 1953, and ends before August 17, 1954—

(A) the net operating loss deduction for such year shall be computed as if subsection (a) of this section applied to such taxable year, and

(B) for purposes of the second sentence of subsection (b)(2), the taxable income for such taxable year shall be the net income for such taxable year, computed—

(i) without regard to paragraphs (1) and (2) of section 122(d) of the Internal Revenue Code of 1939, and

(ii) by allowing as a deduction an amount equal to the sum of the credits provided in subsections (b) and (h) of section 26 of such Code.

(4) **EXCESS PROFITS TAX NOT AFFECTED.**—For purposes of subchapter D of chapter 1 of the Internal Revenue Code of 1939, excess profits net income shall be computed as if this section had not been enacted and as if section 122 of such Code continued to apply to taxable years to which this subtitle applies.

(h) **DISALLOWANCE OF NET OPERATING LOSS OF ELECTING SMALL BUSINESS CORPORATIONS.**—In determining the amount of the net operating loss deduction under subsection (a) of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which such corporation is an electing small business corporation under subchapter S.

(i) **CARRYBACK OF NET OPERATING LOSS FOR TAXABLE YEARS BEGINNING IN 1957 AND ENDING IN 1958.**—In the case of a taxable year beginning in 1957 and ending in 1958, the amount of any net operating loss for such year which shall be carried to the third preceding taxable year in the amount which bears the same ratio to such net operating loss as the number of days in the loss year after December 31, 1957,

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bears to the total number of days in such year. In determining the amount carried to any other taxable year, the reduction for the third taxable year preceding the loss year shall not exceed the portion of the net operating loss which is carried to the third preceding taxable year.

(j) CARRYOVER OF NET OPERATING LOSS FOR CERTAIN REGULATED TRANSPORTATION CORPORATIONS.—

(1) DEFINITION.—For purposes of subsection (b)(1)(C), the term “regulated transportation corporation” means a corporation—

(A) 80 percent or more of the gross income of which (computed without regard to dividends and capital gains and losses) for the taxable year is derived from the furnishing or sale of transportation described in subparagraph (A), (C)(i), (E), or (F) of section 1503(c)(1) and taken into account for purposes of section 1503(c)(2),

(B) which is described in section 1503(c)(3), or

(C) which is a member of a regulated transportation system.

(2) REGULATED TRANSPORTATION SYSTEM.—For purposes of this subsection, a corporation shall be treated as a member of a regulated transportation system for a taxable year if—

(A) it is a member of an affiliated group of corporations making a consolidated return for such taxable year, and

(B) 80 percent or more of the aggregate gross income of the members of such affiliated group (computed without regard to dividends and capital gains and losses) for such taxable year is derived from sources described in paragraph (1)(A).

For purposes of subparagraph (B), income derived by a corporation described in section 1503(c)(3) from leases described in subparagraph (A) thereof shall be considered as derived from sources described in paragraph (1)(A).

(3) LIMITATION.—For purposes of subsection (b)(1)(C)—

(A) a net operating loss may not be a net operating loss carryover to the 6th taxable year following the loss year unless the taxpayer is a regulated transportation corporation for such 6th taxable year; and

(B) a net operating loss may not be a net operating loss carryover to the 7th taxable year following the loss year unless the taxpayer is a regulated transportation corporation for the 6th taxable year following the loss year and for such 7th taxable year.

(4) TAXABLE YEAR BEGINNING IN 1955 AND ENDING IN 1956.—

In the case of a net operating loss for a taxable year beginning in 1955 and ending in 1956, the amount of such loss which may be carried—

(A) to the 6th taxable year following the loss year shall be the amount which bears the same ratio to the amount which (but for this paragraph) would be carried to such 6th taxable year as the number of days in the loss year after December 31, 1955, bears to the total number of days in the loss year, and

(B) to the 7th taxable year following the loss year shall be the amount (if any) by which (i) the amount carried to the 6th taxable year (determined under subparagraph (A)), exceeds (ii) the taxable income (computed as provided in subsection (b)(2)) for such 6th taxable year.

SUPPLEMENTARY STATEMENT BY SENATOR
PAUL DOUGLAS

No hearings were held on this bill either in the House or in the Senate. It is impossible therefore to determine whether or not it is in the public interest. I think this is poor procedure and that therefore this bill probably needs more thorough scrutiny.

We have drifted into loose procedures on these bills rushed through at the end of the session. They have been going through Congress with little examination and this has sometimes had unfortunate results. I believe our Senate procedures should be revised to provide for a more thorough examination of their possible merits and demerits. In the meantime the Senate should in my opinion go slow.

SUPPLEMENTARY STATEMENT BY SENATOR HARRY F. BYRD, CHAIRMAN

The Senate Finance Committee, in formal meeting September 10, 1962, ordered to be reported 11 bills with recommendations that they be considered favorably by the Senate. This bill was among those ordered to be reported at that time.

As a member of the committee, the Senator from Illinois (Mr. Douglas) voted against committee approval of all of these bills except one. He voted affirmatively to report only H.R. 12529 which affected his State.

He voted against reporting all other bills before the committee on that date with the statement that he was voting in the negative because public hearings had not been held.

In his supplementary statements on these bills the Senator from Illinois creates the impression—intentional or not—that the Finance Committee is not giving proper and adequate attention to legislation reported to the Senate.

With respect to all of these bills he apparently tries to leave the inference that the committee has drifted into a loose procedure of rushing bills through at the end of the session which he claims produces unfortunate results.

On behalf of the majority of the Senate Finance Committee I want to make it clear to the Senate that, in the case of the bills ordered to be reported by the committee on September 10, 1962—

1. Each of the bills has been passed by the House of Representatives;

2. No request was made for Senate hearings on these bills, and this includes the bill for which the Senator from Illinois voted in the affirmative;

3. Each of the bills ordered to be reported, except H.R. 12529 in which the Senator from Illinois is interested, was formally approved by the executive agencies having jurisdiction over their administration;

4. The contents of each bill were fully outlined by the members of the committee staff, and discussed by members of the committee; and

5. When the committee voted, members had full knowledge of the purpose and effects of the proposed legislation.

Momentous matters are referred to the Senate Committee on Finance, including legislation with respect to taxation, tariffs and customs, social security, veterans, etc., and the committee has always been meticulous in exploring the effects of all legislation it recommends.

The current tax bill—H.R. 10650—now in conference is a case in point. More than 200 witnesses were heard on this bill, and the legislation was under committee consideration more than 4 months.

The Senator from Virginia cannot recall that the Senate has rejected a bill recommended by the Senate Finance Committee. It suffices to

say that when the need for hearings is indicated, the committee will hold them.

The procedure followed by the committee in consideration of the agenda for the meeting of September 10 involved no departure from committee practice over the 30 years during which I have been a member.

The committee always holds hearings when they are necessary for the enlightenment of the membership, and the procedure of the past, so far as the chairman is concerned, will be continued in the future.

