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SENATE

} REPORT
No. 508

REFUNDING OF LEGACY TAXES

MARCH 6 (calendar day, MARCH 9), 1928.—Ordered to be printed

Mr. WALSH of Massachusetts, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 7224]

The Committee on Finance, to whom was referred the bill (H. R. 7224) to extend the time for the refunding of certain legacy taxes erroneously collected, having had the same under consideration, report it back to the Senate without amendment and recommend that the bill do pass.

The Finance Committee adopts the report of the Judiciary Committee of the House on the bill, which is as follows:

[House Report No. 266, Seventieth Congress, first session]

The Committee on the Judiciary, to whom was referred the bill H. R. 7224, after hearing (serial 17, 69th Cong.) and consideration, reports the same favorably with an amendment and recommends that the bill as amended do pass.

The committee amendment is as follows:

On page 2, line 13, after the word "Reports" strike out the "period" and insert a "colon" and the following language:

"*Provided*, That no interest shall be allowed on any of these claims."

On June 27, 1902, Congress passed an act authorizing the refund of certain taxes collected under the Spanish War revenue act of June 13, 1898. The third section of that act provides as follows:

"That in all cases where an executor, administrator, or trustee shall have paid or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act approved June 13, 1898, entitled, 'An act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July 1, 1902. And no tax shall hereafter be assessed or imposed under said act approved June 13, 1898, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July 1, 1902." (32 Stat. L. 406.)

It will be noted that this section provides that in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act in question, the Secretary of the Treasury is authorized and directed to refund so much of said tax as may have been collected upon any contingent beneficial interest which shall not have become vested prior to July 1, 1922.

There was no period of limitation fixed by the act within which the claims for refund should be filed. Shortly after the passage of the act, the following Treasury decisions were issued restricting its application:

"When the decedent died prior to July 1, 1902, and the distributive shares or legacies absolutely bequeathed were not distributed to or among the beneficiaries on or before the date named on account of the time allowed by State laws to settle the estate and distribute or disburse the personal property, or on account of litigation, such legacies and distributive shares are subject to tax. (Treasury Decision 630, Internal Revenue Decisions, vol. 5, p. 140.)

"It must be held, therefore, that tax attached to every vested interest in personal property in actual value above \$10,000, passing under the will of any person who died prior to July 1, 1902, and since June 18, 1898, though the actual possession of that interest, whether by the trustees or beneficiaries, was postponed to July 1, 1902, or later." (Treasury Decision 595, Internal Revenue Decisions, vol. 5, p. 193.)

These Treasury rulings remained in full force and effect until the matter was finally settled and they were reversed by a decision of the Supreme Court of the United States on January 25, 1915, in which the court held, referring to the refunding act, that "it deals with legacies and distributive shares upon the same plane, treats both as 'contingent' interests until they 'become absolutely vested in possession or enjoyment,' directs that the tax collected upon contingent interests not so vested prior to July 1, 1902, shall be refunded, and forbids any further enforcement of the tax as respects interests remaining contingent up to that date." (U. S. v. Jones, administrator of Dalzell, supra, 236 U. S. 106; McCoach, collector, v. Pratt, 236 U. S. 562.)

Prior to these decisions by the Supreme Court, the Treasury decisions disallowed the right of refund to these claimants. In the interim, however, between the act of June 27, 1902, and January 25, 1915, the date of the first decision by the Supreme Court of the United States, Congress passed the act of July 27, 1912, which was held to apply to the claims for refund under the act of June 27, 1902. This act required that all claims should be filed by January 1, 1914.

After the decision of the Supreme Court was made there were only a few of these claims left outstanding, because under the decision of the Supreme Court those who happened to have their claims on file before January 1, 1914, had their claims favorably adjudicated, and the report of the Senate committee shows that 95 per cent of those entitled to refund were paid. No claim of laches, however, can properly be made against the few claimants without relief in view of the fact that the Treasury Department would not entertain their claims prior to the date of the limitation established by the act of July 27, 1912, and their rights were not established by the Supreme Court until January, 1915, one year after the period of limitation (January 1, 1914) set up by the act of June 27, 1912. As stated the act of June 27, 1902, upon which these refunds are based, carried no limitation period for filing claims.

Similar bills passed the Senate in the Sixty-sixth, Sixty-seventh, and Sixty-eighth Congresses. The bill in the Sixty-seventh Congress received favorable consideration by the House Committee on Claims. There is printed herewith and made a part of this report, the report of the Senate Committee on Claims in the Sixty-eighth Congress (S. Rept. 47), recommending the enactment of this legislation:

"The Committee on Claims, to whom was referred the bill (S. 894) to extend the time for the refunding of taxes erroneously collected from certain estates, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

"A similar bill (S. 3716) passed the Senate September 11, 1922. Senate bill 4591 passed the Senate during the Sixty-sixth Congress, January 25, 1921, for the relief of certain estates therein enumerated, and a similar bill (S. 158) passed the Senate June 6, 1921, Sixty-seventh Congress.

"The Secretary of the Treasury, under date of March 18, 1921, suggested that a general bill be passed in lieu of certain enumerated estates, the Secretary stating:

"It is the opinion of this office that if legislation is to be enacted further extending the time within which to apply for refunds that the legislation should take the form of a general bill, so limited, however, as to permit of the refund of claims coming solely within the decision of the Supreme Court of the United States. The reason for advocating general legislation, rather than a bill granting relief to a limited number of claims, is that it is believed that the department should have the opportunity to carefully adjudicate each case, and considerable care must be exercised in the adjudication of each claim to determine the amount properly allowable in the light of the several Supreme Court decisions."

"The purpose of the legislation is to refund taxes illegally collected in view of the decisions of the Supreme Court of the United States in the cases of *United States v. Jones* (236 U. S. 106) and *McCoach v. Pratt* (236 U. S. 562).

"Under said decisions the committee is advised approximately 95 per cent of the estates entitled to a refund were paid.

"When the parties in interest made claims under decision of the Supreme Court of the United States, the Commissioner of Internal Revenue rejected them as barred under a provision contained in the act of July 27, 1912, which required that certain claims for refund be filed prior to January 1, 1914.

"It was contended by these claimants that the limitation in the act of 1912 did not apply to claims for refund under the act of 1902, and this particular question was litigated and the Supreme Court of the United States held in May, 1919, in the case of *Coleman v. United States* (250 U. S. 30) that the limitation barred all classes of claims for refund.

"In other words, claimants who waited until the Supreme Court of the United States passed upon the merits of the matter now find themselves barred (under the decisions of the Supreme Court made in May, 1919) because of a provision contained in the 1912 act, although there was no limitation contained whatever in the 1902 act, under which claimants seek the refund, which 1902 act was not finally construed by the Supreme Court as stated until 1915.

"The only question involved is the statute of limitations which, as herein stated, was not decided by the Supreme Court of the United States until May, 1919, to apply to this class of claims.

"The Committee on Claims has frequently removed the statute of limitations where it appeared that a tax had been illegally exacted.

"This is money illegally collected from these estates which the Government has improperly retained for several years, and the claimants ought not to be deprived of a refund by reason of any statute of limitations, which limitations were not decided to apply to these cases by the Supreme Court until May, 1919.

"These claimants can not be charged with laches or neglect in asserting their claims, for the reason that the 1902 act was not finally construed by the Supreme Court until 1915, and they had no reason to expect that a limitation contained in a subsequent act would bar their claim for refund under a prior act, in which no limitation was mentioned.

"As herein stated, practically all of the claims have been paid except a comparatively small number of them, representing in all approximately 150 claims from nearly every State, and the amount due these claimants to be benefited by this legislation probably will not exceed \$100,000."

This bill grants no new rights. It simply authorizes the Commissioner of Internal Revenue to consider and determine such claims as may be presented within six months under the act in question, without regard to the limitation period, where, and only when, it be found that such taxes were collected upon the erroneous interpretation of the law condemned by the decisions of the Supreme Court referred to.

