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NIXON TAX ACTION CALLED ILLEGAL

Depreciation Order Assailed by Professor of Law

By EILEEN SHANAHAN
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WASHINGTON, April 4—One of the nation's leading tax authorities charged today that the Nixon Administration acted illegally when it ordered into effect, without any new legislative authority, a tax reduction of some $3-billion annually for business.

The accusation came from Boris I. Bittker, Sterling Professor of Law at Yale University. He made his charge in a statement filed with the Internal Revenue Service preparatory to public hearings on the issue, which are to be held next month.

The tax reduction for business will come in the form of a liberalization of the rules under which businesses compute the depreciation of their equipment for tax purposes. The more rapidly the equipment can be said to depreciate, the bigger the tax deduction for depreciation that may be taken and the bigger the tax saving.

Although the Internal Revenue Service is holding hearings on the depreciation liberalization, Treasury Department officials have said they do not expect to make any fundamental changes, as a result of the hearings, in the liberalized depreciation rules as announced Jan. 11.

Under that announcement businesses would be permitted, without challenge from the Internal Revenue Service, to depreciate their equipment 20 per cent faster than under the rules that have been in effect since 1962.

Professor Bittker, in his statement, said there was no legal similarity between the liberalization of depreciation that the Kennedy Administration put into effect in 1962, also without any new statutory authority, and the present one.

The 1962 action was, he said, based on economic and technical studies that justified the shortening of the period over which depreciation was taken.

Firm Is Planning Test

The Nixon Administration's Treasury appeared to have made no such study, he said.

"The Internal Revenue code does not authorize the taxpayer to select, or the Treasury to accept, an artificial period of time, unrelated to the asset's useful life, as the proper method for depreciating its cost," Professor Bittker said.

Treasury officials have defended the legality of their action as one that comes well within the statutory requirement that allowances for depreciation be "reasonable." They rejected a proposal by a Presidential study group that depreciation periods be reduced by 40 per cent, they said, because they did not believe that so great a liberalization could be ordered under existing law.

In a related development, a new public-interest law firm, calling itself Tax Advocates, announced its intention to test in court the legality of the depreciation liberalization.

The executive director of Tax Advocates, Thomas F. Field, also announced that his organization was seeking contributions from the public to finance this court test and others that it plans to bring in the public interest in the tax field.

Another noted tax expert, Robert Eisner, professor of economics at Northwestern University, also filed a statement with the Internal Revenue Service challenging the Administration's contention that the depreciation liberalization would help economic recovery.

He said there was "little evidence" that such liberalization of depreciation allowances had much effect on business expenditures for equipment. In fact, he said, the liberalization seems likely to produce "a considerably smaller increase in captital expenditures than the loss in tax revenues."

Professor Eisner also challanged the basic idea of reducing business taxes rather than spending the tax revenue in other ways such as "investment in human capital, in education, in health, in basic research."