

J. W. BAUER AND OTHERS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

RETURNING,

WITHOUT APPROVAL, HOUSE BILL NO. 2326, ENTITLED "AN ACT
FOR THE RELIEF OF J. W. BAUER AND OTHERS."

FEBRUARY 27, 1907.—Read; referred to the Committee on Claims and ordered to be
printed.

To the House of Representatives:

I return herewith, without approval, House bill No. 2326, entitled "An act for the relief of J. W. Bauer and others," for the reasons set forth in the following letters from the Secretary of the Treasury and the Commissioner of Internal Revenue:

"I have the honor to return herewith H. R. 2326, an act for the relief of J. W. Bauer and others, for the amount assessed against and paid by said parties to the United States Government as penalty for failure to make return for special tax as retail dealers of oleomargarine.

"The report of the Commissioner of Internal Revenue in the matter, of the 23d instant, is herewith transmitted, and for the reasons given in the report it is recommended that the bill be not approved."

"Relative to a bill, H. R. 2326, for the relief of J. W. Bauer and others, submitted to you by direction of the President under date of the 21st instant, with request for information as to whether or not there is any objection to its approval, I have the honor to submit the following statement covering the facts upon which the proposed relief is based:

"A certain manufacturer of oleomargarine in Chicago sold, in 1903, to a large number of dealers in the city of Louisville, Ky., among whom were the parties named in this bill, artificially colored oleomargarine, which had been tax-paid at the rate of one-fourth cent per pound, as oleomargarine free from artificial coloration.

"These several parties were visited by a revenue officer, who found that they had sold the article manufactured in Chicago, artificially colored, which made them liable for special taxes, as retail dealers in oleomargarine, at the rate of \$48 per year, and the special tax was

assessed against each from the beginning of the month in which the liability accrued to June 30, 1903, with 50 per cent penalty for failure to make return in the time and manner provided by law.

"These parties, after assessment, paid the special taxes and penalties and filed in this office claims for the refunding thereof, which, after investigation, were rejected for the reason that, as the amounts had been legally assessed and collected, there was no authority of law to refund the same.

"A bill (H. R. 11100) authorizing the refunding of the penalties collected as aforesaid was introduced in the Fifty-eighth Congress, and upon its reference to this office for report and recommendation, I reported favorably thereon under date of April 14, 1904, for the reason that these parties supposed they were selling oleomargarine free from artificial coloring, and their failure to make return was, therefore, without willful intent to defraud the Government.

"This bill was not passed, and subsequently the parties sued the collector to whom the taxes and penalties were paid for the recovery thereof, and on the 19th day of May, 1906, judgment was entered in the circuit court for the western district of Kentucky in favor of the plaintiffs.

"The cases were divided by distinguishing facts into two classes. Those in the first class contended that they had not sold colored oleomargarine in any quantity, and those in the second class alleged that the oleomargarine sold by them was not colored within the meaning of the law.

"Judgments were rendered in favor of fourteen claimants, included in the first class, for the full amount of taxes and penalties paid by them, with interest thereon from the date of the rejection of their claims, as follows:

John L. Gruber	\$36.00
Woodford Blanton	72.00
Charles Boeswald	72.00
Fred Gausman	50.40
John Heinz & Co.	72.00
C. A. Heuser	72.00
E. C. Jansen	72.00
L. A. Kissel	72.00
Fred Keller	72.00
J. S. Reynolds	56.70
G. H. Young	72.00
Frank Ziegler	72.00
J. B. King	72.00
H. B. Kruse	31.50

"As these cases had been submitted to the court without a jury and the findings of facts by the court appeared to support the judgments, no appeal was taken, and claims for the amounts included therein were allowed by this office on October 27, 1906, referred to the accounting officers, adjusted by the Auditor for the Treasury Department November 15, 1906, and as there was no appropriation to pay the same, the claims were scheduled and by you transmitted to Congress on the 7th instant for an appropriation under section 2 of the act of July 7, 1884.

"In the other class of cases the court found from the evidence that the parties had sold colored oleomargarine, rendering them liable to the payment of special taxes, but held that as section 3176, Revised Statutes, had not been incorporated in the oleomargarine acts, there was no warrant for the assessment and collection of the 50 per cent

penalties against said dealers for failure to disclose liability within the time and manner specified by said section, and gave judgments to the following-named plaintiffs for the amounts only which had been collected as penalties with interest thereon:

I. Schafer.....	\$24.00
C. A. Culver.....	28.00
Samuel Goldsmith.....	16.00
M. J. Madden.....	6.00
S. Weisbach.....	12.00
J. W. Bauer.....	24.00
C. Caudel.....	24.00
Frank Bleemer.....	24.00
C. J. Finnegan.....	24.00
John W. Kleier.....	24.00
Joseph Kaelin.....	24.00
F. H. Linkenberg.....	27.60
Frank E. Muth.....	24.00
Oscar E. Rehm.....	24.00
W. J. Scheiber.....	24.00
T. J. Wathen.....	24.00

“These judgments were not acquiesced in by the Government for the reason that it was desired to finally settle the question of law therein presented in order that, if the court of last resort should affirm the judgments of the trial court, Congress might be asked to so amend the oleomargarine act as to bring its provisions in harmony with the general revenue system relative to returns and payment of special taxes; therefore these case were appealed on that question of law to the circuit court of appeals, where they are now pending.

“The cases of three other claimants—Julius Straus, I. Felsenthal, and F. H. Worries—were dismissed for the reason that it appeared that the taxes and penalties sued for by them had been voluntarily paid in a former compromise accepted September 2, 1905. Similar suits by several other claimants are pending.

“For the foregoing reasons, I am of the opinion that bill, H. R. 2326, which was not presented to this office for report on the facts before its passage, should not be approved.”

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 27, 1907.*

[H. R. 2326. Fifty-ninth Congress of the United States of America; at the Second Session, begun and held at the City of Washington on Monday, the third day of December, one thousand nine hundred and six.]

AN ACT For the relief of J. W. Bauer and others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed, out of any money in the Treasury not otherwise appropriated, to pay to the following-named persons, citizens of Louisville, Kentucky, the respective sums following their names, to wit: J. W. Bauer, twenty-four dollars; Frank Bleemer, twenty-four dollars; C. J. Finnegan, twenty-four dollars; Samuel Goldsmith, sixteen dollars; John Hopmeister, twenty-four dollars; L. A. Kissel, twenty-four dollars; M. J. Madden, six dollars; W. J. Schieber, twenty-four dollars; T. J. Wathen, twenty-four dollars; Windhorst and Grimmer, twenty-four dollars; I. Schafer, twenty-four dollars; J. A. Hess, twelve dollars; Daniel Scherer, twenty-four dollars; Sebastian Weisbach, twelve dollars; John Heinz and Company, twenty-four dollars; Oscar E. Rehn, twenty-four dollars; John W. Kleier, twenty-four dollars; Mrs. G. Caudel, twenty-four dollars; Frank E. Muth, twenty-four dollars; Mrs. E. C. Jansen, twenty-four dollars; G. H. Young, twenty-four dollars; Charles Boeswald, twenty-four dollars; Fred Keller, twenty-four dollars; Frank Zeigler, twenty-four dollars; Joseph

Kaelin, twenty-four dollars; G. Schlange, twenty-four dollars; J. B. King, twenty-four dollars; Woodford Blanton, twenty-four dollars; C. W. Hall, six dollars; C. A. Henson, twenty-four dollars; John L. Gruber, twelve dollars; C. A. Culver, eight dollars; Fred Gausmann, sixteen dollars and eighty cents; H. B. Kruse, ten dollars and fifty cents; J. S. Reynolds, eighteen dollars and ninety cents; Christ Keller, sixteen dollars, being the amount assessed against and paid by said parties to the United States Government as penalty for failure to make return for special tax as retail dealers of oleomargarine.

J. G. CANNON,
Speaker of the House of Representatives.

CHARLES W. FAIBBANKS,
Vice-President of the United States and President of the Senate.

I certify that this Act originated in the House of Representatives.

A. McDOWELL, *Clerk.*
By WM. J. BROWNING, *Chief Clerk.*

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