

RELATING TO THE APPLICATION OF THE EXCESS-PROFITS TAX TO CERTAIN PRODUCTION BONUS PAYMENTS

SEPTEMBER 24 (legislative day, SEPTEMBER 15), 1943.—Ordered to be printed

Mr. CLARK of Missouri, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 2888]

The Committee on Finance, to whom was referred the bill (H. R. 2888) relating to the application of the excess-profits tax to certain production bonus payments, report favorably thereon, without amendment, and recommend that the bill do pass.

This legislation was requested by the War Production Board, and the pending bill was drawn and approved by the Treasury.

H. R. 2888 was introduced in the House of Representatives June 7, 1943, and passed the House unanimously on June 25. S. 1249 was introduced in the Senate on June 22, and referred to Finance Committee. They are identical bills.

This bill is to correct inadvertent technical error in tax bill of 1942, in regard to exemption from excess-profits tax on premium payments by Metals Reserve Company on zinc production from tailing piles (waste material from nonferrous metal mines). Under the act this exemption applies only to premium payments on zinc produced from mining operations entitled to depletion. Under present interpretations of various revenue acts, tailing piles are not entitled to depletion (and therefore not entitled to exemption from excess-profits tax) except in cases where the tailing mill operation is conducted by the same operator who produced the tailings from mining operations, i. e., operators having an "economic interest" in the mineral property from which the minerals are extracted. A large percentage of the original mine operators who produced tailings have gone out of business, and the piles of tailings left by them are now being retreated by others than the original mine operator because of the need for zinc.

The purpose of H. R. 2888 is to put all tailing-mill operators on an equality, giving them the same exemption under the Revenue Act of 1942, whether they have an economic interest in the mineral property or not.

Tailing-mill operations in the largest zinc-production district in the country (tri-State) have been producing approximately 15 percent of the total production of that district, and it is believed the passage of

this bill will result in large expansion of tailing-mill operations in that district and in all zinc-producing districts in the country, and a large increase in production of zinc, so greatly needed for war purposes.

The 1942 act includes timber in the same paragraph with minerals, and the amending bill (H. R. 2888), therefore, includes timber.

The correspondence between War Production Board, the Bureau of Internal Revenue, and Treasury Department is set out in the House committee report.

For the further information of the Senate there is appended hereto and made a part of this report a letter to the chairman of the Senate Finance Committee, under the date of July 24, 1943, from the Acting Secretary of the Treasury, pointing out the views of the Treasury Department on the bill S. 1249, identical to bill H. R. 2888, as follows:

HON. WALTER F. GEORGE,
*Chairman, Committee on Finance,
 United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your letter of June 23, 1943, requesting report on S. 1249 (78th Cong., 1st sess.) entitled "A bill relating to the application of the excess-profits tax to certain production bonus payments."

If enacted, the proposed legislation would extend the definition of "nontaxable bonus income" as contained in section 735 (c) of the Internal Revenue Code so as to include a mineral product extracted or recovered from mine tailings by a corporation which owns no economic interest in the mineral property from which the ore containing such tailings was mined. Existing law provides that bonus payments made to a corporation which extracts minerals from a mineral property, or recovers timber from a timber block, in which an economic interest is owned by such corporation, by any agency of the United States Government on account of the production in excess of a specified quota of a mineral, or of timber, the exhaustion of which gives rise to an allowance for depletion, under section 23 (m), shall be excluded from the payment of the excess-profits tax. The amount of these excluded bonus payments or "nontaxable bonus income" is limited to an amount not in excess of the net income (computed with the allowance for depletion) attributable to the output in excess of such quota.

The relief extended by existing law is limited to those producers having an "economic interest" in the mineral property or timber block from which minerals are extracted or timber is recovered and it is the purpose of the present bill to enlarge existing law so as to provide the same relief for tailing-mill operators having no economic interest in the mineral property from which the tailings were taken.

The proposed bill is identical in form and substance with H. R. 2888 (78th Cong., 1st sess.) as passed by the House of Representatives on June 24, 1943 (Congressional Record, vol. 89, p. 6530). The subject matter of H. R. 2888 was discussed with the House Committee on Ways and Means by officials of the Treasury Department who found no grounds for objecting to the purposes sought to be accomplished by the proposed legislation. It is to be observed, however, that section 4 of the bill is open to a construction which it is believed was not intended by the draftsman. Such section provides that the amendments proposed by the bill shall be applicable to taxable years beginning after December 31, 1940, which provision might be construed as establishing a new effective date with respect to the provisions of sections 711 (a) (1) (I) and 711 (a) (2) (K) relating to the exclusion of nontaxable income from exempt excess output of mines and timber blocks.

Under the circumstances, the Treasury Department recommends that section 4 of the bill be amended to read substantially as follows:

"Sec. 4. The amendments made by this Act shall be effective as if they were a part of section 209 of the Revenue Act of 1942 on the date of its enactment."

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

If further correspondence relative to this matter is necessary, please refer to IR:IT:P:CA-CJM.

Very truly yours,

HERBERT E. GASTON,
Acting Secretary of the Treasury.