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DIGEST OF
TESTIMONY PRESENTED ON H. R. 7125
THE EXCISE TAX TECHNICAL CHANGES ACT
OF 1957
BEFORE THE
COMMITTEE ON FINANCE
OF THE
UNITED STATES SENATE
PREPARED BY THE
STAFF OF THE JOINT COMMITTEE ON
INTERNAL REVENUE TAXATION



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H. R. 7125 (EXCISE TAX TECHNICAL CHANGES ACT
OF 1957)

Suggestions Submitted at Hearings of Senate Finance Committee,
July 15 Through 17, 1958

PART I.—SUGGESTIONS OF TREASURY

(TITLE I. MISCELLANEOUS EXCISES)

Section 111. Parts and accessories for farm equipment

(1) An objection is raised to the exemption procedure provided for sales of parts for use or resale for repair or replacement purposes on farm equipment.

(2) Objection also is raised to relieving the manufacturer of liability where he accepts in good faith a certificate that the part is to be used in farm equipment.

Section 115. Constructive sale price for manufacturers' excise taxes

Opposition is expressed to the changes made in H. R. 7125 which would permit sales to retailers to obtain a constructive price.

Section 119. Uniform system of exemptions, registration, etc.

It is proposed that a person who, after purchasing an article on a tax-free basis, later makes a taxable sale or use of the article will be liable for the tax on the article.

Section 141. Documentary stamp taxes

(1) It is proposed that the 6-cents-per-share limitation for the tax on the transfer of stock be removed.

(2) It is proposed that the provisions in H. R. 7125 dealing with the stamp tax on transfers to capital be deleted as unworkable.

(3) It is proposed that the exemption from the transfer tax for transfers between revocable trusts be deleted from the bill.

Section 165. Statute of limitations for stamp taxes; redemption of stamps

It is proposed that the provision granting refunds of tax for gasoline lost in a major disaster be deleted from the bill.

TITLE II

Section 202

It is proposed that the mandatory weekly return system for tobacco products not be enacted.

Miscellaneous

Miscellaneous changes in the distilled spirits and tobacco provisions are proposed.

PART II—SUGGESTIONS OF THE PUBLIC FOR REVISION
OF H. R. 7125

TITLE I

ONE. RETAILERS TAXES

(A) *Section 101. Semiprecious stones*

(1) "Coral" should be removed from the list of taxable stones.—Jewelry Industry Tax Committee (Bernard N. Burnstine), page 183.

(2) Imitation jewelry should continue to be taxed.—Jewelry Industry Tax Committee (Bernard N. Burnstine), page 183; American Retail Federation (Rowland Jones, Jr.), page 174.

(3) A special exemption should be made for industrial stones.—Jewelry Industry Tax Committee (Bernard N. Burnstine), page 183.

(B) *Exemption from retailers excise taxes for nonprofit educational organizations*

(1) It is proposed that the exemption from the retailers' tax provided for nonprofit educational organizations be extended to hospitals and to nonprofit welfare and recreational organizations.—American Hospital Association (Kenneth Williamson), page 107; National Jewish Welfare Board (Sanford Solendar), page 119; Young Women's Christian Association (Mrs. F. Beardsley Foster, Jr.), page 125.

(2) One group urged that the exemption for nonprofit schools be deleted.—Protestants and Other Americans United for the Separation of Church and State (Rev. C. Stanley Lowell), page 37.

(C) *Miscellaneous excise tax suggestions*

(1) As a result of recent decisions (Gellman and Torti cases), sales of certain articles are not being taxed. These cases held that sales of certain items to be used as prizes or awards are not sales at retail, and not taxable. The Service has limited this exemption to cases where the seller is not already a seller at retail. It has been requested that both retailers and wholesalers get the benefit of the Gellman exemption.—Jewelry Industry Tax Committee (O. A. Jenkins), page 183; Manufacturing Jewelers and Silversmiths of America, Inc. (George R. Frankovich), page 254; American Retail Federation (Rowland Jones, Jr.), page 174.

(2) It has been requested that, where a person sells both taxable and nontaxable articles on conditional sales contracts, he be allowed to prorate the tax on the basis of the values of the taxable and nontaxable items.—American Retail Federation (Rowland Jones, Jr.), page 174.

TWO. MANUFACTURERS TAXES

(A) *Section 114. Radio and television components, record players, tape and wire recorders, etc.*

(1) It has been proposed that tape and wire recorders *not* be taxed. H. R. 7125 would impose a tax on these items, which are not taxed in present law.—Ampex Audio, Inc. (Herbert L. Brown), page 157; Magnetic Recording Industry (Mark L. Mooney), page 184.

(2) Certain special-type phonographs used for teaching should not be taxed. Present law would not tax these "nonentertainment" phonographs. However, the effect of H. R. 7125 is to tax these phonographs.—Audio-Visual Co. (Don White), page 26.

(B) Section 115. Constructive sale price for manufacturers excise taxes

(1) It has been proposed by one company that section 115 be broadened to permit sales of home appliances to certain special dealers to obtain a constructive price.—Maytag (Murray B. Nelson), page 31; NAM also approves (Charles R. Orem), page 250; American Home Laundry Manufacturers' Association (Guenther Baumgart), page 265.

(2) It has been proposed that where there is considerable discounting in sales to retailers, the lowest discount price should be used as the constructive price.—National Association of Photographic Manufacturers (William C. Babbitt), page 147.

(C) Section 117. Leases of certain articles subject to manufacturers excise tax

(1) It is proposed that where a used article is leased that the tax be no greater than if the article were new. New articles receive a constructive price.—IBM (Daniel M. Gribbon), page 82.

(2) It is proposed that in order to obtain the benefit of the relief extended by H. R. 7125 to leased articles the manufacturer not be required to sell the same *model* but only the same *type*.—IBM (Daniel M. Gribbon), page 82.

(D) Section 119. Uniform system of exemptions, registration, etc.

(1) It is suggested that the exemption for nonprofit schools be broadened to exempt nonprofit hospitals and also nonprofit welfare and recreational organizations.—YWCA; Jewish Welfare Board; American Hospital Association (see sec. 105 above).

(2) It is proposed that the present exemption procedure be retained for exports. Fountain Pen and Mechanical Pencil Manufacturers' Association (Herman Berg), page 35.

(E) Miscellaneous manufacturers excise tax problems

(1) It has been suggested that where a manufacturer of tires sells his tires at his own retail outlet he should be placed in the same position as independent retail outlets who have to pay tax upon the purchase of the tires. National Federation of Independent Business—(George Burger), page 187.

THREE. FACILITIES AND SERVICES

(A) Section 131. Admissions

(1) The scope of the cabaret should be clarified to solve certain problems, e. g., (1) where customer pays his check before the entertainment starts and waits to see part of it; (2) what to do about the "related room" question.—Packard Hotels Co. (Arthur J. Packard), page 155.

(2) The proprietor should not be liable except for what he actually collects from a concessionaire. (H. R. 7125 imposes a duty on the proprietor to collect the tax.)—Packard Hotels Co. (Arthur J. Packard), page 155.

(3) It is proposed that admissions be exempted where the proceeds go to a scholarship fund.—American Association of University Women

(Mrs. Stanley Butner), page 72; (Mary E. Bradshaw), page 263; (Dr. Anna L. Rose Hawkes and Dr. Elizabeth S. May), page 90.

(B) Section 132. Club dues tax

(1) It is proposed that the swimming-pool exemption be made retroactive. Various dates have been suggested.—Hon. George M. Rhodes, page 28; Lincolnia Recreational Club (Col. Orval Matteson), page 39; Guilford Hills Park, Inc. (N. B. Boney, Jr.), page 110; Mrs. Harold Schloss, page 132; Hunting Hills Swimming Club, Inc. (J. Harold Awalt, president), page 153; Community Pools Association of Montgomery County, Md. (Irving J. Rotkin), page 166; Oakview Recreation Corp. (Edward E. Oppenheim), page 258.

(2) It is proposed that nonprofit skating clubs be exempted.—United States Figure Skating Association and others (Henry T. Heath), page 172.

(3) It is proposed that dancing facilities not be prohibited and that minor facilities should be permissible.—Northern Virginia Swimming League, page 178.

(4) In order to obtain the swim-club exemption, H. R. 7125 provides that it be shown that the swim club is not under common control with "any" organization. It is proposed that the exemption not be denied unless the swim club is under common control with an organization subject to the dues tax.—Hollins Hill Community Association, (Edmund Brunner), page 98.

(C) Other dues tax problems

(1) It is proposed that optional charges (locker fees, slip rentals for boats) not be subject to the dues tax.—Rochester Yacht Club (Thomas G. Carney), page 67; Club Managers Association of America (Richard E. Daley), page 88; Hon. Robert Wilson (H. R. 9877), page 130; U. S. Golf Association (John D. Ames), page 137.

(D) Section 133. Communications taxes

(1) It has been proposed that news-ticker services be exempted from the tax on wire equipment. The Revenue Service is strictly construing the section which appears to exempt all news-ticker service. The Service maintains that the exemption only applies where the ticker service is rented by a news service, radio station, or the press.—Dow Jones (William T. Barnes), page 43.

(2) The statute of limitations on refunds should run from the date the customer presents his claim to the company, rather than the date the company files its return.—New England Telephone & Telegraph (J. A. Williams) (R. V. Jones), pages 92 and 278.

(3) It is proposed that the person collecting the communications taxes not be liable to any person by reason of his having collected the taxes.—New England Telephone & Telegraph (J. A. Williams) (R. V. Jones), pages 92 and 278.

(4) It is proposed that the "catchall" provisions in section 4252 (e) be removed (any radio and television service and any other wire or radio circuit service).—New England Telephone & Telegraph (J. A. Williams) (R. V. Jones), pages 92 and 278.

(5) It is proposed that certain components of wire equipment service (such as facilities) not be taxed.—New England Telephone & Telegraph (J. A. Williams) (R. V. Jones), pages 92 and 278.

(6) In section 4252 (a) (1), the status of extensions connected to a private branch should be clarified. The words "such an exchange"

could refer either to a private branch exchange or to a regular telephone exchange.—New England Telephone & Telegraph (J. A. Williams) (R. V. Jones), pages 92 and 278.

(7) The tax on all burglar alarms should be eliminated. If the tax is retained, it should apply to all types of burglar alarms, not just to those connected with a central office off the premises.—Controlled companies of American District Telegraph Co. (E. Gaston), page 114.

(8) It is urged that the exemption for common carriers for teletypewriter service be continued. H. R. 7125 exempts common carriers only from the wire equipment and wire mileage service and not from the teletypewriter service. It is suggested that the word "exchange" in section 4252 (a) (1) be defined as not including a connection used by a common carrier for transmission of messages within the system. Association of American Railroads, page 252.

(E) Section 137. Transportation of persons

(1) It is proposed that the exemption from the tax on the transportation of persons be extended to nonprofit hospitals and nonprofit welfare and recreational organizations. (See secs. 105 and 119 for list of witnesses.)

(2) It is proposed that the exemption in the bill for ferryboats be applied to the tax on the transportation of persons.

FOUR (SEC. 141). DOCUMENTARY STAMP TAXES

(1) It is proposed that open-end investment companies be exempted from the stock-issuance tax, or, in the alternative, that (1) the tax on these companies be based on par value or (2) the rate of 4 cents per \$100 actual value be used instead of 10 cents per \$100.—National Association of Investment Companies (Joseph Welch), page 34; (see statement of SEC, page 244); Massachusetts Investors Trusts; Amory Parker, Inc., Investors.

(2) The exemption in H. R. 7125 for qualified pension and profit-sharing trusts should be made retroactive to January 1, 1955.—The Chase National Bank (Esmond S. Gardner), page 130.

(3) It is proposed that the transferor of stock be required to certify the actual value of the stock transferred, and that the transfer agent relying on the certification be relieved of liability.—New York Stock Transfer Association (Geo. J. Gansel), page 61.

(4) It is urged that the tax on the transfer of stock *not* be raised to 5 cents per \$100 value as the Treasury proposes.—New York Stock Exchange (John R. Haire), page 73.

(5) It is proposed that conveyances to which a State or local government is a party be completely exempted since the State or local government actually bears the tax.—Hon. Alan Bible, page 27; American Association of State Highway Officials (C. R. McMillan), page 102; California State Department of Public Works (C. M. Gillis), page 120; Hon. Richard L. Neuberger, page 122; Western Association of State Highway Officials (H. G. Glaisyer), page 123; State of Oregon, State Highway Department (Leonard I. Lindes), page 123; State of California, Department of Public Works (Frank C. Balfour), page 124; State of Nebraska (L. N. Ness), page 128; Washington State Highway Commission (W. A. Bugge), page 141.

FIVE. OCCUPATIONAL AND WAGERING TAXES

(1) Under present law, non-coin-operated machines offering prizes are subject to the 10-percent gambling tax on receipts, while coin-operated machines offering prizes are subject to a \$250 tax. H. R. 7125 would amend the law to tax non-coin-operated machines as if they were coin operated. It is proposed that this change be made retroactive to the effective date of the code, with refunds being limited to \$2,000 to any one person. Where the gambling tax would be smaller, that figure would be used. Tri-County Federation of Clubs (David Arnold), page 170.

(2) It is proposed that machines known as "diggers" and skill machines not be subject to the \$250 tax on slot machines. Ro Ko, Inc. (Sherman Rosenberg), page 128; Cedar Point on Lake (E. S. Starr), page 126.

SIX. USE TAX ON HIGHWAY TRUCKS

(1) It is proposed that an amendment be made to the use tax on trucks to provide for (1) setting up a separate category for highway motor vehicles used exclusively in combination with semitrailers equipped with furniture van or automobile transporter bodies; (2) exempting from the use tax where the actual gross loaded weight of a vehicle did not exceed 26,000 pounds at any time during the taxable year; (3) quarterly payment of the truck use tax; and (4) a refund of tax where a taxable vehicle is permanently removed from service prior to June 1 of the taxable year.—American Trucking Association (James F. Fort), page 70.

SEVEN. PROCEDURE AND ADMINISTRATION

(A) Section 161. Returns of Retailers Excise Taxes by Suppliers

It is urged that this section not be enacted on the grounds that it favors door-to-door salesmen.—National Association of Retail Drug-gists (Geo. H. Frates), page 64.

(B) Section 163. Credits or refunds of certain taxes

(1) It is urged that where an initial manufacturer sells a part to another manufacturer for use in further manufacture, the initial manufacturer be allowed to obtain credit or refund from the Government. Present law and the bill require the second manufacturer to file the claim for credit or refund.—Tung-Sol Electric Inc. (Harry G. Mason), page 134.

(2) It is urged that a manufacturer be entitled to a credit or refund if he can show that he *will* refund the tax to the ultimate so that it will not be necessary to have proof at the time of filing the return that he has already obtained the consent of the ultimate vendor or ultimate purchaser. It is also urged that the term "ultimate purchaser" be used in addition to "ultimate vendor" in the case where newsreel is involved.—National Association of Photographic Manufacturers (Wm. C. Babbitt), page 147.

(3) It is urged that the diplomatic exemption be broadened to exempt sales where an intervening dealer is involved.—National Association of Photographic Manufacturers (Wm. C. Babbitt), page 147.

(C) *Section 164. Refunds of gasoline tax used for nonhighway purposes, or by local transit systems*

It is proposed that refunds of gasoline tax be handled through the States by agreement. This recommendation deals particularly with the 3-cent refund to farmers.—American Farm Bureau Federation. (Chas. B. Schuman), page 111.

TITLE II

(A) *Distilled spirits, beer, and wine*

In this area the main item of controversy is the application of the new bonding period to stock existing at the time of enactment.

(1) Some urged that the bill be enacted as it is and that the new bonding period apply to existing stock as well as future stock.—The Wine Conference of America (Edward W. Wooten), page 73. Robert Gould Co., page 74; J. T. S. Brown's Son Co. (Alvin A. Gould), page 136; Willett Distilling Co. (Thompson Willett), pages 38, 382; Louis Forman & Co., page 249; T. W. Samuels Distillery (Samuel L. Westerman), page 145; Pennco Distilleries, Inc. (S. S. Glass), page 247; American Distilling Co., Inc. (Russell R. Brown), page 152; Schenley Industries, Inc. (Ralph T. Heymsfeld), page 287. (See pp. 242-244 for additional witnesses.)

(2) Others urged that the new bonding period be limited to future production.—Distilled Spirits Institute.—(Dan L. Street), pages 211, 267 (for a list of members see p. 225), Joseph E. Seagrams (Scott W. Lucas), page 193; McCormick Distilling Co. (Claud L. Croy), page 78; Sunset Hills Farm (A. Smith Bowman), page 162; Laird & Co. (John E. Laird, Jr.), page 181; National Distillers & Chemical Corp. (R. E. Joyce), page 249.

(3) Existing spirits should not be able to be labeled as over 8 years.—Hiram Walker & Sons, Inc. (Howard R. Walton), page 264.

(4) It is suggested that existing stock not have to be removed from bond after 8 years, but that the tax be based on the 8-year regage.—Distilled Spirits Institute (Dan L. Street), pages 211, 267.

(5) It is suggested that retailers having no recourse to their suppliers be permitted to make direct claims for refund of tax on spirits lost in a major disaster.—National Liquor Stores Association (Benjamin Josephs), page 153.

(6) It has been proposed that distillers be able to use caramel in rum without the imposition of a rectification tax. Under present law and the bill, caramel may be used in brandy without the imposition of a rectification tax.—Felton & Sons, Inc., Distilleries (Ellis Benjamin), page 159.

(7) Distilleries should be allowed to add charcoal or activated carbon to rum to remove canewax without the imposition of a rectification tax.—Felton & Sons, Inc., Distilleries (Ellis Benjamin), page 159.

(8) The provision allowing a refund for unmerchantable still wines should be made retroactive.—(Hon. Eugene Keogh), page 168.

(B) *Tobacco products*

(1) The maximum period to be covered by a return should be increased from 7 days to 30 days.—Tobacco Institute, Inc., page 96.

(2) The tobacco industry should be required to pass on to the customer the savings from the new return system.—Samuel W. Pierce, page 245.

PART III—PUBLIC PROPOSALS DEALING WITH REDUC- TION OF RATES AND NEW EXEMPTIONS

(A) RETAILERS' TAXES

(1) The tax on toilet articles should be removed or placed at the manufacturers' level.—National Association of Retail Druggists (George Frates), page 64.

(B) MANUFACTURERS' TAXES

(1) It is urged that the taxes on various appliances be repealed.—National Electrical Manufacturers Association (H. G. Blakeslee), page 149.

(2) It is proposed that the taxes on automatic heaters and food-waste disposers be repealed.—National Electrical Manufacturers Association (H. G. Blakeslee), page 149.

(3) It is proposed that the tax on electric light bulbs be reduced to 5 percent.—Sylvania Electrical Products, Inc. (A. L. Milk), page 259.

(4) It is proposed that the tax on bicycle tires be repealed.—Harry Lee Coe, page 282.

(5) It is proposed that the tax on certain stencil-cutting machines be exempted from the tax imposed by section 4191. The machines involved are not office machines.—Stencil Cutting Manufacturers (Evan Howell), page 99.

(6) It is proposed that the tax on lighters be removed.—Ronson Corp. and Zippo Manufacturing Co. (Walter Surrey), page 177.

(C) ADMISSIONS AND DUES TAXES

(1) It is proposed that the cabaret tax be reduced to 10 percent.—American Society of Composers and Authors (Paul Cunningham), page 79.

(2) It is proposed that the club-dues tax be reduced to 10 percent.—Club Managers Association of America (Richard E. Daley), page 88; Packard Hotels, Inc. (Arthur J. Packard), page 155.

(D) COMMUNICATIONS TAXES

(1) It is proposed that a termination date be placed on the communication taxes.—New England Telephone & Telegraph (J. A. Williams), page 91; Chesapeake & Potomac Telephone Company of Virginia (Joseph E. Blackburn), page 180.

(2) It is proposed that the tax on telegraph messages be removed.—Western Union Telegraph Co. (J. A. C. McGann), page 105.

(E) TRANSPORTATION OF PROPERTY

(1) It is proposed that the Metropolitan Opera be exempted from the tax on the transportation of property.—Metropolitan Opera Co. (Lincoln Lauterstein), page 51.

(2) It is proposed that the tax on the transportation of persons be repealed.—American Cattlemen's Association (Radford Hall), page 109; American Farm Bureau Federation (Chas. B. Schuman) (Matt

Triggs), page 111; San Francisco Chamber of Commerce (A. K. Brown), page 112; Wabash Railroad Co. (Arthur Atkinson), page 130; North Atlantic Ports Association (Thos. W. S. Davis), page 132.

(3) The tax on the transportation of persons should be amended to exempt furlough flights.—Delta Airlines (Erle Cocke, Jr.; Edward Martin), page 261.

PART II

(A) DISTILLED SPIRITS

(1) It is proposed that the President be allowed to reduce the tax on distilled spirits when he feels economic conditions warrant it.—Barton Distilling Co. (Oscar Getz; Joseph Palester), page 102.

(B) TOBACCO PRODUCTS

(1) The tax on tobacco products other than cigars and cigarettes should be lowered from 10 cents per pound to 4 cents per pound.—Tobacco Institute, page 95.

(C) FIREARMS

(1) It is proposed that S. 1947 (Mr. Dirksen) be added to H. R. 7125. This bill would exempt certain firearms from taxation.—Interarmco, Ltd. (C. L. C. Atkeson), page 180; American Gun Dealers, Inc. (Fred B. Rhodes, Jr.), page 263.



