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The United States Senate

Report of Proceedings

Hearing held before

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE

S. 366

Washington, D. C.

April 17, 1934

WARD & PAUL

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April 17, 1934

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Mr. Edward Gallagher
Attorney, Investment Bldg., Washington,
D. C., On Behalf of the Hartford-Connect-
icut Trust Company

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United States Senate,

Committee on Finance,

Washington, D. C.,

Tuesday, April 17, 1934.

The Subcommittee of the Committee on Finance this day met at 2:30 p.m., in the Military Affairs Committee Room, Capitol Building, Senator Walter F. George, Chairman of the Subcommittee, presiding.

Presents: Senators George, Byrd, and Walcott.

The Subcommittee had under consideration S. 366.

PROCEEDINGS

Senator George: Senator Walcott, Senator Byrd, and myself were designated here by the Chairman of the Finance Committee as a Subcommittee on S. 366. That bill is as follows:

S. 366

A BILL

For the refund of income and profits taxes erroneously collected.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Internal Revenue is hereby authorized and directed to receive, consider, and determine, in accordance with law, but without regard to any statute of limitations, any claim filed not later than six months after the passage of this Act by the Hartford-Connecticut Trust Company, a corporation organized and existing under the banking laws of the State

of Connecticut, having its principal place of business in Hartford, Connecticut, for the refund of income and profits taxes erroneously collected from the said Hartford-Connecticut Trust Company in 1919, 1920, 1921, 1922, and 1923.

Senator George: The information which the Chairman furnishes me is that the testimony of at least one witness is to be taken today.

I suppose, Senator Walcott, that you have seen the report?

Senator Walcott: Well, Senator George, yes, I have, and I have communicated at length, and several times, with Judge Benjamin Holden of Connecticut, who has this matter in hand, and he expected to be here in person, but he has sent a man to represent him, who will make a statement.

I suppose you are going to present the whole matter?

Mr. Gallagher: Yes, sir.

Senator Walcott: And the argument for the claim?

Then, if agreeable to you, Mr. Chairman, I suggest that Mr. Holden's representative be allowed to present his case.

Senator George: I suppose we might put into the record, here, the report made by Mr. Ballantine, dated May 5, 1933, on this Bill, so that the Bureau of Internal Revenue will have the whole matter before it at one time.

TREASURY DEPARTMENT

WASHINGTON

May 5, 1933

Dear Mr. Chairman:

I have your letter of March 18, 1933, transmitting to the Treasury Department for report a copy of a bill S. 366, for the relief of the Hartford-Connecticut Trust Company, a corporation organized and existing under the laws of the State of Connecticut.

Upon final determination by the Commissioner of Internal Revenue of the tax liability of the Hartford-Connecticut Trust Company for the years involved, it was determined that the tax liability for the period July 30 to December 31, 1919, and for the years 1920 and 1923, had been overpaid. Claims for refund were filed by the taxpayer on March 12, 1927, after the expiration of the statutory time limit for allowance with respect to the full amount of overassessments for the years 1919 and 1920. Refunds were made on the basis of the claims filed for these years to the extent allowable under the limitation provisions of the law. The total amount of overpayment for the year 1923 was refunded on the basis of the claim timely filed for that year. For the years 1921 and 1922 additional taxes were determined, but were not assessed and collected because of the bar of the statute of limitations which had operated against the United States.

I may state that the taxpayer instituted suit in the United States Court of Claims for the recovery of the taxes overpaid for the period July 30, 1919, to December 31, 1919,

and for the year 1920, refund of which was denied by the Commissioner of Internal Revenue as barred by the statute of limitations. The Court of Claims in its decision of May 2, 1932 (74 O. Cls. 546), denied recovery and held in favor of the United States. The Treasury Department does not consider the case, therefore, as one meriting special consideration by Congress.

It has been the policy of Congress to include in the revenue acts limitation provisions by the operation of which after a certain period of time it becomes impossible for the Government to assert additional liabilities, or for the taxpayer to assert a claim for a refund. It not infrequently happens that a taxpayer finds himself barred by the operation of the statute of limitations from securing a refund of an amount of tax paid in excess of what was due. In such cases the taxpayer often feels that he is entitled to get back the amount overpaid notwithstanding that the statute of limitations has run, and bills are often introduced into Congress seeking such relief. The ground for relief asserted in such cases is always that the amount of tax was in fact overpaid and that it is unjust for the Government to retain the money. The considered answer of this Department has invariably been that to grant relief in such cases would be contrary to the policy of the statute of limitations and would open the door to relief in all cases where the statute operated to the prejudice of a particular

taxpayer, while leaving the door closed to the Government in those cases in which the statute operated to the disadvantage of the Government in a particular case. The position which this Department has taken, and which Congress has sanctioned, is that it was sound to have statutes of limitation and that the policy upon which statutes are based must be adhered to, notwithstanding hardship in particular cases.

For the reasons stated the Treasury Department is opposed to the enactment of the bill S. 366.

Very truly yours,

A. A. Ballantine,

Acting Secretary of the Treasury.

Honorable Pat Harrison,

Chairman, Committee on Finance,

United States Senate .

Senator George: We will now hear you, Mr. Gallagher.

STATEMENT OF MR. EDWARD GALLAGHER

ATTORNEY, INVESTMENT BUILDING, WASHINGTON, D. C.,

ON BEHALF OF THE HARTFORD-CONNECTICUT TRUST COMPANY

Mr. Gallagher: My name is Edward Gallagher, Investment Building, Washington, D. C. I think I should state for the record that Judge Holden was prevented from being here through illness, and he called us into the matter rather unexpectedly. I shall do the best I can with it.

Senate Bill 366 provides for refund of income and profits

taxes, erroneously collected from the Hartford-Connecticut Trust Company, of Hartford, Connecticut.

I want to say at the outset that the propriety and the legality of the claim is admitted by the Bureau of Internal Revenue, and even by the Court of Claims. In fact, the Court of Claims, in passing upon the question of whether the claim is barred by the statute of limitations, admitted in its decision that, as a matter of fact, waivers had been filed, which would operate to toll the statute, but that, as a matter of law, they were not effective.

That is a somewhat ambiguous statement. I shall clear it up later.

I want to say also, in a preliminary way, that this is not the usual charity case, where a taxpayer has slept on his rights, and then, in a desperate effort to obtain relief, comes to the Congress. We have been assiduous in pressing our claims from the time that the returns were filed, and we have cooperated fully with the Department in waiving the statute, where it operated to the favor of the Government.

I think that I should state here, in a brief way, the history of the claims. The returns were filed; and those returns which are involved here were filed for 1919 and 1920. Now, there were a number of adjustments affecting those returns over a period of two or three years, so that the period covered by the statute of limitations was rapidly nearing its end. The

Government approached the taxpayer and asked it to sign waivers extending the period to which the statute would apply, for both parties. This request was made in November, 1924. In December, 1924, the waiver was signed by the taxpayer, extending the time until May 14, 1926.

In other words, the statute of limitations was extended so as to permit claims up until May 14, 1926.

Thereafter, in January of 1925, that is, one month after the first request for the signing of a waiver was made -- the Government again communicated with the taxpayer and asked it to agree that there was a further deficiency in its returns, of \$7,921, and at the same time they asked that an additional waiver be signed.

Now, as only one month had elapsed between the time that the first waiver had been signed, and the time that this second request occurred, the taxpayer felt that there was no necessity for signing a waiver at that time, but subsequently, on September 8, 1925, as a reasonable period of time had elapsed by that date, the taxpayer again signed a waiver, further extending the period of time; and it is that waiver of 1925 that gives rise to the present controversy.

The present controversy centers around the question of whether or not that waiver, as a matter of law, was received by the Commissioner of Internal Revenue.

During the course of these negotiations that I have just

described, the taxpayer called in an accountant, who went over the books, primarily to check up upon the findings of the Commissioner of Internal Revenue, regarding deficiency, and he discovered that there was an overassessment of \$41,914, and that is the claim here.

Now, that overassessment occurred in this way: It had been the practice of the taxpayer to treat discount on promissory notes covering loans as earned income, the minute the loan was made. Now, the accountant advised the taxpayer that that was not in conformity with law. He said that the discount should not be treated as income, and taxes should not be paid on that discount until the loan had been paid back in full. Therefore, the accountant, who was employed by the taxpayer, conferred with the officials of the Internal Revenue Department, and they readily agreed that that was the law, and that there was an overassessment, and they agree to that, today. They agreed that under the law there is an overassessment. The only question is, the statute of limitations.

Now, after the conference with the Bureau, where it was agreed that there was an overassessment, amended returns were filed by the taxpayer to cover the years 1919 and 1920. They were filed on March 15, 1927, and it is admitted by all parties that if, as a matter of fact and law, the waivers were received by the Commissioner of Internal Revenue, the filing on that date would be within the period covered by the statute of limi-

tations.

There is no controversy on that point, but, now, after those amended returns were filed, in March, 1927, an agent of the Bureau -- and this, to my mind, indicates that the Bureau had these waivers on file, or had been advised, and were proceeding under the impression that the statute of limitations had not run its course, because, after those amended returns were filed, the agent of the Bureau called on the taxpayer, examined his books, and his accounts, at great length, made out a detailed statement, agreeing that there had been an overassessment of \$41,914, and he submitted that statement to the Bureau and to the taxpayer.

Thereafter the taxpayer and the agent of the Bureau were brought together, and they agreed and signed a statement, as a matter of law, perhaps, making out what might be termed an account stated, agreeing that there was an overassessment of \$41,000.

Now, that statement, signed by both parties, was placed on file in the Internal Revenue Bureau and today that statement in the files of the Department bears notations which indicate that it had the approval of the Bureau and its officers. They bear that approval on their face.

Now, somewhat in support of what I said regarding the attitude of the Court of Claims, I want to quote, just very briefly, from its decision in this matter. I have previously

said that as a matter of fact they admit that the waivers were filed in time, but that, as a matter of law, they deny it. This is from the decision of the Court of Claims, in case known as K-23. They say:

"The proof shows, and we have found that the plaintiff's vice president, on September 5, 1925, executed waivers for the years 1919, 1920, and 1921; that the waivers were handed by plaintiff's vice president to his secretary, who, on the following day, delivered them to the secretary of the Collector of Internal Revenue, at the Collector's office in Hartford. The record does not show what became of them after delivery to the Collector's secretary", and I might say, in explaining that statement, that "The record does not show what happened to them", this: That by the sworn testimony of the clerk from that office, it was shown in the record of the Court of Claims that it was not the custom of the Collector in Hartford, Connecticut, to accompany the transmission of a waiver to Washington with any letter of transmittal. That is the sworn testimony, and that is why there was no record of it, in Hartford.

Now, after admitting that the waivers were actually delivered to the Collector of Internal Revenue in Hartford, they proceed to deny relief, on this ground. They say:

"Collectors of Internal Revenue have no duty to perform with reference to waivers, and they are not authorized by the

statute or regulations to receive and file waivers for the Commissioner. The delivery of a waiver to the office of a Collector of Internal Revenue is therefore not a filing of the waiver, within the meaning of the statute under consideration."

Now, what the Court of Claims held there was that the Collector of Internal Revenue in Hartford was not an agent of the United States Government, and that is the sole reason why they denied relief. From my experience, I do not know of any similar case where it could be claimed that a person who is receiving his salary from a principal, who spends his entire time for that principal, is not that principal's agent. That is the theory that the Court of Claims went on, and, after admitting, as a matter of fact, the waivers had been delivered to Hartford, to the agent of the United States Government, the Court of Claims denies relief, because they say the Collector of Internal Revenue at Hartford is not a United States agent.

Senator George: That is, at least for the purpose of accepting the waivers?

Mr. Gallagher: Yes, sir. We might consider the Post Office, by analogy. The Post Office is the agency of the United States Government. It can be the agent of a person mailing a letter, too, but it is certainly an agent of the United States Government.

Now, in that connection, I want to stress this point, that right there is where the difference lies between this

case and other cases that you might have heard about and considered in the past. Here is not just a question or a case where we are asking that the statute of limitations be waived because we slept on our rights, or because we were guilty of laches.

Here the Court of Claims went off on the highly technical point, and, to my mind, the untenable theory, that the Collector of Internal Revenue at Hartford is not a United States agent.

Senator George: Is there anything in the record indicating what the Collector at Hartford had to say about it? Is there any statement from the Collector at Hartford?

Mr. Gallagher: Regarding his capacity?

Senator George: Regarding the receipt of the waivers by him.

Mr. Gallagher: No. The only testimony on that point, Senator George, is that it was not the custom -- that they had no record, and that they had no record because it was not the custom to write letters of transmittal with waivers, which bore the number of the case on their face. In other words, they simply received these waivers, and if they bore the number of the case on their face, they stick them in an envelope and transmit them to Washington, and the number makes it sure that it will get to the right file in Washington.

Senator George: The record discloses no independent re-

collection or definite statement from the Collector on that point?

Mr. Gallagher: It does not, Senator, but, coming back to that point, the essential difference between this case and other cases is that in this case the matter has gone off on the technical point of whether or not the Collector of Internal Revenue at Hartford is a United States agent.

Now, I have practically finished. I just want to say, in support of our argument, that even as a matter of law, the waivers were actually on file with the Bureau in time to toll the statute. I would like to make these one or two points: First, by the sworn testimony, it was shown in the Court of Claims that the vice president of the taxpayer signed the waivers; that the secretary of the vice president personally delivered the waivers to the Collector of Internal Revenue in Hartford.

2. It was testified by an agent of the Bureau, in the local office, that it was not the custom to accompany the transmission of waivers with letters of transmittal.

3. It was found by agents of the taxpayer that the files of the Bureau contained papers indicating, by notations on their face, that the waivers had been received. For example, the statement in the files, drawn up by the agent, after examination of the taxpayer's books, -- that is, the statement that was made out as a result of the examination of the tax-

payer's books, and subsequent to the time that the amended returns were filed. That statement bears this notation: "Mr. Reed", who was a technical adviser to the Commissioner of Internal Revenue at that time, "said O. K. to close", and marked with the initials E. G. T.

In other words, this statement was approved, long after the period would have run if it were not for these waivers, and if it were not for the fact that the waivers were received.

Furthermore, the amended returns bore the pin marks on them, and it is the testimony of the agent of the Commissioner of Internal Revenue that nothing except a waiver would have been pinned to this particular document, as a matter of custom.

4. I would like to stress, again, that there is nothing unusual about this case. I mean by that that there is nothing unusual about the losing of a waiver, because, in this same proceeding, on December 9, 1934 -- that is, the first waiver that the taxpayer signed, at the request of the Government -- that waiver was lost, as well. When we went to investigate this matter, as a result of the disagreement regarding the propriety of the claim, we looked for the waiver, or requested the waiver, and the Bureau of Internal Revenue said, "Why, you didn't file that waiver. We haven't got it." And we went down to the Bureau, or representatives of the taxpayer went down to the Bureau, and asked permission to search in the

files, and we searched the files, and we found the waiver. It had been misplaced -- a waiver in the same case.

And it is interesting to note that one of the things that the Bureau relied on in the Court of Claims is that on white cards that they maintain, to record the receipt of waivers on, and also to chart the progress of the waiver through the Bureau, they allege that the white card that should have covered our waiver, the waiver under discussion here, bore no notations or no writing at all, so then we asked to see the card that would bear the record of the first waiver, the one that they said had been lost, and that we later found; and when they brought that card in, there was no notation on that card, either; and this waiver is in the same proceeding as we have under consideration here; so that there is nothing very extraordinary or unusual about the losing of a waiver. Another waiver had been lost in the same proceeding, and we were lucky enough to find it.

Senator Walcott: Now, right at that point, Mr. Chairman, may I ask Mr. Gallagher, just in order to clarify the record, what you mean by a "waiver"? A waiver of what, and why the loss of a waiver or the mislaying of a waiver is so important in this case.

Mr. Gallagher: Yes, I think I should have done that before, Senator.

Senator George: The first waiver you offered was within

the five-year period?

Senator Walcott: Yes.

Senator George: As to all these taxes, as I understand.

Mr. Gallagher: Yes.

Senator George: And within the statute. The statute had not run when that waiver was made?

Mr. Gallagher: No.

Senator George: And there is no dispute that that waiver was actually made?

Mr. Gallagher: No, sir.

Senator George: And then, within the period that the statute was lengthened, another waiver was made, as the taxpayer contends?

Mr. Gallagher: Yes, sir.

Senator George: And there is the lost waiver, and that is the point of the controversy?

Mr. Gallagher: Yes, sir; and the Court of Claims found that that waiver had actually been delivered to Hartford.

Senator George: Now, if the second waiver was filed and was delivered, and became a part of the record, then the proceedings necessary to the relief of the taxpayer were had, within the lifetime or within the extension of that period, that resulted?

Mr. Gallagher: That is admitted by all parties.

Senator George: That is.

Mr. Gallagher: Yes, sir.

Senator George: They were commenced within that time?
All right.

Mr. Gallagher: Yes, sir.

Senator George: But the taxpayer finally suffered an adverse decision in the Court of Claims?

Mr. Gallagher: Yes, sir.

Senator George: Because it was held that the Collector at Hartford, Connecticut, was not an officer of the United States?

Mr. Gallagher: That is right, Senator George.

Senator George: At least, with the authority and power to accept this waiver and transmit it?

Mr. Gallagher: That is right, Senator.

Senator Walcott: Now, will you insert, for the lay mind, in the record, just what this waiver would have accomplished, in the extension of the time?

Mr. Gallagher: Yes, sir. As you all know, these income tax returns are very voluminous, sometimes, and highly technical, and there is oftentimes disagreement regarding the exact amount of taxes due, so that it often happens that adjustments are necessary, extending over a period of three or four or five years; and when those adjustments are being considered and negotiations are being carried on, when it appears that the negotiations might extend beyond the period allowed by the

statute of limitations, the Government, or the taxpayer, requests the signing of a waiver -- usually the Government. The Government usually comes to the taxpayer and requests the taxpayer to sign a waiver, extending the application of the statute of limitations, and that is what was done here.

Senator Walcott: Yes, or it might be reversed; the taxpayer might request it of the Government?

Mr. Gallagher: Yes, Senator.

Senator Walcott: And then, in that case, the Government would issue a waiver?

Mr. Gallagher: Yes, that is right.

Senator Walcott: I think that clears the point. Thank you, Mr. Chairman.

Mr. Gallagher: Now, in closing, I simply want to say that, up until the time that the claim was turned down adversely by the Commissioner of Internal Revenue, the matter had always been treated as an active claim. The file was an active file, the case was held open.

After the amended returns had been filed, in March, 1927, which would have been after the period, were it not for the waivers, they sent out their agents to examine our books. They examined the books at great length, prepared detailed statements, entered into an agreement with the taxpayer regarding the propriety of the claim, and making definite the amount of the claim, by agreement.

All those things were done after the statute would have run, were it not for these waivers, and we had no intimation that they were going on the theory or that anyone would urge at a later date that the waivers had not been received until the Commissioner of Internal Revenue ruled against us, not because the sum was not due, but because he said that it was barred by the statute.

Now, the only explanation we have, the only explanation we can think of, is that the waivers were received; they were made a part of the file; that they were subsequently lost, and when the Commissioner of Internal Revenue, at the end of the whole thing, came to pass upon the matter, the waivers were not there. He could not allow the claim unless the waivers were there, and he had to rule that the claim was barred by the statute of limitations.

Now, that is all there is to it.

Senator Byrd: Do you think Mr. Ballantine had all of that information when he gave this letter?

Mr. Gallagher: I do not think he could have, Senator. I do not see how he could have ruled that way, if he had.

Senator Walcott: Is that the letter of May 5, 1933?

Senator Byrd: Yes.

Mr. Gallagher: If I might say a word regarding that report, his great fear seems to be that if the claim presented here is allowed, it will open the door to a lot of similar

claims.

Now, that is not true at all, because this is a very peculiar case, in that it has been admitted that the waivers were received within the proper period, but that they were not received as a matter of law.

That is the best way I can say it; or that they were not properly received.

Senator Byrd: Would it not be a good idea to resubmit this to the Department, together with your statement here?

Mr. Gallagher: I think perhaps it would, Senator, yes.

Senator George: Did the taxpayer pursue his legal remedy to ^a final conclusion?

Mr. Gallagher: Senator, as you usually find the case, what we were asked, when the matter first arose, to come right to Congress and see if we could not get some kind of relief, but we realized that that was not the proper way to handle it. We realized that it was a matter that the judicial tribunal should pass upon, so that we insisted on going through the Court of Claims with it.

Senator Byrd: And they rejected it, on the same grounds that the Department had rejected it prior to that?

Mr. Gallagher: No, Senator. The Department rejected the claim on the ground that the statute had run, and that the waivers had not been received in time, and therefore the statute barred the claim.

The Court of Claims held that the waivers were received, and, if they had been received by the proper party, the claim would have to be allowed, but that, because they were not received by the proper party, the claim would have to be disallowed.

Senator Byrde: It ^{was} received by the Collector, in Connecticut, I think you said?

Mr. Gallagher: Yes.

Senator Byrde: Who do they contend was the proper party? The Commissioner, here?

Mr. Gallagher: The Commissioner of Internal Revenue, in Washington, and they claimed that the Collector in Hartford was not the proper party, because he was not an agent of the United States Government.

Senator Walcott: There is one other point, and only one other point, so far as I can see from the record, in which the Government makes any claim, and that is this, contained in the last paragraph of the Ballantine report of May 5, 1933:

"It not infrequently happens that a taxpayer finds himself barred by the operation of the statute of limitations from securing a refund of an amount of tax paid in excess of what was due."

In this particular case you claim that the operation of the statute of limitations had not run its full course, because of the waiver, which was apparently mislaid?

Mr. Gallagher: That is it, exactly.

Senator Walcott: However, he goes on to say:

"In such cases the taxpayer often feels that he is entitled to get back the amount overpaid notwithstanding that the statute of limitations has run, and bills are often introduced into Congress seeking such relief. The ground for relief asserted in such cases is always that the amount of tax was in fact overpaid and that it is unjust for the Government to retain the money. The considered answer of this Department has invariably been that to grant relief in such cases would be contrary to the policy of the statute of limitations and would open the door to relief in all cases where the statute operated to the prejudice of a particular taxpayer, while leaving the door closed to the Government in those cases in which the statute operated to the disadvantage of the Government in a particular case."

But if your contention is true that argument completely falls down?

Mr. Gallagher: Absolutely, Senator. It is not applicable.

Senator Walcott: Because it is not applicable, because the statute of limitations did not take effect on account of the waiver?

Mr. Gallagher: That is it, exactly.

Senator Walcott: Which makes the entire argument rest

upon the one point, the waiver?

Senator George: Yes. You put in the record, there, the citation to the Court of Claims decision, did you?

Mr. Gallagher: I did, Senator, yes, sir.

Senator George: You did? That is all right.

Mr. Gallagher: I have here, and wish to file with the Committee, the findings of fact of the Commissioner in the Court of Claims. The findings that the Commissioner made, after considering all the evidence, I would like to file.

Senator George: You wish to put that in the record?

Mr. Gallagher: If there is no objection.

Senator George: Yes, sir. You may put it in the record.

Court of Claims of the United States

No. K-23

(Filed APR 18 1931)

HARTFORD-CONNECTICUT TRUST COMPANY v. THE UNITED STATES

REPORT OF COMMISSIONER

To the honorable the CHIEF JUSTICE AND ASSOCIATE JUDGES OF THE
COURT OF CLAIMS OF THE UNITED STATES:

Pursuant to the order of reference in the above-entitled cause, the parties having closed proof, your commissioner reports the facts as follows:

1. Plaintiff, the Hartford-Connecticut Trust Company, is a corporation organized and existing under the banking laws of the State of Connecticut, having its principal place of busi-

ness in Hartford, Connecticut. By an act of the General Assembly of Connecticut the Hartford Trust Company and the Connecticut Trust and Safe Deposit Company were consolidated, and the plaintiff, as its successor, was authorized to assume all liabilities and take possession of all the assets of said companies.

2. The said Hartford Trust Company was a banking corporation chartered by the General Assembly of Connecticut having its principal place of business in Hartford in said State. The Connecticut Trust and Safe Deposit Company was likewise chartered by the General Assembly of Connecticut and has its principal place of business in Hartford.

3. The Hartford Trust Company and the Connecticut Trust and Safe Deposit Company filed separate income tax returns for the first half of the year 1919, ending July 19th. Plaintiff on May 14, 1920, after consolidation, filed its return covering the period from July 20, 1919, to December 31, 1919, and paid \$9,895.13 as taxes thereon as follows:

\$2,473.78 on May 14, 1920, \$2,473.78 on June 15, 1920, \$2,473.78 on August 14, 1920, and \$2,473.79 on December 15, 1920.

4. On or about March 15, 1921, plaintiff filed its tax return for the year ended December 31, 1920, and paid \$24,715.11 taxes thereon as follows: \$16,178.78 on March 15, 1921, \$16,178.78 on July 1, 1921, \$16,178.78 on September 15, 1921, and \$16,178.77 on December 15, 1921.

5. In October, 1924, an additional tax was assessed against plaintiff for the year 1919 in the sum of \$1,590.27, of which \$1,274.97 was paid by it in cash on November 13, 1924, and \$315.30 was abated by the commissioner on February 28, 1925. On October 5, 1927, the commissioner refunded to plaintiff the said sum of \$1,274.97. An additional tax was also assessed against plaintiff for 1920 amounting to \$2,665.36, \$2,248.00 of which plaintiff paid on November 13, 1924, \$417.36 was abated by the commissioner on February 28, 1925, and the said sum of \$2,248.00 was refunded to plaintiff on November 14, 1927.

6. On November 22, 1924, the Bureau of Internal Revenue addressed the following letter to plaintiff:

"An audit of your income-tax return for the period January 1 to July 19, 1919, in connection with an examination of your books of account and records, discloses a deficiency in tax amounting to \$2,661.23, as shown in the attached statement."

The statement attached thereto reads as follows:

"January 1 to July 19, 1919. -- Deficiency in tax,
\$2,661.23.

"This additional tax results from the adjustments shown in the revenue agent's reports dated August 29 and October 15, 1924.

"If your protest against the determination of the de-

iciency, the bureau desires to proceed in the regular manner to the consideration of any information submitted by you. However, the statutory period within which the commissioner may assess additional taxes for the year 1919 will expire presently, and in order to avoid the necessity of making an assessment prior to such consideration, it is requested that you sign and return to this office the enclosed form of waiver."

7. On December 9, 1924, plaintiff executed a waiver covering the calendar year 1919, which it filed with the Commissioner of Internal Revenue, extending the period of assessment for one year after the expiration of the statutory period, or until May 14, 1926.

8. On January 12, 1925, a letter was written by the office of the Commissioner of Internal Revenue to the plaintiff advising that an examination of its books and records for the period of January 1 to July 19, 1919, had disclosed a deficiency of \$7,921.50, as shown in the attached statement, which letter is here quoted:

"The determination of your income-tax liability for the period January 1 to July 19, 1919, pursuant to an examination of your books of account and records, as set forth in office letter dated November 22, 1924, disclosed a deficiency in tax amounting to \$7,921.50 as shown in the attached statement.

"In accordance with the provisions of section 274 of the revenue act of 1924, you are allowed 60 days from the date

of this letter within which to file an appeal to the Board of Tax Appeals contesting in whole or in part the correctness of this determination.

"Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

"If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT: CA-2115-6. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to."

To this letter was attached an agreement, known as Form A, as follows:

"The undersigned taxpayer hereby waives the right of appeal under section 274 (a) of the revenue act of 1924 with respect to the items listed below and consents to the immediate assessment of the deficiency in tax resulting therefrom. These items are included in a deficiency in tax aggregating \$7,921.50 as indicated by letter from the Commissioner of In-

ternal Revenue, Washington, D.C., dated Jan. 12, 1925, bearing the symbols IT:CA-2115-6, or as indicated in the report of the Revenue Agent in Charge at _____ dated _____."

Said letter also had attached thereto the statement referred to above, as follows:

"In re: Hartford-Connecticut Trust Co., Successors to Hartford Trust Co., 750 Main Street, Hartford, Connecticut.

"Deficiency in tax

"January 1 to July 19, 1919, \$7,921.50.

"The overassessment of \$141.33, recommended by the revenue agent in his report dated October 15, 1924, has been changed to an additional tax of \$7,921.50 due to the following adjustments:

Net taxable income reported by agent \$109,774.34

"No Change."

Invested capital reported by agent 1,284,000.99

Loss:

1913 to 1917 overassessments \$467.67

Amount shown by agent 1,994.90

1,527.23

1,295,171.06

Loss:

Inadmissibles prorated by agent ..15,200.66

Inadmissibles prorated by office, being overassessment in prior year as admissible assets

15,801.48

.88

| | |
|--|-------------------|
| Adjusted invested capital | 1,285,170.23 |
| Invested capital for 199/360 year | <u>710,413.55</u> |
| 8% of invested capital | 56,833.08 |
| Exemption 199/360 of \$3,000.00 | <u>1,658.33</u> |
| Excess profits credit | <u>58,491.41</u> |
| Excess profits tax | 10,256.59 |
| Income tax at 10% | <u>7,890.93</u> |
| Tax assessable | 18,147.52 |
| Previously assessed as shown by agents 18,268.28 | |
| Previously assessed as shown by returns | <u>10,226.02</u> |
| Deficiency in tax | 7,921.50 |

"If you protest against the determination of the deficiency, the bureau desires to proceed in the regular manner to the considerations of any information submitted by you. However, the statutory period within which the commissioner may assess additional taxes for the year 1919 will expire presently, and in order to avoid the necessity of making an assessment prior to such consideration, it is requested that you sign and return to this office the enclosed form of waiver."

Plaintiff replied on January 13th as follows:

"We are in receipt of letter dated January 12, 1925, signed D. H. Blair, Commissioner, by J. G. Bright, deputy com-

missioner, in which you send to us certain agreements consenting to assessment of deficiency and also statement in which you state that the deficiency in tax was \$7,921.50 for the period January 1 to July 19, 1919. You also state that if we consent to the extension of time for examination by your department that we should sign and return the inclosed waiver. We note that there is no form of waiver accompanying the letter, but in a similar letter received from your department dated November 22, 1924, there was a form of waiver which was duly signed and returned to your department on December 9, 1924, agreeing to the extension of time. Therefore, we do not understand why we should receive a second letter.

"If possible, will you kindly inform us if there is anything else that you wish to do in relation to the matter."

9. On September 8, 1925, waivers for 1919, 1920, and 1921 were executed by plaintiff's vice president, and the latter's secretary, personally delivered them to the secretary of the collector of internal revenue in Hartford, Connecticut, at his office. It was the practice of that office when waivers were delivered to it, if they contained the numerals designating the case, to put the waivers in an envelope, place the numerals thereon and forward them by mail to the Commissioner of Internal Revenue without a letter of transmittal; but if the waivers did not contain said numerals, they were forwarded with a letter of transmittal.

Said waivers read as follows:

"September 8, 1925.

**INCOME AND PROFITS-TAX WAIVER FOR TAXABLE YEARS ENDED PRIOR
TO JANUARY 1, 1926**

"In pursuance of the provisions of existing internal revenue laws the Hartford, Connecticut Trust Company, a taxpayer of Hartford, County of Hartford, Connecticut, and the Commissioner of Internal Revenue hereby waive the time prescribed by law for making any assessment of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of said taxpayer for the year (or years) December 31, 1925, under existing revenue acts, or under prior revenue acts.

"This waiver of the time for making any assessment as aforesaid shall remain in effect until December 31, 1926, and shall then expire except that if a notice of a deficiency in tax is sent to said taxpayer by registered mail before said date and (1) no appeal is filed therefrom with the United States, Board of Tax Appeals then said date shall be extended sixty days, or (2) if any appeal is filed with said board then said date shall be extended by the number of days between the date of mailing of said notice of deficiency and the date of final decision of said board.

"This waiver supersedes the waiver submitted on December 31, 1925, and the waiver submitted on February 11, 1926, which was submitted in answer to

partment letter dated November 22, 1934."

"September 8, 1925.

"INCOME AND PROFITS TAX WAIVER FOR TAXABLE YEARS ENDED PRIOR TO
JANUARY 1, 1922

"In pursuance of the provisions of existing internal revenue laws of the Hartford-Connecticut Trust Company, a taxpayer of Hartford, County of Hartford, Connecticut, and the Commissioner of Internal Revenue hereby waive the time prescribed by law for making any assessment of the amount of income, excess profits, of or war-profits taxes due under any return made by or on behalf of said taxpayer for the year (or years) ended December 31, 1920, and December 31, 1921, under existing revenue acts, or under prior revenue acts.

"This waiver of the time for making any assessment as aforesaid shall remain in effect until December 31, 1926, and shall then expire, except that if a notice of a deficiency in tax is sent to said taxpayer by registered mail before said date and (1) no appeal is filed therefrom with the United States Board of Tax Appeals then said date shall be extended sixty days; or (2) if an appeal is filed with said board then said date shall be extended by the number of days between the date of mailing of said notice of deficiency and the date of final decision by said board."

10. Following the action of the commissioner in making additional assessments against plaintiff for the years 1919 and

1920, plaintiff's accountant made an audit of its books and accounts. This audit revealed that plaintiff had been treating discounts as earned income before they were earned, and had overpaid its taxes for some years and underpaid them for others. Said accountant advised a change in its system whereby discounts would be placed on an accrual basis. He then consulted with representatives of the commissioner in Washington, and as a result plaintiff filed amended returns for 1919, 1920, and 1921, which were accepted by the commissioner in March, 1927.

11. Said amended returns for 1919, 1920, and 1921 were filed by plaintiff on or about March 15, 1927, to which were attached claims for refund of its 1919 and 1920 taxes, amounting to \$41,914.89, which claims were rejected by the commissioner. Thereafter defendant's field agent in New Haven, Connecticut, was directed to make, and made an examination of plaintiff's books. The findings of said agent, which were approved by plaintiff on May 13, 1927, are as follows:

| Years | Additional tax | Overassessment |
|---|----------------|-----------------|
| July 10, 1919 to December 31, 1919..... | | \$11,063.35 |
| 1920 | | 40,892.47 |
| 1921 | \$4,860.18 | |
| 1922 | 825.62 | |
| 1923 | | <u>7,684.57</u> |

| | Additional tax | Overassess- ment |
|---------------------------------|-------------------|---------------------|
| | \$5,786.80 | \$59,640.39 |
| Net Overassessment | | 53,854.59 |

This report was transmitted to plaintiff by said agent on June 4, 1927. On July 18, 1927, the commissioner wrote plaintiff in reference to this report, in which he stated that the disallowance therein was due to the fact that plaintiff's claims for refund had been filed after the statute of limitations had expired. Plaintiff's accountant then visited the Bureau of Internal Revenue at Washington for the purpose of making a search for the waivers filed by plaintiff for the years 1919, 1920, and 1921. A special searcher in that bureau located the waiver for 1919, filed on December 9, 1924, but the waiver for 1920 and 1921 was not found on file there.

It was the custom in the bureau previous to 1928, when a waiver was received, to attach it to the taxpayer's return, stamping on the return receipt of the waiver. Later the rule was changed and the movements of the return were stamped on a white card, which was retained in the file, and the waiver was then sent to the proper district file. When this latter system was adopted waivers which were previously attached to returns were not disturbed. No record was found in the bureau, either on the returns or cards, of the filing by plaintiff of waivers

for the years 1920, and 1921.

12. Should the plaintiff be entitled to recover, it should receive \$41,914.39.

Respectfully submitted,

JOHN A. ELMORE, Commissioner.

* * * * *

Senator George: Is it the wish of the members of the Subcommittee that this matter be re-referred to the Treasury Department, together with the statement submitted in behalf of the taxpayer, so that the Committee may be furnished with an additional statement of the Treasury Department? I believe Senator Byrd made that suggestion.

Senator Walcott: Yes.

Senator Byrd: I think that would be a good idea.

Senator Walcott: I am not sure whether that vote ought not to be taken, Mr. Chairman, in executive session. What do you think?

Senator George: Yes, I think so.

Senator Walcott: So that, if the counsel has finished his statement --

Mr. Gallagher: Yes.

Senator Walcott: -- we might remain in executive session.

Mr. Gallagher: I have finished, except to thank you ever so much for your attention.

Senator Walcott: Mr. Gallagher, you had no other suggestion, had you, except this, that you are appealing to us, as a Subcommittee of the Finance Committee, to again refer this back to the Department?

Mr. Gallagher: I do not make that request, Senator, no, sir. If the Committee feels that it would be helpful to them to have another report from the Treasury, of course, that is

something about which I have nothing to say.

Senator Byrd: But you see no objection to that?

Mr. Gallagher: I see no objection to it, no, sir.

Senator Walcott: But is there anything else to do? An Act of Congress, overruling the Department, is the only alternative, isn't it?

Mr. Gallagher: Yes, sir.

Senator Walcott: That is the only alternative? And don't you think that would be rather an unusual course?

Mr. Gallagher: Well, I have seen so much controversy, in recent months, between Departments of the Government and the Congress itself, regarding the propriety of certain measures, that I don't think the opinion of a Department is controlling, any more, or that it ever has been.

Senator Byrd: In this particular case, though, it certainly should be re-referred, because you brought out things that has not dealt with at all in the report that we have before us.

Senator Walcott: It does not seem to me that the report of Mr. Ballantine covers this particular case at all.

Mr. Gallagher: I think it would be very wise, from the standpoint of the Committee, to obtain a further ruling from the Treasury Department.

Senator George: Well, we thank you very much, Mr. Gallagher.

Mr. Gallagher: Thank you, Senators.

Senator George: Senator, there is nothing else, I suppose, that you wanted to put into the record?

Senator Walcott: No, I think not.

(Thereupon the Subcommittee went into executive session.)
