89TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2308

SUSPENSIONS OF INVESTMENT CREDIT AND ACCELERATED DEPRECIATION

OCTOBER 18, 1966.—Ordered to be printed

Mr. MILLS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 17607]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 17607) to suspend the investment credit and the allowance of accelerated depreciation in the case of certain real property, having met, after full and free conference, have agreed to recommend and do recommend to their repsective Houses as follows:

That the Senate recede from its amendments numbered 23, 24, 25, 26, 36, and 42.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32, 33, 34, 38, and 39, and agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with the follcwing amendments:

On page 2, line 12, of the Senate engrossed amendments, strike out "erected, or acquired" and insert *or erected*

On page 2, line 15, of the Senate engrossed amendments, after "commenced" insert *by the taxpayer*—

On page 4, line 3, of the Senate engrossed amendments, strike out "erect, or acquire" and insert *or erect*

On page 4, line 15, of the Senate engrossed amendments, strike out "(E)" and insert *(D)*

And the Senate agree to the same.

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Amendment numbered 13:

That the House recede from its disagreement to the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows:

Strike out the matter proposed to be stricken out by the Senate amendment, and in lieu of the matter proposed to be inserted by the Senate amendment insert the following: *the preceding sentences of this paragraph*; and the Senate agree to the same.

Amendment numbered 27:

That the House recede from its disagreement to the amendment of the Senate numbered 27, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"(13) Certain replacement property.—Section 38 property constructed, reconstructed, erected, or acquired by the taxpayer shall be treated as property which is not suspension period property to the extent such property is placed in service to replace property which was—

"(A) destroyed or damaged by fire, storm, shipwreck, or other casualty, or

"(B) stolen,

but only to the extent the basis (in the case of new section 38 property) or cost (in the case of used section 38 property) of such section 38 property does not exceed the adjusted basis of the property destroyed, damaged, or stolen.

And the Senate agree to the same.

Amendment numbered 28:

That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment, as follows:

Strike out the matter proposed to be stricken out by the Senate amendment, and in lieu of the matter proposed to be inserted by the Senate amendment insert the following: *$20,000*; and the Senate agree to the same.

Amendment numbered 29:

That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment, as follows:

Strike out the matter proposed to be stricken out by the Senate amendment, and in lieu of the matter proposed to be inserted by the Senate amendment insert the following: *$20,000*; and the Senate agree to the same.

Amendment numbered 35:

That the House recede from its disagreement to the amendment of the Senate numbered 35, and agree to the same with an amendment, as follows:

On page 12, line 6, of the Senate engrossed amendments, strike out "$100,000" and insert *$50,000*; and the Senate agree to the same.

Amendment numbered 37:

That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows:

Strike out the matter proposed to be stricken out by the Senate amendment, and in lieu of the matter proposed to be inserted by the Senate amendment insert the following: (*3*); and the Senate agree to the same.

Amendment numbered 40:

That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with the following amendments:

On page 14, beginning on line 7, strike out "(or such higher rate as the Secretary of the Treasury, with the approval of the President, may determine necessary)".

On page 14, line 13, of the Senate engrossed amendments, strike out "the amount" and insert *the maximum amount*

On page 14, line 15, of the Senate engrossed amendment, strike out "such amount" and insert *such maximum amount*

And the Senate agree to the same.

Amendment numbered 41:

That the House recede from its disagreement to the amendment of the Senate numbered 41, and agree to the same with the following amendments:

On page 15, line 13, of the Senate engrossed amendments, strike out the comma.

On page 15 of the Senate engrossed amendments, strike out lines 14 through 21.

On page 15, line 22, of the Senate engrossed amendments, strike out "(c)(1)" and insert (*b*)(*1*)

On page 17 of the Senate engrossed amendments, strike out line 6, and insert:

(*c*) *The amendment made by subsection* (*a*)

And the Senate agree to the same.

W. D. MILLS,
CECIL R. KING,
HALE BOGGS,
EUGENE J. KEOGH,
JOHN W. BYRNES,
THOS. B. CURTIS,
JAMES B. UTT,
Managers on the Part of the House.

RUSSELL B. LONG,
GEORGE A. SMATHERS,
CLINTON ANDERSON,
JOHN J. WILLIAMS,
FRANK CARLSON,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 17607) to suspend the investment credit and the allowance of accelerated depreciation in the case of certain real property, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The following Senate amendments made technical, clerical, or conforming changes: 4, 9, 10, 13, 15, 19, 20, 28, 30, 32, 34, and 37. With respect to each of these amendments, the House either recedes or recedes with a technical, clerical, or conforming amendment.

BEGINNING OF SUSPENSION PERIOD

Amendments Nos. 1, 2, 3, 11, 12, 16, 17, 31, 38, and 39: These amendments change the effective date for the beginning of the suspension period from September 9, 1966, to October 10, 1966. The House recedes.

SPECIAL PURPOSE STRUCTURES

Amendment No. 5: The bill as passed by the House contained a proposed section 48(h)(4) of the code providing a rule for equipped buildings. This amendment adds a new sentence to the proposed section 48(h)(4) providing that for purposes of this rule a special purpose structure is to be treated as a building. The House recedes.

PLANT FACILITY RULE

Amendment No. 6: This amendment inserts a new paragraph (5) in the proposed section 48(h) of the code providing a general rule that where (1) pursuant to a plan of the taxpayer in existence on October 9, 1966, the taxpayer has constructed, reconstructed, erected, or acquired a plant facility; and (2) either the construction, reconstruction, or erection of such plant facility was commenced before October 10, 1966, or more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such plant facility is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before October 10, 1966, or property the acquisition of which by the taxpayer occurred before such date, then all section 38 property comprising such plant facility is to be treated as section 38 property which is not suspension period property.

Under the amendment, the term "plant facility" is defined as any facility which does not include any building (or of which buildings constitute an insignificant portion) and which is (1) a self-contained, single operating unit or processing operation; (2) located on a single

site; and (3) identified, on October 9, 1966, in the purchasing and internal financial plans of the taxpayer as a single unitary project.

Subparagraph (C) of the new paragraph (5) provides that if (1) a certificate of convenience and necessity has been issued before October 10, 1966, by a Federal regulatory agency with respect to two or more plant facilities which are included under a single plan of the taxpayer to construct, reconstruct, erect, or acquire such plant facilities; and (2) more than 50 percent of the aggregate adjusted basis of all the property of a character subject to the allowance for depreciation making up such plant facilities is attributable to either property the construction, reconstruction, or erection of which was begun by the taxpayer before October 10, 1966, or property the acquisition of which by the taxpayer occurred before such date, then such plant facilities shall be treated as a single plant facility.

The amendment also provides that, for purposes of the new paragraph (5)(A)(ii) (that is, so much of the general rule described above as relates to when the construction, reconstruction, or erection of the plant facility was commenced), the construction, reconstruction, or erection is not to be considered to have commenced until construction, reconstruction, or erection has commenced at the site of such plant facility. The preceding sentence is not to apply if the site of such plant facility is not located on land.

The House recedes with technical amendments.

MACHINERY OR EQUIPMENT RULE

Amendment No. 7: This amendment strikes out paragraph (5) of the proposed section 48(h) of the code as passed by the House and replaces the two rules contained therein relating to the completion of machinery by a single machinery or equipment rule contained in a new paragraph (6). Under this new paragraph, any piece of machinery or equipment is to be treated as property which is not suspension period property if (1) more than 50 percent of the parts and components (determined on the basis of cost) were held by the taxpayer on October 9, 1966, or are acquired by the taxpayer pursuant to a binding contract which was in effect on such date, for inclusion or use in such piece of machinery or equipment; and (2) the cost of the parts and components of such piece of machinery or equipment is not an insignificant portion of the total cost.

The House recedes.

CERTAIN LEASEBACK TRANSACTIONS

Amendment No. 8: The bill as passed by the House (in proposed sec. 48(h)(6)) contained the rule that where, pursuant to a financing transaction, a person who is a party to a binding contract described in paragraph (3) transfers rights in such contract (or in the property to which such contract relates) to another person but a party to such contract retains the right to use the property under a long-term lease with such other person, then to the extent of the transferred rights such other person shall, for purposes of paragraph (3), succeed to the position of the transferor with respect to such binding contract and such property.

This amendment strikes out the proposed section 48(h)(6) and replaces it with a proposed section 48(h)(7). Under the amendment,

the requirement that the transfer be pursuant to a financing transaction is eliminated. Second, the requirement that the lease be a long-term lease is eliminated in those cases where the lessor makes an election under section 48(d) of the code to have the lessee treated as if he acquired the leased property. Third, under the Senate amendment this provision is to apply where a party to the contract retains a right to use the property under a leaseback from the person to whom the rights or property was transferred, even though other persons (such as a joint lessee) may also have a right to use such property.

The House recedes.

CERTAIN LEASE AND CONTRACT OBLIGATIONS

Amendment No. 14: The bill as passed by the House (proposed paragraph (7) of sec. 48(h) of the code which becomes par. (8) under the Senate amendments) contains rules providing that certain property is not to be treated as suspension period property if it is constructed, reconstructed, erected, or acquired pursuant to obligations in a binding lease or contract to lease in effect on September 8, 1966 (October 9, 1966, under the conference agreement). Similar rules applied where the relationship of the contracting parties was that of vendor-vendee (instead of lessor-lessee).

Senate amendment No. 14 adds two new rules to this provision. The first rule provides that where, pursuant to a binding contract in effect on October 9, 1966, the taxpayer is obligated to construct, reconstruct, erect, or acquire property specified in the contract to be used to produce one or more products, and the other party is required to take substantially all of the products to be produced over a substantial portion of the expected useful life of the property, the property so constructed, reconstructed, erected, or acquired is to be treated as property which is not suspension period property. The second rule provides that property to be used for the production of one or more products is not to be treated as suspension period property if it is constructed, reconstructed, erected, or acquired pursuant to the obligations of a binding contract, in effect on October 9, 1966, with a political subdivision of a State, and the political subdivision is obligated under the contract to make substantial expenditures which benefit the taxpayer.

The House recedes.

AFFILIATED CORPORATIONS

Amendment No. 18: This amendment adds a new paragraph (10) to the proposed section 48(h) of the code, which provides that where one corporation which is a member of an affiliated group acquires property from another member of the same group (1) such corporation is to be treated as having acquired the property on the date on which it was acquired by the other member, (2) such corporation is to be treated as having entered into a binding contract for the property on the date on which the other member entered into a binding contract for the property, and (3) such corporation is to be treated as having commenced construction, reconstruction, or erection of the property on the date on which the other member commenced such construction, reconstruction, or erection. For purposes of the new paragraph (10),

the term "affiliated group" has the meaning assigned to it by section 1504(a) of the code (which applies 80 percent stock ownership tests with respect to the chain of corporations), except that all corporations are to be treated as includible corporations (without any exclusion under sec. 1504(b)). The House recedes.

WATER AND AIR POLLUTION CONTROL FACILITIES

Amendments Nos. 21 and 22: Under the bill as passed by the House, water and air pollution control facilities which meet certain requirements are to be treated as property which is not suspension period property. Among the requirements was a requirement for certification by the State water pollution control agency (or State air pollution control agency) that the facility is in conformity with the State program or requirements for control of water (or air) pollution and is in compliance with the applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of water (or air) pollution.

Under Senate amendment No. 21, the certification with respect to regulations of Federal agencies and policies of the United States is to be made, in the case of water pollution control facilities, by the Secretary of the Interior. Under Senate amendment No. 22, the certification with respect to air pollution control facilities is to be made by the Secretary of Health, Education, and Welfare.

The House recedes.

RAILROAD ROLLING STOCK AND HIGHWAY TRAILERS AND SEMITRAILERS

Amendment No. 23: Under this amendment, property which is railroad rolling stock designed to carry freight solely or highway trailers and semitrailers of the type used in commercial freight transportation would be treated as property which is not suspension period property. The Senate recedes.

CERTAIN OTHER RAILROAD ROLLING STOCK

Amendment No. 24: Under this amendment, railroad rolling stock especially designed and used for local or suburban commuter services would be treated as property which is not suspension period property. The Senate recedes.

NEW UHF TELEVISION STATIONS

Amendment No. 25: Under this amendment, certain property constructed, reconstructed, erected, or acquired for an ultra-high-frequency television station which had been authorized by the Federal Communications Commission before October 10, 1966, would be treated as property which is not suspension period property. The Senate recedes.

CARGO AIRCRAFT

Amendment No. 26: Under this amendment, certain cargo aircraft acquired for use by air carriers and to be delivered after July 1, 1968, would be treated as property which is not suspension period property. The Senate recedes.

REPLACEMENT PROPERTY

Amendment No. 27: Under this amendment, property constructed, reconstructed, erected, or acquired by the taxpayer, to the extent it is placed in service to replace property which is destroyed or damaged by fire, storm, shipwreck, or other casualty, or is stolen, is to be treated as property which is not suspension period property.

The House recedes with an amendment. Under the conference agreement, the rule contained in the proposed section 48(h)(13) of the code is to apply only to the extent that the basis (in the case of new replacement property) or the cost (in the case of used replacement property) does not exceed the adjusted basis of the property which is destroyed, damaged, or stolen.

EXEMPTION FROM SUSPENSION

Amendment No. 29: The bill as passed by the House provides, in the proposed new section 48(i) of the code, that property, which would otherwise be suspension period property, acquired by the taxpayer by purchase for use in his trade or business is not to be treated as suspension period property to the extent of items (selected by the taxpayer) having an aggregate cost of $15,000 for the suspension period. Senate amendment No. 29 increased this exemption to $25,000.

The House recedes with an amendment under which the amount of the exemption is $20,000.

CERTAIN LEASED PROPERTY

Amendment No. 33: This amendment adds a new sentence to section 48(d) of the code (relating to certain leased property) which provides that where (1) section 38 property is leased after October 9, 1966 (except pursuant to a binding contract in effect on such date), (2) the property is not suspension period property in the hands of the lessor but would be suspension period property if acquired by the lessee, and (3) the property is of the same kind that the lessor ordinarily sold to customers before October 10, 1966 (or ordinarily leased and made the election under sec. 48(d) of the code), the lessor will be deemed to have made an election under section 48(d) with respect to such property. Thus, the lessee will be deemed to have acquired such property and the lessor will not be eligible for the investment credit with respect to such property. The House recedes.

EXEMPTION FROM DENIAL OF ACCELERATED DEPRECIATION

Amendment No. 35: Under the bill as passed by the House a new subsection (i) is added to section 167 of the code (relating to depreciation). The new subsection denies (with certain exceptions) the accelerated methods of computing depreciation with respect to new property which were first permitted by the enactment of the 1954 code if (1) the physical construction, reconstruction, or erection of the property by any person begins during the suspension period; or (2) an order for such construction, reconstruction, or erection is placed by any person during the suspension period.

Senate amendment No. 35 exempted from this rule any item of real property selected by the taxpayer if the cost of such property (when added to the cost of other items selected by the taxpayer) does not exceed $100,000.

The House recedes with an amendment under which the amount of this exemption is $50,000.

HOUSING BUILT ON NONNAVIGABLE WATERS

Amendment No. 36: This amendment provided an exception to the rule for denial of accelerated depreciation (described with respect to Senate amendment No. 35) for any item of real property on which housing is built if such housing could not have been provided but for the enactment of section 307 or 309 of Public Law 89–298. The Senate recedes.

RETIREMENT AND SAVINGS BONDS

Amendment No. 40: This amendment adds a new section 22(A) to the Second Liberty Bond Act authorizing the issuance of U.S. retirement and savings bonds.

The new series of retirement and savings bonds (1) may be issued only on a discount basis, (2) shall have maturities of not less than 10 or nor more than 30 years, and (3) shall be redeemable before maturity on such terms and conditions as the Secretary of the Treasury may prescribe. If held to maturity, the new bonds would provide an investment yield (as prescribed by the Secretary of the Treasury) of not more than 5 percent per annum, compounded semiannually, or a higher rate if so prescribed by the Secretary with the approval of the President. The Secretary is authorized to limit the amount of the new bonds issued in any one year which may be held by any individual (but not below $3,000).

Other provisions of the new section 22(A) of the Second Liberty Bond Act are similar, in general, to the provisions of law applicable to series E savings bonds.

The House recedes with clarifying amendments and with an amendment which eliminates the authority of the Secretary of the Treasury, with the approval of the President, to prescribe a rate of investment yield for the new retirement and savings bonds in excess of 5 percent per annum, compounded semiannually.

PROFESSIONAL FOOTBALL LEAGUES

Amendment No. 41: This amendment adds a new section to the bill which amends the Internal Revenue Code of 1954 and the act of September 30, 1961, with respect to professional football leagues.

Section 501(c)(6) of the code provides, in effect, exemption from income tax for business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. Professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual, have been held to qualify for tax exemption under this provision of the code.

Subsection (a) of the new section amends this provision to include, among the organizations specifically enumerated, professional football

leagues, whether or not administering a pension fund for football players. Thus, under the amendment, in determining for purposes of section 506(c)(6) of the code whether any part of the net earnings of a professional football league inures to the benefit of any private shareholder or individual, there is not to be taken into account the fact that the league administers a pension fund for football players.

Subsection (b) of the new section amends section 512(b) of the code to provide that, in determining the unrelated business taxable income of organizations subject to the tax imposed by section 511 of the code, there was to be excluded all income derived from promoting or sponsoring any professional football game if such promotion or sponsorship does not occur more than four times during the taxable year with respect to any team.

Paragraph (1) of subsection (c) of the new section amends section 1 of the act of September 30, 1961 (75 Stat. 732; 15 U.S.C. 1291). The amendment provides that the antitrust laws, as defined in section 1 of the act of October 15, 1914, as amended, or in the Federal Trade Commission Act, as amended, shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of the Internal Revenue Code of 1954, combine their operations in an expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto.

The amendment to the act of September 30, 1961, would not extend to the combined league any greater antitrust immunity than that now existing for the existing professional football leagues. The amendment does not seek to resolve any of the antitrust problems of professional football or the other professional team sports. It is the intent of the conferees, both on the part of the House and of the Senate, that the new league will commence operations with no greater antitrust immunity than the existing individual leagues now enjoy. The sole effect of this amendment to the act of September 30, 1961, is to permit the combination of the two leagues to go forward without fear of antitrust challenge based upon a joint agreement between the member clubs of two leagues to combine in a single league and to conduct their affairs as members of a single league.

Paragraph (2) of subsection (c) of the new section makes a technical conforming amendment to section 2 of the act of September 30, 1961.

Paragraph (3) of subsection (c) of the new section amends section 3 of the act of September 30, 1961, to extend to high schools the same protection from telecasting of professional football games that is accorded to colleges. This protection prohibits the telecasting of a professional football game from a telecasting station located within 75 miles of the game site of a college or high school game. The protection extends from 6 p.m., on Friday (beginning with the second Friday in September of each year), through Saturday of each week (ending on the second Saturday in December of each year).

Subsection (d) of the new section provides that the amendments made by this section to the Internal Revenue Code are to apply to taxable years ending after the date of the enactment of the bill.

The House recedes with clerical and conforming amendments and with an amendment which strikes out the amendment described above to section 512(b) of the code.

REDUCTION IN FEDERAL CIVILIAN EMPLOYMENT

Amendment No. 42: This amendment added a new section to the bill which would require, in effect, that, with certain exceptions, only 25 percent of the vacancies occurring in civilian positions in the executive branch of the Government could be filled during any month if at the end of the preceding month the number of civilian employees exceeded a number equal to the number of such employees on September 30, 1966, minus 200,000. The Senate recedes.

W. D. MILLS,
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