GOVERNMENT
Storage

Y 4 .W 36: Ex 2/13

EXCISE TAXES

SUMMARY OF TECHNICAL ISSUES UNDER PRESENT LAW RAISED IN TESTIMONY GIVEN BEFORE THE COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, ON JULY 21, 22, 23, 24, 27, 28, 29, 30, 31, AND AUGUST 3, 1964

U.S. GOVERNMENT PRINTING OFFICE
38-694 WASHINGTON : 1964 JCS-14-64

Y4.W 36/2: Ex 5/13

JEWELRY AND RELATED ITEMS

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
4001	This section imposes a 10-percent tax on the sale at retail of real and imitation jewelry, watches, clocks, silver plated hollow ware, gold, gold plated, silver, and sterling flatwear or hollow ware, and opera, marine, and field glasses.	Question arises as to whether or not sales of jewelry to employers, etc., for use as service awards for their employees, as prizes in connection with sales promotion programs, etc., are sales at retail. Internal Revenue Service takes the position that sales of jewelry for these purposes if made by a wholesaler are not taxable (following the *Gellman* case), but that similar sales made by a retailer are taxable. Lower courts are split on the issue of whether sales by retailers for use as awards, etc., are taxable. A Michigan district court holds them to be exempt on the theory that a retail outlet may also act as a wholesaler, while other courts have held them to be retail sales and, in effect, question the validity of the holding of the *Gellman* case.	Committee for Repeal of the Federal Retail Excise Tax, p. 274.
4002	This section treats articles sold by an auctioneer as being sold at retail.	No comments	
4003	This section provides exceptions for (1) religious articles, (2) surgical instruments, (3) watches for the blind, (4) eyeglasses, (5) pens, pencils, and pipes if the only jewelry used are essential parts of the article rather than ornamentation, (6) buttons, etc., used on military uniforms, (7) $100 total exemption for auction sales at the home of the owner whose property is sold, (8) clocks subject to the manufacturers' excise tax, and (9) clocks used as a part of a nontaxable regulatory device.	No comments	

FURS

4011	This section imposes a 10-percent tax on the sale at retail of articles made of fur and articles of which fur is the component material of chief value if such value is more than 3 times the value of the next most valuable component material.	When fur is used as trim on dresses, cloth coats, etc., interpretative problems arise as to whether the fur is part of the dress (and nontaxable under the 3 times value rule) or whether it is a separate article (and taxable). In an informal ruling the Internal Revenue Service has reportedly held that if a fur collar is attached to a cloth garment by 4 or fewer basting stitches per inch, it is taxable as a separate item, but is tax exempt if attached by 6 or 8 stitches per inch. Witness maintains that the uncertainty of whether or not fur trim is taxable results in a loss of business to the fur industry.	National Board of Fur Farm Organizations, Inc., p. 297.
4012	This section treats sales by an auctioneer, and the dressing, dyeing, or manufacture of fur articles by a furrier for a customer who supplies unused hides or pelts, as sales at retail.	No comments	
4013	This section exempts from tax the first $100 of otherwise taxable furs sold by an auctioneer at the home of the person whose articles are being sold.	No comments	

TOILET PREPARATIONS

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
4021	This section imposes a 10-percent tax on the sale at retail of perfumes, cosmetics, hair dressings and dyes, toilet powders, and similar items used or intended to be used for toilet purposes.	The witness maintains that the problem of determining the tax status of individual items causes substantial compliance problems and that Internal Revenue agents on audit often employ arbitrary methods for determining the amount of a retailer's tax liability.	National Association of Retail Druggists, p. 311; National Association of Chain Drugstores, p. 330; Toilet Goods Association, p. 338.
4022	This section provides an exemption for (1) items intended to be used only in the care of babies; (2) items used in the operation of barber shops and beauty parlors; and (3) sales of miniature samples to house-to-house salesman for demonstration use.	No comments	

LUGGAGE, HANDBAGS, ETC.

4031	This section imposes a 10-percent tax on the sale at retail of specified items of luggage.	The Internal Revenue Service apparently looks to the use for which an article can be made to determine taxability. The witness claims that an article should not be taxed unless listed in the statute even though a secondary use could be to carry wearing apparel. Specific question raised relates to whether or not a carrying case designed to carry an electric hair dryer should be taxed as a "hatbox." The Internal Revenue Service has apparently taken the postion that since the article is advertised as being of the "hatbox" style, and may be used to carry garments, it is taxable. The witness maintains that since the statute does not list "hairdryer carrying cases," it is not taxable since Congress removed the catchall category of "other cases, bags, and kits * * * for use in carrying toilet articles or articles of wearing apparel" from the statute effective Jan. 1, 1959.	Landers, Frary & Clark, p. 259.

SPECIAL FUELS

4041	Subsec. (a) imposes a 4 cents per gallon tax upon any liquid (other than gasoline) sold for use or used as fuel for a registered diesel-powered highway vehicle. A 2 cents per gallon tax applies to liquids sold for or used as a fuel for unregistered highway vehicles.	The witness maintains that the diesel fuel tax should not apply to the use of a fuel in a highway-type vehicle while the vehicle's engine is being used for an off-highway purpose. For example, in the case of oil well servicing operations, the engine of a highway vehicle is used to transmit power to servicing equipment installed on the vehicle after the vehicle has been placed in position as a servicing unit (generally by jacking it up, attaching guy lines, etc.). The witness states that no tax would be payable on fuel used to power the equipment if a second motor was used for that purpose, even though the fuel might be drawn from a common tank.	Association of Oilwell Servicing Contractors. p. 613.

	Subsec. (b) imposes a 4 cents per gallon tax upon any liquid (other than gasoline, kerosene, gas, or fuel oil, or a liquid taxed under subsec. (a)) sold for use or used as a fuel for the propulsion of a registered motor vehicle. A 2 cents per gallon tax applies to a liquid sold for or used as a fuel for airplanes, boats, and unregistered motor vehicles.	The retail distributors of liquefied petroleum gas maintain that the taxation of special motor fuels used for the "propulsion of motor vehicles" places them at a competitive disadvantage vis-a-vis forklift trucks powered by electric motors or engines using diesel fuel. The witness states that administrative problems arise in determining how much special fuel is subject to tax in factory use since the tax applies to use by forklift trucks (which are defined as motor vehicles by the Internal Revenue Service) but not to fuel used by tractors which push or pull, but do not lift, a load.	National Liquefied Petroleum Gas Association, p. 682.
		The witness maintains that the Internal Revenue Service requires payment of a tax on liquids as special motor fuels if they are used by truck chassis and built-up type well servicing units, even though the fuels are not used for the propulsion of a motor vehicle.	Association of Oilwell Servicing Contractors, p. 613.
	Subsec. (c) provides that the tax rate on all fuels is to be reduced to 1½ cents per gallon on Oct. 1, 1972.	No comments	
	Subsecs. (d) and (e) provide exemption from the diesel fuel and special motor fuel taxes for liquids used on farms for farming purposes and as supplies for aircraft and vessels operating outside the United States.	No comments	

SPECIAL PROVISIONS APPLICABLE TO RETAILER'S TAX

4051	This section defines the term "price" to include the cost of packaging, etc., but to exclude transportation, delivery, insurance, and installation charges and separately stated State sales taxes.	No comments	
4052	This section provides that the lease of an article is to be treated the same as the sale of an article.	No comments	
4053	This section provides special rules for the payment of tax on installment sales.	No comments	
4054	This section provides that retail sales taxes apply to retail sales made by the United States.	No comments	
4055–4057	These sections exempt from tax (1) articles sold to State or local governments for their exclusive use, (2) articles sold to tax-exempt educational institutions for their use, and (3) articles sold for export.	No comments	

MOTOR VEHICLES

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
4061	Subsec. (a) imposes a 10-percent tax on the sale by a manufacturer, producer, or importer of automobiles, trucks, buses, trailers, and tractors. The tax rate on automobiles is scheduled to be reduced to 7 percent on July 1, 1965, and to 5 percent on other vehicles effective Oct. 1, 1972.	Due to the problems that arise in determining who the manufacturer of an article is, a statutory definition should be added to the code.	Automobile Manufacturers Association, p. 417.
		The witness takes issue with Rev. Rul. 64–34 which treats trucking companies as "manufacturers" when they install kits which result in the lengthening of their trailers from 35 to 40 feet. Under the ruling, the tax base includes the cost of labor, overhead, and a 10-percent profit item.	American Trucking Association, Inc., p. 535.
		The witness takes issue with an Internal Revenue Service ruling which holds that the automobile portion of a "flying automobile" is subject to tax. He maintains that sales of vehicles which can fly as well as be operated on the highways compete against sales of light aircraft, rather than automobiles, and should be treated accordingly.	Aerocar, Inc., p. 538.
		Although the statute does not provide an exemption for off-highway vehicles, the Internal Revenue Service has long limited tax to highway vehicles. Following this position, Treasury Regulation § 48.4061(e)(3) provides that farm wagons primarily designed for use on farms are not taxable as "trailers" even though they may be incidentally used on the highway. The witness maintains that Rev. Rul. 64–107, which held that ammonia "nurse tank wagons" are subject to tax, is contrary to this regulation and is precedent for the taxation of ordinary farm wagons. The witness also maintains that the ruling should not be retroactive since the statute of limitations does not apply to many small manufacturers of wagons who never filed returns.	Agricultural Ammonia Institute, p. 536.
		If a truck trailer manufacturer installs heating or cooling equipment in a trailer, the equipment is taxable at a 10-percent rate as part of the sales price of the trailer. The witness claims this practice places the manufacturer at a competitive disadvantage with distributors who pay tax at 8 percent on air-conditioning systems and no tax on installation costs.	Truck Trailers Manufacturers Association, p. 531.
	Subsec. (b) imposes an 8-percent tax on the sale by a manufacturer, producer, or importer of automobile and truck parts and accessories (other than tires, tubes, and radios). The tax is scheduled to be reduced to 5 percent effective July 1, 1965.	Determining if an article is an automobile part or accessory creates numerous classification problems and often results in inconsistent rulings.	Industrywide Automotive Excise Tax Committee, p. 464.
		Testimony indicates that the Internal Revenue Service treats welding steel to a chassis frame for reinforcing purposes as the manufacture of an automobile part.	Truck Trailer Manufacturers Association, p. 531.
		Treasury regulations now hold that cutting ordinary glass for installation as a replacement part in an automobile constitutes the "manufacture" of a part. District court cases take an opposite position.	National Glass Dealers Association, p. 524.
		The argument is made that baby seats and beds which are used in homes, automobiles, boats, trains, etc., should not be taxed as automobile accessories.	Juvenile Products Manufacturers, Association, Inc., p. 519.

	Subsec. (c) provides an exemption from tax for rebuilt parts and accessories.	Substantial confusion exists as to when repairing an article constitutes "manufacturing." Problems involving cleaning of spark plugs, rebuilding motors, cleaning generators raised.	Legislative Steering Committee for Rebuilders of Automotive Parts p. 493; International Motor Rebuilding Co., p. 515.
4062	This section provides that spark plugs, storage batteries, leaf springs, coils, timers, and tire chains are to be treated as automotive parts if they are suitable for use in connection with automobiles, trucks, etc.	Due to the difficulties of determining if a storage battery constitutes an automobile part or accessory, the witness recommends a definition which would treat all batteries as taxable if they are 6- to 10-volt batteries with 50 pounds or less metal or 12- to 24-volt batteries with 100 pounds or less metal. The tax would be based on metallic content rather than selling price.	Industrywide Automotive Excise Tax Committee, p. 464.
4063	This section provides an exemption for house trailers and tractors and permits a manufacturer of a car or truck chassis to buy bodies tax free if they are to be used in the manufacture of a car or truck.	No comments	

TIRES AND TUBES

4071	This section provides for a tax on the sale by a manufacturer, producer, or importer of the following articles at the specified rates: *Article* — *Present rate* (Cents per pound) — *Rate effective October 1, 1972* (Cents per pound) Tires for highway vehicles — 10 — 5 Other tires — 5 — 5 Inner tubes — 10 — 9 Tread rubber — 5 — Exempt Laminated tires — 1 — 1	No comments	
4072	This section defines the terms "rubber," "tread rubber," and "tires of the type used on highway vehicles."	No comments	
4073	This section provides an exemption from tax for small tires and tread rubber which is not used for recapping highway tires.	No comments	

PETROLEUM PRODUCTS

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
4081	This section imposes a tax of 4 cents a gallon on the sale of gasoline by a producer or importer. The tax is scheduled to be reduced to 1½ cents a gallon effective Oct. 1, 1972.	No comments	
4082	Subsec. (a) defines the term "producer" to include, among others, wholesale distributors.	No comments	
	Subsec. (b) defines the term "gasoline" to mean all products commonly or commercially known or sold as gasoline, including casinghead and natural gasoline.	Under the present definition of gasoline adopted by the Internal Revenue Service, which refers to certain Government contract specifications, the witness maintains that certain petrochemicals may be taxed. They suggest adopting a new statutory definition of gasoline.	American Petroleum Institute, p. 620.
		The witness points out that since casinghead and natural gasoline are generally not finished products, and cannot generally be used in high compression engines, they should be treated as special fuels and be taxed only when used for the propulsion of a motor vehicle.	Mid-Continent Oil & Gas Association, p. 637.
		Various natural gas processors have been assessed tax on casinghead and natural gasoline which they extract from natural gas and then sell to refineries for blending with crude oil into refined gasoline. Since these natural gas producers did not get exemption certificates from their purchasers, imposition of the tax will result in a double tax, once as natural gasoline and a second time as gasoline. The witness requests an expression from Congress that casinghead and natural gasoline should be taxed only when it is commercially known as gasoline.	Natural Gas Processors Association, p. 644.
	Subsec. (c) provides for tax on the use of gasoline by a producer and subsec. (d) defines the term "wholesale distributor."	No comments	
4083	This section provides that the tax does not apply to the sale of gasoline to a "producer."	No comments	
4091	This section imposes a tax on the sale of oil by a manufacturer or producer at the rate of 3 cents a gallon on cutting oils, and a rate of 6 cents a gallon on lubricating oils.	When oil is used as a lubricant it is taxed; but when the same oil is used for some other purpose it is exempt from tax. This differentiation based on use causes administrative problems where oils are used for nonlubricating purposes since sales of such oils require the handling of exemption certificates.	American Petroleum Institute, p. 620.
4092	This section defines the term "cutting oils" and provides that a person shall be treated as a manufacturer or producer of oil if they purchase it tax free for resale.	No comments	
4093	This section permits a manufacturer or producer of oil to purchase oil tax free for resale by him.	No comments	

101	This section requires every producer of gasoline and oil to register with the Treasury Department and give a bond.	The witness maintains that the bonding requirement imposes an unnecessary administrative burden upon the petroleum industry, that it is discriminatory, and that the Government is amply protected against nonpayment of tax should the bonding requirement be repealed.	American Petroleum Institute, p. 620.
4102	This section permits the inspection by State authorities of gasoline and lubricating tax returns, reports, and statements.	No comments	

HOUSEHOLD-TYPE EQUIPMENT, ETC.

4111	This section imposes a 5-percent tax on the sale by a manufacturer, producer, or importer of household-type refrigerators and freezers and at a 10-percent rate on self-contained air-conditioning units.	No comments	
4121	This section imposes a 5-percent tax on the sale by a manufacturer, producer, or importer of household-type water heaters, air heaters, electric blankets, mixers, fans, clothes driers, door chimes, dehumidifiers, dishwashers, hedge trimmers, lawn mowers, etc.	The separation of water heaters into those which are of the household type, and therefore taxable, and those which are not taxable, has imposed continuing problems of definition and identification on both the Internal Revenue Service and the industry.	Congressman Henry S. Reuss, p. 961; Gas Appliance Manufacturers Association, p. 716.
4131	This section imposes a 10-percent tax on the sale by a manufacturer, producer, or importer of electric light bulbs and tubes.	The witness takes issue with Rev. Rul. 62–34 which treats plastic sheets made luminous through electroluminescence and fixtures incorporating such articles as "electric light bulbs or tubes."	General Electric Co, p. 560.

ENTERTAINMENT EQUIPMENT

4141	This section imposes a 10-percent tax on the sale by the manufacturer, producer, or importer of radios, television sets, phonographs (and components thereof), and records.	Difficulties arise in determining who the manufacturer of a record is in cases where a producer uses the pressing and marketing facilities of an integrated company. In practice, both are often treated as the manufacturer.	Columbia Records, p. 890.
4142	This section defines the term "radio and television components."	No comments	
4143	This section provides an exemption for communication detection or navigation equipment of the type used in commercial, military, or marine installations.	No comments	
4151	This section imposes a 10-percent tax on the sale by the manufacturer, producer, or importer of musical instruments.	No comments	

RECREATIONAL EQUIPMENT

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
4161	This section imposes a 10-percent tax on the sale by the manufacturer, producer, or importer of— 1. Badminton, table tennis, and tennis nets, rackets, frames, strings, and balls; 2. Bowling balls and pins; 3. Fishing rods and reels; 4. Golf bags, balls, and clubs; 5. Skis, poles, snowshoes, and sleds; 6. Lacrosse balls and sticks; and 7. Miscellaneous other sporting goods.	In some Internal Revenue districts dealers who string new tennis rackets are treated as manufacturers, in other districts they are not. There has been "considerable difficulty" in defining fishing rods and artificial lures. A problem exists as to whether or not a bamboo pole which is cut into sections and fitted with ferrules which permits the parts to be joined together constitutes a "fishing rod." Revenue Ruling 58–425 holds they are; court cases conflict. The excise tax on imported table tennis balls is based on a bulk cost, while U.S. manufactured balls are based on a packaged cost.	National Sporting Goods Association, p. 798. National Sporting Goods Association, p. 798. Norton Manufacturing Co., p. 831. Tennex Corp. of America, p. 827.
4171	This section imposes a 10-percent tax on the sale by the manufacturer, producer, or importer of cameras, camera lenses, and unexposed film, and a 5-percent tax on the sale of household-type projectors.	Problems arise in determining if projectors are of the "household type."	National Association of Photographic Manufacturers, p. 753.
4172	This section permits certain handlers of unexposed film to be treated as the manufacturer of the film.	No comments	
4173	This section exempts professional-type cameras, lenses, and film from tax, including X-ray cameras and film.	No comments	
4181–4182	These sections impose a 10-percent tax on the sale by a manufacturer, producer, or importer of pistols and revolvers and an 11-percent tax on shells and cartridges and other firearms. An exemption is provided for sales to the Defense Department and for sales on which a transfer tax is paid.	No comments	

OTHER ITEMS

4191–4192	This section imposes a 10-percent tax on the sale by a manufacturer, producer, or importer of specified business machines. However, specific exemptions are provided for retail cash registers and stencil cutting machines used for preparing shipping documents.	The question of who is a "manufacturer" is constantly raised. A recent ruling indicates a typewriter dealer would be considered a manufacturer of a new machine if he changed the carriage or more than 6 letters of type on a used machine. Due to the fact the specific items listed in the statute has remained substantially unchanged since 1941, modern advances in the business machine field make tax classification of new machines difficult. Since tax is required to be paid on sales to the Federal Government, but not on leases, companies which lease have an advantage over those that sell.	National Office Machine Dealers Association, p. 389. Business Equipment Manufacturers Association, p. 371. Business Equipment Manufacturers Association, p. 371.

4201	This section imposes a 10-percent tax on the sale by a manufacturer, producer, or importer of mechanical pencils and pens.	The question of who is the manufacturer of fountain pens and pencils has caused "considerable confusion."	Writing Instrument Manufacturers Association, p. 739.
4211	This section imposes a tax of 2 cents per 1,000 matches (but not more than 10 percent of the selling price) on their sale by a manufacturer, producer, or importer.	A controversy exists between the Internal Revenue Service and the match industry with respect to the tax base on matches where part of the charge represents special packaging for advertising purposes. Beginning in 1947, the industry computed tax by excluding advertising packaging costs from the tax base on the basis of company records. In 1960, the Service ruled that such costs could be excluded only if they were billed separately to the customer. Thus, the companies are faced with deficiency assessments for the years 1957, 1958, and 1959. The witness maintains the position of the Service should not have retroactive application since the Service was negligent in failing to develop a rule under the 1954 act until 1960.	Match Institute, Inc., p. 545.

SPECIAL PROVISIONS APPLICABLE TO MANUFACTURERS' TAX

4216	Subsec. (a) provides that the tax base includes charges for coverings and containers but excludes charges for transportation, delivery, insurance, installation, and similar charges.	The witness maintains that transportation charges from a factory to a warehouse should be excluded from the tax base. In his case, matches manufactured in Ohio are shipped in carload lots to a warehouse in Washington from which individual orders are filled. By including this transportation charge in the tax base, the tax base is higher on the sale of matches shipped from Washington than on sales delivered directly from the factory.	Hunt Foods & Industries, Inc., p. 556.
	Subsec. (b) provides that if an article is sold by a manufacturer, producer, or importer at retail, the tax base is not to exceed the highest wholesale price at which such articles are sold by manufacturers. A similar rule also generally applies to sales to retailers or special dealers (except in the case of automobiles, business machines, and matches) if the manufacturer normally sells to wholesalers in arm's length transactions. If articles are sold on consignment or at less than fair market value in a sale which is not at arm's length, the tax base is to be the price at which such articles are sold in the ordinary course of business.	The constructive sales price on retail sales and sales to retailers should be based on the lowest (rather than highest) price for which such articles are sold to wholesale distributors. This would be consistent with the tax base used on articles consumed by the manufacturer.	Federal Excise Tax Council, p. 195.
		Companies which sell only to "dealers" base the manufacturers excise tax on their price to the "dealers." Companies which sell both to "dealers" and wholesalers base the tax on sales to "dealers" on their highest price to wholesalers. This discriminates between companies.	Institute of Appliance Manufacturers, p. 700.
		The witness claims companies selling "private brand" automotive parts and accessories have an advantage over more integrated distributors since the tax base of "private brand" parts is substantially lower than the tax base on sales to other distributors. To remedy the situation the witness recommends excluding the cost of advertising, selling, warehousing, and other distributing costs from the tax base.	Industrywide Automotive Excise Tax Committee, p. 464.
		Uncertainty and discrimination result when a constructive price is used on sales of records to dealers and customers since the Internal Revenue Service uses, at its election, either general industry pricing practices or selected prices charged by the taxpayer.	Columbia Records, p. 890.
		Sales prices of pens and pencils have been "frequently questioned" in connection with sales to subsidiaries and constructive price formulas.	Writing Instruments Manufacturing Association, p. 739.
	Subsecs. (c) and (e) (subsec. (d) has been repealed) provide special rules for payment of tax on leases and installment sales.	No comments	

SPECIAL PROVISIONS APPLICABLE TO MANUFACTURERS TAX—Continued

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
4216	Subsec. (f) permits an exclusion from the tax base for certain charges for local advertising.	No comments	
4217	This section provides that a lease of a taxable article is considered a sale and each payment under the lease is taxable until an amount of tax is paid equal to the tax that would have been paid had the article initially been sold.	It is administratively difficult to keep track of excise tax payments on leased machines so as to cut off collection of tax on leases when the amount paid equals that which would have been paid on sale. It also raises competitive problems between lessees of identical items one of which is taxable and the other one on which full tax has been paid.	Business Equipment Manufacturers Association, p. 371.
4218	This section in general imposes a tax on the same basis as if an article were sold if a manufacturer, producer, or importer of a taxable article uses it other than as a component part of another taxable article. However, in the case of automobile parts, radio and television components, and cameras, the article which incorporates these parts need not be a taxable article for the exemption to apply.	By imposing a tax on the use of a taxable article when it is used in the manufacture of a nontaxable article, (1) subsequent tax exempt purchasers lose the benefit of their tax exempt status; (2) intermediate manufacturers who produce exempt subassemblies pay the tax, while integrated companies obtain a refund where the ultimate product is a taxable article; and (3) the Internal Revenue Service imposes a tax on a functional basis even though the article itself is nontaxable. Witness recommends extending the exemption of sec. 4218(c) to all articles, not just automotive parts and accessories, radio components, and cameras.	Federal Excise Tax Council, p. 195.
		Discrimination against domestic manufacturers exists where light bulbs are taxed when incorporated in nontaxable articles, for example flashlights and miniature light bulb sets, while no tax applies to light bulbs if imported as components of nontaxable articles.	General Electric Co., p. 560.
4219	This section provides that if a person acquires the right to sell a taxable article from a manufacturer, producer, or importer by operation of law, such person becomes liable for tax on the sale of the article.	No comments	
	EXEMPTIONS, REGISTRATION, ETC.		
4221	This section provides exemptions from tax for:		
	1. Sales for export;	No comments	
	2. Sales to State and local governments for their exclusive use;	If a school district buys a school bus, no excise tax is paid by the manufacturer. Witness claims the absence of a similar exemption in the case of sales to contract operators discriminates against them.	National School Bus Contract-Operators Association, p. 527.
	3. Sales to tax exempt educational institutions;	No comments	
	4. Sales for use as ship and aircraft supplies;	No comments	
	5. Sales of automobile parts, radio and television components, and cameras for use in the manufacture of other articles; and	No comments	

	6. Sales of gasoline for nonfuel purposes in the manufacture of other articles;	The witness maintains that this exception should apply to the sale of gasoline for its use as an ingredient in a new article whether or not the new article is in fact subsequently burned, for example, the use of gasoline in the manufacture of illuminating gas to enrich the gas. Recommends that the exemption apply to use for a non-motor-fuel purpose.	American Petroleum Institute, p. 620.
	7. Sales of other taxable articles for use in the manufacture of taxable articles; and	Electronics manufacturers may buy radio and television components tax free whether or not the product they manufacture is taxable; however they can buy electric light bulbs tax free only if used in a taxable article. This has led to confusion and administrative difficulties. Witness recommends permitting tax-free purchase whether or not used in the manufacture of a taxable article.	General Electric Co., p. 560.
	8. Sales of musical instruments to religious institutions for religious purposes.	No comments	
	In general, these exemptions apply if the seller in good faith accepts a certificate from the purchaser that the article will be used for an exempt purpose; however, in the case of sales for export, and sales for resale by a purchaser to a 2d purchaser for use in further manufacture, proof of export or resale must be furnished the seller.	Handling exemption certificates on sales of golf and tennis equipment to schools causes clerical problems. The securing of exemption certificates in the case of sales to schools is burdensome. Witness suggests a blanket exemption certificate procedure be adopted.	Athletic Goods Manufacturers Association, p. 781. Brunswick Corp., p. 821; American Textbook Publishers Institute, p. 896.
4222	In general, this section provides that the exemptions provided in sec. 4221 apply only if the tax-free purchaser is registered with the Treasury Department. However, the use of exemption certificates, rather than registration, is permitted in the case of sales to State and local governments and sales for export.	The witness maintains that the registration system does not operate properly in the case of the sale of gasoline and oil to State and local governments and to registered aircraft and shipping companies for use as supplies for ships and aircraft engaged in foreign commerce. In this case, the witness states that the Internal Revenue Service requires the oil companies to obtain proof of use of the gasoline or oil in a tax exempt manner from the registered purchaser. They recommend that exemption should rest on mere sale to a State or local government or to a purchaser for use as supplies for vessels or aircraft.	American Petroleum Institute, p. 620.
4223	This section provides that a manufacturer who purchases an article tax free for further manufacture will be treated as the manufacturer of the article if he resells it. The tax base may, however, be determined by reference to his cost of the article.	No comments	
4224–4225	These sections provide exemptions from the manufacturer's tax for jewelry and for Indian handicraft manufactured by Indians on Indian reservations.	No comments	
4226	This section provides for assessments of floor stock taxes with respect to articles held by dealers when various rates were changed in 1956 and 1961.	No comments	

ADMISSIONS

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
4231	This section imposes: 1. A tax of 1 cent for each 10 cents (or major fraction thereof) over $1 of the amount paid for admission to any place other than a racetrack;	No comments	
	2. A tax of 1 cent for each 5 cents (or major fraction thereof) of the amount paid for admission to a racetrack;	No comments	
	3. A tax of 10 percent on any amount charged by ticket agencies over the established price for tickets;	No comments	
	4. A tax of 50 percent of the excess over the established price for tickets charged by a proprietor, manager, or employee of a place of amusement; and	No comments	
	5. A tax of 10 percent of the amount paid for admission, refreshments, service or merchandise at any roof garden, cabaret, or similar establishment furnishing a public performance for profit by any patron who is entitled to be present during the performance.	Revenue Ruling 63–154 provides that the Internal Revenue Service will no longer litigate cases involving the applicability of the cabaret tax in case where items are ordered and served before or after an establishment attains cabaret status. The witness claims the Internal Revenue Service should establish guidelines for other troublesome cases, e.g., items ordered and partially served before the establishment attains cabaret status. Also, a practical problem arises when the Internal Revenue Service requires a tax to be levied on service in a "related room" from which a patron can obtain entrance to the cabaret.	American Hotel & Motel Association, p. 1211.
4232	This section defines, among others, the term "roof garden, cabaret, or other similar place." In general, the term means any place where music and dancing or other entertainment is provided in connection with the serving or selling of food, refreshments, or merchandise. However, the term does not include a "ballroom" or similar place where the selling of food, etc., is merely "incidental."	In determining whether an establishment qualifies as a "ballroom, dance hall, or other similar place where the serving or selling of food, refreshment, or merchandise is merely incidental" the Internal Revenue Service is apparently basing its findings solely on a comparison of receipts from food, etc., to total receipts of the establishment. The witness claims this approach is contrary to the legislative history of the 1951 amendment which exempted ballrooms from the cabaret tax and that the industry has been unable to get the Internal Revenue Service to rule as to precisely what criteria it is using.	National Ballroom Operators Association, p. 1231.
4233	This section provides exemptions from the tax on admissions: 1. If the proceeds inure exclusively to the benefit of a church, an educational institution, a community fund, a symphony orchestra or opera, a chautauqua program, a veterans organization, a scholarship program, or a policemen's or firemen's disability fund. These exemptions do not apply to postseason college athletic games which do not benefit crippled children, pugilistic	No comments	

	matches, carnivals, or motion picture exhibitions; 2. To swimming pools and skating rinks; 3. To home and garden tours; 4. To historical sites, etc.; and 5. To certain rodeos, pageants, agricultural fairs, musical or dramatic performances, and athletic events.		
4234	This section requires the admissions tax to be printed on a ticket.	No comments	

CLUB DUES

4241	This section imposes a 20-percent tax on dues or membership fees paid to any social, athletic, or sporting club or organization if the annual fees exceed $10. A similar tax applies to initiation fees if they exceed $10 or if the dues to the club exceed $10 a year.	A question exists as to whether the tax applies to the acquisition of stock in a corporation which owns land used for grazing and hunting purposes where ownership of the stock and the payment of annual dues is required as a condition precedent for membership in a hunting club. The corporation involved is part of a conservation district in California.	J. Martin Winton, p. 960.
		The witness disagrees with the decision of the court in *J. R. Johnston* v. *Commissioner*, where it was held that the amount paid for membership in a bowling club for participation in bowling league competition at commercial bowling alleys is subject to the dues tax.	Bowling Proprietors Association of America, Inc., p. 802.
4242	This section defines the term "dues" to include any charge for social privileges or facilities or for athletic privileges or facilities for more than a 6-day period. It also defines the term "initiation fees."	The witness contends that the Treasury has followed a pattern of extending the tax base to voluntary payments. For example, the Internal Revenue Service now holds that payments for the use of lockers, for cleaning and storing golf clubs, for the use of docking and mooring facilities, and for boarding of horses (including feed and grooming charges), come within the definition of "dues."	Walter A. Slowinski, p. 943.
		The witness maintains that the Internal Revenue Service takes the position that if a club imposes a monthly minimum charge against which purchases of food may be credited, the entire charge is subject to tax, not just the unused portion.	Arthur E. Iredell, p. 944.
4243	This section provides exemptions for dues paid: 1. To fraternal associations operating under the lodge system or for college students; 2. For capital improvements of a facility (including furnishings); and 3. For neighborhood swimming and skating clubs.	The witness considers it improper that nonprofit hunting, fishing, rifle, pistol and conservation clubs are considered to be sporting clubs and subject to tax, while nonprofit swimming and skating clubs are exempt.	Wildlife Management Institute, p. 837.

COMMUNICATIONS

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
4251	This section imposes a 10-percent tax on amounts paid for general telephone service, telegraph service, teletypewriter exchange service, and wire mileage service and an 8-percent tax on amounts paid for wire and equipment service. These taxes are scheduled to expire July 1, 1965.	No comments	
4252	This section defines the taxable services	The witness maintains that due to alternative uses which may be made of a single service, it is often difficult to fit a particular service into one of the statutory classifications in order to apply administrative rules and exemptions. For example, a single service may cover both voice and teletype transmissions.	American Telephone & Telegraph Co., p. 1085.
4253	The section provides exemptions for coin operated service where the charge is less than 25 cents; for news services; for servicemen's calls originating in a combat zone; for installation charges; for private communication services; etc.	The exemption of private communication systems from tax has caused a substitution of privately owned facilities for common carrier service. An agricultural news service furnished by PAM has been held subject to tax while A.T. & T. has not been paying tax on a competitive service. The taxpayer therefore wishes a determination as to whether a wire and equipment service furnishing agricultural news is or is not subject to tax under the definition of a wire and equipment service contained in sec. 4252(f) or is an exempt "news service."	American Telephone & Telegraph Co., p. 1085. Twin Coast Newspapers, Inc., p. 1130.
4254	This section establishes the method for computation of the tax.	No comments	

TRANSPORTATION OF PERSONS BY AIR

4261–4264	In general, these sections impose a 5-percent tax on the amount paid for the domestic transportation of any person by air. This tax is scheduled to expire July 1, 1965.	No comments	

SAFE DEPOSIT BOXES

4286–4287	These sections impose a 10-percent tax on the amount collected for the use of any safe deposit box.	No comments	

4291	This section provides that every person receiving any payment for facilities or services on which tax is imposed shall collect the tax.	The witness stated that the statute does not provide adequate guidance or protection for the collecting agency whose liabilities to the United States and to its customers are undefined. For example, does a statute of limitations apply?	American Telephone & Telegraph Co., p. 1085.
4292–4294	These sections provide exemptions for payments for the use of otherwise taxable facilities or services for State and local governments and exempt educational institutions. The Secretary of the Treasury is also authorized to exempt otherwise taxable articles, facilities, or services furnished the United States if he finds such exemption will avoid expense and inure to the benefit of the United States.	No comments	

Chapter 52.—Tobacco, Cigars, Cigarettes, and Cigarette Paper and Tubes

5701	This section, among other things, imposes a tax on cigars manufactured in, or imported into, the United States at the following rates based upon the ordinary retail price of a single cigar: *Ordinary retail price per cigar* — *Tax per 1,000 cigars* 0 to 2½ cents — $2. 50 2½ to 4 cents — 3. 00 4 to 6 cents — 4. 00 6 to 8 cents — 7. 00 8 to 15 cents — 10. 00 15 to 20 cents — 15. 00 Over 20 cents — 20. 00	The witness maintains that the present bracket system is unnecessarily cumbersome and complicated and results in arbitrary tax rates having no logical relationship to the selling price per cigar. He recommends taxing cigars at 8 percent of the manufacturers net selling price.	Cigar Manufacturers Association of America, p. 1065.

CREDITS AND REFUNDS

6414	Subsecs. (a) and (b), in general, provide that overpayment of retailer's, manufacturer's, and cabaret taxes may be refunded only if the person who paid the tax establishes (1) that the tax was not collected from the purchaser; (2) that it was repaid to the ultimate purchaser; or (3) that the ultimate vendor has filed a waiver. These requirements do not apply, however, (1) in the case of bona fide discounts, rebates, or allowances, (2) where purchasers of articles subject to the manufacturer's excise tax use tax paid articles in the manufacture of taxable articles (or any article in the case of automobile parts and accessories, radio and television components, or cameras) or (3) in the case of certain installment accounts.	Persons subject to a manufacturer's excise tax should be allowed to recover illegal or erroneous overpayments in cases where the tax is not separately stated without showing (1) the tax was not collected from the vendor, (2) it was repaid to the ultimate purchaser, or (3) the ultimate purchaser consented to the repayment.	Federal Excise Tax Council, p. 195.
		Once a taxable article is sold, the Internal Revenue Service takes the position that the entire tax is payable even though the sales price may not be collected from the purchaser. Witness recommends allowing refund of tax paid on losses incurred on uncollectible accounts.	Federal Excise Tax Council, p. 195.
		To prevent a doubling up of tax in cases where two persons are treated as the manufacturer of the same article, the witness recommends giving the second person treated as a manufacturer a credit for the tax paid by the first person.	Federal Excise Tax Council, p. 195.

CREDITS AND REFUNDS—Continued

Section No.	Brief description of present law	Technical problems raised by witnesses	Name of witness
	Subsec. (c) provides that if tax paid on tires, inner tubes, or radio or television sets are used in connection with the sale of another taxable article, the manufacturer of the second taxable article may obtain a credit for tax equal to an amount determined by multiplying the tax rate on the product he manufactured by the amount paid for the tire, tube, or set.	Under sec. 4221, tires, tubes, and automobile radio and television sets cannot be purchased tax free for use in the manufacture of a taxable article. However, a credit can be obtained equal to the amount determined by multiplying the tax rate of the manufactured article times the purchase price of the tires, tubes, radio, or television set. In lieu of allowing a credit for this arbitrary amount, the witness recommends giving a credit for the actual tax paid by the tire, tube, or set manufacturer.	Automobile Manufacturers Association, p. 417.
	Subsecs. (d), (e), (f), (g), and (h) provide rules relating to refunds in the case of fountain pens, etc., taxable as jewelry; the election to claim a credit for overpayments rather than filing for a refund; and the denial of a claim for refund based on export of an article in the case of the export of motor vehicles, refrigeration equipment, appliances and radio and television sets, etc., unless the article was sold by the manufacturer after receipt by him of a notice of intent to export.	No comments	

STATUTE OF LIMITATIONS AND JURISDICTION OF THE TAX COURT

6501	This section, in general, provides that a tax assessment must be made within 3 years after the filing of a return. This rule does not apply, of course, if no return was filed or if the return was false or fraudulent.	Recent court decisions have held that a return is not filed for the purpose of causing the 3-year statute of limitations to run unless each transaction subject to tax is reported. The witness recommends that a good-faith filing of an excise tax form indicating the presence or absence of liability for any category of tax should start the running of the statute of limitations.	Federal Excise Tax Council p. 195; Automobile Manufacturers Association, p. 417.
6512	This section authorizes the Tax Court to determine a deficiency or overpayment of income, estate, and gift taxes.	The witness recommends that the Tax Court be given jurisdiction over excise tax matters.	Gibson Discount Co., p. 354.

NOTE.—The testimony does not mention any technical problems arising under chapter 34 (the documentary stamp taxes), chapter 35 (the taxes on wagering), chapter 36 (certain other excise taxes), chapter 37 (sugar, coconut and palm oil), chapter 38 (import taxes), chapter 39 (regulatory taxes), or chapter 40 (occupational taxes).

A11600 79054S