

REPORT #712

TAX SECTION

New York State Bar Association

Opposition to Denial of Interest

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TAX SECTION

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February 27, 1992

The Honorable Dan Rostenkowski
Chair, House Ways & Means Committee
House of Representatives
Rayburn 2111
Washington, DC 20515

The Honorable Lloyd Bentsen
Chair, Senate Finance Committee
United States Senate
Hart 703
Washington, DC 20510

Dear Sirs:

On behalf of the Tax Section of the New York State Bar Association, I write to express strong opposition to the extraordinarily unfair provision contained in section 3103 of H.R. 4287, which generally would deny interest on tax refunds for the period between the date the tax was paid and the date the refund was claimed.

Once a tax is paid to the Internal Revenue Service, the United States government has the use of that money until the tax is refunded. This is true whether the refund is claimed on the tax return or on an amended return filed several months or years later. In either case, the government owes money to the taxpayer from the date the tax is paid. The Treasury Department pays interest to holders of its debt obligations from the time that its indebtedness is incurred. Taxpayers should not be discriminated against in this respect.

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There are many legitimate reasons why taxpayers may not claim refunds on their tax returns. For example, several months after filing its return, a taxpayer may find an error and file an amended return claiming a refund. As another example, subsequently decided court decisions often provide taxpayers with rights to refund of which they were unaware when their returns were filed. Other cases involve taxpayers that pay proposed deficiencies prior to litigating contested issues in the District Court or Claims Court but do not file claims for refund on the same days the deficiencies are paid; the proposal would deny interest for the intervening period.

In practical effect, the proposed amendment would discriminate against small taxpayers. Large corporations and wealthy individuals with sophisticated tax advisors could significantly blunt its adverse effect by claiming protective refunds on their original returns or amended returns filed shortly thereafter that would include every conceivable item for which a refund might be available, no matter how remote.* Less affluent taxpayers, particularly those who prepare their own returns, would be unable to adopt such a sophisticated approach.

It is particularly ironic that such an inequitable provision should be included in legislation that is labeled a "Tax Fairness . . . Act" and that contains as an important provision a "taxpayer bill of rights". It is hard to imagine a more important "right" that taxpayers should enjoy than that their government should compensate them for its use of their money, particularly when they must compensate the government for money they owe it.

* In addition to the additional burden placed on taxpayers in preparing such claims, this would lead to added time required for IRS agents to review them. This is likely to be especially true as taxpayers file such amended returns for prior years before the July 1, 1992 effective date of the proposal. In this respect, the proposal is unsound as an administrative matter.

The proposal should be abandoned.

Respectfully submitted,

John A. Corry
Corry

cc: The Honorable Bill Archer
The Honorable Bob Packwood
The Honorable Fred T. Goldberg
The Honorable Shirley Peterson
Harry L. Gutman, Esq.