

## TAX TREATMENT OF INCOME RECEIVED FROM PATENT INFRINGEMENT SUITS

JULY 29, 1955.—Ordered to be printed

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

### R E P O R T

[To accompany H. R. 7300]

The Committee on Finance, to whom was referred the bill (H. R. 7300) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of income received from patent infringement suits, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

#### PURPOSE OF BILL

This bill, as amended, inserts a new section 1304 in the Internal Revenue Code of 1954. Under this section, a taxpayer who receives or accrues an amount which represents compensatory damages resulting from a judgment for infringement of a patent issued by the United States may spread such amount proportionately over the period in which the infringement occurred if this results in a lesser tax than including the lump sum proceeds in gross income.

#### REASONS FOR BILL

Under existing law, averaging of certain receipts, such as those from an individual's invention or artistic work, is permitted. In the case of a patent infringement, however, the owner of the patent (or the owner of an undivided interest in the patent) may receive a judicial award for infringement of the patent where the infringement occurred over a period of years. If the taxpayer is required to include the total infringement award in gross income for the year in which the award is made, he may be compelled to pay a substantially increased tax over the tax that he would have had to pay if he had received the equivalent of the compensatory damages during the period in which the infringement occurred. This bill, therefore, permits the taxpayer to readjust his taxes with respect to such compensatory damages.

#### EXPLANATION OF BILL

The income spreading permitted under the bill is restricted to those instances in which damages are received or accrued in the taxable year as the result of an award in a civil action for infringement of a patent issued by the United States.

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The amount which may be spread back is limited to that portion of the award which represents compensatory damages and does not include that portion of the award which represents increased damages awarded by the court over and above the amount found adequate to compensate for the infringement. (See U. S. C., title 35, sec. 284.) It also does not include any amount that may be awarded to the taxpayer as attorney's fees, interest, or costs in the judicial action.

In determining the period over which the amount representing compensatory damages may be spread, only those months in which an infringement occurred may be taken into account. Thus, the ceiling on the computation of tax with respect to the amount representing compensatory damages is computed by determining the number of months in which the infringement occurred, dividing the amount by the number of such months and, by including the quotient in gross income for each of such months.

Where the recipient of an infringement award is entitled to capital-gains treatment on the proceeds the averaging permitted under this bill may be applied to the proceeds which are deemed to arise from the sale or exchange of a capital asset held for more than 6 months.

The amendment is effective with respect to taxable years ending after the date of enactment of this bill but only with respect to any amounts which are received or accrued after that date as the results of an award in a civil action made after that date.

Your committee has reported this bill unanimously.

### 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):

#### *SEC. 1304. COMPENSATORY DAMAGES FOR PATENT INFRINGEMENT*

*If an amount representing compensatory damages is received or accrued by a taxpayer during a taxable year as the result of an award in a civil action for infringement of a patent issued by the United States, then the tax attributable to the inclusion of such amount in gross income for the taxable year shall not be greater than the aggregate of the increases in taxes which would have resulted if such amount had been included in gross income in equal installments for each month during which such infringement occurred.*

#### SEC. [1304] 1305. RULES APPLICABLE TO THIS PART

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NOTE.—The bill also changes table references and section numbers, and references thereto in the Internal Revenue Code, to conform to the addition of the new section. In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX in the case of these purely technical amendments, in order to expedite the business of the Senate.

