

REFUND OF INCOME AND PROFITS TAXES ERRONEOUSLY COLLECTED FROM THE HARTFORD-CONNECTICUT TRUST CO.

MAY 13 (calendar day, JULY 20), 1935.—Ordered to be printed

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

REPORT

[To accompany S. 2044]

The Committee on Finance, to whom was referred the bill (S. 2044) for the refund of income and profits taxes erroneously collected, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The bill would authorize and direct the Commissioner of Internal Revenue to receive, consider, and determine in accordance with law, but without regard to any statute of limitations, any claim filed within 6 months after the passage of the act for the refund of income and profits taxes erroneously collected from the Hartford-Connecticut Trust Co. for the years 1919 to 1923. The amount involved in the bill as introduced is something less than \$42,000. The committee amendment directs that from any amount of refund found due there shall be deducted any additional taxes for the years 1921 and 1922, in effect removing the bar of the statute of limitations to the extent that it operates against the Government in the case of this taxpayer.

The committee believes the merit of this claim is not a matter of dispute. It is admitted on all sides that the taxes were erroneously collected. A refund was denied by the Bureau of Internal Revenue, however, on the theory that the claim was barred by the statute of limitations. The claimant has demonstrated to the satisfaction of the committee that the statute was tolled in due time.

When the matter was presented to the Court of Claims (*Hartford-Connecticut Trust Co. v. United States*, 58 Fed. (2d) 443), the court found that "the plaintiff's vice president, on September 8, 1925, executed waivers for the years 1919, 1920, and 1921; that these 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 their delivery to the collector's secretary." On this finding of fact, the court held that "delivery of the waivers to the collector of internal revenue rather than to the Commissioner made the collector the agent of the taxpayer, and not the agent of the Commissioner." In other words, the Court of Claims found that the waivers extending the operation of the statute of limitations were filed with an officer of the United States. If the waivers were thereafter lost, it is due to the negligence of the Government, not the taxpayer.

The claimant further demonstrated at the hearing before the committee that the returns in question bore pin marks, which, according to the testimony of employees of the Bureau submitted to the Court of Claims, could only have been made by attaching waivers to the returns. It was further shown by claimant that other waivers, filed by the same claimant for different years, were found after repeated denials by the Bureau that they had ever been filed. And it was shown that the Bureau maintained a field force working on this particular case, long after the period allowed by the statute would normally have run. In other words, if no waivers were on file, the men would have been working in vain, since the statute would have prevented any action based on their recommendations. These facts, coupled with the finding of the Court of Claims quoted above, led the committee to believe that the statute had been tolled by the filing of waivers, and that the waivers were subsequently lost in the office of the Commissioner of Internal Revenue.

The Treasury Department has withheld its approval of this claim, thinking that it will open the door to many similar claims. The report of the Department states that the Congress, having established the policy of enforcing a statute of limitations, should refrain from relaxing it in individual cases. The committee feel that this is an exceptional case. It is not inclined to reject the claim on the theory that it will open the door to similar claims by other parties. This is not a case seeking an outright waiver of the statute of limitations. In this case all the evidence indicates that the statute was tolled in due time by the taxpayer. The question here is whether or not the statute was tolled; and not whether the statute should be waived.

In the great majority of cases involving a question of this kind, the effort is to have the statute of limitations waived, after the taxpayer has slept on his rights. The claimant here is not seeking a waiver of the statute of limitations; it has submitted evidence proving to the satisfaction of this committee, that the statute was tolled in due time. It is in this particular that this case differs from others of a similar nature that have been previously presented to it.

The United States can be sued only with its permission and on its own terms. The decision of the Court of Claims turned on the highly technical point that the collector of internal revenue at Hartford, Conn., was not an agent of the United States for the purpose of receiving waivers extending the operation of the statute of limitations. The equities of the parties could not concern the court since it had power only to delineate the legal rights. This bill will permit the claimant to avail itself of an equitable right, the effective recognition of which was beyond the province of the Court of Claims. The moral obligation of the United States, and the equitable right of the claimant can only be recognized by an act of Congress.

The adverse report of the Treasury Department, which the committee believes is sufficiently answered by the foregoing statement, is as follows:

TREASURY DEPARTMENT,
Washington, March 25, 1935.

Hon. PAT HARRISON,
Chairman Committee on Finance, United States Senate.

MY DEAR MR. CHAIRMAN: I have your letter of February 27, 1935, transmitting to the Treasury Department for a report copy of S. 2044 (74th Cong., 1st sess.), a bill for the relief of the Hartford-Connecticut Trust Co., a corporation organized and existing under the banking laws of the State of Connecticut.

The bill would authorize and direct the Commissioner of Internal Revenue to receive, consider, and determine in accordance with law, but without regard to any statute of limitations, any claim filed within 6 months from the passage of the act for the refund of income and profits taxes erroneously collected for the years 1919 to 1923, inclusive.

Returns were filed by this taxpayer for the years in question in the usual manner. Upon final determination by the Commissioner of Internal Revenue of the tax liability for the years involved, it was found that the taxes for the period July 20 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 period within which the full amount of the overassessment for the years 1919 and 1920 could be allowed. The total amount of the overpayment for the year 1923 was refunded on the basis of the claim which was timely filed for that year. For the years 1921 and 1922 additional taxes were found to be due, but these were not assessed and collected due to the bar of the statute of limitations which had operated against the Government.

The taxpayer instituted suit in the United States Court of Claims for the recovery of the taxes overpaid for the period July 20, 1919, to December 31, 1919, and for the year 1920. An officer of the corporation contended that he had on September 8, 1925, signed waivers extending the period within which taxes for the years in question could be assessed and collected and had given these waivers to his secretary with instructions to file with the collector of internal revenue at Hartford, Conn. These waivers, if filed, would have extended the period within which a claim could be filed for the years in question. The special findings of fact of the Court of Claims on this case (No. K-23) stated in part as follows:

"There is nothing in the record of the office of the collector at Hartford to show that these waivers were ever received by the collector, and there is no proof that they were transmitted to the Commissioner of Internal Revenue at Washington. Nor is there any proof that the waivers were filed in the Commissioner's office."

The attention of the committee is invited to the fact that the bill, S. 2044, as introduced would authorize and direct the Commissioner of Internal Revenue to receive, consider, and determine, in accordance with law, but without regard to any statute of limitations, any claim filed not later than 6 months after the passage of the act, for the refund of income and profits taxes erroneously collected from the Hartford-Connecticut Trust Co. for the years 1919 to 1923, inclusive. While it is admitted that the taxes for the years 1919 and 1920 have been overpaid, it will also be seen that a deficiency exists for the years 1921 and 1922, which is barred from collection. The bill as introduced permits the filing of claims for all years but does not provide for the collection of taxes due for those years.

It has been the policy of Congress to include in the revenue acts limitation provisions by the operation of which after a certain time it is impossible for the Government to assess additional taxes found to be due or for the taxpayer to obtain a refund of taxes overpaid. It frequently 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 the running of the statute of limitations, and bills are often introduced in Congress, seeking relief. The ground for relief asserted is always that the amount of tax was in fact overpaid and that it is unjust for the Government to retain the money. After deliberate consideration, the answer of the Department has invariably been that to grant relief in this type of case would be contrary to the policy of the statute of limitations and would open the door of relief in 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. The position which the Department has taken and which Congress has sanctioned, is that it is sound to have statutes of limitations and that the policy upon which such statutes are based must be adhered to, notwithstanding hardship in a particular case.

The Treasury Department opposes the enactment of S. 2044 for the reasons indicated above.

In the event further correspondence relative to this matter becomes necessary, please refer to IT:E:RRR.

Very truly yours,

T. J. COOLIDGE,
Acting Secretary.

