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86TH CONGRESS, 2d Session | SENATE | REPORT No. 1084

REDUCTION OF CABARET TAX FROM 20 PERCENT TO 10 PERCENT

FEBRUARY 17 (legislative day, FEBRUARY 15), 1960.—Ordered to be printed

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

REPORT

[To accompany H.R. 2164]

The Committee on Finance, to whom was referred the bill (H.R. 2164) to reduce the cabaret tax from 20 percent to 10 percent, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. GENERAL STATEMENT

H.R. 2164 reduces from 20 percent to 10 percent the tax imposed (by sec. 4231(6)) with respect to roof gardens, cabarets, and similar establishments. This change in rates is to be effective as of 10 a.m. on the first day of the month beginning more than 10 days after the enactment of this bill.

II. REASONS FOR THE BILL

Your committee is reporting this bill to reduce the cabaret tax for two principal reasons: First, the present 20-percent rate is discriminatory in that the rates of almost all of the other ad valorem excise taxes do not exceed 10 percent; second, the present high rate of this tax is believed to have been a substantial deterrent to the employment of musicians and other entertainers.

In the case of the cabaret tax, the 20-percent rate is particularly onerous because although this tax is classed as an admissions tax its base includes not only the price paid for any admissions but also amounts paid for refreshments, services, and merchandise. Moreover, the 20-percent rate applies only where there is a combination of entertainment and the serving of food or beverages. Where only entertainment is provided the 10-percent admissions tax usually applies; on the other hand, where there is only the serving of food and

beverages, generally no tax is imposed. Thus the present 20-percent tax discriminates against the combination of food or beverages and entertainment since either, if provided separately, is taxed at a lesser rate or is not taxed at all.

In addition, this discriminatory, high rate of the cabaret tax has had a serious adverse effect on the employment of musicians and other entertainers.

In recent years the employment of musicians and entertainers as a class has been at a relatively low level as a result of the drastic technological changes which have occurred in the entertainment business. The decline in employment, begun with the passing of the silent movies and vaudeville in the early thirties, has continued as first radio and then television has increased the emphasis on home entertainment. The trend away from "live" entertainment also has been accelerated by the increase in the use of records in the home and places of entertainment.

Moreover, statistics show that the present high rate of the cabaret tax has been an important factor in adding to this decline. For example, a sizable sample of establishments in business in 1954 (when the cabaret tax was 20 percent) who also were in business in 1943 (when the cabaret tax was 5 percent) indicated a decline in the employment of musicians in this period of about 56 percent in terms of man-hours. This was brought about in large part by a reduction of about 40 percent in the time during which entertainment is provided by these establishments, thus increasing the time when only food and beverages are available and no entertainers are employed. In addition, although there was an increase of 102 percent in the consumer expenditures in all eating and drinking places between the years 1943 and 1955, there was a 40-percent decrease in expenditures for meals and beverages subject to the cabaret tax between the fiscal years 1943 and 1955. Certainly, statistics of this type suggest that the present high rate of this tax is a significant contributing factor to the difficult times presently faced by many entertainers and that this tax rate should be reduced to the 10-percent level generally applicable to ad valorem excise taxes.

The Treasury Department is opposed to enactment of this bill because of the revenue loss estimated to be $20 million.

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

SECTIONS 4231 AND 4232 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 4231. IMPOSITION OF TAX.

There is hereby imposed:

(1) GENERAL.—

(A) SINGLE ADMISSION.—A tax of 1 cent for each 10 cents or major fraction thereof of the amount in excess of $1 paid for admission to any place.

(B) SEASON TICKET.—In the case of a season ticket or subscription for admission to any place, a tax of 1 cent for each 10 cents or major fraction thereof of the amount paid for such season ticket or subscription which is in excess of $1 multiplied by the number of admissions provided by such season ticket or subscription, *or*

(C) to a roof garden, cabaret, or other similar place.

(C) BY WHOM PAID.—The taxes imposed under subparagraphs (A) and (B) shall be paid by the person paying for the admission.

(2) CERTAIN RACE TRACKS.—In lieu of the tax imposed under paragraph (1), a tax of 1 cent for each 5 cents or major fraction thereof of the amount paid for admission to any place (including admission by season ticket or subscription) if the principal amusement or recreation offered with respect to such admission is horse or dog racing at a race track. The tax imposed under this paragraph shall be paid by the person paying for such admission.

(3) PERMANENT USE OR LEASE OF BOXES OR SEATS.—In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement (in lieu of the tax imposed under paragraph (1) or (2)), a tax equivalent to 10 percent (20 percent if paragraph (2) would otherwise apply) of the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder. The tax imposed under this paragraph shall be paid by the lessee or holder.

(4) SALES OUTSIDE OF BOX OFFICE IN EXCESS OF ESTABLISHED PRICE.—Upon tickets or cards of admission to theaters, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of such theaters, operas, or other places of amusement, at a price in excess of the sum of the established price therefor at such ticket offices plus the amount of any tax imposed under paragraph (1) or (2), a tax equivalent to 10 percent (20 percent if paragraph (2) applies) of the amount of such excess. The tax imposed under this paragraph shall be returned and paid by the person selling such tickets.

(5) SALES BY PROPRIETORS IN EXCESS OF REGULAR PRICE.—A tax equivalent to 50 percent of the amount for which the proprietors, managers, or employees of any opera house, theater, or other place of amusement sell or dispose of tickets or cards of admission in excess of the regular or established price or charge therefor. The tax imposed under this paragraph shall be returned and paid by the persons selling such tickets.

(6) CABARETS.—A tax equivalent to [20] *10* percent of all amounts paid for admission, refreshment, service, or merchandise, at any roof garden, cabaret, or other similar place furnishing a public performance for profit, by or for any patron or guest who is entitled to be present during any portion of such performance. The tax imposed under this paragraph shall be returned and paid by the person receiving such payments; except that if the person receiving such payments is a concessionaire, the tax imposed under this paragraph shall be paid by such concessionaire and collected from him by the proprietor of the roof garden, cabaret,

or other similar place. No tax shall be applicable under paragraph (1) or (2) on account of an amount paid with respect to which tax is imposed under this paragraph.

This section shall apply with respect to amounts paid within or outside the United States, but only if the place of admission or performance is within the United States. In the case of any payment outside the United States in respect of which tax is imposed under paragraph (1), (2), or (3) of this section, such tax shall be collected by the person who is to furnish the facility or service, and if such person does not collect the tax he shall be liable for the payment of such tax.

SEC. 4232. DEFINITIONS.

(a) ADMISSION.—The term "admission" as used in this chapter includes seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor.

(b) ROOF GARDEN, CABARET OR OTHER SIMILAR PLACE.—The term "roof garden, cabaret, or other similar place," as used in this chapter, shall include any room in any hotel, restaurant, hall, or other public place where music and dancing privileges or any other entertainment, except instrumental or mechanical music alone, are afforded the patrons in connection with the serving or selling of food, refreshment, or merchandise. In no case shall such term include any ballroom, dance hall, or other similar place where the serving or selling of food, refreshment, or merchandise is merely incidental, unless such place would be considered, without the application of the preceding sentence, as a "roof garden, cabaret, or other similar place." Such term does not include any place if—

(1) no beverage subject to tax under chapter 51 (distilled spirits, wines, and beer), is served or permitted to be consumed;

(2) only light refreshment is served;

(3) where space is provided for dancing, no charge is made for dancing; and

(4) where music is provided or permitted, such music is (A) instrumental or other music which is supplied without any charge to the owner, lessee, or operator of such place (or to any concessionnaire), or (B) mechanical music.

(c) PERFORMANCE FOR PROFIT.—A performance shall be regarded as being furnished for profit for purposes of section 4231(6) even though the charge made for admission, refreshment, service, or merchandise is not increased by reason of the furnishing of such performance.

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