

SOCIAL SECURITY COVERAGE FOR CERTAIN EMPLOYEES OF TAX-EXEMPT ORGANIZATIONS WHICH PAID TAX

August 4, 1958.—Ordered to be printed

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

REPORT

[To accompany H. R. 7570]

The Committee on Finance, to whom was referred the bill (H. R. 7570) to amend section 403 of the Social Security Amendments of 1954 to provide social security coverage for certain employees of tax-exempt organizations which erroneously but in good faith failed to file the required waiver certificate in time to provide such coverage, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

GENERAL STATEMENT

H. R. 7570 would liberalize the special conditions under which certain employees of nonprofit organizations may receive social security credit for earnings in the employ of such an organization even though the organization failed to file the necessary certificate waiving its exemption from social security taxes. Under the special provisions in present law, any earnings reported for an employee for the years 1951 through 1956 by a nonprofit organization which failed to file a valid waiver certificate before the enactment of the Social Security Amendments of 1956 may be credited for social security purposes, provided the earnings were reported, and the social security taxes paid, in good faith and in the mistaken belief that the organization had filed a valid waiver certificate. In order to provide credit under other circumstances in which earnings and taxes were reported in good faith, H. R. 7570 would add, as an alternative to the condition that the nonprofit organization must have acted in the mistaken belief that it had filed a valid waiver certificate, the condition that the failure to file a waiver certificate was due to an assumption by the organization that it was unnecessary to file such a certificate.

The bill would also provide social-security credit for certain employees of nonprofit organizations which filed waiver certificates

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before the enactment of the Social Security Amendments of 1956 but after the termination of employment relationship between the organization and such employees.

The Department of Health, Education, and Welfare reported to the House Ways and Means Committee that, although they consider retroactive coverage provisions ordinarily undesirable, it was their belief the cases covered by H. R. 7570 merit retroactive coverage at least as much as those covered by the existing provisions of section 403 of the 1954 amendments. However, since this bill was passed by the House, the Committee on Finance has received a report from Acting Secretary of Health, Education, and Welfare, the Honorable Elliott Richardson, in which he states:

However, since this bill was passed by the House of Representatives, this Department and representatives of the Department of the Treasury have discussed the operation of its provisions in the light of cases which have been presented recently for our review and we have agreed that certain technical changes in H. R. 7570 would be desirable. The changes we are recommending, and the Department of the Treasury concurs in this recommendation, would meet the objective of the bill and would serve the additional purpose of clarifying section 403 of the Social Security Amendments of 1954 as it now applies. Furthermore, this Department and the Department of the Treasury have found that the present wording might be construed under certain circumstances to narrow the conditions under which coverage may now be obtained. Under the changes which we are recommending, section 1 of H. R. 7570 would read: "That section 403 (a) (1) of the Social Security Amendments of 1954 is amended by striking out 'has failed to file prior to the enactment of the Social Security Amendments of 1956' and inserting in lieu thereof the following: 'did not have in effect, during the entire period in which the individual was so employed,'." Section 2 of H. R. 7570 would be redesignated "Sec. 3," and a new section 2 would be added. This new section is required to make section 403 (a) (3) consistent with section 1, worded as recommended above. The new proposed section 2 would read: "That section 403 (a) (3) of the Social Security Amendments of 1954 is amended by inserting 'performed during the period in which such organization did not have a valid waiver certificate in effect' after 'service'."

The bill, if modified in accordance with our recommendations, would provide retroactive social-security credit for certain employees of a nonprofit organization regardless of when the organization filed a valid waiver certificate and regardless of whether the employment involved was terminated. Only if the provisions cover all these conditions fully would we be certain that the present coverage of section 403 would not be narrowed.

We would interpose no objection to the enactment of the bill, modified as suggested above.

Thus the Committee on Finance modified the bill as recommended by the Department of Health, Education, and Welfare and recommends to the Senate that the bill as amended be passed.

CHANGES IN EXISTING LAW

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

SECTION 403 OF THE SOCIAL SECURITY AMENDMENTS OF 1954, AS AMENDED

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PRIOR TO ENACTMENT OF THE SOCIAL SECURITY AMENDMENTS OF 1956

SEC. 403. (a) In any case in which—

(1) an individual has been employed, at any time subsequent to 1950 and prior to the enactment of the Social Security Amendments of 1956, by an organization which is described in section 501 (c) (3) of the Internal Revenue Code of 1954 and which is exempt from income tax under section 501 (a) of such Code but which [has failed to file prior to the enactment of the Social Security Amendments of 1956] *did not have in effect, during the entire period in which the individual was so employed, a valid waiver certificate under section 1426 (l) (1) of the Internal Revenue Code of 1939 or section 3121 (k) (1) of the Internal Revenue Code of 1954;*

(2) the service performed by such individual as an employee of such organization during the period subsequent to 1950 and prior to 1957 would have constituted employment (as defined in section 210 of the Social Security Act and section 1426 (b) of the Internal Revenue Code of 1939 or section 3121 (b) of the Internal Revenue Code of 1954, as the case may be, at the time such service was performed) if such organization had filed prior to the performance of such service such a certificate accompanied by a list of the signatures of employees who concurred in the filing of such certificate and such individual's signature had appeared on such list;

(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 or sections 3101 and 3111 of the Internal Revenue Code of 1954, as the case may be, have been paid with respect to any part of the remuneration paid to such individual by such organization for such service *performed during the period in which such organization did not have a valid waiver certificate in effect;*

(4) part of such taxes have been paid prior to the enactment of the Social Security Amendments of 1956;

(5) so much of such taxes as have been paid prior to the enactment of the Social Security Amendments of 1956 have been paid by such organization in good faith and *without knowledge that a*

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waiver certificate was necessary or upon the assumption that a valid waiver certificate had been filed by it under section 1426 (l) (1) of the Internal Revenue Code of 1939 or section 3121 (k) (1) of the Internal Revenue Code of 1954, as the case may be; and

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