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REPORT
No. 95-797

REVISION OF MISCELLANEOUS TIMING REQUIREMENTS OF THE REVENUE LAWS

MAY 10 (legislative day, APRIL 24), 1978—Ordered to be printed

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

REPORT

[To accompany H.R. 7320]

The Committee on Finance, to which was referred the bill (H.R. 7320) to revise miscellaneous timing requirements of the revenue laws, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are shown in the text of the bill in italic.

I. SUMMARY

In general, the bill contains various provisions relating to certain timing requirements of the Federal tax laws. These provisions have been developed from a list of legislative recommendations submitted by the American Bar Association, the American Institute of Certified Public Accountants and various other groups including State and local bar and accounting associations.

The Subcommittee on Taxation and Debt Management of the Committee on Finance held public hearings on the bill on March 17, 1978. The Committee on Finance subsequently made further amendments to the bill as a result of the testimony and comments received.

House bill

The bill contains provisions relating to the time for (1) payment of expenses owed to related parties, (2) election of special corporate liquidation treatment for involuntary conversions, (3) election of subchapter S status by a corporation, (4) filing of unrelated business income tax returns for exempt organizations, (5) determining the status of a taxpayer as a farmer or fisherman for estimated income tax purposes, (6) claiming credits or refunds arising from

carrybacks, and (7) collection of the penalty for failure to pay over withholding taxes where a bond is furnished. In addition to these timing provisions, the bill provides a basis adjustment for property distributions received by a corporation where gain is recognized by the distributing corporation.

Committee amendments.—A committee amendment modifies the provision relating to the election of subchapter S status by a corporation in two respects.

First, the House bill provides that a newly formed corporation may make the subchapter S election during the first 75 days of its first taxable year, rather than the 1-month period provided under present law. The committee modified this provision so that existing corporations may also make a subchapter S election during the first 75 days of its taxable year.

Second, the House bill would permit the filing of a subchapter S election by shareholders of a small business corporation at any time during the year preceding the taxable year for which the election is effective. The committee has modified this provision so that the addition of new shareholders, after such an election is filed and before the election is effective, will not terminate the subchapter S election.

A committee amendment also would permit duty-free importation of boric acid, mineral wool, or glass fibers from any most-favored-nation country beginning on the date of enactment of this bill and before June 30, 1979.

II. EXPLANATION OF PROVISIONS

A. Period for Payment to Qualify for Deductibility of Certain Expenses Paid to Related Taxpayers (sec. 2 of the bill and new sec. 267(e) of the Code)

Present law

Under present law (sec. 267(a)), an accrual basis taxpayer is denied a deduction for certain accrued expenses or interest owed to certain related persons who are on the cash basis. The disallowed interest and expenses are those which are not paid to the related person, or are not constructively received by the related person, within the taxable year in which the expenses are accruable, or within 2½ months thereafter. This provision prevents an accrual-basis taxpayer from claiming a deduction for an accrued expense which the related cash-basis payee is not required to take into income until some subsequent time, if at all.

Because an accrued expense is deductible by a taxpayer under the accrual method of accounting only in the taxable year in which it accrues, a deduction disallowed under section 267(a) is permanently lost. It cannot be deducted at some subsequent time when payment is made.

In determining whether certain acts are performed timely, present law (sec. 7503) generally provides that when the last day for performing any act falls on a Saturday, Sunday, or legal holiday, the act is timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. However, the Internal Revenue

Service has ruled that this provision applies only to procedural steps in connection with the determination, collection, or refund of taxes, and does not extend the 2½-month period (under section 267(a)) during which accrued expenses owed to a related person must be paid by the taxpayer, or constructively received by the related person. (Rev. Rul. 72–541, 1972–2 CB 645.)

Reasons for change

The committee believes that the general procedural rule for timely performance when the last day for performance falls on a Saturday, Sunday, or legal holiday, should apply to the period for payment of accrued expenses owed to related parties. This will permit deductions for payments of expenses on the succeeding business day in the ordinary course of business.

Explanation of the provision

This amendment applies the timely performance rule relating to holidays (sec. 7503) in determining the period within which accrued expenses owed to a related taxpayer must be paid (sec. 267(a)). As a result, the 2½-month period under section 267(a) during which payments must be made (or constructively received) in order to be deductible is to be extended if the period ends on a Saturday, Sunday, or legal holiday.

Under the bill, the determination of what constitutes a "legal holiday" is to be made under section 7503. For this purpose, a legal holiday must be a holiday recognized throughout the State where the payor is considered to reside for purposes of filing the payor's income tax return for the preceding taxable year.

The provision is the same as the House bill.

Effective date

This amendment applies with respect to payments made after the date of enactment of the bill.

B. Increase in Basis for Amount of Gain Recognized to the Distributing Corporation (sec. 3 of the bill and secs. 301(b)(1)(B), 301(d)(2), and 312(c) of the Code)

Present law

Under present law (sec. 301(b)(1)(B)), if property is distributed by a domestic corporation to a shareholder which is a domestic corporation, the amount of the distribution treated as a dividend to the distributee corporation is an amount equal to the lesser of (1) the fair market value of the property received, or (2) the adjusted basis of the property to the distributing corporation, plus any income or gain recognized by the distributing corporation upon the distribution pursuant to certain designated Code sections.[1] These designated Code sections provide for recognition of gain upon the disposition of certain types of property, such as LIFO inventory, properties subject to indebtedness in excess of basis, appreciated property used to redeem stock, real and personal property on which depreciation was claimed,

[1] Sections 311(b), (c), and (d), 341(f), 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), and 1254(a).

farmland, and interests in oil or gas properties. Corresponding rules apply in determining the reduction in the earnings and profits of the distributing corporation (sec. 312(c)).

The same rule is provided with respect to the computation of the basis of the property received by a domestic distributee-corporation (sec. 301(d)(2)).

Reasons for change

The provisions of present law prevent double taxation at the corporate level of the same gain (once at the distributor-corporation level against double taxation at the corporate level (sec. 243).) If a step-up in basis to the extent gain is recognized by the distributor-corporation. (The corporate dividends received deduction also operates to mitigate against double taxation at the corporate level (sec. 243).) If a step-up in basis were not provided in these instances, double taxation of a portion of the gain would occur upon the subsequent sale or disposition of the property by the distributee-corporation.

However, in at least one instance and possibly others, reference is not made to a Code section which requires the recognition of gain by a corporation upon the distribution of property to another corporation. Thus, while gain is recognizable upon a corporation's distribution of an installment obligation to a distributee corporation (under sec. 453(d)), no increase in the amount of distribution and basis results because the installment disposition provision is not specifically designated under either the dividend inclusion rule or the basis rule for property distributed to a corporate shareholder. Moreover, there are other corporate distribution situations with respect to which certain case law would require recognition of gain.

Thus, the dividend inclusion rule and corporate-distributee basis rule are not inclusive of all situations in which gain is recognized. As a result, the potential for some double taxation exists for those recognition situations which are not specifically covered by these provisions (secs. 301(b)(1)(B) and 301(d)(2)).

Accordingly, the committee believes that a general provision should be provided to adjust the amount of the distribution and the basis of the distributed property for a distributee-corporation where gain is recognized upon the distribution of property by the distributor-corporation.

Explanation of the provision

The bill provides that the amount of an in-kind property distribution and the basis of the property to a distributee corporation is to be increased by any gain recognized to the distributing corporation on the distribution. The bill also provides that the earnings and profits account of the distributing corporation is to be adjusted for any gain recognized by it upon the distribution (rather than just the gain recognized pursuant to specified Code sections).

The provision is the same as the House bill.

Effective date

This provision applies to distributions made after the date of enactment of the bill.

C. 60-Day Extension of 12-Month Period for Nonrecognition of Gain in Connection With Certain Liquidations Where There is an Involuntary Conversion (sec. 4 of the bill and sec. 337 of the Code)

Present law

Under present law, a corporation, which adopts a plan of complete liquidation and within 12 months thereafter distributes all of its assets to its shareholders, does not recognize gain or loss on the sale of property during the 12-month period. Prior to the enactment of this provision of the Code (sec. 337), a sale of property by a corporation which subsequently liquidated generally resulted in two taxes—one tax on the corporation on the gain realized on the sale, and a second tax on the shareholders on the gain realized by them when they received the proceeds from the corporation in complete liquidation of their stock. Prior to enactment of section 337, the tax on the sale could generally be avoided only by a distribution of assets to the shareholders in a taxable liquidation followed by a sale under which gain was not realized because the bases of the assets were equal to the sales price. The Congress changed the law in 1954 because these differences accorded undue weight to the formalities of the transaction and they, therefore, represented merely a trap for the unwary.

Congress chose to eliminate the tax at the corporate level. Section 337 generally eliminates the distinction between (1) a distribution of assets followed by a sale and (2) a sale followed by a distribution of sale proceeds to shareholders. The three major requirements of section 337 are: (1) that a plan of complete liquidation be adopted on or before the date of the sale or exchange, (2) that the sale or exchange occur within the 12-month period beginning on the date of adoption of the plan, and (3) that all proceeds (less assets retained to meet claims) be distributed in complete liquidation within the 12-month period.

Under present law, an involuntary conversion of property which results from a fire or condemnation proceeding is a "sale or exchange" eligible for non-recognition of gain or loss under this provision. In the case of a fire, the Supreme Court has held that the sale or exchange occurs at the time of the fire even if the insurance proceeds are not determinable at that time, *Central Tablet Manufacturing Co.* v. *U.S.*, 417 U.S. 673 (1974). Similarly, the transfer of ownership to the State in the case of condemnation constitutes a "sale or exchange," even if the owner did not have notice of the action. In some States, filing of documents in court is sufficient to transfer ownership of the condemned property, and subsequent litigation as to the amount of the condemnation award does not change the date of "sale" for purposes of the 12-month liquidation provision.

In the case of destruction of property by fire or other casualty, it is difficult if not impossible to take action to adopt a plan of liquidation on the date the fire or other casualty occurs.[1] If a corporation decides after an involuntary conversion to liquidate, any gain arising from the involuntary conversion is subject to two incidences of taxation if

[1] Under the statute, the nonrecognition provision applies to sales or exchanges taking place on or after the date the plan is adopted.

the corporation did not adopt a plan on the date of the involuntary conversion or did not happen to have a plan in existence before the date of the conversion. Similar considerations arise in connection with condemnations. If the taxpayer has little knowledge of an impending condemnation, then the corporation may be unable to adopt a plan of liquidation on or before the date of the condemnation.

Reasons for change

The committee believes that any gains arising from the involuntary conversion of a corporation's assets should not be subject to two incidences of taxation where the corporation adopts a plan of liquidation shortly after the conversion, and does in fact liquidate within the 12 months following adoption of the plan.

The committee feels that since two incidences of taxation can be avoided where events can be foreseen, similar treatment should be afforded, on an elective basis, in the case of an unforeseen event such as fire or other involuntary conversion.

Explanation of the provision

The bill extends nonrecognition treatment to gain or loss resulting from the destruction, theft, seizure, requisition, or condemnation of property, or from the sale or exchange of property under the threat or imminence of requisition or condemnation, if a plan of liquidation is adopted within 60 days after the date the involuntary conversion occurs, and the liquidation otherwise qualifies under the 12-month liquidation provision (sec. 337). However, this additional nonrecognition provision will apply only if the liquidating corporation so elects, at such time and in such manner as may be prescribed in Treasury regulations. If the nonrecognition election is made, it will apply to all gains and losses from all involuntary conversions occurring during the 60-day period.

This provision is the same as the House bill.

Effective date

The amendment is to apply to involuntary conversions occurring after the date of enactment of the bill.

D. Extension of Period for Making Subchapter S Elections (sec. 5 of the bill and sec. 1372(c) of the Code)

Present law

Subchapter S was enacted in 1958 in order to minimize the effect of Federal income taxes on the form in which a business is conducted by permitting incorporation and operation of certain small businesses without the incidence of income taxation at both the corporate and shareholder levels. The subchapter S rules allow corporations engaged in active trades or businesses to elect to be treated for income tax purposes in a manner similar to that accorded partnerships. Where an eligible corporation elects under the subchapter S provisions, the income or loss (except for certain capital gain) is not taxed to the corporation, but each shareholder reports a share of the corporation's income or loss each year in proportion to his share of the corporation's total stock. Once made, the election continues in effect for the taxable year and subsequent years until terminated.

Present law requires that in order for a subchapter S election to be effective for a taxable year, it must be filed during a 2-month period which begins 1 month before the start of the taxable year. (For example, if a calendar year corporation wishes to elect subchapter S effective for 1978, the election must be filed during December of 1977 or January of 1978.) An election is not valid for either the intended year or any future year if it is not filed within this period. Extensions of time for filing the election are not granted. Rev. Rul. 60–183, 1961–1 C.B. 625. If an election is found to be untimely upon audit several years later, the corporation is taxed as a regular corporation for all the intervening years, *Opine Timber Co., Inc.*, 64 T.C. 700 (1975); *Joseph W. Feldman*, 47 T.C. 329 (1966).

In effect, the period of time during which an election can be made by a newly-formed corporation for its first taxable year is only one month since a new corporation cannot make the election until it is in existence under State law, which generally occurs at the same time as the beginning of its first taxable year. *J. William Frentz*, 44 T.C. 485 (1965), aff'd, 375 F.2d 662 (6th Cir. 1967). In other situations it has been difficult to determine when the 1-month period begins for a new corporation because of several alternative rules used to determine when its first taxable year begins.

Reasons for change

There are many instances where an apparent timely subchapter S election may be invalid because the election was not filed within the limited period of time allowed under present law. In the case of a new corporation, this problem is particularly acute because of the alternative tests for determining when a corporation begins its existence. An invalid election may effect the shareholders for several years because they may not realize the election is invalid until an audit occurs several years later. In this case, a retroactive election may not be made and subchapter S status is not available for any of these years.

The limited 2-month rule, applicable to corporations making the election for a year other than the year in which they are formed, was intended to require the corporation to make the election before it could predict its profitability for the year with any certainty. This rule helps preclude use of subchapter S as a tax avoidance mechanism. Extending the period of election to encompass the entire preceding year does not provide any tax avoidance possibilities, and should reduce inadvertent untimely elections by allowing them to be made when they are first considered during the preceding year, rather than having to wait until the last month of the year.

Explanation of the provision

Under the bill as passed by the House and amended by the Committee, the period of time to make the subchapter S election is expanded to include the entire preceding taxable year of the corporation. In addition, the bill would permit all corporations to make the election during the first 75 years of the taxable year for which the election is effective. Under the bill as passed by the House, the 75-day period would have been available only to newly formed corporations. The committee amendment extends this period to previously existing corporations.

The bill, as amended by the committee, also provides that where the election is made prior to the taxable year for which it is effective, the shareholders who are required to consent to the election are those who hold stock on the day the election is made rather than on the first day of the taxable year for which the election is effective. Where the election is made during the taxable year preceding the year for which it is to be effective, no additional consents will be required where shareholders acquire stock prior to the beginning of the year for which the election is effective. This rule would also apply when an election is not timely filed for the intended taxable year but is effective for succeeding taxable years. In these cases, an individual who becomes a shareholder after the election is filed would have to affirmatively refuse to consent to the election within 60 days of becoming a shareholder to break the election.

Effective date

This amendment will be effective for subchapter S elections made more than 60 days after date of enactment but only for taxable years which begin more than 60 days after the date of enactment.

In addition, if certain conditions are satisfied, the perfection of a prior election which was not timely filed is permitted as to the corporation's taxable year following the taxable year in which the original election was filed. The small business corporation must have filed an income tax return for that year as an electing corporation and file a perfecting election (at the time and in the manner prescribed by Treasury regulations). All persons who were shareholders of the corporation (at any time during the period beginning with the first taxable year to which the perfecting election applies and ending with the date of making the perfecting election) must consent to the making of the election. The shareholders must also consent to an extension of the statute of limitations for assessing any deficiencies attributable to the election, which would otherwise be barred, for a 1-year period after the date of filing the perfecting election. The perfecting election must apply to the corporation's first taxable year following the taxable year in which the original election was filed and to subsequent taxable years. Similarly, the election will relate to the shareholders' taxable years affected by perfecting the corporation's status as an electing small business corporation.

E. Time for Filing Income Tax Returns in the Case of Organizations Exempt from Taxation Under Section 501(a) (sec. 6 of the bill and sec. 6072 of the Code)

Present law

Under present law, income tax returns on the unrelated business taxable income of calendar year corporations exempt from tax under section 501(a) of the Code must be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year must be filed on or before the 15th day of the third month following the close of the fiscal year.[1] Similarly, trusts exempt from tax under section 501(a) must file income tax returns on their unrelated business taxable income on or before

[1] Sec. 6072(b).

the 15th day of April in the case of returns made on the basis of the calendar year, or, in the case of returns made on the basis of the fiscal year, on or before the 15th day of the fourth month following the close of the fiscal year.[2] However, annual information returns of these exempt organizations (other than certain religious or apostolic organizations) must be filed on or before the 15th day of the fifth calendar month following the close of the taxable year.[3] Thus, the due date for an exempt organization's information return is different from the due date for the organization's income tax return.

Reasons for change

The committee believes that for reasons of administrative convenience to both the Internal Revenue Service and those exempt organizations required to file both an information return and an unrelated business income tax return, a single due date should be prescribed.

Explanation of the provision

The provision generally conforms the due date for an exempt organization to file a return of unrelated business income to the due date for filing an annual information return. Under this provision, an organization exempt from tax under section 501(a), other than an employees' trust described in section 401(a), must file its income tax return on or before the 15th day of the fifth month following the close of the taxable year. For a calendar year organization, the return would have to be filed by May 15.

This provision is the same as the House bill.

Effective date

This provision applies to returns for taxable years beginning after the date of enactment of the bill.

F. Period for Determining Whether the Taxpayer is a Farmer or a Fisherman for Purposes of the Estimated Tax (sec. 7 of the bill and sec. 6073(b) of the Code)

Present law

Under present law, an individual generally is required to file quarterly declarations of estimated income tax if his tax liability not covered by withholding can be expected to be $100 or more and he will have a certain amount of gross income or nonsalary income (secs. 6015 and 6073). An addition to tax generally is imposed on an underpayment of estimated tax. The rate of this addition to tax is equal to the interest rate on underpayments of tax and is based on the amount of underpayment for the time between the due date of the estimated tax payment and the due date of the tax return unless one of several exceptions apply (sec. 6654).

However, special provisions apply to farmers and fishermen. Under these provisions, an individual may postpone the filing of an estimated tax return (and the payment of estimated taxes) for a taxable year until January 15th of the succeeding taxable year if his estimated gross income from farming or fishing for the taxable year is at least

[2] Sec. 6072(a).
[3] Treasury regulations § 1.6033-2(e).

two-thirds of the total estimated gross income from all sources for the taxable year.[1]

Reasons for change

Under present law, if an individual relies on the special rules for farmers and fishermen in the belief that at least two-thirds of his current gross income will be from farming or fishing and it later develops that this is not the case (for instance, because of a crop failure), the taxpayer may not be able to avoid the addition to tax for underpayment of estimated tax because the time for making timely payments of estimated tax has expired.

Accordingly, the committee believes that the special rules for filing estimated tax returns in the case of farmers and fishermen should be available if the requirements are satisfied on the basis of gross income for the preceding taxable year.

Explanation of the provision

The bill extends the exception from quarterly declarations of estimated tax so that the special rule for farmers and fishermen also applies when at least two-thirds of the gross income shown on an individual's tax return for the preceding taxable year was gross income from farming or fishing.

The provision is the same as the House bill.

Effective date

This provision applies to declarations of estimated tax for taxable years beginning after the date of enactment of the bill.

G. Period of Limitations for Credit or Refund With Respect to Certain Carrybacks of Losses and Credits (sec. 8 of the bill and sec. 6511 of the Code)

Present law

Under present law (sec. 6511(d)(2)(A)), a claim for refund or credit attributable to a carryback of a net operating loss or capital loss must be filed within 3 years of the due date of the corporate or individual tax return for the taxable year of the loss, without regard to any extensions of time which may be granted for filing the return (including automatic extensions) unless a written extension of the period of limitations on assessment is obtained. Similar rules apply with respect to the carryback of the investment credit, work incentive credit and new jobs credit.

Since under present law a claim for refund attributable to a carryback of a net operating loss, capital loss or the previously mentioned credits must be filed within 3 years of the return due date determined without regard to any extension of time, it is possible for a carryback claim to be barred by the statute of limitations at a time that deficiencies attributable to the carryback may still be assessed, or that a claim for refund of the current year's tax is not barred by the statute of limitations.

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[1] Also, an individual who qualifies for deferral of estimated tax payments under this rule is not required to make a declaration of estimated tax or payment of estimated tax on January 15th, if he files a tax return on or before March 1 of the following year and pays the full amount of tax at that time (sec. 6015(f)).

Reasons for change

The committee believes that the limitation period for filing claims for refunds with respect to loss carrybacks. where the taxpayer has filed a timely return for the loss year, should be the same as the limitation period for assessing deficiencies attributable to the carrybacks.

Explanation of the provision

The provision amends section 6511(d)(2)(A) to provide that a claim for credit or refund relating to an overpayment attributable to a net operating loss carryback or a capital loss carryback may be filed within 3 years after the time for filing the return, including extensions, for the loss year. A similar rule applies to the carrybacks of the investment credit, the work incentive program credit and the new jobs credit.

This provision is the same as the House bill.

Effective date

The amendments apply to carrybacks arising in taxable years beginning after the date of enactment of the bill.

H. Stay of Collection of Penalty Under Section 6672 When Bond is Filed (sec. 9 of the bill and sec. 6672 of the Code)

Present law

Present law (sec. 6672) imposes a civil penalty upon any person who willfully fails to collect or pay over any tax imposed by the Internal Revenue Code. The penalty is equal to the amount of tax which has not been collected or paid over. This penalty, commonly called the 100-percent penalty for failure to pay over, applies not with regard to the personal tax liability of the person potentially subject to the penalty but rather to tax for which another person is primarily liable, e.g., an employer's liability for employees' income taxes withheld from payroll.

In the case of Tax Court litigation, a taxpayer need not pay a deficiency asserted by the Government until the final adjudication of his case, and the Government may not levy on his property or begin any other collection procedure in the meantime.[1] However, the 100-percent penalty is not subject to Tax Court jurisdiction. Instead, the person subject to the penalty generally is restricted to filing with the Internal Revenue Service a claim for refund for the penalty after it has been paid or collected. If the Service denies the claim (or fails to respond within 6 months), a suit for refund can be filed in either a U.S. district court or the Court of Claims.[2]

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[1] In the case of jeopardy assessments, immediate assessment and collection may be made, but a new provision was added under the Tax Reform Act of 1976 to obtain expedited administrative and judicial review of jeopardy assessments (secs. 6331, 6861, 6862, and 7429).

[2] The 100-percent penalty is frequently imposed on account of a failure to pay over withholding employment taxes. These are separate taxes as to each individual, and the position of the IRS as to whether individuals are employees or independent contractors can be challenged by paying the amount of the taxes for only one of those individuals and suing for a refund of that amount. In addition the plaintiff could demand abatement of the penalty attributable to the withholding taxes of the other individuals whose status is questioned. However, even in this situation, the Government could file liens and levy on the plaintiff's property for the amount of the penalty that is not yet paid. *Marvel* v. *United States*, 548 F. 2d 295 (C.A. 10, 1977), certiorari denied, 45 U.S.L.W. 3804 (U.S. June 13, 1977).

Thus, under present law, there is generally no procedure whereby the person subject to penalty may stay enforcement of the penalty pending a judicial determination. The Internal Revenue Service may assess the penalty immediately after it is determined and, 10 days after notice and demand for payment is made, enforce the assessment by various collection procedures, including a seizure of the property of the person assessed with the penalty.

Reasons for change

Allowing the I.R.S. to proceed against a person assessed with the penalty with collection procedures prior to a judicial determination of his liability may seriously affect the credit or solvency of that person.[3] This result might occur, for example, if the tax liabilities underlying the penalty assessment were assessed retroactively for past years, as well as for the current year.

In certain instances, persons against whom the penalty has been assessed had to liquidate investments to pay the penalty and then obtain an adjudication of their liability to pay.

Explanation of the provision

The bill provides a stay of collection proceedings against a person assessed with the penalty if, within 30 days after the date of notice and demand for payment of the penalty, he posts a bond equal to one and one-half times the amount of the assessed penalty. The stay of collection would not apply if it is determined that collection of the penalty will be jeopardized by delay. In addition, the person posting the bond must pay an amount sufficient to initiate refund litigation (in the case of a penalty resulting from nonpayment of employment taxes, this would be the withholding taxes attributable to one individual), file a refund claim, and begin court proceedings within 30 days after a denial of the refund claim.

The bonds submitted under this provision are to be in the form and with such surety or sureties as may be prescribed by the Secretary of the Treasury or his delegate. However, the person required to furnish the bond may choose intead to deposit obligations of the United States.

After the posting of a bond under this provision, collection proceedings would be stayed until the final resolution of the court proceedings in favor of the Government. While the collection proceedings are stayed, the running of the period of limitations during which the penalty may be collected would be suspended for the period of the stay of collection proceedings.

The procedure for posting bond to stay collection for the penalty is to be available as a matter of right. However, the committee does not intend that the Internal Revenue Service treat the provision as the exclusive means by which a person can have an adjudication of his or her liability for the penalty. Thus, in appropriate cases, the Service may permit the issue of liability to be adjudicated by a suit for the refund for the payment of withholding tax for one employee rather than having bond furnished for the entire amount in controversy.

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[3] As a result, the taxpayer may be unable to pay the penalty at all, even by means of a loan. In such cases the I.R.S. or the Justice Department have entered into agreements with the taxpayers under which the basic tax or the penalty is to be paid in installments, but these agreements usually provide that the taxpayer must allow an entry of judgment and may not prosecute a refund claim against the Government for the amounts paid.

This provision is the same as the House bill.

Effective date

This provision applies to penalties assessed more than 60 days after enactment of this provision.

I. Suspension of Import Duty on Certain Insulation Materials

Present law

Imports of boric acid from countries receiving nondiscriminatory tariff treatment (MFN countries) are dutiable at 0.4 cents per pound under column 1 of item 416.10 of the Tariff Schedules of the United States (TSUS). MFN imports of mineral wool are dutiable at 7.5 percent ad valorem under column 1 of item 522.81 of the TSUS. MFN imports of glass fibers are dutiable at 11 percent ad valorem under column 1 of item 540.71 of the TSUS. All three articles are duty free if they are the product of a beneficiary developing country under the Generalized System of Preferences (GSP).

Reasons for change

Domestic demand for insulation materials for residential and industrial use has greatly increased in recent years as a result of rising energy costs, increasing consumer awareness of the need for energy conservation, and the boom in housing starts. During the winter of 1977–78, there was a shortage of many forms of insulation in the United States, causing prices to escalate rapidly for the material available. Boric acid mineral wool, and glass fibers are among the materials used for residential and industrial insulation purposes which are in short supply.

The committee considers it appropriate to take temporary action that will encourage greater imports of boric acid, mineral wool, and glass fibers to relieve supply shortages and help restrain increasing prices. In particular, greater imports of boric acid would help to control the production costs of cellulosic insulation, the major product competing with fiber glass and mineral wool as an insulation material. Boric acid is used as a fire retardant in the manufacture of cellulosic insulation materials.

Explanation of the provision

The committee amendment to H.R. 7320 would permit temporary duty-free treatment for imports entered under column 1 of the TSUS of boric acied, mineral wool, and glass fibers provided for in TSUS items 416.10, 522.81, and 540.71, respectively.

Effective date

The duty-free treatment would extend from the date of enactment through June 30, 1979.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL AS AMENDED

Budget effect

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made about the effect on the

budget of this bill, H.R. 7320, as amended. The committee estimates that the amendments to the Internal Revenue Code of 1954 which are contained in the bill will not have any significant revenue effect in the current fiscal year or in any of the five following fiscal years.

Based on 1977 data, enactment of the committee amendment relating to the suspension of duty on imports of certain insulation materials would result in a customs revenue loss of about $1.7 million.

The Treasury Department agrees with this statement.

Vote of the committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made about the vote of the committee on the motion to report the bill, as amended. The bill, H.R. 7320, as amended, was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE BILL

Pursuant to rule XXIX of the Standing Rules of the Senate, as amended by S. Res. 4 (February 4, 1977), the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of this bill.

The bill does not regulate any individuals or businesses, but amends certain timing provisions of the tax law in order to ease compliance by taxpayers with these provisions and suspends for a temporary period certain materials used in insulation. The bill is not expected to have any impact on personal privacy and is not expected to involve any additional paperwork for individuals.

V. CHANGES IN EXISTING LAW

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is in italic, existing law in which no change is proposed is shown in roman).

INTERNAL REVENUE CODE OF 1954

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART IX—ITEMS NOT DEDUCTIBLE

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SEC. 267. LOSSES, EXPENSES, AND INTEREST WITH RESPECT TO TRANSACTIONS BETWEEN RELATED TAXPAYERS

(a) DEDUCTIONS DISALLOWED.—No deductions shall be allowed—

(1) LOSSES.—In respect of losses from sales or exchanges of property (other than losses in cases of distributions in corporate liquidations), directly or indirectly, between persons specified within any one of the paragraphs of subsection (b).

(2) UNPAID EXPENSES AND INTEREST.—In respect of expenses, otherwise deductible under section 162 or 212, or of interest, otherwise deductible under section 163—

(A) If within the period consisting of the taxable year of the taxpayer and 2½ months after the close thereof (i) such expenses or interest are not paid, and (ii) the amount thereof is not includible in the gross income of the person to whom the payment is to be made; and

(B) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(C) If, at the close of the taxable year of the taxpayer or at any time within 2½ months thereafter, both the taxpayer and the person to whom the payment is to be made are persons specified within any one of the paragraphs of subsection (b).

(b) RELATIONSHIPS.—The persons referred to in subsection (a) are:

(1) Members of a family, as defined in subsection (c) (4);

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(3) Two corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;

(4) A grantor and a fiduciary of any trust;

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) A fiduciary of a trust and a beneficiary of such trust;

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust; or

(9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual.

(c) CONSTRUCTIVE OWNERSHIP OF STOCK.—For purposes of determining, in applying subsection (b), the ownership of stock—

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(3) An individual owning (otherwise than by the application of paragraph (2)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(4) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(5) Stock constructively owned by a person by reason of the application of paragraph (1) shall, for the purpose of applying paragraph (1), (2), or (3), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (2) or (3) shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock.

(d) AMOUNT OF GAIN WHERE LOSS PREVIOUSLY DISALLOWED.—If—

(1) in the case of a sale or exchange of property to the taxpayer a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of subsection (a) (1) (or by reason of section 24(b) of the Internal Revenue Code of 1939); and

(2) after December 31, 1953, the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in his hands is determined directly or indirectly by reference to such property) at a gain.

then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer. This subsection applies with respect to taxable years ending after December 31, 1953. This subsection shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091 (relating to wash sales) or by reason of section 118 of the Internal Revenue Code of 1939.

(e) RULE WHERE LAST DAY OF 2½ MONTH PERIOD FALLS ON SUNDAY, ETC.—For purposes of section (a) (2)—

(1) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day shall be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and

(2) the determination of what constitutes a legal holiday shall be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.

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Subchapter C—Corporate Distributions and Adjustments

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PART I—DISTRIBUTIONS BY CORPORATIONS

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Subpart A—Effects on Recipients

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SEC. 301. DISTRIBUTIONS OF PROPERTY

(a) IN GENERAL.—Except as otherwise provided in this chapter, a distribution of property (as defined in section 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in a manner provided in subsection (c).

(b) AMOUNT DISTRIBUTED.—

(1) GENERAL RULE.—For purposes of this section, the amount or any distribution shall be—

(A) NONCORPORATE DISTRIBUTORS.—If the shareholder is not a corporation, the amount of money received, plus the fair market value of the other property received.

(B) CORPORATE DISTRIBUTEES.— If the shareholder is a corporation, unless subparagraph (D) applies, the amount of money received, plus whichever of the following is the lesser:

(i) the fair market value of the other property received; or

(ii) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain [to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 351(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)] *recognized to the distributing corporation on the distribution.*

(C) CERTAIN CORPORATE DISTRIBUTEES OF FOREIGN CORPORATION.—Notwithstanding subparagraph (B), if the shareholder is a corporation and the distributing corporation is a foreign corporation, the amount taken into account with respect to property (other than money) shall be the fair market value of such property; except that if any deduction is allowable under section 245 with respect to such distribution, then the amount taken into account shall be the sum (determined under regulations prescribed by the Secretary) of—

(i) the proportion of the adjusted basis of such property (or, if lower, its fair market value) properly attributable to gross income which is effectively connected with the conduct of a trade or business within the United States, and

(ii) the proportion of the fair market value of such property properly attributable to gross income which is

not effectively connected with the conduct of a trade or business within the United States.

For purposes of clause (i), the gross income of a foreign corporation for any period before its first taxable year beginning after December 31, 1966, which effectively connected with the conduct of a trade or business within the United States is an amount equal to the gross income for such period from sources within the United States. For purposes of clause (ii), the gross income of a foreign corporation for any period before its first taxable year beginning after December 31, 1966, which is not effectively connected with the conduct of a trade or business within the United States is an amount equal to the gross income for such period from sources without the United States.

(D) FOREIGN CORPORATE DISTRIBUTEES.—In the case of a distribution to a shareholder which is a foreign corporation, if the amount received by the foreign corporation is not effectively connected with the conduct by it of a trade or business within the United States, the amount of the money received, plus the fair market value of the other property received.

(2) REDUCTION FOR LIABILITIES.—The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by—

(A) the amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(B) the amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) DETERMINATION OF FAIR MARKET VALUE.—Purposes of this section, fair market value shall be determined as of the date of the distribution.

(c) AMOUNT TAXABLE.—In the case of a distribution to which subsection (a) applies—

(1) AMOUNT CONSTITUTING DIVIDEND.—That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) AMOUNT APPLIED AGAINST BASIS.—That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) AMOUNT IN EXCESS OF BASIS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) DISTRIBUTIONS OUT OF INCREASE IN VALUE ACCRUED BEFORE MARCH 1, 1913.—That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the extent that it is out of increase in value accrued before March 1, 1913, shall be exempt from tax.

(d) BASIS.—The basis of property received in a distribution to which subsection (a) applies shall be—

(1) NONCORPORATE DISTRIBUTEES.—If the shareholder is not a corporation, the fair market value of such property.

(2) CORPORATE DISTRIBUTEES.—If the shareholder is a corporation, unless subparagraph (3) applies, whichever of the following is the lesser:

(A) the fair market value of such property; or

(B) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain [to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)] *recognized to the distributing corporation on the distribution.*

(3) FOREIGN CORPORATE DISTRIBUTEES.—In the case of a distribution of property to a shareholder which is a foreign corporation, if the amount received by the foreign corporation is not effectively connected with the conduct by it of a trade or business within the United States, the fair market value of the property received.

(4) CERTAIN CORPORATE DISTRIBUTEES OF FOREIGN CORPORATION.—In the case of property described in subparagraph (C) of subsection (b)(1), the basis shall be determined by substituting the amount determined under such subparagraph (C) for the amount described in paragraph (2) of this subsection.

(e) SPECIAL RULES.—

(1) For distributions in redemption of stock, see section 302.

(2) For distributions in partial or complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For partial exclusion from gross income of dividends received by individuals, see section 116.

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Subpart B—Effects on Corporation

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SEC. 312. EFFECT ON EARNINGS AND PROFITS

(a) GENERAL RULE.—Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) the amount of money,

(2) the principal amount of the obligations of such corporation, and

(3) the adjusted basis of the other property,

so distributed.

(b) CERTAIN INVENTORY ASSETS.—

(1) IN GENERAL.—On the distribution by a corporation, with respect to its stock, of inventory assets (as defined in paragraph (2)(A)) the fair market value of which exceeds the adjusted basis thereof, the earnings and profits of the corporation—

(A) shall be increased by the amount of such excess; and

(B) shall be decreased by whichever of the following is the lesser

(i) the fair market value of the inventory assets distributed, or

(ii) the earnings and profits (as increased under subparagraph (A)).

(2) DEFINITION.—

(A) INVENTORY ASSETS.—For purposes of paragraph (1), the term "inventory assets" means—

(i) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(ii) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business; and

(iii) unrealized receivables or fees, except receivables from sales or exchanges of assets other than assets described in this subparagraph.

(B) UNREALIZED RECEIVABLES OR FEES.—For purposes of subparagraph (A)(iii), the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

(i) goods delivered, or to be delivered, to the extent that the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(ii) services rendered or to be rendered.

(c) ADJUSTMENTS FOR LIABILITIES, ETC.—In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

(1) the amount of any liability to which the property is subject,

(2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution, and

(3) any gain [to the corporation recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)] *recognized to the corporation on the distribution.*

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PART II—CORPORATE LIQUIDATIONS

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Subpart B—Effects on Corporation

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SEC. 337. GAIN OR LOSS ON SALES OR EXCHANGES IN CONNECTION WITH CERTAIN LIQUIDATIONS

(a) GENERAL RULE.—If, within the 12-month period beginning on the date on which a corporation adopts a plan of complete liquidation, all of the assets of the corporation are distributed in complete liquida-

tion, less assets retained to meet claims, then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

(b) PROPERTY DEFINED.—

(1) IN GENERAL.—For purposes of subsection (a), the term "property" does not include—

(A) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

(B) installment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in subsection (a)) of stock in trade or other property described in subparagraph (A) of this paragraph, and

(C) installment obligations acquired in respect of property (other than property described in subparagraph (A)) sold or exchanged before the date of the adoption of such plan of liquidation.

(2) NONRECOGNITION WITH RESPECT TO INVENTORY IN CERTAIN CASES.—Notwithstanding paragraph (1) of this subsection, if substantially all of the property described in subparagraph (A) of such paragraph (1) which is attributable to a trade or business of the corporation is, in accordance with this section, sold or exchanged to one person in one transaction, then for purposes of subsection (a) the term "property" includes—

(A) such property so sold or exchanged, and

(B) installment obligations acquired in respect of such sale or exchange.

(c) LIMITATIONS.—

(1) COLLAPSIBLE CORPORATIONS AND LIQUIDATIONS TO WHICH SECTION 333 APPLIES.—This section shall not apply to any sale or exchange—

(A) made by a collapsible corporation (as defined in section 341(b)), or

(B) following the adoption of a plan of complete liquidation, if section 333 applies with respect to such liquidation.

(2) LIQUIDATIONS TO WHICH SECTION 332 APPLIES.—In the case of a sale or exchange following the adoption of a plan of complete liquidation, if section 332 applies with respect to such liquidation, then—

(A) if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b)(1), this section shall not apply; or

(B) if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b)(2), this section shall apply only to that portion (if any) of the gain which is not greater than the excess of (i) that portion of the adjusted basis (adjusted for any adjustment required under the second sentence of section 334(b)(2)) of the stock of the liquidating corporation which is allocable, under regulation prescribed by the Secretary, to the

property sold or exchanged, over (ii) the adjusted basis, in the hands of the liquidating corporation, of the property sold or exchanged.

This paragraph shall not apply to a sale or exchange by a member of an affiliated group of corporations, as defined in section 1504(a) (but without regard to the exceptions contained in section 1504(b)), if each member of such group (including the common parent corporation) which receives, within the 12-month period beginning on the date of the adoption of a plan of complete liquidation by the corporation which made the sale or exchange, a distribution in complete liquidation from any other member of such group is itself completely liquidated within such 12-month period.

(d) SPECIAL RULE FOR CERTAIN MINORITY SHAREHOLDERS.—If a corporation adopts a plan of complete liquidation, and if subsection (a) does not apply to sales or exchanges of property by such corporation, solely by reason of the application of subsection (c)(2)(A), then for the first taxable year of any shareholder (other than a corporation which meets the 80 percent stock ownership requirement specified in section 332(b)(1)) in which he receives a distribution in complete liquidation—

(1) the amount realized by such shareholder on the distribution shall be increased by his proportionate share of the amount by which the tax imposed by this subtitle on such corporation would have been reduced if subsection (c)(2)(A) had not been applicable, and

(2) for purposes of this title, such shareholder shall be deemed to have paid, on the last day prescribed by law for the payment of the tax imposed by this subtitle on such shareholder for such taxable year, an amount of tax equal to the amount of the increase described in paragraph (1).

(e) SPECIAL RULE FOR INVOLUNTARY CONVERSIONS.—If—

(1) there is an involuntary conversion (within the meaning of section 1033) of property of a distributing corporation and there is a complete liquidation of such corporation which qualifies under subsection (a),

(2) the disposition of the converted property (within the meaning of clause (ii) of section 1033(a)(2)(E)) occurs during the 60-day period which ends on the day before the first day of the 12-month period, and

(3) such corporation elects the application of this subsection at such time and in such manner as the Secretary may by regulations prescribe,

then for purposes of this section such disposition shall be treated as a sale or exchange occurring within the 12-month period.

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Subchapter S—Election of Certain Small Business Corporations as to Taxable Status

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SEC. 1372. ELECTION BY SMALL BUSINESS CORPORATION

(a) ELIGIBILITY.—Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of

this section, not to be subject to the taxes imposed by this chapter. [Such election shall be valid only if all persons who are shareholders in such corporation—

[(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

[(2) on the day on which the election is made, if the election is made after such first day,

consent to such election.]

Such election shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

(b) EFFECT.—If a small business corporation makes an election under subsection (a), then—

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter (other than as provided by section 58(d)(2) and by section 1378) and, with respect to such taxable years and all succeeding taxable years, the provisions of section 1377 shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of sections 1373, 1374, and 1375 shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of section 1376 shall apply to such shareholder.

[(c) WHEN AND HOW MADE.—An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the Secretary shall prescribe by regulations.]

(c) WHEN AND HOW MADE.—

(1) IN GENERAL.—An election under subsection (a) may be made by a small business corporation for any taxable year—

(A) at any time during the preceding taxable year, or

(B) at any time during the first 75 days of the taxable year.

(2) TREATMENT OF CERTAIN LATE ELECTIONS.—If—

(A) a small business corporation makes an election under subsection (a) for any taxable year, and

(B) such election is made after the first 75 days of the taxable year and on or before the last day of such taxable year,

then such election shall be treated as having been made for the following taxabe year.

(3) MANNER OF MAKING ELECTION.—An election under subsection (a) shall be made in such manner as the Secretary shall prescribe by regulations.

(d) TECHNICAL AMENDMENTS.—

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(e) TERMINATION.—

(1) NEW SHAREHOLDERS.

[(A) An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

[(i) on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

[(ii) on the day on which the election is made, if such election is made after such first day,

becomes a shareholder in such corporation and affirmatively refuses (in such manner as the Secretary shall by regulations prescribe) to consent to such election on or before the 60th day after the day on which he acquires the stock.]

(A) *An election under subsection (a) made by a small business corporation shall terminate if any person who is not a shareholder in such corporation on the day on which the election was made becomes a shareholder in such corporation and affirmatively refuses (in such manner as the Secretary may by regulations prescribe) to consent to such election on or before the 60th day after the day on which he acquired the stock.*

(B) If the person acquiring the stock is the estate of a decedent, the period under subparagraph (A) for affirmatively refusing to consent to the election shall expire on the 60th day after whichever of the following is the earlier:

(i) The day on which the executor or administrator of the estate qualifies; or

(ii) The last day of the taxable year of the corporation in which the decedent died.

(C) Any termination of an election under subparagraph (A) by reason of the affirmative refusal of any person to consent to such election shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation (*or, if later, the first taxable year for which such election would have taken effect*) and for all succeeding taxable years of the corporation.

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART V—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

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SEC. 6072. TIME FOR FILING INCOME TAX RETURNS.

(a) GENERAL RULE.—In the case of returns under section 6012, 6013, 6017, or 6031 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

(b) RETURNS OF CORPORATIONS.—Returns of corporations under section 6012 made on the basis of the calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year. Returns required for a taxable year by section 6011(e)(2) (relating to returns of a DISC) shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year.

(c) RETURNS BY CERTAIN NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS.—Returns made by nonresident alien individuals (other than those whose wages are subject to withholding under chapter 24) and foreign corporations (other than those having an office or place of business in the United States) under section 6012 on the basis of a calendar year shall be filed on or before the 15th day of June following the close of the calendar year and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 6th month following the close of the fiscal year.

(d) RETURNS OF COOPERATIVE ASSOCIATIONS.—In the case of an income tax return of—

(1) an exempt cooperative association described in section 1381(a)(1), or

(2) an organization described in section 1381(a)(2) which is under an obligation to pay patronage dividends (as defined in section 1388(a)) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings,

a return made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year.

(e) *ORGANIZATIONS EXEMPT FROM TAXATION UNDER SECTION 501(a).—In the case of an income tax return of an organization exempt from taxation under section 501(a) (other than an employees' trust described in section 401(a)), a return shall be filed on or before the 15th day of the 5th month following the close of the taxable year.*

SEC. 6073. TIME FOR FILING DECLARATIONS OF ESTIMATED INCOME TAX BY INDIVIDUALS.

(a) INDIVIDUALS OTHER THAN FARMERS OR FISHERMEN.—Declarations of estimated tax required by section 6015 from individuals regarded as neither farmers nor fishermen for the purpose of that section shall be filed on or before April 15 of the taxable year, except that if the requirements of section 6015 are first met—

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

In the case of a nonresident alien described in section 6072(c), the

requirements of section 6015 shall be deemed to be first met no earlier than after April 1 and before June 2 of the taxable year.

[(b) FARMERS OR FISHERMEN.—Declarations of estimated tax required by section 6015 from individuals whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the succeeding taxable year.]

(b) FARMERS OR FISHERMEN.—Declarations of estimated tax required by section 6015 from any individual—

(1) whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year, or

(2) whose gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least two-thirds of the total gross income from all sources shown on such return,

may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the taxable year succeeding the taxable year.

(c) AMENDMENT.—An amendment of a declaration may be filed in any interval between installment dates prescribed for that taxable year, but only one amendment may be filed in each such interval.

(d) SHORT TAXABLE YEARS.—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

(e) FISCAL YEARS.—In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the month specified in this section, the months which correspond thereto.

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CHAPTER 66—LIMITATIONS

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Subchapter A—Limitations on Assessment and Collection

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SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

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[(j) INVESTMENT CREDIT CARRYBACKS.—In the case of a deficiency attributable to the application to the taxpayer of an investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.]

(j) CERTAIN CREDIT CARRYBACKS.—

(1) IN GENERAL.—In the case of a deficiency attributable to the application to the taxpayer if a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(2) CREDIT CARRYBACK DEFINED.—For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

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(m) TENTATIVE CARRYBACK ADJUSTMENT ASSESSMENT PERIOD.—In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback adjustments) by reason of a net operating loss carryback, a capital loss carryback, an investment credit carryback, or a work incentive program carryback, or a new employee credit carryback to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in [subsection (h), (j), (o), or (p)] *subsection (h) or (j)*, whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of [subsection (h), (j), (o), or (p)] *subsection (h) or (j)*, as the case may be.

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[(o) WORK INCENTIVE PROGRAM CREDIT CARRYBACKS.—In the case of a deficiency attributable to the application to the taxpayer of a work incentive program credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused work incentive program credit which results in such carryback may be assessed, or, with respect to any portion of a work incentive

program credit carryback from a taxable year attributable to a net operating loss carryback, an investment credit carryback, or a capital loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year many be assessed.

[(p) NEW EMPLOYEE CREDIT CARRYBACKS.—In the case of a deficiency attributable to the application to the taxpayer of a new employee credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused new employee credit which results in such carryback may be assessed, or, with respect to any portion of a new employee credit carryback from a taxable year attributable to a net operating loss carryback, an investment credit carryback, a work incentive program credit carryback, or a capital loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.]

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Subchapter B—Limitation on Credit or Refund

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SEC. 6511. LIMITATIONS ON CREDIT OR REFUND

(a) PERIOD OF LIMITATION ON FILING CLAIM.—Claim for credit or refund of an overpayment of any tax by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) LIMITATION ON ALLOWANCE OF CREDITS AND REFUNDS.—

(1) FILING OF CLAIM WITHIN PRESCRIBED PERIOD.—No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) LIMIT ON AMOUNT OF CREDIT OR REFUND.—

(A) LIMIT WHERE CLAIM FILED WITHIN 3-YEAR PERIOD.—If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim,

(B) LIMIT WHERE CLAIM NOT FILED WITHIN 3-YEAR PERIOD.—If the claim was not filed within such 3-year period, the amount of the credit or refund not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) LIMIT IF NO CLAIM FILED.—If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

(c) SPECIAL RULES APPLICABLE IN CASE OF EXTENSION OF TIME BY AGREEMENT.—If an agreement under the provisions of section 6501 (c) (4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund—

(1) TIME FOR FILING CLAIM.—The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b) (1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c) (4).

(2) LIMIT ON AMOUNT.—If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b) (2) if a claim had been filed on the date of the agreement was executed.

(3) CLAIMS NOT SUBJECT TO SPECIAL RULE.—This subsection shall not apply in the case of a claim filed, or credit or refund allowed if no claim is filed, either—

(A) prior to the execution of the agreement or

(B) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(d) SPECIAL RULES APPLICABLE TO INCOME TAXES—

(1) SEVEN-YEAR PERIOD OF LIMITATION WITH RESPECT TO BAD DEBTS AND WORTHLESS SECURITIES.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(A) The deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or, under section 165(g), of a loss from worthlessness of a security, or

(B) The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover,

in lieu of the 3-year period of limitation prescribed in subsection

(a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(2) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO NET OPERATING LOSS OR CAPITAL LOSS CARRYBACKS.—

(A) PERIOD OF LIMITATION.—If the claim or credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends [with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of] *3 years after the time prescribed by law for filing the return (including extensions thereof) for* the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that—

(i) with respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(ii) with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final.

In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) APPLICABLE RULES.—

(i) If the allowance of a credit or refund of any overpayment of tax attributable to a net operating loss carryback or a capital loss carryback is otherwise prevented by

the operation of any low or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411 (b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411(a). In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, or with respect to the determination of a short-term capital loss, and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not an issue in such proceeding.

(ii) A claim for credit or refund for a computation year (as defined in section 1302(c)(1) shall be determined to relate to an overpayment attributable to a net operating loss carryback or a capital loss carryback, as the case may be, when such carryback relates to any base period year (as defined in section 1302(c)(3)).

(3) SPECIAL RULES RELATING TO FOREIGN CREDIT.—

(A) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO FOREIGN TAXES PAID OR ACCRUED.—If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by suitable A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(B) EXCEPTION IN THE CASE OF FOREIGN TAXES PAID OR ACCRUED.—In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).

(4) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO [INVESTMENT] CERTAIN CREDIT CARRYBACKS.—

(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to [an investment] *a* credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that

period which ends [with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which results in such carryback (or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the end of such subsequent taxable year] *3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year)* or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryover.

(B) APPLICABLE RULES.—If the allowance of a credit or refund of an overpayment of tax attributable to [an investment] *a* credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to [the investment] *any* credit, and the effect of such credit, to the extent that such credit is affected by a *credit* carryback which was not in issue in such proceeding.

(C) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term "credit carryback" means any investment credit carryback, work incentive program credit carryback, and new employee credit carryback.

(5) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO SELF-EMPLOYMENT TAX IN CERTAIN CASES.—If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made

if claim therefore is filed on or before the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health, Education, and Welfare.

(6) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO REDUCTION OF POLICYHOLDERS SURPLUS ACCOUNT OF LIFE INSURANCE COMPANIES.—

(A) PERIOD OF LIMITATIONS.—If the claim for credit or refund relates to an overpayment arising by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 39th month following the end of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2), or the period prescribed in subsection (c), in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of overpayment arising by operation of section 815(d)(5).

(B) APPLICABLE RULES.—If the allowance of a credit or refund of an overpayment arising by operation of section 815(d)(5) is otherwise prevented by operation of any law or rule of law, other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the effect of the operation of section 815(d)(5), to the extent such effect of the operation of section 815(d)(5) was not in issue in such proceeding.

[(7) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO WORK INCENTIVE PROGRAM CREDIT CARRYBACKS.—

[(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a work incentive program credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused work incentive program credit which results in such carryback (or, with respect to any portion of a work incentive program credit carryback from a taxable year attributable to a net operating loss carryback, an investment credit carryback, or a capital loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the year of such taxable year) or the period prescribed in subsection (c) in

respect to such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

[(B) APPLICABLE RULES.—If the allowance of a credit or refund of an overpayment of tax attributable to a work incentive program credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to the work incentive program credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.]

[8](7) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO AMOUNTS INCLUDED IN INCOME SUBSEQUENTLY RECAPTURED UNDER QUALIFIED PLAN TERMINATION.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.

[(9) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO NEW EMPLOYEE CREDIT CARRYBACKS.—

[(A) PERIOD OF LIMITATIONS.—If the claim for credit or refund related to an overpayment attributable to a new employee credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation) following the end of the taxable year of the unused new employee credit which results in such carryback (or, with respect to any portion of a new employee credit carryback from a taxable year attributable to a net operating loss carryback, an investment credit carryback, a work incentive program credit carryback, or a capital loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation following the end of such taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection

(b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

[(B) APPLICABLE RULES.—If the allowance of a credit or refund of an overpayment of tax attributable to a new employee credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final shall not be conclusive with respect to the new employee credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.]

(e) SPECIAL RULES IN CASE OF MANUFACTURED SUGAR.—

(1) USE AS LIVESTOCK FEED OR FOR DISTILLATION OR PRODUCTION OF ALCOHOL.—No payment shall be allowed under section 6418(a) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

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CHAPTER 67—INTEREST

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Subchapter A—Interest on Underpayments

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SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT OF TAX

(a) GENERAL RULE.—If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at an annual rate established under section 6621 shall be paid for the period from such last date to the date paid.

(b) LAST DATE PRESCRIBED FOR PAYMENT.—For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) EXTENSIONS OF TIME DISREGARDED.—The last date prescribed for payment shall be determined without regard to any extension of time for payment.

(2) INSTALLMENT PAYMENTS.—In the case of an election under section 6152(a), 6156(a), or 6158(a) to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6152(b), 6156(b), or 6158(a), as the case may be, and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment of any portion of the tax not shown on the return.

For purposes of subparagraph (A), section 6158(a) shall be treated as providing that the date prescribed for payment of each installment shall not be later than the date prescribed for payment of the 1985 installment.

(3) JEOPARDY.—The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior to the last date otherwise prescribed for such payment.

(4) LAST DATE FOR PAYMENT NOT OTHERWISE PRESCRIBED.—In the case of taxes payable by stamp and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary).

(c) SUSPENSION OF INTEREST IN CERTAIN INCOME, ESTATE, GIFT, AND CHAPTER 41, 42, 43, or 44 TAX CASES.—In the case of a deficiency as defined in section 6211 (relating to income, estate, gift, and certain excise taxes), if a waiver of restrictions under section 6213(d) on the assessment of such deficiency has been filed, and if notices and demand by the Secretary for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(d) INCOME TAX REDUCED BY CARRYBACK OR ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS.—

(1) NET OPERATING LOSS OR CAPITAL LOSS CARRYBACK.—If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss or net capital loss arises.

[(2) INVESTMENT CREDIT CARRYBACK.—If the credit allowed by section 38 for any taxable year is increased by reason of an investment credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the investment credit carryback arises, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.]

(2) CERTAIN CARRYBACKS.—

(A) IN GENERAL— If any credit allowed for any taxable year is increased by reason of a credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such increase shall not affect the computation of interest

under this section for the period ending with the last day of such subsequent taxable year.

(B) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(3) ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS OF LIFE INSURANCE COMPANIES.—If the amount of any tax imposed by subtitle A is reduced by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).

[(4) WORK INCENTIVE PROGRAM CREDIT CARRYBACK.—If the credit allowed by section 40 for any taxable year is increased by reason of a work incentive program credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the work incentive program credit carryback arises, or, with respect to any portion of a work incentive program carryback from a taxable year attributable to a net operating loss carryback, an investment credit carryback, or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

[(5) NEW EMPLOYEE CREDIT CARRYBACK.—If the credit allowed by section 44B for any taxable year is increased by reason of a new employee credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the new employee credit carryback arises, or, with respect to any portion of a new employee credit carryback from a taxable year attributable to a net operating loss carryback, an investment credit carryback, a work incentive program credit carryback, or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.]

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Subchapter B—Interest on Overpayments

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SEC. 6611. INTEREST ON OVERPAYMENTS

(a) RATE.—Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at an annual rate established under section 6621.

(b) PERIOD.—Such interest shall be allowed and paid as follows:

(1) CREDITS.—In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.

(2) REFUNDS.—In the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30 days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(d) ADVANCE PAYMENT OF TAX, PAYMENT OF ESTIMATED TAX, AND CREDIT FOR INCOME TAX WITHHOLDING.—The provisions of section 6513 (except the provisions of subsection (c) thereof), applicable in determining the date of payment of tax for purposes of determining the period of limitation on credit or refund, shall be applicable in determining the date of payment for purposes of subsection (a).

(e) INCOME TAX REFUND WITHIN 45 DAYS AFTER RETURN IS FILED.—If any overpayment of tax imposed by subtitle A is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

(f) REFUND OF INCOME TAX CAUSED BY CARRYBACK OR ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS.—

(1) NET OPERATING LOSS OR CAPITAL LOSS CARRYBACK.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss or net capital loss arises.

[(2) INVESTMENT CREDIT CARRYBACK.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from an investment credit carryback, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such investment credit carryback arises, or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made prior to the close of such subsequent taxable year.]

(2) CERTAIN CREDIT CARRYBACKS.—

(A) IN GENERAL.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a credit carryback, such overpayment shall be deemed not to have been made before the close of the taxable year in which such credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback fom a subsequent taxable year, such overpayment shall be deemed not to have been made before the close of such subsequent taxable year.

(B) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(3) ADJUSTMENT FOR CERTAIN UNUSED DEDUCTIONS OF LIFE INSURANCE COMPANIES.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A arises by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain and unused deductions), such overpayment shall be deemed not to have been made prior to the close of the last taxable year to which the loss described in section 815(d)(5)(A) is carried under section 812(b)(2).

[(4) WORK INCENTIVE PROGRAM CREDIT CARRYBACK.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a work incentive program credit carryback, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such work incentive program credit carryback arises, or, with respect to any portion of a work incentive program credit carryback from a taxable year attributable to a net operating loss carryback, an investment credit carryback, or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made prior to the close of such subsequent taxable year.

[(5) NEW EMPLOYEE CREDIT CARRYBACK.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a new employee credit carryback, such overpayment shall be deemed not to have been made before the close of the taxable year in which such new employee credit carryback arises, or, with respect to any portion of a new employee credit carryback from a taxable year attributable to a net operating loss carryback, an investment credit carryback, a work incentive program credit carryback, or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the close of such subsequent taxable year.]

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter B—Assessable Penalties

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SEC. 6672. FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO EVADE OR DEFEAT TAX

[Any person] (*a*) *GENERAL RULE.—Any person* required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for any pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

No penalty shall be imposed under section 6653 for any offense to which this section is applicable.

(*b*) *EXTENSION OF PERIOD OF COLLECTION WHERE BOND IS FILED.—*

(*1*) *IN GENERAL.—If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person—*

(A) pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his liability for such penalty,

(B) files a claim for refund of the amount so paid, and

(C) furnishes a bond which meets the requirements of paragraph (3),

no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421 (a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(*2*) *SUIT MUST BE BROUGHT TO DETERMINE LIABILITY FOR PENALTY.—If, within 30 days after the day on which his claim for refund with respect to any penalty under subsection (a) is denied, the person described in paragraph (1) fails to begin a proceeding in the appropriate United States district court (or in the Court of Claims) for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the 30-day period referred to in this paragraph.*

(*3*) *BOND.—The bond referred to in paragraph (1) shall be in such form and with such sureties as the Secretary may by regulations prescribe and shall be in an amount equal to 1½ times the amount of excess of the penalty assessed over the payment described in paragraph (1).*

(*4*) *SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS ON COLLECTION.—The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.*

(*5*) *JEOPARDY COLLECTION.—If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this subsection shall prevent the immediate collection of such penalty.*

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CHAPTER 73—BONDS

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SEC. 7103. CROSS REFERENCES—OTHER PROVISIONS FOR BONDS

(a) EXTENSIONS OF TIME.—

(1) For bond where time to pay tax or deficiency has been extended, see section 6165.

(2) For bond to stay collection of a jeopardy assessment, see section 6863.

(3) For bond to stay assessment and collection prior to review of a Tax Court decision, see section 7485.

(4) For a bond to stay collection of a penalty assessed under section 6672, see section 6672(b).

(5) For bond in case of an election to postpone payment of estate tax where the value of a reversionary or remainder interest is included in the gross estate, see section 6165.

(b) RELEASE OF LIEN OR SEIZED PROPERTY.—

(1) For the release of the lien provided for in section 6325 by furnishing the Secretary or his delegate a bond, see section 6325 (a)(2).

(2) For bond to obtain release of perishable goods which have been seized under forfeiture proceeding, see section 7324(3).

(3) For bond to release perishable goods under levy, see section 6336.

(4) For bond executed by claimant of seized goods valued at $1,000 or less, see section 7325(3).

(c) MISCELLANEOUS.—

(1) For bond as a condition precedent to the allowance of the credit for accrued foreign taxes, see section 905(c).

(2) For bonds relating to alcohol and tobacco taxes, see generally subtitle E.

CHAPTER 76—JUDICIAL PROCEEDINGS

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Subchapter B—Proceedings by Taxpayers and Third Parties

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SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION

(a) TAX.—Except as provided in sections 6212(a) and (c), 6213(a), *6672(b)*, *6694(c)*, and 7426(a) and (b)(1), and 7429(b) no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) LIABILITY OF TRANSFEREE OR FIDUCIARY.—No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (31 U.S.C. 192) in respect of any such tax.

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TARIFF SCHEDULES OF THE UNITED STATES

APPENDIX TO THE TARIFF SCHEDULES

Item	Articles	Rates of duty 1	Rates of duty 2	Effective period
	PART 1. TEMPORARY LEGISLATION			
*	* * * *	*	*	*
	Subpart B.—Temporary Provisions Amending the Tariff Schedules			
*	* * * *	*	*	*
907.40	*Boric acid (provided for in item 416.10, part 2B, schedule 4)*	*Free*	*No change*	*On or before 6/30/79.*
909.10	*Mineral wool, in bulk, or in batts, blankets, or similar forms, whether or not lined, bacind, or supported with paper, paperboard, or similar materials (provided for in item 522.81, part 1J, schedule 5)*	*Free*	*No change*	*On or before 6/30/79.*
909.30	*Glass fibers in bulk; glass fibers in the form of mats, batts, blankets, felts, pads, casing, and boards, all the foregoing, of a density not over 4 pounds per cubic foot, whether or not coated, impregnated, or bonded with glue, plastics, or other substances, or lined, backed, or supported with paper, paperboard, fabrics or similar materials, or with metal mesh or foil (provided for in item 540.71, part 3A, of schedule 5)*	*Free*	*No change*	*On or before 6/30/79.*

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