

## STATUTE OF LIMITATIONS IN CASE OF CRIMINAL PROSECUTIONS

MAY 5 (legislative day, MAY 1), 1952.—Ordered to be printed

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

### REPORT

[To accompany H. R. 5048]

The Committee on Finance, to whom was referred the bill (H. R. 5048) relating to the statute of limitations in the case of criminal prosecutions of offenses arising under the internal revenue laws, which passed the House of Representatives October 19, 1951, having considered the same, report favorably thereon with amendment and recommend the bill as amended do pass.

#### PURPOSE

The bill amends section 3748 (a) of the Internal Revenue Code, which is the statute of limitations on criminal prosecutions for offenses arising under the internal revenue laws, including "the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof." Under this code section the period of limitation is tolled for "The time during which the person committing any of the offenses above-mentioned is absent from the district wherein the same is committed \* \* \*." H. R. 5048, as amended, would amend section 3748 (a) by striking this latter provision and substituting in lieu thereof the following:

The running of the period of limitations prescribed by this subsection for any offense shall be suspended in respect of a person committing such offense for any time during which such person is not present in the United States; except that there shall be no such suspension under this sentence for any time during which such person is not present in the United States by reason of active service as a member of the Armed Forces of the United States. The term "United States," when used in the preceding sentence in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, the possessions of the United States, and the Canal Zone. If any person, in the course of committing any offense in respect of a tax imposed by chapter 1 or chapter 2, files a return under such chapter in a collection district knowing that such district is not a collection district in which the filing of such return is prescribed pursuant

## 2 STATUTE OF LIMITATIONS IN CASE OF CRIMINAL PROSECUTIONS

to law, the period of limitations prescribed by this subsection for such offense shall not commence to run in respect of such person until whichever of the following is the earlier: (A) the day on which such return is received in the office for a collection district in which the filing of such return is prescribed pursuant to law, or (B) the day on which there is received in the office for such a district a notice from such person stating when, and in which district, he filed such return.

The provision of section 3748 (a) which tolls the period of limitation while the offender is absent from the district wherein the offense was committed has been in the revenue laws since 1884. The legislative history of the tolling provision indicates that Congress intended the word "district" to mean judicial district, not revenue collection district.

The offense of filing a false or fraudulent tax return or of failing to file a return is deemed to have been committed at the place where the return was or should have been filed. Section 53 (b) (1) of the Internal Revenue Code requires the income-tax return of a resident individual to be filed with the collector for the (revenue collection) district in which the taxpayer has his legal residence or principal place of business. Due to overlapping of judicial districts and revenue collection districts, many taxpayers are thus required to file income-tax returns in judicial districts other than that of their legal residence or principal place of business. Such taxpayers apparently are deprived of the protection of the statute of limitations.

For example, residents of the District of Columbia are required to file returns in the collection district office at Baltimore, Md.; since they and their collection office are not located in the same judicial district, they may never avail themselves of the statute of limitations. The residents of a large proportion of the counties in the United States are separated from their collection office by the boundary of a judicial district and, therefore, not protected against prosecution for ancient tax offenses. The tolling provision of section 3748 (a) thus discriminates against inhabitants of certain parts of the United States. Moreover, as applied to taxpayers who change their place of residence, the provision also produces erratic and irrational results.

The difficulties mentioned above would be cured by H. R. 5048, as amended. Under its provisions the statute of limitations would be tolled for any period of time during which an offender is not present in the United States, meaning the States, the Territories of Alaska and Hawaii, the District of Columbia, the possessions of the United States, and the Canal Zone. The statute would not be tolled, however, for any period during which the offender is not present in the United States by reason of active service as a member of the Armed Forces of the United States. Under the bill as amended, the statute of limitations prescribed by code section 3748 (a) will be tolled in the case of an offender who is present in the United States where such person in the course of committing any offense in respect of a tax imposed by chapters 1 and 2 of the Internal Revenue Code files a return required by either of such chapters in a collection district knowing that such district is not a collection district in which the filing of the return is prescribed pursuant to law. In such case the period of limitations prescribed by section 3748 (a) for such offenses shall not commence to run until the earlier of the following: (A) the day on which such return is received in the office for a collection district in which the filing of such return is prescribed pursuant to law, or (B)

the day on which there is received in the office for such a district a notice from such person stating when, and in which district, he filed such return.

The term "United States" is defined in the bill as amended in such manner as to be coextensive with the jurisdiction of the United States to execute a warrant for the arrest of any person for any of the offenses referred to or described in section 3748 (a) of the Internal Revenue Code. Under H. R. 5048, as amended, title 18, United States Code, section 3290, continues to be applicable in the case of a person fleeing from justice.

The amendments made by H. R. 5048, as amended, eliminate any doubt that the tolling provision applies in the case of an offender who has never been in the United States. Under H. R. 5048, as amended, except as stated above with reference to intentional misfiling, the period of limitations is tolled only during the period an offender is "not present in the United States," whereas under the existing law the statute is tolled during the time he is "absent from the district." This latter language has given rise to conflicting decisions as to its application to an offender who departed from the United States prior to the commission of the offense or who was never present in the United States. Compare *United States v. Patenotre* ((S. D., N. Y. 1948) 81 F. Supp. 1000) with *United States v. Eliopoulos* ((D. N. J. 1942) 45 F. Supp. 777).

The amendments made by H. R. 5048 revise the reference in the first sentence of the second paragraph of code section 3748 (a) to "section 37 of the Criminal Code" to read "section 371 of title 18 of the United States Code, or under the corresponding provision of prior law" to accord with the revision and renumbering of the Criminal Code.

The amendments made by H. R. 5048 apply to offenses committed on, before, or after the date of its enactment, except that such amendments shall not apply to any offense (1) for which the period of limitations in effect prior to the enactment of H. R. 5048 expired on or before the date of its enactment, or (2) with respect to which the indictment is found or the information is instituted on or before such date of enactment.

The report from the Secretary of the Treasury on this measure is printed below:

THE SECRETARY OF THE TREASURY,  
Washington, January 15, 1952.

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

MY DEAR MR. CHAIRMAN: This letter is in response to your request for a report on H. R. 5048 (82d Cong., 1st sess.), a bill relating to the statute of limitations in the case of criminal prosecutions of offenses arising under the internal revenue laws, which passed the House of Representatives October 19, 1951.

The bill would amend section 3748 (a) of the Internal Revenue Code, which is the statute of limitations on criminal prosecutions for offenses arising under the internal revenue laws, including "the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof." Under this code section the period of limitation is tolled for "the time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed." H. R. 5048 would amend section 3748 (a) by striking this latter provision and substituting in lieu thereof the following:

"\* \* \* The time during which the person committing any of the offenses mentioned in this subsection is not present in the United States shall not be taken as any part of the time limited by law for the commencement of such proceedings,

#### 4 STATUTE OF LIMITATIONS IN CASE OF CRIMINAL PROSECUTIONS

except that this sentence shall not apply for any period during which such person is serving as a member of the Armed Forces of the United States. For the purpose of the preceding sentence, the term 'United States,' when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, the possessions of the United States, and the Canal Zone. \* \* \*

The provision of section 3748 (a) which tells the period of limitation while the offender is absent from the district wherein the offense was committed has been in the revenue laws since 1884. A study of the legislative history of the tolling provision indicates that Congress intended the word "district" to mean judicial district and not revenue collection district.

The offense of filing a false or fraudulent tax return or of failing to file a return is deemed to have been committed at the place where the return was or should have been filed. Section 53 (b) (1) of the Internal Revenue Code requires the income-tax return of a resident individual to be filed with the collector for the (revenue collection) district in which the taxpayer has his legal residence or principal place of business. Due to overlapping of judicial districts and revenue collection districts, many taxpayers are thus required to file income-tax returns in judicial districts other than that of their legal residence or principal place of business. Such taxpayers apparently are deprived of the protection of the statute of limitations.

For example, residents of the District of Columbia are required to file returns with the collector at Baltimore, Md.; since they and their collector's office are not located in the same judicial district, they may never avail themselves of the statute of limitations. A survey has shown that residents of 945 of the 3,070 counties in the United States are separated from their collector's office by the boundary of a judicial district and, therefore, not protected against prosecution for ancient tax offenses. The tolling provision of section 3748 (a) thus discriminates against inhabitants of certain parts of the United States. Moreover, as applied to taxpayers who change their place of residence and to accountants or other persons who assist in the preparation of returns, the provision also produces erratic and irrational results.

The difficulties mentioned above would be cured by H. R. 5048. Under its provisions the statute of limitations would be tolled for any period of time during which an offender is not present in the United States, meaning the States, the Territories of Alaska and Hawaii, the District of Columbia, the possessions of the United States, and the Canal Zone. The statute would not be tolled, however, for any period during which the offender is not present in the United States and is serving as a member of the Armed Forces of the United States. The term "United States" is defined in the bill in such manner as to be generally coextensive with the jurisdiction of the United States to execute a warrant for the arrest of any person for any of the offenses referred to or described in section 3748 (a) of the Internal Revenue Code. Under H. R. 5048, title 18, United States Code, section 3290, continues to be applicable in the case of a person fleeing from justice.

The amendment would also eliminate any doubt that the tolling provision applies in the case of an offender who has never been in the United States. Under H. R. 5048 the period of limitations is tolled during the period an offender is "not present in the United States," whereas under the existing law the statute is tolled during the time he is "absent from the district." This latter language has given rise to conflicting decisions as to its application to an offender who departed from the United States prior to the commission of the offense or who was never present in the United States. Compare *United States v. Patenotre* ((S. D., N. Y. 1948) 81 F. Supp. 1000) with *United States v. Eliopoulos* ((D. N. J. 1942) 45 F. Supp. 777).

This Department takes the view that the amendments made by H. R. 5048 would be desirable, and favors its enactment into law.

Since it is understood that your committee may take up this bill in the next few days, the Department has not obtained advice from the Bureau of the Budget as to whether the proposed legislation is in accord with the program of the President.

Very truly yours,

JOHN W. SNYDER,  
Secretary of the Treasury.

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 italics; existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE

SEC. 3748. PERIODS OF LIMITATION.

(a) CRIMINAL PROSECUTIONS.—No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, except that the period of limitation shall be six years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof; and

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, or a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

For offenses arising under [section 37 of the Criminal Code, March 4, 1909, 35 Stat. 1096 (U. S. C., title 18, § 88),] *section 371 of title 18 of the United States Code, or under the corresponding provision of prior law, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. [The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings.] The running of the period of limitations prescribed by this subsection for any offense shall be suspended in respect of a person committing such offense for any time during which such person is not present in the United States; except that there shall be no such suspension under this sentence for any time during which such person is not present in the United States by reason of active service as a member of the Armed Forces of the United States. The term "United States", when used in the preceding sentence in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, the possessions of the United States, and the Canal Zone. If any person, in the course of committing any offense in respect of a tax imposed by chapter 1 or chapter 2, files a return under such chapter in a collection district knowing that such district is not a collection district in which the filing of such return is prescribed pursuant to law, the period of limitations prescribed by this subsection for such offense shall not commence to run in respect of such person until whichever of the following is the earlier: (A) the day on which such return is received in the office for a collection district in which the filing of such return is prescribed pursuant to law, or (B) the day on which there is received in the office for such a district a notice from such person stating when, and in which district, he filed such return. Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district. In the case of a person fleeing from justice, section 3290 of title 18 of the United States Code shall apply.*

