

Public Law 95-628
95th Congress

An Act

To revise miscellaneous timing requirements of the revenue laws, and for other purposes.

Nov. 10, 1978
[H.R. 7320]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Internal Revenue
Code of 1954,
amendment.

SECTION 1. AMENDMENT OF 1954 CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

26 USC 1 *et. seq.*

SEC. 2. PERIOD FOR PAYMENT TO QUALIFY FOR DEDUCTIBILITY OF CERTAIN EXPENSES PAID TO RELATED TAXPAYERS.

(a) **AMENDMENT OF SECTION 267.**—Section 267 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) is amended by adding at the end thereof the following new subsection:

26 USC 267.

“(e) **RULE WHERE LAST DAY OF 2½ MONTH PERIOD FALLS ON SUNDAY, ETC.**—For purposes of subsection (a) (2)—

“(1) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day shall be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and

“(2) the determination of what constitutes a legal holiday shall be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.”

26 USC 7503.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to payments made after the date of the enactment of this Act.

26 USC 267 note.

SEC. 3. INCREASE IN BASIS FOR AMOUNT OF GAIN RECOGNIZED TO THE DISTRIBUTING CORPORATION.

(a) **AMOUNT DISTRIBUTED.**—Clause (ii) of section 301(b)(1)(B) (relating to amount distributed in the case of corporate distributees) is amended to read as follows:

26 USC 301.

“(ii) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain recognized to the distributing corporation on the distribution.”

(b) **BASIS.**—Subparagraph (B) of section 301(d)(2) (relating to basis in case of corporate distributees) is amended to read as follows:

“(B) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain recognized to the distributing corporation on the distribution.”

(c) **EFFECT ON EARNINGS AND PROFITS.**—Paragraph (3) of section 312(c) (relating to adjustments for liabilities, etc.) is amended to read as follows:

26 USC 312.

26 USC 301 note. “(3) any gain recognized to the corporation on the distribution.”
 (d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to distributions made after the date of the enactment of this Act.

SEC. 4. 60-DAY EXTENSION OF 12-MONTH PERIOD UNDER SECTION 337 WHERE THERE IS INVOLUNTARY CONVERSION.

26 USC 337. (a) **AMENDMENT OF SECTION 337.**—Section 337 (relating to gain or loss on sales or exchanges in connection with certain liquidations) is amended by adding at the end thereof the following new subsection:

26 USC 1033. “(e) **SPECIAL RULE FOR INVOLUNTARY CONVERSIONS.**—If—
 “(1) there is an involuntary conversion (within the meaning of section 1033) of property of a distributing corporation and there is a complete liquidation of such corporation which qualifies under subsection (a),

“ (2) the disposition of the converted property (within the meaning of clause (ii) of section 1033(a)(2)(E)) occurs during the 60-day period which ends on the day before the first day of the 12-month period, and

“ (3) such corporation elects the application of this subsection at such time and in such manner as the Secretary may by regulations prescribe,

then for purposes of this section such disposition shall be treated as a sale or exchange occurring within the 12-month period.”

26 USC 337 note. (b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to dispositions of the converted property (within the meaning of clause (ii) of section 1033(a)(2)(E) of the Internal Revenue Code of 1954) occurring after the date of the enactment of this Act in taxable years ending after such date.

SEC. 5. EXTENSION OF PERIOD FOR MAKING SUBCHAPTER S ELECTIONS.

26 USC 1372. (a) **AMENDMENT OF SECTION 1372(c).**—Subsection (c) of section 1372 (relating to where and how subchapter S election may be made) is amended to read as follows:

“(c) **WHEN AND HOW MADE.**—

“(1) **IN GENERAL.**—An election under subsection (a) may be made by a small business corporation for any taxable year—

“(A) at any time during the preceding taxable year, or

“(B) at any time during the first 75 days of the taxable year.

“(2) **TREATMENT OF CERTAIN LATE ELECTIONS.**—If—

“(A) a small business corporation makes an election under subsection (a) for any taxable year, and

“(B) such election is made after the first 75 days of the taxable year and on or before the last day of such taxable year, then such election shall be treated as having been made for the following taxable year.

“(3) **MANNER OF MAKING ELECTION.**—An election under subsection (a) shall be made in such manner as the Secretary shall prescribe by regulations.”

(b) **TECHNICAL AMENDMENTS.**—

(1) Section 1372(e)(1)(A) (relating to termination in the case of new shareholders) is amended to read as follows:

“(A) an election under subsection (a) made by a small business corporation shall terminate if any person who is not a shareholder in such corporation on the day on which the election was made becomes a shareholder in such corporation and affirmatively refuses (in such manner as the Secretary

may by regulations prescribe) to consent to such election on or before the 60th day after the day on which he acquired the stock.”

(2) The last sentence of section 1372(a) (relating to eligibility for election by a small business corporation) is amended to read as follows: “Such election shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.” 26 USC 1372.

(3) Subparagraph (C) of section 1372(e)(1) is amended by inserting “(or, if later, the first taxable year for which such election would have taken effect)” after “in the corporation”.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to elections made more than 60 days after the date of the enactment of this Act for taxable years beginning more than 60 days after such date of enactment. 26 USC 1372 note.

(d) RETROACTIVE APPLICATION OF “PRECEDING TAXABLE YEAR” AMENDMENT.— 26 USC 1372 note.

(1) IN GENERAL.—If—

(A) a small business corporation has treated itself in its return as an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1954 for any taxable year beginning before the date 60 days after the date of the enactment of this Act (hereinafter in this subsection referred to as the “election year”),

(B) such treatment was pursuant to an election which such corporation made during the taxable year immediately preceding the election year and which, but for this subsection, would not be effective, and

(C) at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe by regulations—

(i) such corporation makes an election under this paragraph, and

(ii) all persons (or their personal representatives) who were shareholders of such corporation at any time beginning with the first day of the election year and ending on the date of the making of such election consent to such election, consent to the application of the amendment made by subsection (a), and consent to the application of paragraph (3) of this subsection,

then paragraph (1) of the first sentence of section 1372(c) of such Code (as amended by subsection (a)) shall apply with respect to the taxable years referred to in paragraph (2) of this subsection.

(2) YEARS TO WHICH AMENDMENT APPLIES.—In the case of an election under paragraph (1) by any corporation, the taxable years referred to in this paragraph are—

(A) the election year,

(B) all subsequent taxable years of such corporation, and

(C) in the case of each person who was a shareholder of such corporation at any time during any taxable year described in subparagraph (A) or (B)—

(i) the first taxable year of such person ending with or within a taxable year described in subparagraph (A) or (B), and

(ii) all subsequent taxable years of such person.

(3) STATUTE OF LIMITATIONS FOR ASSESSMENT OF DEFICIENCY.—If the assessment of any deficiency in income tax resulting from

the filing of an election under paragraph (1) for a taxable year ending before the date of such filing would be prevented, but for the application of this paragraph, before the expiration of one year after the date of such filing by any law or rule of law, then such deficiency (to the extent attributable to such election) may be assessed at any time before the expiration of such one-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

SEC. 6. TIME FOR FILING INCOME TAX RETURNS IN THE CASE OF ORGANIZATIONS EXEMPT FROM TAXATION UNDER SECTION 501(a).

26 USC 6072. (a) **AMENDMENT OF SECTION 6072.**—Section 6072 (relating to time for filing income tax returns) is amended by adding at the end thereof the following new subsection:

26 USC 501. “(e) **ORGANIZATIONS EXEMPT FROM TAXATION UNDER SECTION 501(a).**—In the case of an income tax return of an organization exempt from taxation under section 501(a) (other than an employees’ trust described in section 401(a)), a return shall be filed on or before the 15th day of the 5th month following the close of the taxable year.”

26 USC 6072 note. (b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to returns for taxable years beginning after the date of the enactment of this Act.

SEC. 7. PERIOD FOR DETERMINING WHETHER A TAXPAYER IS A FARMER OR FISHERMAN FOR PURPOSES OF THE ESTIMATED TAX.

26 USC 6073. (a) **AMENDMENT OF SECTION 6073(b).**—Subsection (b) of section 6073 (relating to time for filing declaration of estimated tax in case of farmers and fishermen) is amended to read as follows:

26 USC 6015. “(b) **FARMERS OR FISHERMEN.**—Declarations of estimated tax required by section 6015 from any individual—

“(1) whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year, or

“(2) whose gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least two-thirds of the total gross income from all sources shown on such return,

may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the taxable year succeeding the taxable year.”

26 USC 6073 note. (b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to declarations of estimated tax for taxable years beginning after the date of the enactment of this Act.

SEC. 8. PERIOD OF LIMITATIONS FOR CREDIT OR REFUND WITH RESPECT TO CERTAIN CARRYBACKS.

26 USC 6511. (a) **NET OPERATING LOSS OR CAPITAL LOSS CARRYBACKS.**—Subparagraph (A) of section 6511(d)(2) (relating to special period of limitation with respect to net operating loss or capital loss carrybacks) is amended by striking out “with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of” and inserting in lieu thereof “3 years after the time prescribed by law for filing the return (including extensions thereof) for”.

(b) INVESTMENT CREDIT AND OTHER CREDIT CARRYBACKS.—

(1) Paragraph (4) of section 6511(d) (relating to special period of limitation with respect to investment credit carrybacks) is amended to read as follows:

“(4) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO CERTAIN CREDIT CARRYBACKS.—

“(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

“(B) APPLICABLE RULES.—If the allowance of a credit or refund of an overpayment of tax attributable to a credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to any credit, and the effect of such credit, to the extent that such credit is affected by a credit carryback which was not in issue in such proceeding.

26 USC 7122.

“(C) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term ‘credit carryback’ means any investment credit carryback, work incentive program credit carryback, and new employee credit carryback.”

(2) Subsection (d) of section 6511 is amended—

26 USC 6511.

(A) by striking out paragraphs (7) and (9), and

(B) by redesignating paragraph (8) as paragraph (7).

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) AMENDMENTS OF SECTION 6501.—

26 USC 6501.

(A) Subsection (j) of section 6501 (relating to investment credit carrybacks) is amended to read as follows:

“(j) CERTAIN CREDIT CARRYBACKS.—

26 USC 6501.

“(1) IN GENERAL.—In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for

26 USC 6213.

the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

26 USC 6511. “(2) CREDIT CARRYBACK DEFINED.—For purposes of this subsection, the term ‘credit carryback’ has the meaning given such term by section 6511(d)(4)(C).”

(B) Subsection (m) of section 6501 (relating to tentative carryback adjustment assessment period) is amended by striking out “subsection (h), (j), (o), or (p)” each place it appears and inserting in lieu thereof “subsection (h) or (j)”.

26 USC 6501.

(C) Section 6501 is amended by striking out subsections (o) and (p).

26 USC 6601.

(2) AMENDMENTS OF SECTION 6601.—

(A) Paragraph (2) of section 6601(d) (relating to investment credit carryback) is amended to read as follows:

“(2) CERTAIN CREDIT CARRYBACKS.—

“(A) IN GENERAL.—If any credit allowed for any taxable year is increased by reason of a credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

“(B) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term ‘credit carryback’ has the meaning given such term by section 6511(d)(4)(C).”

(B) Subsection (d) of section 6601 is amended by striking out paragraphs (4) and (5).

26 USC 6611.

(3) AMENDMENTS OF SECTION 6611.—

(A) Paragraph (3) of section 6611(f) (relating to investment credit carryback) is amended to read as follows:

“(2) CERTAIN CREDIT CARRYBACKS.—

“(A) IN GENERAL.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a credit carryback, such overpayment shall be deemed not to have been made before the close of the taxable year in which such credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the close of such subsequent taxable year.

“(B) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term ‘credit carryback’ has the meaning given such term by section 6511(d)(4)(C).”

(B) Subsection (f) of section 6611 is amended by striking out paragraphs (4) and (5).

26 USC 6511
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to carrybacks arising in taxable years beginning after the date of the enactment of this Act.

SEC. 9. STAY OF COLLECTION OF PENALTY UNDER SECTION 6672 WHERE BOND IS FILED.

(a) **IN GENERAL.**—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by striking out “Any person” and inserting in lieu thereof “(a) **GENERAL RULE.**—Any person” and by adding at the end thereof the following new subsection: 26 USC 6672.

“(b) **EXTENSION OF PERIOD OF COLLECTION WHERE BOND IS FILED.**—

“(1) **IN GENERAL.**—If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person—

“(A) pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his liability for such penalty,

“(B) files a claim for refund of the amount so paid, and

“(C) furnishes a bond which meets the requirements of paragraph (3),

no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court. 26 USC 7421.

“(2) **SUIT MUST BE BROUGHT TO DETERMINE LIABILITY FOR PENALTY.**—If, within 30 days after the day on which his claim for refund with respect to any penalty under subsection (a) is denied, the person described in paragraph (1) fails to begin a proceeding in the appropriate United States district court (or in the Court of Claims) for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the 30-day period referred to in this paragraph.

“(3) **BOND.**—The bond referred to in paragraph (1) shall be in such form and with such sureties as the Secretary may by regulations prescribe and shall be in an amount equal to 1½ times the amount of excess of the penalty assessed over the payment described in paragraph (1).

“(4) **SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS ON COLLECTION.**—The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court. 26 USC 6502.

“(5) **JEOPARDY COLLECTION.**—If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this subsection shall prevent the immediate collection of such penalty.”

(b) **TECHNICAL AMENDMENTS.**—

(1) Subsection (a) of section 7421 is amended by inserting “6672(b), 6694(c),” after “6213(a),”. 26 USC 7421.

(2) Subsection (a) of section 7103 is amended by inserting after paragraph (3) the following new paragraph: 26 USC 7103.

“(4) For a bond to stay collection of a penalty assessed under section 6672, see section 6672(b).”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to penalties assessed more than 60 days after the date of the enactment of this Act. 26 USC 6672 note.

SEC. 10. TEMPORARY SUSPENSION OF DUTY ON IMPORTS OF INSULATION.

19 USC 1202
app.

(a) **IN GENERAL.**—Subpart B of part 1 of the appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting after item 907.20 the following new item:

“ 907.40	Boric acid (provided for in item 416.10, part 2B, schedule 4).....	Free	No change	On or before 6/30/79	”.
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(b) Such subpart B is amended by inserting before item 911.00 the following new items:

“ 909.10	Mineral wool, in bulk, or in batts, blankets, or similar forms, whether or not lined, backed, or supported with paper, paperboard, or similar materials (provided for in item 522.81, par 1J schedule 5).....	Free	No change	On or before 6/30/79	”.
909.30	Glass fibers in bulk; glass fibers in the form of mats, batts, blankets, felts, pads, casings, and boards, all the foregoing, of a density not over 4 pounds per cubic foot, whether or not coated, impregnated, or bonded with glue, plastics, or other substances, or lined, backed, or supported with paper, paperboard, fabrics or similar materials, or with metal mesh or foil (provided for in item 540.71, part 3A, of schedule 5).....	Free	No change	On or before 6/30/79	”.

19 USC 1202
app. note.

(c) The amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of enactment of this Act.

SEC. 11. FONDATION JOSÉE ET RENÉ DE CHAMBRUN.

26 USC 2501 et
seq.
26 USC 2001 et
seq.
26 USC 2522,
2106.

For the purpose of determining the liability for tax of Josée or René Chambrun, citizens of France, under chapter 12 of the Internal Revenue Code of 1954, and for the purpose of determining the liability for tax of the estate of the said Josée or René de Chambrun under chapter 11 of such Code, the Fondation Josée et René de Chambrun, Paris, France, shall be treated as if it were an organization described in sections 2522(b)(2) and 2106(a)(2)(A)(ii) of such Code, respectively.

Approved November 10, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-645 (Comm. on Ways and Means).

SENATE REPORT No. 95-797 (Comm. on Finance).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Nov. 1, considered and passed House.

Vol. 124 (1978): Aug. 23, considered and passed Senate, amended.

Oct. 10, House concurred in certain Senate amendments, in others with amendments, and disagreed to Senate amendment No. 7.

Oct. 14, Senate concurred in House amendments.