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EXTENDING THE TIME WITHIN WHICH APPLICATIONS UNDER SECTION 722 OF THE INTERNAL REVENUE CODE MUST BE MADE

NOVEMBER 1 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

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

REPORT

[To accompany H. R. 3363]

The Committee on Finance, to whom was referred the bill (H. R. 3363) extending the time within which applications under section 722 of the Internal Revenue Code must be made, and for other purposes, having had the same under consideration, report thereon with amendments, and recommend that the bill, as amended, do pass.

Amend the bill as follows:

On page 2, line 20, strike out all of line 20 through line 6 on page 3, and in lieu thereof insert the following:

"(b) DEFICIENCY RESULTING FROM RELIEF UNDER SECTION 722.—If any part of a deficiency for a taxable year beginning prior to January 1, 1942, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year, no interest shall be assessed or paid with respect to such part of the deficiency. If any part of a deficiency for a taxable year beginning after December 31, 1941, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year (excluding any portion of a deficiency of excess-profits taxes constituting a deficiency by reason of deferment of tax under section 710 (a) (5), and excluding, in case the taxpayer has availed itself of the benefits of section 710 (a) (5), such portion of a deficiency under Chapter 1 as may be determined by the Commissioner to exceed any refund or credit of excess-profits tax arising from the operation of section 722), no interest shall be assessed or paid with respect to such part of the deficiency for any period prior to one year after the filing of such application, or September 16, 1945, whichever is the later."

On page 3, line 10, strike out all of line 10 through line 21, and in lieu thereof insert the following:

"(g) CLAIMS BASED UPON RELIEF UNDER SECTION 722.—If any part of an overpayment for a taxable year beginning prior to January 1, 1942, is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year, no interest shall be allowed or paid with respect to such part of the overpayment. If any part of an overpayment for a taxable year beginning after December 31, 1941, is determined by the Commissioner to be attributable to the final determination of an

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application for relief or benefit under section 722 for any taxable year, no interest shall be allowed or paid with respect to such part of the overpayment for any period prior to one year after the filing of such application, or September 16, 1945, whichever is the later."

SEC. 3. (a) Section 162 (d) (1) (B) of the Revenue Act of 1942 is amended to read as follows:

> "(B) such a plan shall be considered as satisfying the requirements of section 165 (a) (3), (4), and (5) and (6) for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than January 1, 1944."

(b) Section 162 (d) (2) of the Revenue Act of 1942 is amended to read as follows:

"(2) In the case of a stock bonus, pension, profit sharing or annuity plan put into effect after September 1, 1942, such a plan shall be considered as satisfying the requirements of section 165 (a) (3), (4), (5), and (6) for the period beginning with the date such plan is put into effect and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than the effective date of such plan or January 1, 1944, whichever is the later."

The report set forth below of the Committee on Ways and Means of the House of Representatives states the purposes of the bill in extending the time for application under section 722 of the Internal Revenue Code, and in making special provisions with respect to interest on overpayments and deficiencies attributable to determinations under that section. The committee amendment of section 2 is designed to make appropriate provision for application of the section where there has been deferment of part of the excess-profits tax under section 710 (a) (5) of the code. In general, a taxpayer must pay its tax, computed without any benefit, from the application of section 722. Since, under the bill, taxpayers which have paid their taxes in full, without the application of section 722, will receive any refunds with interest only for the periods provided, taxpayers who have availed themselves of the deferment provided by section 710 (a) (5) should be required to pay interest on the amount by which they have underpaid.

The committee amendment also rearranges section 2 so that the interest provisions will be appropriately applied in case of carry-overs and carry-backs of unused excess-profits credits. For taxable years beginning prior to January 1, 1942, no interest shall be allowed or assessed for overpayments or deficiencies attributable to relief under section 722, whether or not the relief arises directly by virtue of the determination of a constructive average base-period net income for the year in question or indirectly through carry-overs or carry-backs of the unused excess-profits credit resulting from the determination of a constructive average base-period net income for a prior or subsequent year. For taxable years beginning after December 31, 1941, the general interest rule applicable is that there shall be no interest for the period prior to 1 year after the application or September 16, 1945, whichever is the later. In general in the case of carry-overs, the determination will be for the year to which the carry-over is being made, and in the case of carry-backs, it will be for the year from which the unused excess-profits credit is being carried back, but the bill authorizes the Commissioner of Internal Revenue to determine the application to which the part of the overpayment or deficiency is attributable. The bill does not supersede section 3771 (e) of the Code (relating to the period for interest on carry-backs)

and its provisions as well as those of the bill may be applicable. In the case of carry-backs, the bill does not allow interest to begin in any case earlier than is provided in section 3771 (e), but in certain cases provides for a later date than in that section.

The purpose of section 3 added by the amendments is to provide additional time for pension, stock bonus, profit-sharing and annuity plans to meet the requirements of section 165 (a) (3), (4), (5), and (6) of the Code as added by section 162 of the Revenue Act of 1942. The present law permits provisions of plans not meeting these added requirements to continue to apply to otherwise permissible contributions and benefits paid before December 31, 1943, with respect to periods prior thereto, if the plan is amended to comply by December 31, 1943. The amendments would extend this time for compliance to December 31, 1944, but, at the same time, a requirement has been inserted that any provisions adopted by December 31, 1944, in order to comply with the statute, shall be made effective for all purposes as of a date not later than January 1, 1944, or the effective date of the plan in the case of a plan becoming effective after January 1, 1944. The purpose of this latter provision is to insure that, although the time to complete any necessary changes in a plan is extended for another year, nevertheless, as to coverage, contributions, and benefits, the plan will be amended so as to meet the statutory tests with respect to any payments made in or pertaining to any period after December 31, 1943.

The report of the Committee on Ways and Means of the House of Representatives on the bill reads as follows:

Section 722 of the Internal Revenue Code, amended by section 222 of the Revenue Act of 1942, was designed to provide relief in certain cases where the invested capital credit or the average earnings credit does not reflect a proper basis for computing excess profits. The Revenue Act of 1942 provided that applications for relief under section 722 had to be filed not later than 6 months after the date prescribed by law for filing the excess-profits-tax return for the taxable year to which the application related; and, since the changes in section 722 were made retroactively applicable to all taxable years beginning after December 31, 1939, applications for relief for taxable years beginning in 1940 and 1941 had to be filed within 6 months after the date of the enactment on October 21, 1942, of the Revenue Act of 1942, i. e., on or before April 21, 1943.

Because the period of time proved to be too short to permit the adequate fulfillment of the legislative policy reflected by section 722, the time for filing applications for relief with respect to taxable years beginning in 1940 and 1941 was extended by Public Law 21 (78th Cong., 1st sess.), to September 15, 1943. It now appears that further time should be allowed taxpayers within which to file applications for relief under section 722 not only for the taxable years beginning in 1940 and 1941, but also for later years.

In order to obtain relief, the taxpayer must under the bill within the period of time prescribed for filing refund claims under section 322, and subject to the limitations prescribed therein, make application for relief in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary. In general, refund claims must be filed within 3 years from the time the return was filed, or 2 years from the time the tax was paid. The amendments made by the bill relating to applications for relief are retroactively applicable to all taxable years beginning after December 31, 1939. The provisions of section 322, which are applicable to the taxable year for which an application for relief under section 722 is filed, shall be applicable in determining the period of time within which such application must be filed for such year and the limitation upon the amount of credit or refund for such year.

The bill provides that no interest shall be allowed on overpayments attributable to determinations under section 722 with respect to taxable years beginning in 1940 and 1941. Correspondingly, no interest will be collected on deficiencies resulting from such determinations for those years. Since section 722 as amended by the Revenue Act of 1942 was made retroactive to grant relief for taxable years

beginning in 1940 and 1941, it is believed proper not to allow interest on overpayments or collect interest on deficiencies resulting from the application of this section to such years. With respect to 1942 and subsequent years, interest on overpayments and on deficiencies arising from the application of this section is not allowed for any period prior to September 16, 1945, or prior to 1 year after the filing of the application, whichever is the later.

There had been filed by September 15, 1943, more than 25,000 applications for the years 1940, 1941, and 1942. Since September 15, 1943, approximately 2,500 additional applications have been submitted for consideration. Many of these applications will have to be perfected in order to constitute proper claims. By reason of the character of the relief afforded, many of the applications under section 722 must necessarily be complex and involve the presentation of voluminous and intricate data. In view of these considerations, it is appropriate that a period of approximately 2 years from September 15, 1943, before interest begins to run be allowed in connection with current applications for the careful consideration and disposition thereof. Similar considerations indicate that it is equitable to provide that interest shall not begin to run until 1 year after the filing of the application.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in the Internal Revenue Code made by the bill, as introduced, 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. 292. INTEREST ON DEFICIENCIES.

(a) General Rule.—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed, or, in the case of a waiver under section 272 (d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

(b) Deficiency Resulting From Relief Under Section 722.—If any part of a deficiency for a taxable year is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year beginning prior to January 1, 1942, no interest shall be assessed or paid with respect to such part of the deficiency; and for any taxable year beginning after December 31, 1941, no interest shall be assessed or paid with respect to such part of the deficiency for any period prior to one year after the filing of the application for relief under section 722, or September 16, 1945, whichever is the later.

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SEC. 722. GENERAL RELIEF—CONSTRUCTIVE AVERAGE BASE PERIOD NET INCOME.

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[(d) Application for Relief Under This Section.—The taxpayer shall compute its tax, file its return, and pay its tax under this subchapter without the application of this section, except as provided in section 710 (a) (5). The benefits of this section shall not be allowed unless the taxpayer, not later than six months after the date prescribed by law for the filing of its return, or if the application relates to a taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, prior to September 16, 1943, makes application therefor in accordance with regulations to be prescribed by the Commissioner with the approval of the Secretary, except that if the Commissioner in the case of any taxpayer with respect to the tax liability of any taxable year—

[(1) issues a preliminary notice proposing a deficiency in the tax imposed by this subchapter such taxpayer may, within ninety days after the date of such notice make such application, or

[(2) mails a notice of deficiency (A) without having previously issued a preliminary notice thereof or (B) within ninety days after the date of such

preliminary notice, such taxpayer may claim the benefits of this section in its petition to the Board or in an amended petition in accordance with the rules of the Board.

If the application is not filed within six months after the date prescribed by law for the filing of the return, or if the application relates to a taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, prior to September 16, 1943, the operation of this section shall not reduce the tax otherwise determined under this subchapter by an amount in excess of the amount of the deficiency finally determined under this subchapter without the application of this section. If a constructive average base period net income has been determined under the provisions of this section for any taxable year, the Commissioner may, by regulations approved by the Secretary, prescribe the extent to which the limitations prescribed by this subsection may be waived for the purpose of determining the tax under this subchapter for a subsequent taxable year.]

(*d*) *Application for Relief Under This Section.—The taxpayer shall compute its tax, file its return, and pay the tax shown on its return under this subchapter without the application of this section, except as provided in section 710 (a) (5). The benefits of this section shall not be allowed unless the taxpayer within the period of time prescribed by section 322 and subject to the limitation as to amount of credit or refund prescribed in such section makes application therefor in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. If a constructive average base period net income has been determined under the provisions of this section for any taxable year, the Commissioner may, by regulations approved by the Secretary, prescribe the extent to which the limitations prescribed by this subsection may be waived for the purpose of determining the tax under this subchapter for a subsequent taxable year.*

SEC. 3771. INTEREST ON OVERPAYMENTS.

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(f) Estimated Tax and Tax Withheld at Source.—For date of payment in respect of estimated tax and of tax withheld at source on wages, see section 322 (e).

(*g*) *Claims Based Upon Relief Under Section 722.—If any part of an overpayment for a taxable year is determined by the Commissioner to be attributable to the final determination of an application for relief or benefit under section 722 for any taxable year beginning prior to January 1, 1942, no interest shall be allowed or paid with respect to such part of the overpayment; and for any taxable year beginning after December 31, 1941, no interest shall be allowed or paid with respect to such part of the overpayment for any period prior to one year after the filing of the application for relief under section 722, or September 16, 1945, whichever is the later.*

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