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Agricultural Stabilization and Conservation Service
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Atomic Energy Commission
Business and Defense Services Administration
Civil Aeronautics Board
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Customs Bureau
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Title 3—THE PRESIDENT

Executive Order 11378

EXEMPTION OF DANIEL J. QUILL FROM COMPULSORY RETIREMENT FOR AGE

WHEREAS Daniel J. Quill, Postmaster at San Antonio, Texas will, during the month of October 1967, become subject to compulsory retirement for age under the provisions of the Civil Service Retirement Law, unless exempted therefrom; and

WHEREAS, in my judgment, the public interest requires that Mr. Quill be exempted from such compulsory retirement:

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by Title V, 80 Stat. 571 (5 U.S.C. 8335), I hereby exempt Daniel J. Quill from compulsory retirement for age for a period of three years.

Except as the authority vested in the President by Title V of the law, is specifically exercised in this Order, nothing contained in this Order shall be deemed to limit or restrict in any manner the exercise of such authority delegated to the Civil Service Commission by Section 2(c) of Executive Order No. 10530 of May 10, 1954, as amended by Executive Order No. 10682 of October 22, 1956.

Lyndon B. Johnson

THE WHITE HOUSE,

October 31, 1967.

[F.R. Doc. 67-13057; Filed, Nov. 1, 1967; 2:03 p.m.]

Rules and Regulations

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-333; Order 353]

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS; ETHICAL STANDARDS

Standards of Conduct for Employees and Special Government Employees

By order issued March 9, 1966,[1] the Commission amended Part 3 of its general rules to prescribe standards of conduct for its employees. Those standards implemented Executive Order 11222 and the regulations of the Civil Service Commission issued thereunder (30 F.R. 12529). On June 9, 1967, amended regulations on the subject were issued by the Civil Service Commission (32 F.R. 8281) and it is necessary, therefore, to revise our regulations to conform thereto. The revisions here adopted are, for the most part, designed to clarify or correct the current regulations. The revision to § 3.735–7(c)(4), however, is intended to make less onerous the requirement that employees report outside employment and financial interests by restricting that section to those employees in positions in which the possibility of conflicts-of-interest is involved. Accordingly, the Commission orders:

A. Subparts C and D, Part 3, Chapter I of Title 18 of the Code of Federal Regulations are amended by revising § 3.735–5(c), (2), (3), (4); § 3.735–7 (c)(4), (e); § 3.735–8(a)(1)(ii)(*f*); § 3.735–11 (a)(6), (d)(3), (e)(1); § 3.735–26(e)(2)(v), (3); § 3.735–28(d); and § 3.735–32. As amended, the affected sections or portions thereof read as follows:

§ 3.735–5 Conflicts of interest.

* * * * *

(c) *Gifts, entertainment, loans, and favors.* * * *

(2) The requirements of subparagraph (1) of this paragraph do not apply to:

* * * * *

(v) Acceptance of bona fide reimbursement for expenses for travel and necessary subsistence to the extent permitted by the provisions of paragraph (e)(4)(i) of this section.

(3) An employee shall not:

(i) Solicit a contribution from another employee for a gift to an official superior;

(ii) Make a donation as a gift to an official superior; or

(iii) Accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351).

(iv) The prohibitions of subdivisions (i), (ii), and (iii) of this subparagraph are not intended to prohibit voluntary gifts or donations of nominal value made to an employee on a special occasion such as marriage, illness, resignation or retirement.

(4) An employee shall not accept a gift, present, decoration, or any other thing from a foreign government unless authorized by Congress as provided by the Constitution and in P.L. 89–673, 80 Stat. 952.

* * * * *

(e) *Outside employment: Teaching, writing, lecturing.* * * *

(4) *Limitations on prohibitions of subparagraphs (1) through (3) of this paragraph.* The prohibitions of subparagraphs (1) through (3) of this paragraph do not preclude an employee from:

(i) Receiving a bona fide reimbursement for expenses for travel and such other necessary subsistence as is compatible with this Subpart C for which no Government payment or reimbursement is made, except that an employee may not be reimbursed, and payment may not be made on his behalf for excessive personal living expenses, gifts, entertainment, or other personal benefits. An employee may not receive non-government reimbursement for travel on official business pursuant to Commission order if such reimbursement would in effect constitute an unauthorized augmentation of the Commission's appropriation. (See Decision B–128527 of the Comptroller General, dated Mar. 7, 1967.)

* * * * *

§ 3.735–7 Statements of employment and financial interests.

* * * * *

(c) *Employees required to submit; time of submission.* * * *

(4) *FPC Form 498—Statement of employment and financial interests.* (i) All employees, except Commissioners, who are:

(*a*) Paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, U.S.C.; or

(*b*) In Grade GS–13 or above and are the heads or deputy or assistant heads of bureaus and offices, hearing examiners, division chiefs or their deputies, section chiefs or heads, case managers, regional engineers, deputy regional engineers, engineers-in-charge in regional offices, technical assistants to the Commissioners or have contracting or procurement responsibilities;

shall submit FPC Form 498 not later than:

(*c*) Thirty days after entrance on duty; and

(*d*) Shall also submit a supplemental report on FPC Form 498 on June 30 of each year for the purpose of annual review. Where there are no changes in or additions to the original information submitted a negative report shall be filed.

(ii) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that could result, in a violation of the conflicts-of-interest provisions of § 3.735–5.

(iii) Any employee requested to submit FPC Form 498 may request the Interpretation and Advisory Service described in § 3.735–8 to determine whether FPC Form 498 should be required for his position. If an employee after obtaining such a determination believes his position improperly to be included as one requiring the submission of FPC Form 498, he may obtain review of that determination through the Commission's grievance procedure.

* * * * *

(e) *Confidentiality.* The Executive Director, the Director, Office of Personnel Programs, and the Agency Counselor shall be responsible for keeping all FPC forms listed in paragraph (a) of this section strictly confidential, and shall not grant access to, or permit disclosure of information from, these forms except to carry out the purpose of these regulations. Information contained thereon will not be disclosed except in accordance with the regulations of the Civil Service Commission or on a determination of good cause made by the Chairman of the Federal Power Commission.

* * * * *

§ 3.735–8 Interpretation and advisory service.

(a) * * *

(1) *Agency counselor.* * * *

(ii) *Duties.* The Agency Counselor shall:

* * * * *

(*f*) In accordance with the provisions of § 3.735–7(e) relating to confidentiality, exercise responsibility, together with the Executive Director and the Director, Office of Personnel Programs for keeping all FPC forms listed in paragraph (a) of § 3.735–7 strictly confidential.

(2) *Deputy Counselors*—(i) *Designation.* * * *

(*c*) The Assistant Secretary of the Commission for the Offices of the Secretary, the Comptroller, Administrative Operations, Economics, and Personnel Programs.

* * * * *

§ 3.735–11 Miscellaneous statutes and regulations.

* * * * *

[1] Order No. 319, Docket No. R–299, issued and effective Mar. 9, 1966, 31 F.R. 4118.

(a) *General.* * * *

(6) The prohibitions relating to gifts to superiors. (5 U.S.C. 7351.)

* * * * *

(d) *Foreign governments.* * * *

(3) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act. (18 U.S.C. 219.)

(e) *Political activities.* (1) The prohibitions against political activities (the former Hatch Act) in subchapter III of chapter 73 of title 5, U.S.C. and 18 U.S.C. 602, 603, 607, and 608. The prohibitions, and exemptions therefrom, with respect to Government employees holding state, territorial or municipal offices. (Civil Service Regulations, 5 CFR Part 734.)

* * * * *

§ 3.735–26 Conflicts of interest.

* * * * *

(e) *Gifts, entertainment, loans, and favors.* * * *

(2) The requirements of subparagraph (1) of this paragraph do not apply to:

* * * * *

(v) Receipt of a bona fide reimbursement for expenses for travel and such other necessary subsistence as is compatible with this Subpart D for which no Government payment or reimbursement is made except that a special Government employee may not be reimbursed, and payment may not be made on his behalf for excessive personal living expenses, gifts, entertainment, or other personal benefits. A special Government employee may not receive non-Government reimbursement for travel on official business pursuant to Commission order if such reimbursement would in effect constitute an unauthorized augmentation of the Commission's appropriation. (See Decision B–128527 of the Comptroller General, dated Mar. 7, 1967.)

(3) A special Government employee, while so employed or in connection with his employment, shall not:

(i) Solicit a contribution from another employee for a gift to an official superior;

(ii) Make a donation as a gift to an official superior; or

(iii) Accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351).

(iv) The prohibitions of subdivisions (i), (ii), and (iii) of this subparagraph are not intended to prohibit voluntary gifts or donations of nominal value made to an employee on a special occasion such as marriage, illness, resignation or retirement.

* * * * *

§ 3.735–28 Statements of employment and financial interests.

* * * * *

(d) *Confidentiality.* The Executive Director, the Director, Office of Personnel Programs, and the Agency Counselor shall be responsible for keeping all FPC forms listed in paragraph (a) of this section strictly confidential, and shall not grant access to, or permit disclosure of information from, these forms except to carry out the purpose of these regulations. Information contained thereon will not be disclosed except in accordance with the regulations of the Civil Service Commission or on a determination of good cause made by the Chairman of the Federal Power Commission.

* * * * *

§ 3.735–32 Miscellaneous statutes and regulations.

Each special Government employee shall acquaint himself with the statutes and regulations relating to ethical conduct listed in § 3.735–11. The full texts of the statutes and regulations listed in § 3.735–11 are available in the office of the Agency Counselor and the Office of Personnel Programs.

B. The statutory references contained in the following paragraphs, subparagraphs and subdivisions of Subparts C and D, Chapter I of Title 18 of the Code of Federal Regulations are revised to read as indicated.

1. In § 3.735–5(e)(4)(iii) change "the Hatch Act" to "the prohibitions against political activity".

2. In § 3.735–11(b)(1) change "5 U.S.C. 640" to "5 U.S.C. 7352".

3. In § 3.735–11(c)(1) change "5 U.S.C. 118p, 118r" to "5 U.S.C. 7311, 18 U.S.C. 1918".

4. In § 3.735–11(d)(1) change "5 U.S.C. 114–115a" to "P.L. 89–673, 80 Stat. 952".

5. In § 3.735–11(h)(1) change "5 U.S.C. 637" to "18 U.S.C. 1917".

6. In § 3735–11(i)(1) change "5 U.S.C. 78(c)" to "31 U.S.C. 638a(c)".

7. In § 3.735–21(b) change "§§ 3.735–11 and 3.735–32" to "this Subpart D at § 3.735–32".

8. In § 3.735–26(e)(4) change "5 U.S.C. 114–115a" to "P.L. 89–673, 80 Stat. 952".

C. The following sections, or indicated portions thereof, Subparts C and D, Part 3, Chapter I, Title 18 of the Code of Federal Regulations are revised by changing the words "Director of Personnel" therein appearing to "Director, Office of Personnel Programs":

§ 3.735–5(b)(5)(iii).
§ 3.735–7(a) Footnote 2, (c)(5), and (d).
§ 3.735–8 (a)(1)(ii)(e) and (b).
§ 3.735–9 (a), (b), (c), (d) (2) and (3)(i) (a) and (b), and (e)(1).
§ 3.735–10(c).
§ 3.735–11, opening paragraph.
§ 3.735–23.
§ 3.735–25(b).
§ 3.735–28(a) footnote 3 and (c).
§ 3.735–29(b).
§ 3.735–30 (a), (c), (d)(2), (e).
§ 3.735–31(c).

D. This order was approved by the Civil Service Commission on September 22, 1967, and shall be effective on the date of publication in the FEDERAL REGISTER.

By the Commission.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67–12974; Filed, Nov. 2, 1967; 8:45 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Approved Modified Live Virus Vaccines

Pursuant to § 76.16(c) of the regulations in Part 76, as amended, Title 9, Code of Federal Regulations, containing restrictions on the movement of swine and certain products because of hog cholera, under the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of June 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134–134h), paragraph (d) of § 76.16 of said regulations is amended in the following respects:

1. The spelling of brand name "Vetrocine," License No. 246, is corrected to read "Vitrocine," License No. 246.

2. The following additional approved modified live virus vaccine is added to § 76.16(d):

License number	*Brand name or description*
246	PURACEL.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791, as amended, 792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 1, 75 Stat. 481; 21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134–134h; 29 F.R. 16210, as amended, 30 F.R. 5799, as amended; 9 CFR 76.16(c))

The purpose of the foregoing amendment is to add "PURACEL" to the list of modified live virus vaccines approved by the Director of Division under the regulations in 9 CFR Part 76, and to correct the spelling of an approved vaccine previously listed under § 76.16(d).

The amendment relieves restrictions imposed by 9 CFR Part 76 relating to hog cholera and other communicable swine diseases and must be made effective promptly in order to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under the administrative procedure provisions of 5 U.S.C. section 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary and the amendment may be made effective less than 30 days after publication in the FEDERAL REGISTER.

The amendment shall become effective upon publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 27th day of October 1967.

G. H. WISE,
Acting Director, Animal Health Division, Agricultural Research Service.

[F.R. Doc. 67–13011; Filed, Nov. 2, 1967; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

PART 301—PROCEDURE AND ADMINISTRATION

Republication

In order to facilitate its distribution and use, Part 301 of Chapter I of Title 26, Code of Federal Regulations is hereby republished. This republication is a compilation reflecting amendments to such part subsequent to January 1, 1961 and includes the latest amendment to the part dated June 17, 1967 (32 F.R. 8711). The compilation as set forth below contains no substantive changes.

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

Information and Returns

RETURNS AND RECORDS

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Closing Agreements and Compromises

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AUTHORITY: The provisions of this Part 301 issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

NOTE: In the text of this part, integral section references are to sections of the Internal Revenue Code of 1954; decimal section references are to sections of the Code of Federal Regulations.

References in the text to the "Code" are references to the Internal Revenue Code of 1954.

Information and Returns

RETURNS AND RECORDS

RECORDS, STATEMENTS, AND SPECIAL RETURNS

§ 301.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 301.6001-1 Notice or regulations requiring records, statements, and special returns.

For provisions requiring records, statements, and special returns, see the regulations relating to the particular tax.

TAX RETURNS OR STATEMENTS

General Requirement

§ 301.6011 Statutory provisions; general requirement of return, statement, or list.

SEC. 6011. *General requirement of return, statement, or list*—(a) *General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) *Identification of taxpayer.* The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) *Return of retailers excise taxes by suppliers*—(1) *General rule.* Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may enter into an agreement with any supplier with respect to any retailers excise tax imposed by chapter 31 (not including the taxes imposed by section 4041), whereby such supplier will be liable to return and pay such tax (for the period for which such agreement is in effect) for the person who (without regard to this subsection) is required to return and pay such tax. Except as provided in the regulations prescribed under this subsection—

(A) All provisions of law (including penalties) applicable in respect of the person who (without regard to this subsection) is required to return and pay the tax shall apply to the supplier entering into the agreement, and

(B) The person who (without regard to this subsection) is required to return and pay such tax shall remain subject to all provisions of law (including penalties) applicable in respect of such person.

(2) *Limitations on agreement authority in the case of house-to-house salesmen.* In the case of sales, by house-to-house salesmen, of articles subject to tax under chapter 31 (other than section 4041) which are supplied by a manufacturer or distributor, if the manufacturer or distributor establishes the retail list price at which such articles are to be sold, the Secretary or his delegate shall not, as a condition to entering into an agreement under paragraph (1), require—

(A) That such house-to-house salesmen execute powers of attorney making such manufacturer or distributor an agent for the return and payment of such tax,

(B) That the manufacturer or distributor make separate returns with respect to each such house-to-house salesman, or

(C) That the manufacturer or distributor assume any liability for tax on articles supplied by any person other than such manufacturer or distributor.

(d) *Income, estate, and gift taxes.* For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

[Sec. 6011 as amended by sec. 161, Excise Tax Technical Changes Act 1958 (72 Stat. 1305)]

§ 301.6011-1 General requirement of return, statement, or list.

For provisions requiring returns, statements, or lists, see the regulations relating to the particular tax.

Income Tax Returns

§ 301.6012 Statutory provisions; persons required to make returns of income.

SEC. 6012. *Persons required to make returns of income*—(a) *General rule.* Returns with respect to income taxes under subtitle A shall be made by the following:

(1) Every individual having for the taxable year a gross income of $600 or more (except that any individual who has attained the age of 65 before the close of his taxable year shall be required to make a return only if he has for the taxable year a gross income of $1,200 or more);

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income; and

(5) Every estate or trust of which any beneficiary is a nonresident alien;

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary or his delegate, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) *Returns made by fiduciaries and receivers*—(1) *Returns of decedents.* If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) *Persons under a disability.* If an individual is unable to make a return required under subsection (a) or section 6015(a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) *Receivers, trustees and assignees for corporations.* In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) *Returns of estates and trusts.* Returns of an estate or a trust shall be made by the fiduciary thereof.

(5) *Joint fiduciaries.* Under such regulations as the Secretary or his delegate may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(c) *Certain income earned abroad or from sale of residence.* For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to sale of residence by individual who has attained age 65) and without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States).

(d) *Consolidated returns.* For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

[Sec. 6012 as amended by sec. 72(a), Technical Amendments Act 1958 (72 Stat. 1660); sec. 206(b)(1), Rev. Act 1964 (78 Stat. 40)]

§ 301.6012–1 Persons required to make returns of income.

For provisions with respect to persons required to make returns of income, see §§ 1.6012–1 to 1.6012–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6013 Statutory provisions; joint returns of income tax by husband and wife.

SEC. 6013. *Joint returns of income tax by husband and wife*—(a) *Joint returns.* A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) No joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien;

(2) No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 443(a)(1);

(3) In the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within 1 year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(b) *Joint return after filing separate return*—(1) *In general.* Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife under this subsection shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

(2) *Limitations for making of election.* The election provided for in paragraph (1) may not be made—

(A) Unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or

(B) After the expiration of 3 years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse); or

(C) After there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court of the United States within the time prescribed in section 6213; or

(D) After either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(E) After either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

(3) *When return deemed filed*—(A) *Assessment and collection.* For purposes of section 6501 (relating to periods of limitations on assessment and collection), and for purposes of section 6651 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

(i) Where both spouses filed separate returns prior to making the joint return—on the date the last separate return was filed (but not earlier than the last date prescribed by law for filing the return of either spouse);

(ii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than $600 of gross income ($1,200 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such separate return (but not earlier than the last date (prescribed by law for the filing of such separate return); or

(iii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of $600 or more ($1,200 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such joint return.

(B) *Credit or refund.* For purposes of section 6511, a joint return made under this subsection shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse).

(4) *Additional time for assessment.* If a joint return is made under this subsection, the periods of limitations provided in sections 6501 and 6502 on the making of assessments and the beginning of levy or a proceeding in court for collection shall with respect to such return include one year immediately after the date of the filing of such joint return (computed without regard to the provisions of paragraph (3)).

(5) *Additions to the tax and penalties*—(A) *Additions to the tax.* Where the amount shown as the tax by the husband and wife on a joint return made under this subsection exceeds the aggregate of the amounts shown as the tax upon the separate return of each spouse—

(i) *Negligence.* If any part of such excess is attributable to negligence or intentional disregard of rules and regulations (but without intent to defraud) at the time of the making of such separate return, then 5 percent of the total amount of such excess shall be added to the tax;

(ii) *Fraud.* If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, then 50 percent of the total amount of such excess shall be added to the tax.

(B) *Criminal penalty.* For purposes of section 7206 (1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns) the term "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under this subsection after the filing of such separate return.

(c) *Treatment of joint return after death of either spouse.* For purposes of sections 21, 443, and 7851(a)(1)(A), where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

(d) *Definitions.* For purposes of this section—

(1) The status as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

(A) If both have the same taxable year—as of the close of such year; and

(B) If one dies before the close of the taxable year of the other—as of the time of such death; and

(2) An individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married; and

(3) If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

[Sec. 6013 as amended by sec. 73, Technical Amendments Act 1958 (72 Stat. 1660)]

§ 301.6013–1 Joint returns of income tax by husband and wife.

For provisions with respect to joint returns of income tax by husband and wife, see §§ 1.6013–1 to 1.6013–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6014 Statutory provisions; income tax return—tax not computed by taxpayer.

SEC. 6014. *Income tax return—tax not computed by taxpayer*—(a) *Election by taxpayer.* An individual entitled to elect to pay the tax imposed by section 3 whose gross income is less than $5,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as defined in section 3401(a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section and shall constitute an election to pay the tax imposed by section 3. In such case the tax shall be computed by the Secretary or his delegate who shall mail to the taxpayer a notice stating the amount determined as payable. In determining the amount payable, the credit against such tax provided for by section 37 shall not be allowed. In the case of a head of household (as defined in section 1(b)) or a surviving spouse (as defined in section 2(b)) electing the benefits of this subsec-

tion, the tax shall be computed by the Secretary or his delegate without regard to the taxpayer's status as a head of household or as a surviving spouse. In the case of a married individual filing a separate return and electing the benefits of this subsection, neither Table V in section 3(a) nor Table V in section 3(b) shall apply.

(b) *Regulations.* The Secretary or his delegate shall prescribe regulations for carrying out this section, and such regulations may provide for the application of the rules of this section to cases where the gross income includes items other than those enumerated by subsection (a), to cases where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100 but not more than $200, and to cases where the gross income is $5,000 or more but not more than $5,200. Such regulations shall provide for the application of this section in the case of husband and wife, including provisions determining when a joint return under this section may be permitted or required, whether the liability shall be joint and several, and whether one spouse may make return under this section and the other without regard to this section.

[Sec. 6014 as amended by secs. 201(d)(14) and 301(b)(2), Rev. Act 1964 (78 Stat. 32, 140)]

§ 301.6014–1 Income tax return—tax not computed by taxpayer.

For provisions relating to the use of Form 1040A by taxpayers with gross income of less than $5,000, see § 1.6014–1 of this chapter (Income Tax Regulations).

§ 301.6015 Statutory provisions; declaration of estimated income tax by individuals.

SEC. 6015. *Declaration of estimated income tax by individuals*—(a) *Requirement of declaration.* Every individual (other than a nonresident alien with respect to whose wages, as defined in section 3401(a), withholding under chapter 24 is not made applicable, but including every alien individual who is a resident of Puerto Rico during the entire taxable year) shall make a declaration of his estimated tax for the taxable year if—

(1) The gross income for the taxable year can reasonably be expected to exceed—

(A) $5,000 in the case of—

(i) A single individual other than a head of a household (as defined in section 1(b)(2)) or a surviving spouse (as defined in section 2(b));

(ii) A married individual not entitled under subsection (b) to file a joint declaration with his spouse; or

(iii) A married individual entitled under subsection (b) to file a joint declaration with his spouse, but only if the aggregate gross income of such individual and his spouse for the taxable year can reasonably be expected to exceed $10,000; or

(B) $10,000, in the case of—

(i) A head of a household (as defined in section 1(b)(2)); or

(ii) A surviving spouse (as defined in section 2(b)); or

(2) The gross income can reasonably be expected to include more than $200 from sources other than wages (as defined in section 3401(a)).

Notwithstanding the provisions of this subsection, no declaration is required if the estimated tax (as defined in subsection (c)) can reasonably be expected to be less than $40.

(b) *Joint declaration by husband and wife.* In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or the wife is a nonresident alien, if they are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(c) *Estimated tax.* For purposes of this title, in the case of an individual, the term "estimated tax" means the amount which the individual estimates as the amount of the income tax imposed by chapter 1 for the taxable year, minus the amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1.

(d) *Contents of declaration.* The declaration shall contain such pertinent information as the Secretary or his delegate may by forms or regulations prescribe.

(e) *Amendment of declaration.* An individual may make amendments of a declaration filed during the taxable year under regulations prescribed by the Secretary or his delegate.

(f) *Return as declaration or amendment.* If on or before January 31 (or February 15, in the case of an individual referred to in section 6073(b), relating to income from farming or fishing) of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Secretary or his delegate—

(1) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and

(2) If the tax shown on the return (reduced by the sum of the credits against tax provided by part IV of subchapter A of chapter 1) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by subsection (e) to be filed on or before January 15.

In the application of this subsection in the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the 15th or last day of the months specified in this subsection, the 15th or last day of the months which correspond thereto.

(g) *Short taxable years.* An individual with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the Secretary or his delegate.

(h) *Estates and trusts.* The provisions of this section shall not apply to an estate or trust.

(i) *Applicability.* This section shall be applicable only with respect to taxable years beginning after December 31, 1954; and sections 58, 59, and 60 of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955.

[Sec. 6015 as amended by sec. 74, Technical Amendments Act 1958 (72 Stat. 1660); sec. 5(a), Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1000); sec. 1(a)(1), Act of Sept. 25, 1962 (Pub. Law 87–682, 76 Stat. 575)]

§ 301.6015–1 Declaration of estimated income tax by individuals.

For provisions relating to requirement of declarations of estimated income tax by individuals, see §§ 1.6015(a)–1 to 1.6015(i)–1, inclusive, of this chapter (Income Tax Regulations).

§ 301.6016 Statutory provisions; declarations of estimated income tax by corporations.

SEC. 6016. *Declarations of estimated income tax by corporations*—(a) *Requirement of declaration.* Every corporation subject to taxation under section 11 or 1201(a), or subchapter L of chapter 1 (relating to insurance companies), shall make a declaration of estimated tax under chapter 1 for the taxable year if its income tax imposed by section 11 or 1201(a), or such subchapter L, for such taxable year, reduced by the credits against tax provided by part IV of subchapter A of chapter 1, can reasonably be expected to exceed $100,000.

(b) *Estimated tax.* For purposes of this title, in the case of a corporation, the term "estimated tax" means the excess of—

(1) The amount which the corporation estimates as the amount of the income tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

(2) The sum of—

(A) $100,000, and

(B) The amount which the corporation estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1.

(c) *Contents of declaration.* The declaration shall contain such pertinent information as the Secretary or his delegate may by forms or regulations prescribe.

(d) *Amendment of declaration.* A corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the Secretary or his delegate.

(e) *Short taxable year.* A corporation with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the Secretary or his delegate.

(f) *Applicability.* This section shall apply only with respect to taxable years ending on or after December 31, 1955.

§ 301.6016–1 Declarations of estimated income tax by corporations.

For provisions concerning the requirement of declarations of estimated income tax by corporations, see §§ 1.6016–1 to 1.6016–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6017 Statutory provisions; self-employment tax returns.

SEC. 6017. *Self-employment tax returns.* Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by chapter 2. In the case of a husband and wife filing a joint return under section 6013, the tax imposed by chapter 2 shall not be computed on the aggregate income but shall be the sum of the taxes computed under such chapter on the separate self-employment income of each spouse.

§ 301.6017–1 Self-employment tax returns.

For provisions relating to the requirement of self-employment tax returns, see § 1.6017–1 of this chapter (Income Tax Regulations).

Estate and Gift Tax Returns

§ 301.6018 Statutory provisions; estate tax returns.

SEC. 6018. *Estate tax returns*—(a) *Returns by executor*—(1) *Citizens or residents.* In all

cases where the gross estate at the death of a citizen or resident exceeds $60,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(2) *Nonresidents not citizens of the United States.* In the case of the estate of every nonresident not a citizen of the United States if that part of the gross estate which is situated in the United States exceeds $2,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(b) *Returns by beneficiaries.* If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Secretary or his delegate such person shall in like manner make a return as to such part of the gross estate.

§ 301.6018–1 Estate tax returns.

For provisions relating to requirement of estate tax returns, see §§ 20.6018–1 to 20.6018–4, inclusive, of this chapter (Estate Tax Regulations).

§ 301.6019 Statutory provisions; gift tax returns.

SEC. 6019. *Gift tax returns*—(a) *In general.* Any individual who in any calendar year makes any transfers by gift (except those which under section 2503(b) are not to be included in the total amount of gifts for such year) shall make a return with respect to the gift tax imposed by subtitle B.

(b) *Tenancy by the entirety.* For provisions relating to requirement of return in the case of election as to the treatment of gift by creation of tenancy by the entirety, see section 2515(c).

§ 301.6019–1 Gift tax returns.

For provisions relating to requirement of gift tax returns, see §§ 25.6019–1 to 25.6019–4, inclusive, of this chapter (Gift Tax Regulations).

Miscellaneous Provisions

§ 301.6020 Statutory provisions; returns prepared for or executed by Secretary.

SEC. 6020. *Returns prepared for or executed by Secretary*—(a) *Preparation of return by Secretary.* If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary or his delegate may prepare such return, which, being signed by such person, may be received by the Secretary or his delegate as the return of such person.

(b) *Execution of return by Secretary*—(1) *Authority of Secretary to execute return.* If any person fails to make any return (other than a declaration of estimated tax required under section 6015 or 6016) required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or his delegate shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) *Status of returns.* Any return so made and subscribed by the Secretary or his delegate shall be prima facie good and sufficient for all legal purposes.

§ 301.6020–1 Returns prepared or executed by district directors or other internal revenue officers.

(a) *Preparation of returns*—(1) *In general.* If any person required by the Code or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the district director or other authorized internal revenue officer or employee provided such person consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the district director as the return of such person.

(2) *Responsibility of person for whom return is prepared.* A person for whom a return is prepared in accordance with subparagraph (1) of this paragraph shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by him.

(b) *Execution of returns*—(1) *In general.* If any person required by any internal revenue law or by the regulations prescribed thereunder to make a return (other than a declaration of estimated tax required under section 6015 or 6016) fails to make such return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the district director or other authorized internal revenue officer or employee shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) *Status of returns.* Any return made in accordance with subparagraph (1) of this paragraph and subscribed by the district director or other authorized internal revenue officer or employee shall be prima facie good and sufficient for all legal purposes.

(3) *Deficiency procedures.* For deficiency procedures in the case of income, estate, and gift taxes, see sections 6211 to 6216, inclusive, and §§ 301.6211–1 to 301.6215–1, inclusive.

(c) *Cross references.* (1) For provisions that a return executed by a district director or other authorized internal revenue officer or employee will not start the running of the period of limitations on assessment and collection, see section 6501(b)(3) and paragraph (c) of § 301.6501(b)–1.

(2) For additions to the tax and additional amounts for failure to file returns, see section 6651 and § 301.6651–1, and section 6652 and § 301.6652–1, respectively.

(3) For additions to the tax for failure to pay tax, see section 6653 and § 301.6653–1.

(4) For criminal penalties for willful failure to make returns, see sections 7201, 7202, and 7203.

(5) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207.

(6) For authority to examine books and witnesses, see section 7602 and § 301.7602–1.

§ 301.6021 Statutory provisions; listing by Secretary of taxable objects owned by nonresidents of internal revenue districts.

SEC. 6021. *Listing by Secretary of taxable objects owned by nonresidents of internal revenue districts.* Whenever there are in any internal revenue district any articles subject to tax, which are not owned or possessed by or under the care or control of any person within such district, and of which no list has been transmitted to the Secretary or his delegate, as required by law or by regulations prescribed pursuant to law, the Secretary or his delegate shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary and make lists of the same, according to the forms prescribed. Such lists, being subscribed by the Secretary or his delegate, shall be sufficient lists of such articles for all purposes.

§ 301.6021–1 Listing by district directors of taxable objects owned by nonresidents of internal revenue districts.

Whenever there are in any internal revenue district any articles subject to tax, which are not owned or possessed by or under the care or control of any person within such district, and of which no list has been transmitted to the district director, as required by law or by regulations prescribed pursuant to law, the district director, or other authorized internal revenue officer or employee, shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary, and shall make lists of the same according to the forms prescribed. Such lists, being subscribed by the district director or other authorized internal revenue officer or employee, shall be sufficient lists of such articles for all purposes.

INFORMATION RETURNS

Information Concerning Persons Subject to Special Provisions

§ 301.6031 Statutory provisions; return of partnership income.

SEC. 6031. *Return of partnership income.* Every partnership (as defined in section 761(a)) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, and such other information for the purpose of carrying out the provisions of subtitle A as the Secretary or his delegate may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual.

§ 301.6031–1 Return of partnership income.

For provisions relating to the requirement of returns of partnership income, see § 1.6031–1 of this chapter (Income Tax Regulations).

§ 301.6032 Statutory provisions; returns of banks with respect to common trust funds.

SEC. 6032. *Returns of banks with respect to common trust funds.* Every bank (as defined in section 581) maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income

and the deductions allowed by subtitle A, and shall include in the return the names and addresses of the participants who would be entitled to share in the taxable income if distributed and the amount of the proportionate share of each participant. The return shall be executed in the same manner as a return made by a corporation pursuant to the requirements of sections 6012 and 6062.

§ 301.6032–1 Returns of banks with respect to common trust funds.

For provisions relating to requirement of returns of banks with respect to common trust funds, see § 1.6032–1 of this chapter (Income Tax Regulations).

§ 301.6033 Statutory provisions; returns by exempt organizations.

SEC. 6033. *Returns by exempt organizations*—(a) *General.* Every organization, except as hereinafter provided, exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the provisions of subtitle A as the Secretary or his delegate may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations, as the Secretary or his delegate may from time to time prescribe, except that, in the discretion of the Secretary or his delegate, an organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization. No such annual return need be filed under this subsection by any organization exempt from taxation under the provisions of section 501(a)—

(1) Which is a religious organization described in section 501(c)(3); or

(2) Which is an educational organization described in section 501(c)(3), if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; or

(3) Which is a charitable organization, or an organization for the prevention of cruelty to children or animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public; or

(4) Which is an organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in paragraph (1); or

(5) Which is an organization described in section 501(c)(8); or

(6) Which is an organization described in section 501(c)(1), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a wholly owned subsidiary of such a corporation.

(b) *Certain organizations described in section 501(c)(3).* Every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary or his delegate may by forms or regulations prescribe, setting forth—

(1) Its gross income for the year,

(2) Its expenses attributable to such income and incurred within the year,

(3) Its disbursements out of income within the year for the purposes for which it is exempt,

(4) Its accumulation of income within the year,

(5) Its aggregate accumulations of income at the beginning of the year,

(6) Its disbursements out of principal in the current and prior years for the purposes for which it is exempt,

(7) A balance sheet showing its assets, liabilities, and net worth as of the beginning of such year, and

(8) The total of the contributions and gifts received by it during the year.

(c) *Cross reference.* For provisions relating to statements, etc., regarding exempt status of organizations, see section 6001.

[Sec. 6033 as amended by sec. 75(b), Technical Amendments Act 1958 (72 Stat. 1661)]

§ 301.6033–1 Returns by exempt organizations.

For provisions relating to the requirement of returns by exempt organizations, see § 1.6033–1 of this chapter (Income Tax Regulations).

§ 301.6034 Statutory provisions; returns by trusts claiming charitable deductions under section 642(c).

SEC. 6034. *Returns by trusts claiming charitable deductions under section 642(c)*—(a) *General rule.* Every trust claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary or his delegate may by forms or regulations prescribe, setting forth—

(1) The amount of the charitable, etc., deduction taken under section 642(c) within such year (showing separately the amount of such deduction which was paid out and the amount which was permanently set aside for charitable, etc., purposes during such year),

(2) The amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

(3) The amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

(4) The amount paid out of principal in the current and prior years for charitable, etc., purposes,

(5) The total income of the trust within such year and the expenses attributable thereto, and

(6) A balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

(b) *Exception.* This section shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries.

§ 301.6034–1 Returns by trusts claiming charitable or other deductions under section 642(c).

For provisions relating to the requirement of returns by trusts claiming charitable or other deductions under section 642(c), see § 1.6034–1 of this chapter (Income Tax Regulations).

§ 301.6035 Statutory provisions; returns of officers, directors, and shareholders of foreign personal holding companies.

SEC. 6035. *Returns of officers, directors, and shareholders of foreign personal holding companies*—(a) *Officers and directors*—(1) *Monthly returns.* On the 15th day of each month each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year preceding the taxable year in which such month occurs, was a foreign personal holding company (as defined in section 552), shall make a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Secretary or his delegate shall by forms or regulations prescribe as necessary for carrying out the provisions of this title. The Secretary or his delegate may by regulations prescribe, as the period with respect to which returns shall be made, a longer period than a month. In such case the return shall be due on the 15th day of the succeeding period, and shall be made by the individuals who on such day are officers or directors of the corporation.

(2) *Annual returns.* On the 60th day after the close of the taxable year of a foreign personal holding company (as defined in section 552), each individual who on such 60th day is an officer or director of the corporation shall make a return setting forth—

(A) In complete detail the gross income, deductions and credits, taxable income, and undistributed foreign personal holding company income of such foreign personal holding company for such taxable year; and

(B) The same information with respect to such taxable year as is required in paragraph (1), except that if all the required returns with respect to such year have been filed under paragraph (1), no information under this subparagraph need be set forth in the return filed under this paragraph.

(b) *Shareholders*—(1) *Monthly returns.* On the 15th day of each month each U.S. shareholder, by or for whom 50 percent of more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including, in the case of an individual, stock owned by the members of his family as defined in section 544(a)(2)), if such foreign corporation with respect to its taxable year preceding the taxable year in which such month occurs was a foreign personal holding company (as defined in section 552), shall make a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Secretary or his delegate shall by forms or regulations prescribe as necessary for carrying out the provisions of this title. The Secretary or his delegate may by regulations prescribe, as the period with respect to which returns shall be made, a longer period than a month. In such case the return shall be due on the 15th day of the succeeding period, and shall be made by the persons who on such day are U.S. shareholders.

(2) *Annual returns.* On the 60th day after the close of the taxable year of a foreign personal holding company (as defined in section 552) each U.S. shareholder by or for whom on such 60th day 50 percent or more in value of the outstanding stock of such company is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544(a)(2)) shall make a return setting forth the same information with respect to such taxable years as is required in paragraph (1), except that, if all the required returns with respect to such year have been made under paragraph (1), no return shall be required under this paragraph.

§ 301.6035–1 Returns of officers, directors, and shareholders of foreign personal holding companies.

For provisions relating to the requirement of returns by officers, directors, and shareholders of foreign personal holding companies, see §§ 1.6035–1 to 1.6035–3, inclusive, of this chapter (Income Tax Regulations).

§ 301.6036 Statutory provisions; notice of qualification as executor or receiver.

SEC. 6036. *Notice of qualification as executor or receiver.* Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, and every executor (as defined in section 2203), shall give notice of his qualification as such to the Secretary or his delegate in such manner and at such time as may be required by regulations of the Secretary or his delegate. The Secretary or his delegate may by regulation provide such exemptions from the requirements of this section as the Secretary or his delegate deems proper.

§ 301.6036–1 Notice required of executor or of receiver or other like fiduciary.

(a) *Receivers and other like fiduciaries*—(1) *Bankruptcy proceedings.* The receiver or the trustee in bankruptcy, the debtor in possession, or other person, designated as in control of the assets of a debtor in any bankruptcy proceeding by order of the court in which such proceeding is pending, shall, on, or within 10 days of, the date of his appointment or authorization to act, give notice thereof in writing to the district director for the internal revenue district in which such debtor is or was required to make returns. Notice under this subparagraph shall not be required if, prior to, on, or within 10 days of, the date of such appointment or authorization to act, any notice regarding such proceeding has been given under any provision of the Bankruptcy Act (Title 11 of the United State Code) to the Secretary or other proper officer of the Treasury Department.

(2) *Proceedings other than bankruptcy.* A receiver in a receivership proceeding or a similar fiduciary in any proceeding (including a fiduciary in aid of foreclosure), designated by order of any court of the United States or of any State or Territory or of the District of Columbia as in control of all or substantially all the assets of a debtor or other party to such proceeding shall, on, or within 10 days of, the date of his appointment or authorization to act, give notice thereof in writing to the district director for the internal revenue district in which the debtor, or such other party, is or was required to make returns. Moreover, any fiduciary in aid of foreclosure not appointed by order of any such court, if he takes possession of all or substantially all the assets of the debtor, shall, on, or within 10 days of, the date of his taking possession, give notice thereof in writing to such district director.

(3) *Assignment for benefit of creditors.* An assignee for the benefit of a creditor or creditors shall, on, or within 10 days of, the date of an assignment, give notice thereof in writing to the district director for the internal revenue district in which the debtor is or was required to make returns. For purposes of this subparagraph, an assignee for the benefit of creditors shall be any person who, by authority of law, by the order of any court, by oral or written agreement, or in any other manner acquires control or possession of or title to all or substantially all the assets of a debtor, and who under such acquisition is authorized to use, reassign, sell, or in any manner dispose of such assets so that the proceeds from the use, sale, or other disposition may be paid to or may inure directly or indirectly to the benefit of a creditor or creditors of such debtor.

(4) *Contents of notice*—(i) *Bankruptcy and other proceedings.* The written notice required under subparagraph (1) or (2) of this paragraph shall contain:

(*a*) The name and address of the person making such notice and the date of his appointment or of his taking possession of the assets of the debtor or other person whose assets are controlled,

(*b*) The name and address of the debtor or other person whose assets are controlled, and

(*c*) In the case of a court proceeding:

(*1*) The name and location of the court in which the proceedings are pending,

(*2*) The date on which such proceedings were instituted,

(*3*) The number under which such proceedings are docketed, and

(*4*) When possible, the date, time, and place of any hearing, meeting of creditors, or other scheduled action with respect to such proceedings.

(ii) *Assignment for benefit of creditors.* The written notice required under subparagraph (3) of this paragraph shall contain:

(*a*) The name and address of, and the date the asset or assets were assigned to, the assignee,

(*b*) The name and address of the debtor whose assets were assigned,

(*c*) A brief description of the assets assigned,

(*d*) An explanation of the action expected to be taken with respect to such assets, and

(*e*) When possible, the date, time, and place of any hearing, meeting of creditors, sale, or other scheduled action with respect to such assets.

(b) *Executors, administrators, and persons in possession of property of decedent.* For provisions relating to requirement of preliminary notice in the case of estate taxes by executor, administrator, or person in possession of property of decedent, see § 20.6036–1 of this chapter (Estate Tax Regulations).

(c) *Notice of fiduciary relationship.* When a notice is required under § 301.6903–1 of a person acting in a fiduciary capacity and is also required of such person under this section, notice given in accordance with the provisions of this section shall be considered as complying with both sections.

(d) *Suspension of period on assessment.* For suspension of the running of the period of limitations on the making of assessments from the date a proceeding is instituted to a date 30 days after receipt of notice from a fiduciary in any proceeding under the Bankruptcy Act or from a receiver in any other court proceeding, see section 6872 and § 301.6872–1.

(e) *Applicability.* The provisions of this section shall apply to those persons referred to in this section whose appointments, authorizations, or assignments occur on or after December 21, 1960.

(f) *Cross references.* (1) For criminal penalty for willful failure to supply information, see section 7203.

(2) For criminal penalties for willfully making false or fraudulent statements, see sections 7206 and 7207.

(3) For time for performance of acts where the last day falls on a Saturday, Sunday, or legal holiday, see section 7503 and § 301.7503–1.

§ 301.6037 Statutory provisions; return of electing small business corporation.

SEC. 6037. *Return of electing small business corporation.* Every electing small business corporation (as defined in section 1371(a)(2)) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each such distribution, and such other information, for the purpose of carrying out the provisions of subchapter S of chapter 1, as the Secretary or his delegate may by forms and regulations prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the corporation under section 6012.

[Sec. 6037 as added by sec. 64(c), Technical Amendments Act 1958 (72 Stat. 1656)]

§ 301.6037–1 Return of electing small business corporation.

For provisions relating to requirement of return of electing small business corporation, see § 1.6037–1 of this chapter (Income Tax Regulations).

§ 301.6038 Statutory provisions; information with respect to certain foreign corporations.

SEC. 6038. *Information with respect to certain foreign corporations.*—(a) *Requirement*—(1) *In general.* Every U.S. person shall furnish, with respect to any foreign corporation which such person controls (within the meaning of subsection (d)(1)), such information as the Secretary or his delegate may prescribe by regulations relating to—

(A) The name, the principal place of business, and the nature of business of such foreign corporation, and the country under whose laws incorporated;

(B) The accumulated profits (as defined in section 902(c)) of such foreign corporation, including the items of income (whether or not included in gross income under chapter 1), deductions (whether or not allowed in computing taxable income under chapter 1), and any other items taken into

account in computing such accumulated profits;

(C) A balance sheet for such foreign corporation listing assets, liabilities, and capital;

(D) Transactions between such foreign corporation and—

(i) Such person,

(ii) Any other corporation which such person controls, and

(iii) Any U.S. person owning, at the time the transaction takes place, 10 percent or more of the value of any class of stock outstanding of such foreign corporation; and

(E) A description of the various classes of stock outstanding, and a list showing the name and address of, and number of shares held by, each U.S. person who is a shareholder of record owning at any time during the annual accounting period 5 percent or more in value of any class of stock outstanding of such foreign corporation.

The Secretary or his delegate may also require the furnishing of any other information which is similar or related in nature to that specified in the preceding sentence.

(2) *Period for which information is to be furnished, etc.* The information required under paragraph (1) shall be furnished for the annual accounting period of the foreign corporation ending with or within the U.S. person's taxable year. The information so required shall be furnished at such time and in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) *Limitation.* No information shall be required to be furnished under this subsection with respect to any foreign corporation for any annual accounting period unless such information was required to be furnished under regulations in effect on the first day of such annual accounting period.

(b) *Effect of failure to furnish information*—(1) *In general.* If a U.S. person fails to furnish, within the time prescribed under paragraph (2) of subsection (a), any information with respect to any foreign corporation required under paragraph (1) of subsection (a), then—

(A) In applying section 901 (relating to taxes of foreign countries and possessions of the United States) to such U.S. person for the taxable year, the amount of taxes (other than taxes reduced under subparagraph (B)) paid or deemed paid (other than those deemed paid under section 904(d)) to any foreign country or possession of the United States for the taxable year shall be reduced by 10 percent, and

(B) In applying sections 902 (relating to foreign tax credit for corporate stockholder in foreign corporation) and 960 (relating to special rules for foreign tax credit) to any such U.S. person which is a corporation (or to any person who acquires from any other person any portion of the interest of such other person in any such foreign corporation, but only to the extent of such portion) for any taxable year, the amount of taxes paid or deemed paid by each foreign corporation with respect to which such person is required to furnish information during the annual accounting period or periods with respect to which such information is required under paragraph (2) of subsection (a) shall be reduced by 10 percent.

If such failure continues 90 days or more after notice by the Secretary or his delegate to the U.S. person, then the amount of the reduction under this paragraph shall be 10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such failure to furnish information continues after the expiration of such 90-day period.

(2) *Limitation.* The amount of the reduction under paragraph (1) for each failure to furnish information with respect to a foreign corporation required under subsection (a)(1) shall not exceed whichever of the following amounts is the greater:

(A) $10,000, or

(B) The income of the foreign corporation for its annual accounting period with respect to which the failure occurs.

(3) *Special rules.* (A) No taxes shall be reduced under this subsection more than once for the same failure.

(B) For purposes of this subsection, the time prescribed under paragraph (2) of subsection (a) to furnish information (and the beginning of the 90-day period after notice by the Secretary) shall be treated as being not earlier than the last day on which (as shown to the satisfaction of the Secretary or his delegate) reasonable cause existed for failure to furnish such information.

(C) In applying subsections (a) and (b) of section 902, and in applying subsection (a) of section 960, the reduction provided by this subsection shall not apply for purposes of determining the amount of accumulated profits in excess of income, war profits, and excess profits taxes.

(c) *Two or more persons required to furnish information with respect to same foreign corporation.* Where, but for this subsection, two or more U.S. persons would be required to furnish information under subsection (a) with respect to the same foreign corporation for the same period, the Secretary or his delegate may by regulations provide that such information shall be required only from one person. To the extent practicable, the determination of which person shall furnish the information shall be made on the basis of actual ownership of stock.

(d) *Definitions.* For purposes of this section—

(1) *Control.* A person is in control of a corporation if such person owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock, of a corporation. If a person is in control (within the meaning of the preceding sentence) of a corporation which in turn owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote of another corporation, or owns more than 50 percent of the total value of the shares of all classes of stock of another corporation, then such person shall be treated as in control of such other corporation. For purposes of this paragraph, the rules prescribed by section 318(a) for determining ownership of stock shall apply; except that—

(A) The second sentence of subparagraphs (A) and (B), and clause (ii) of subparagraph (C), of section 318(a)(2) shall not be applied so as to consider a U.S. person as owning stock which is owned by a person who is not a U.S. person, and

(B) In applying clause (i) of subparagraph(C) of section 318(a)(2), the phrase "10 percent" shall be substituted for the phrase "50 percent" used in subparagraph (C).

(2) *Annual accounting period.* The annual accounting period of a foreign corporation is the annual period on the basis of which such corporation regularly computes its income in keeping its books.

(e) *Cross references.* (1) For provisions relating to penalties for violations of this section, see section 7203.

(2) For definition of the term "U.S. person," see section 7701(a)(30).

[Sec. 6038 as added by sec. 6(a), Act of Sept. 14, 1960 (Pub. Law 86-780, 74 Stat. 1014) and as amended by sec. 20(a), Revenue Act 1962 (76 Stat. 1059)]

§ 301.6038–1 Information returns required of U.S. persons with respect to certain foreign corporations.

For provisions relating to information returns required of U.S. persons with respect to certain foreign corporations, see §§ 1.6038–1 and 1.6038–2 of this chapter (Income Tax Regulations).

§ 301.6039 Statutory provisions; cross references.

SEC. 6039. *Cross references.* (1) For the notice required of persons acting in a fiduciary capacity for taxpayers or for transferees, see sections 6212, 6901(g), and 6903.

(2) For application by executor for determination of tax and discharge from personal liability therefor, see section 2204.

(3) For the notice required of taxpayers for redetermination of taxes claimed as credits, see sections 905(c) and 2016.

(4) For exemption certificates required to be furnished to employers by employees, see section 3402(f)(2), (3), (4), and (5).

(5) For receipts, constituting information returns, required to be furnished to employees, see section 6051.

(6) For the requirement to print the price of an admission on a ticket, see section 4234.

(7) For information required with respect to the redemption of stamps, see section 6805.

(8) For the statement required to be filed by a corporation expecting a net operating loss carryback or unused excess profits credit carryback, see section 6164.

(9) For the application, which a taxpayer may file for a tentative carryback adjustment of income taxes, see section 6411.

[Sec. 6037 as renumbered by sec. 64(c), Technical Amendments Act 1958 (72 Stat. 1656); sec. 6, Act of Sept. 14, 1960 (Pub. Law 86-780, 74 Stat. 1014)]

Information Concerning Transactions With Other Persons

§ 301.6041 Statutory provisions; information at source.

SEC. 6041. *Information at source*—(a) *Payments of $600 or more.* All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), or 6049(a)(1) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), 6045, 6049(a)(2), or 6049(a)(3)), of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary or his delegate, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary or his delegate, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) *Collection of foreign items.* In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make

a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

(c) [Reserved]

(d) *Recipient to furnish name and address.* When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

[Sec. 6041 as amended by sec. 19(f), Revenue Act 1962 (76 Stat. 1058)]

§ 301.6041–1 Returns of information regarding certain payments.

For provisions relating to the requirement of returns of information regarding certain payments, see §§ 1.6041–1 to 1.6041–6, inclusive, of this chapter (Income Tax Regulations).

§ 301.6042 Statutory provisions; returns regarding payments of dividends and corporate earnings and profits.

SEC. 6042. *Returns regarding payments of dividends and corporate earnings and profits*—(a) *Requirement of reporting*—(1) *In general.* Every person—

(A) Who makes payments of dividends aggregating $10 or more to any other person during any calendar year, or

(B) Who receives payments of dividends as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the dividends so received, shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(2) *Returns required by the Secretary.* Every person who makes payments of dividends aggregating less than $10 to any other person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggregate amount of such payments, and the name and address of the person to whom paid.

(b) *Dividend defined*—(1) *General rule.* For purposes of this section, the term "dividend" means—

(A) Any distribution by a corporation which is a dividend (as defined in section 316); and

(B) Any payment made by a stockbroker to any person as a substitute for a dividend (as so defined).

(2) *Exceptions.* For purposes of this section, the term "dividend" does not include—

(A) To the extent provided in regulations prescribed by the Secretary or his delegate, any distribution or payment—

(i) By a foreign corporation, or

(ii) To a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens; and

(B) Any amount described in section 1373 (relating to undistributed taxable income of electing small business corporations).

(3) *Special rule.* If the person making any payment described in subsection (a)(1)(A) or (B) is unable to determine the portion of such payment which is a dividend or is paid with respect to a dividend, he shall, for purposes of subsection (a)(1), treat the entire amount of such payment as a dividend or as an amount paid with respect to a dividend.

(c) *Statements to be furnished to persons with respect to whom information is furnished.* Every person making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) The name and address of the person making such return, and

(2) The aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than $10.

(d) *Statements to be furnished by corporations to the Secretary.* Every corporation shall, when required by the Secretary or his delegate—

(1) Furnish to the Secretary or his delegate a statement stating the name and address of each shareholder, and the number of shares owned by each shareholder;

(2) Furnish to the Secretary or his delegate a statement of such facts as will enable him to determine the portion of the earnings and profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Secretary or his delegate may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Secretary or his delegate may specify; and

(3) Furnish to the Secretary or his delegate a statement of its accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to such accumulated earnings and profits if divided or distributed, and of the amounts that would be payable to each.

[Sec. 6042 as amended by sec. 19(a), Revenue Act 1962 (76 Stat. 1053)]

§ 301.6042–1 Returns of information regarding payments of dividends and corporate earnings and profits.

For provisions relating to the requirement of returns of information regarding payments of dividends and corporate earnings and profits, see §§ 1.6042–1 to 1.6042–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6043 Statutory provisions; return regarding corporate dissolution or liquidation.

SEC. 6043. *Return regarding corporate dissolution or liquidation.* Every corporation shall—

(1) Within 30 days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, make a return setting forth the terms of such resolution or plan and such other information as the Secretary or his delegate shall by forms or regulations prescribe; and

(2) When required by the Secretary or his delegate, make a return regarding its distributions in liquidation, stating the name and address of, the number and class of shares owned by, and the amount paid to, each shareholder, or, if the distribution is in property other than money, the fair market value (as of the date the distribution is made) of the property distributed to each shareholder.

§ 301.6043–1 Returns of information regarding corporate dissolutions or liquidations.

For provisions relating to the requirement of returns of information regarding corporate dissolutions or liquidations, see §§ 1.6043–1 and 1.6043–2 of this chapter (Income Tax Regulations).

§ 301.6044 Statutory provisions; returns regarding payments of patronage dividends.

SEC. 6044. *Returns regarding payments of patronage dividends*—(a) *Requirement of reporting*—(1) *In general.* Except as otherwise provided in this section, every cooperative to which part I of subchapter T of chapter 1 applies, which makes payments of amounts described in subsection (b) aggregating $10 or more to any person during any calendar year, shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(2) *Returns required by the Secretary.* Every such cooperative which makes payments of amounts described in subsection (b) aggregating less than $10 to any person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(b) *Amounts subject to reporting*—(1) *General rule.* Except as otherwise provided in this section, the amounts subject to reporting under subsection (a) are—

(A) The amount of any patronage dividend (as defined in section 1388(a)) which is paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation as defined in section 1388(d)),

(B) Any amount described in section 1382(c)(2)(A) (relating to certain nonpatronage distributions) which is paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) by an organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

(C) Any amount described in section 1382(b)(2) (relating to redemption of nonqualified written notices of allocation) and, in the case of an organization described in section 1381(a)(1), any amount described in section 1382(c)(2)(B) (relating to redemption of nonqualified written notices of allocation paid with respect to earnings derived from sources other than patronage).

(2) *Exceptions.* The provisions of subsection (a) shall not apply, to the extent provided in regulations prescribed by the Secretary or his delegate, to any payment—

(A) By a foreign corporation, or

(B) To a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens.

(c) *Exemption for certain consumer cooperatives.* A cooperative which the Secretary or his delegate determines is primarily engaged in selling at retail goods or services of a type that are generally for personal, living, or family use shall, upon application to the Secretary or his delegate, be granted exemption from the reporting requirements imposed by subsection (a). Application for exemption under this subsection shall be made in accordance with regulations prescribed by the Secretary or his delegate.

(d) *Determination of amount paid.* For purposes of this section, in determining the amount of any payment—

(1) Property (other than a qualified written notice of allocation) shall be taken into account at its fair market value, and

(2) A qualified written notice of allocation

shall be taken into account at its stated dollar amount.

(e) *Statements to be furnished to persons with respect to whom information is furnished.* Every cooperative making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) The name and address of the cooperative making such return, and

(2) The aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than $10.

[Sec. 6044 as amended by sec. 19(b), Revenue Act 1962 (76 Stat. 1054)]

§ 301.6044–1 Returns of information regarding payments of patronage dividends.

For provisions relating to the requirement of returns of information regarding payments of patronage dividends, see §§ 1.6044–1 to 1.6044–5, inclusive, of this chapter (Income Tax Regulations).

§ 301.6045 Statutory provisions; returns of brokers.

SEC. 6045. *Returns of brokers.* Every person doing business as a broker shall, when required by the Secretary or his delegate, make a return, in accordance with such regulations as the Secretary or his delegate may prescribe, showing the names of customers for whom such person has transacted any business, with such details regarding the profits and losses and such other information as the Secretary or his delegate may by forms or regulations require with respect to each customer as will enable the Secretary or his delegate to determine the amount of such profits or losses.

§ 301.6046 Statutory provisions; returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

SEC. 6046. *Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock*—(a) *Requirement of return.* A return complying with the requirements of subsection (b) shall be made by—

(1) Each U.S. citizen or resident who is on January 1, 1963, an officer or director of a foreign corporation, 5 percent or more in value of the stock of which is owned by a U.S. person (as defined in section 7701(a)(30)), or who becomes such an officer or director at any time after such date,

(2) Each U.S. person who on January 1, 1963, owns 5 percent or more in value of the stock of a foreign corporation, or who, at any time after such date—

(A) Acquires stock which, when added to any stock owned on January 1, 1963, has a value equal to 5 percent or more of the value of the stock of a foreign corporation, or

(B) Acquires an additional 5 percent or more in value of the stock of a foreign corporation, and

(3) Each person who at any time after January 1, 1963, becomes a U.S. person while owning 5 percent or more in value of the stock of a foreign corporation.

(b) *Form and contents of returns.* The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign corporation, such information as the Secretary or his delegate prescribes by forms or regulations as necessary for carrying out the provisions of the income tax laws, except that in the case of persons described only in subsection (a)(1) the information required shall be limited to the names and addresses of persons described in subsection (a)(2).

(c) *Ownership of stock.* For purposes of subsection (a), stock owned directly or in directly by a person (including, in the case of an individual, stock owned by members of his family) shall be taken into account. For purposes of the preceding sentence, the family of an individual shall be considered as including only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendents.

(d) *Time for filing.* Any return required by subsection (a) shall be filed on or before the 90th day after the day on which, under any provision of subsection (a), the U.S. citizen, resident, or person becomes liable to file such return.

(e) *Limitation*—(1) *General rule.* Except as provided in paragraph (2), no information shall be required to be furnished under this section with respect to any foreign corporation unless such information was required to be furnished under regulations which have been in effect for at least 90 days before the date on which the U.S. citizen, resident, or person becomes liable to file a return required under subsection (a).

(2) *Exception.* In the case of liability to file a return under subsection (a) arising on or after January 1, 1963, and before June 1, 1963—

(A) No information shall be required to be furnished under this section with respect to any foreign corporation unless such information was required to be furnished under regulations in effect on or before March 1, 1963, and

(B) If the date on which such regulations become effective is later than the day on which such liability arose, any return required by subsection (a) shall (in lieu of the time prescribed by subsection (d)) be filed on or before the 90th day after such date.

(f) *Cross reference.* For provisions relating to penalties for violations of this section, see sections 6679 and 7203.

[Sec. 6046 as amended by sec. 7(a), Act of Sept. 14, 1960 (Pub. Law 86–780, 74 Stat. 1016); sec. 20(b), Revenue Act 1962 (76 Stat. 1061)]

§ 301.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

For provisions relating to requirement of returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, see §§ 1.6046–1 to 1.6046–3, inclusive, of this chapter. (Income Tax Regulations).

§ 301.6047 Statutory provisions; information relating to certain trusts and annuity and bond purchase plans.

SEC. 6047. *Information relating to certain trusts and annuity and bond purchase plans*—(a) *Trustees and insurance companies.* The trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) to which contributions have been paid under a plan on behalf of any owner-employee (as defined in section 401(c)(3)), and each insurance company or other person which is the issuer of a contract purchased by such a trust, or purchased under a plan described in section 403(a), contributions for which have been paid on behalf of any owner-employee, shall file such returns (in such form and at such times), keep such records, make such identification of contracts and funds (and accounts within such funds), and supply such information, as the Secretary or his delegate shall by forms or regulations prescribe.

(b) *Owner-employees.* Every individual on whose behalf contributions have been paid as an owner-employee (as defined in section 401(c)(3))—

(1) To a trust described in section 401(a) which is exempt from tax under section 501(a), or

(2) To an insurance company or other person under a plan described in section 403(a),

shall furnish the trustee, insurance company, or other person, as the case may be, such information at such times and in such form and manner as the Secretary or his delegate shall prescribe by forms or regulations.

(c) *Employees under qualified bond purchase plans.* Every individual in whose name a bond described in section 405(b)(1) is purchased by his employer under a qualified bond purchase plan described in section 405(a), or by a trust described in section 401(a) which is exempt from tax under section 501(a), shall furnish—

(1) To his employer or to such trust, and

(2) To the Secretary (or to such person as the Secretary may by regulations prescribe),

such information as the Secretary or his delegate shall by forms or regulations prescribe.

(d) *Cross reference.* For criminal penalty for furnishing fraudulent information, see section 7207.

[Sec. 6047 as added by sec. 7(m), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 830)]

§ 301.6047–1 Information relating to certain trusts and annuity and bond purchase plans.

For provisions relating to the requirement of returns of information regarding certain trusts and annuity and bond purchase plans, see § 1.6047–1 of this chapter (Income Tax Regulations).

§ 301.6048 Statutory provisions; returns as to creation of or transfers to certain foreign trusts.

SEC. 6048. *Returns as to creation of or transfers to certain foreign trusts*—(a) *General rule.* On or before the 90th day after—

(1) The creation of any foreign trust by a U.S. person, or

(2) The transfer of any money or property to a foreign trust by a U.S. person, the grantor in the case of an inter vivos trust, the fiduciary of an estate in the case of a testamentary trust, or the transferor, as the case may be, shall make a return in compliance with the provisions of subsection (b).

(b) *Form and contents of returns.* The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign trust, such information as the Secretary or his delegate prescribes by regulation as necessary for carrying out the provisions of the income tax laws.

(c) *Cross references.* (1) For provisions relating to penalties for violations of this section, see sections 6677 and 7203.

(2) For definition of the term "foreign trust created by a U.S. person," see section 643(d).

[Sec. 6048 as added by sec. 7(f), Revenue Act 1962 (76 Stat. 987)]

§ 301.6048–1 Returns as to creation of or transfers to certain foreign trusts.

For provisions relating to the requirement of returns as to creation of or transfers to certain foreign trusts, see § 16.3–1 of this chapter (Temporary Regulations under the Revenue Act of 1962).

§ 301.6049 Statutory provisions; returns regarding payments of interest.

SEC. 6049. *Returns regarding payments of interest*—(a) *Requirement of reporting*—(1) *In general.* Every person—

(A) Who makes payments of interest (as defined in subsection (b)) aggregating $10 or more to any other person during any calendar year, or

(B) Who receives payments of interest as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the interest so received,

shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(2) *Returns required by the Secretary.* Every person who makes payments of interest (as defined in subsection (b)) aggregating less than $10 to any other person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(3) *Other returns required by the Secretary.* Every corporation making payments, regardless of amounts, of interest other than interest as defined in subsection (b) shall, when required by regulations prescribed by the Secretary or his delegate, make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

(b) *Interest defined*—(1) *General rule.* For purposes of subsections (a) (1) and (2), the term "interest" means—

(A) Interest on evidences of indebtedness (including bonds, debentures, notes, and certificates) issued by a corporation in registered form, and, to the extent provided in regulations prescribed by the Secretary or his delegate, interest on other evidences of indebtedness issued by a corporation of a type offered by corporations to the public;

(B) Interest on deposits with persons carrying on the banking business;

(C) Amounts (whether or not designated as interest) paid by a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares;

(D) Interest on amounts held by an insurance company under an agreement to pay interest thereon; and

(E) Interest on deposits with stockholders and dealers in securities.

(2) *Exceptions.* For purposes of subsections (a) (1) and (2), the term "interest" does not include—

(A) Interest on obligations described in section 103(a) (1) or (3) (relating to interest on certain governmental obligations);

(B) To the extent provided in regulations prescribed by the Secretary or his delegate, any amount paid by or to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens; and

(C) Any amount on which the person making payment is required to deduct and withhold a tax under section 1451 (relating to tax-free convenant [covenant] bonds), or would be so required but for section 1451(d) (relating to benefit of personal exemptions).

(c) *Statements to be furnished to persons with respect to whom information is furnished.* Every person making a return under subsection (a) (1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) The name and address of the person making such return, and

(2) The aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) (1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a) (1) is less than $10.

[Sec. 6049 as added by sec. 19(c), Revenue Act 1962 (76 Stat. 1055)]

§ 301.6049–1 Returns regarding payments of interest.

For provisions relating to the requirement of returns regarding payments of interest, see §§ 1.6049–1 to 1.6049–3, inclusive, of this chapter (Income Tax Regulations).

Information Regarding Wages Paid Employees

§ 301.6051 Statutory provisions; receipts for employees.

SEC. 6051. *Receipts for employees*—(a) *Requirement.* Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(1) The name of such person,

(2) The name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) The total amount of wages as defined in section 3401(a),

(4) The total amount deducted and withheld as tax under section 3402,

(5) The total amount of wages as defined in section 3121(a), and

(6) The total amount deducted and withheld as tax under section 3101.

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2). In the case of compensation paid for service as a volunteer or volunteer leader within the meaning of the Peace Corps Act, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(3).

(b) *Special rule as to compensation of members of Armed Forces.* In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) *Additional requirements.* The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe.

(d) *Statements to constitute information returns.* A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary or his delegate shall, when required by such regulations, be filed with the Secretary or his delegate.

[Sec. 6051 as amended by sec. 412, Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 879); sec. 202(a)(4) Peace Corps Act (75 Stat. 626)]

§ 301.6051–1 Receipts for employees.

For provisions relating to statements for employees regarding remuneration paid during calendar year, see § 31.6051–1 of this chapter (Employment Tax Regulations).

SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS

§ 301.6061 Statutory provisions; signing of returns and other documents.

SEC. 6061. *Signing of returns and other documents.* Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

§ 301.6061–1 Signing of returns and other documents.

For provisions concerning the signing of returns and other documents, see the regulations relating to the particular tax.

§ 301.6062 Statutory provisions; signing of corporation returns.

SEC. 6062. *Signing of corporation returns.* The return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary pursuant to the provisions of section 6012(b)(3), such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

§ 301.6062–1 Signing of corporation returns.

For provisions relating to the signing of corporation income tax returns, see § 1.6062–1 of this chapter (Income Tax Regulations).

§ 301.6063 Statutory provisions; signing of partnership returns.

SEC. 6063. *Signing of partnership returns.* The return of a partnership made under section 6031 shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

§ 301.6063–1 Signing of partnership returns.

For provisions relating to the signing of returns of partnership income, see § 1.6063–1 of this chapter (Income Tax Regulations).

§ 301.6064 Statutory provisions; signature presumed authentic.

SEC. 6064. *Signature presumed authentic.* The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

§ 301.6064–1 Signature presumed authentic.

An individual's name signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

§ 301.6065 Statutory provisions; verification of returns.

SEC. 6065. *Verification of returns*—(a) *Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Oath.* The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals.

§ 301.6065–1 Verification of returns.

For provisions concerning the verification of returns and other documents, see the regulations relating to the particular tax.

TIME FOR FILING RETURNS AND OTHER DOCUMENTS

§ 301.6071 Statutory provisions; time for filing returns and other documents.

SEC. 6071. *Time for filing returns and other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

(b) *Special taxes.* For payment of special taxes before engaging in certain trades and businesses, see section 4901 and section 5142.

[Sec. 6071 as amended by sec. 204(1) Excise Tax Technical Changes Act 1958 (72 Stat. 1428)]

§ 301.6071–1 Time for filing returns and other documents.

For provisions concerning the time for filing returns and other documents, see the regulations relating to the particular tax.

§ 301.6072 Statutory provisions; time for filing income tax returns.

SEC. 6072. *Time for filing income tax returns*—(a) *General rule.* In the case of returns under section 6012, 6013, 6017, or 6031 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

(b) *Returns of corporations.* Returns of corporations under section 6012 made on the basis of the calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year.

(c) *Returns by certain nonresident alien individuals and foreign corporations.* Returns made by nonresident alien individuals (other than those whose wages are subject to withholding under chapter 24) and foreign corporations (other than those having an office or place of business in the United States) under section 6012 on the basis of a calendar year shall be filed on or before the 15th day of June following the close of the calendar year and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 6th month following the close of the fiscal year.

(d) *Returns of cooperative associations.* In the case of an income tax return of—

(1) An exempt cooperative association described in section 1381(a)(1), or

(2) An organization described in section 1381(a)(2) which is under an obligation to pay patronage dividends (as defined in section 1388(a)) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings, a return made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year.

(e) *Income tax due dates postponed in case of China Trade Act corporations.* In the case of any taxable year beginning after December 31, 1948, and ending before October 1, 1956, no Federal income tax return of any corporation organized under the China Trade Act, 1922 (42 Stat. 849, U.S.C., title 15, chapter 4), as amended, shall become due until December 31, 1956, but only with respect to any such corporation and any such taxable year which the Secretary or his delegate may determine reasonable under the circumstances in China pursuant to such regulations as may be prescribed. Such due date shall be subject to the power of the Secretary or his delegate to extend the time for filing such return, as in other cases.

[Sec. 6072 as amended by sec. 17(b)(3), Revenue Act 1962 (76 Stat. 1051)]

§ 301.6072–1 Time for filing income tax returns.

For provisions relating to time for filing income tax returns, see §§ 1.6072–1 to 1.6072–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6073 Statutory provisions; time for filing declarations of estimated income tax by individuals.

SEC. 6073. *Time for filing declarations of estimated income tax by individuals*—(a) *Individuals other than farmers or fishermen.* Declarations of estimated tax required by section 6015 from individuals regarded as neither farmers nor fishermen for the purpose of that section shall be filed on or before April 15 of the taxable year, except that if the requirements of section 6015 are first met—

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(b) *Farmers or fishermen.* Declarations of estimated tax required by section 6015 from individuals whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the succeeding taxable year.

(c) *Amendment.* An amendment of a declaration may be filed in any interval between installment dates prescribed for that taxable year, but only one amendment may be filed in each such interval.

(d) *Short taxable years.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(e) *Fiscal years.* In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

[Sec. 6073 as amended by sec. 1 (a)(2), (b), (c), Act of Sept. 25, 1962 (Pub. Law 87–682, 76 Stat. 575)]

§ 301.6073–1 Time for filing declarations of estimated income tax by individuals.

For provisions relating to time for filing declarations of estimated income tax by individuals, see §§ 1.6073–1 to 1.6073–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6074 Statutory provisions; time for filing declarations of estimated income tax by corporations.

SEC. 6074. *Time for filing declarations of estimated income tax by corporations*—(a) *General rule.* The declaration of estimated tax required of corporations by section 6016 shall be filed on or before the 15th day of the 9th month of the taxable year, except that if the requirements of section 6016 are first met after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the declaration shall be filed on or before the 15th day of the 12th month of the taxable year.

(b) *Amendment.* If a declaration is filed before the 15th day of the 12th month of the taxable year, an amendment of such declaration my be filed on or before such day.

(c) *Short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.6074–1 Time for filing declarations of estimated income tax by corporations.

For provisions relating to time for filing declarations of estimated income tax by corporations, see §§ 1.6074–1 to 1.6074–3, inclusive, of this chapter (Income Tax Regulations).

§ 301.6075 Statutory provisions; time for filing estate and gift tax returns.

SEC. 6075. *Time for filing estate and gift tax returns*—(a) *Estate tax returns.* Returns made under section 6018(a) (relating to estate taxes) shall be filed within 15 months after the date of the decedent's death.

(b) *Gift tax returns.* Returns made under section 6019 (relating to gift taxes) shall be filed on or before the 15th day of April following the close of the calendar year.

§ 301.6075–1 Time for filing estate and gift tax returns.

For provisions relating to time for filing estate tax returns and gift tax returns, see § 20.6075–1 of this chapter (Estate Tax Regulations) and § 25.6075–1 of this chapter (Gift Tax Regulations), respectively.

EXTENSION OF TIME FOR FILING RETURNS

§ 301.6081 Statutory provisions; extension of time for filing returns.

SEC. 6081. *Extension of time for filing returns*—(a) *General rule.* The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

(b) *Automatic extension for corporation income tax returns.* An extension of 3 months for the filing of the return of income taxes imposed by subtitle A shall be allowed any corporation if, in such manner and at such time as the Secretary or his delegate may by regulations prescribe, there is filed on behalf of such corporation the form prescribed by the Secretary or his delegate, and if such corporation pays, on or before the date prescribed for payment of the tax, the amount properly estimated as its tax or the first installment thereof required under section 6152; but this extension may be terminated at any time by the Secretary or his delegate by mailing to the taxpayer notice of such termination at least 10 days prior to the date for termination fixed in such notice.

(c) *Postponement by reason of war.* For time for performing certain acts postponed by reason of war, see section 7508.

§ 301.6081–1 Extension of time for filing returns.

For provisions concerning extensions of time for filing returns or other documents, see the regulations relating to the particular tax.

PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

§ 301.6091 Statutory provisions; place for filing returns or other documents.

SEC. 6091. *Place for filing returns or other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) *Tax returns.* In the case of returns of tax required under authority of part II of this subchapter—

(1) *Individuals.* Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(2) *Corporations.* Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(3) *Estate tax returns.* Returns of estate tax required under section 6018 shall be made to the Secretary or his delegate in the internal revenue district in which was the domicile of the decedent at the time of his death or, if there was no such domicile in an internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(4) *Exceptional cases.* Notwithstanding paragraph (1), (2), or (3) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

§ 301.6091–1 Place for filing returns or other documents.

For provisions concerning the place for filing returns and other documents, see the regulations relating to the particular tax.

MISCELLANEOUS PROVISIONS

§ 301.6101 Statutory provisions; period covered by returns or other documents.

SEC. 6101. *Period covered by returns or other documents.* When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

§ 301.6101–1 Period covered by returns or other documents.

For provisions concerning the period covered by returns or other documents, see the regulations relating to the particular tax.

§ 301.6102 Statutory provisions; computations on returns or other documents.

SEC. 6102. *Computations on returns or other documents*—(a) *Amounts shown on internal revenue forms.* The Secretary or his delegate is authorized to provide with respect to any amount required to be shown on a form prescribed for any internal revenue return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either—

(1) The fractional part of a dollar shall be disregarded; or

(2) The fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1.

(b) *Election not to use whole dollar amounts.* Any person making a return, statement, or other document shall be allowed, under regulations prescribed by the Secretary or his delegate, to make such return, statement, or other document without regard to subsection (a).

(c) *Inapplicability to computation of amount.* The provisions of subsections (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

§ 301.6102–1 Computations on returns or other documents.

(a) *Amounts shown on forms.* To the extent permitted by any internal revenue form or instructions prescribed for use with respect to any internal revenue return, declaration, statement, other document, or supporting schedules, any amount required to be reported on such form shall be entered at the nearest whole dollar amount. The extent to which, and the conditions under which, such whole dollar amounts shall be entered on any form will be set forth in the instructions issued with respect to such form. For the purpose of the computation to the nearest dollar, a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1. The following illustrates the application of this paragraph:

Exact amount:	*To be reported as*—
$18.49	$18
18.50	19
18.51	19

(b) *Election not to use whole dollar amounts*—(1) *Method of election.* Where any internal revenue form, or the instructions issued with respect to such form, provide that whole dollar amounts shall be reported, any person making a return, declaration, statement, or other document on such form may elect not to use whole dollar amounts by reporting thereon all amounts in full, including cents.

(2) *Time of election.* The election not to use whole dollar amounts must be made at the time of filing the return, declaration, statement, or other document. Such election may not be revoked after the time prescribed for filing such return, declaration, statement, or other document, including extensions of time granted for such filing. Such election may be made on any return, declaration, statement, or other document which is filed after the time prescribed for filing (including extensions of time), and such an election is irrevocable.

(3) *Effect of election.* The taxpayer's election shall be binding only on the return, declaration, statement, or other document filed for a taxable year or period, and a new election may be made on the return, declaration, statement, or other document filed for a subsequent taxable year or period. An election by either a husband or a wife not to report

whole dollar amounts on a separate income tax return shall be binding on any subsequent joint return filed under the provisions of section 6013(b).

(4) *Fractional part of a cent.* For treatment of the fractional part of a cent in the payment of taxes, see section 6313 and § 301.6313–1.

(c) *Inapplicability to computation of amount.* The provisions of paragraph (a) of this section apply only to amounts required to be reported on a return, declaration, statement, or other document. They do not apply to items which must be taken into account in making the computations necessary to determine such amounts. For example, each item of receipt must be taken into account at its exact amount, including cents, in computing the amount of total receipts required to be reported on an income tax return or supporting schedule. It is the amount of total receipts, so computed, which is to be reported at the nearest whole dollar on the return or supporting schedule.

(d) *Effect on accounting method.* Section 6102 and this section have no effect on any authorized accounting method.

§ 301.6103(a) Statutory provisions; publicity of returns and lists of taxpayers; public record and inspection.

SEC. 6103. *Publicity of returns and lists of taxpayers*—(a) *Public record and inspection.* (1) Returns made with respect to taxes imposed by chapters 1, 2, 3, and 6 upon which the tax has been determined by the Secretary or his delegate shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President.

(2) All returns made with respect to the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B, C, and D of chapter 33, subchapter B of chapter 37, and chapter 41, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person, a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Secretary or his delegate. The Secretary or his delegate may prescribe a reasonable fee for furnishing such copy.

[Sec. 6103(a) as amended by sec. 3(c), Interest Equalization Tax Act (78 Stat. 844)]

§ 301.6103(a)–1 Inspection of returns by certain classes of persons and State and Federal government establishments pursuant to Executive order.

(a) *In general*—(1) *Authority.* The President is authorized by subsection (a) of section 6103 to open to public examination and inspection returns in respect of the taxes described in paragraphs (1) and (2) of such subsection. In addition, section 6106 provides that returns in respect of the tax described therein (unemployment tax imposed by chapter 23 of the Code) shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns of the taxes described in section 6103, except that subsections (a)(2) and (b)(2) of section 6103, and subsection (a)(2) of section 7213 (relating to unauthorized disclosure of information) shall not apply.

(2) *Scope.* This section and the Executive orders pursuant to which this section is prescribed govern the inspection of returns by the classes of persons and State and Federal government establishments designated in the succeeding paragraphs of this section insofar as such inspection is permissible only upon order of the President and under regulations approved by the President. Specifically, this section relates to inspection of returns made in respect of the taxes imposed by the following subdivisions of the Code: Chapters 1, 2, 3, and 6 (income taxes); chapter 5 (tax on transfers to avoid income tax); chapter 11 (estate tax); chapter 12 (gift tax); chapter 23 (unemployment tax); chapter 32 (manufacturers excise taxes); subchapters B, C, and D of chapter 33 (communications tax, transportation taxes, and tax on safe deposit boxes, respectively); subchapter B of chapter 37 (tax on coconut and palm oil); and chapter 41 (interest equalization tax).

(3) *Terms used*—(i) *Return.* For purposes of section 6103(a), the term "return" includes information returns, schedules, lists, and other written statements filed with the Internal Revenue Service which are designed to be supplemental to or to become a part of the return, and, in the discretion of the Secretary or the Commissioner or the delegate of either, other records or reports containing information included or required by statute to be included in the return. A notice of acquisition filed under section 4917 is a return for purposes of section 6103. An application for exemption from income tax under section 501(a) filed by an organization described in section 501 (c) or (d) in order to establish its exemption is not a return for purposes of section 6103. For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104–1.

(ii) *Other terms.* Any word or term used in this section, other than the word "return", which is defined in any chapter of the Code shall be given the definition contained in the chapter which is applicable to the particular return made.

(4) *Cross references.* For special provisions relating to inspection of returns pursuant to Executive order by committees of Congress other than those enumerated in section 6103(d) or by certain designated Federal Government establishments, see the regulations under section 6103(a) in §§ 301.6103(a)–100, et seq.

(b) *Procedure for inspection*—(1) *Authority to permit inspection.* The Secretary or the Commissioner or the delegate of either may grant permission for the inspection of returns in accordance with this section.

(2) *Place of inspection.* Generally, returns may be inspected in the Internal Revenue Service office in which they were filed or in the national office. In appropriate cases, inspection may also be made in other offices of the Internal Revenue Service as designated by the Commissioner. Such inspection shall be made only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Penalties.* For penalties for unauthorized disclosure of information, see section 7213.

(c) *Inspection by certain classes of persons*—(1) *Returns in respect of income tax, unemployment tax, and certain excise taxes*—(i) *In general.* Returns in respect of the taxes imposed by chapters 1, 2, 3, and 6 (income taxes), chapter 5 (tax on transfers to avoid income tax), chapter 23 (unemployment tax), chapter 32 (manufacturers excise taxes), subchapters B, C, and D of chapter 33 (communications tax, transportation taxes, and the tax on safe deposit boxes, respectively), subchapter B of chapter 37 (tax on coconut and palm oil), and chapter 41 (interest equalization tax) of the Code shall be open to inspection as hereinafter provided in this subparagraph by certain persons having a material interest which will be affected by information contained in such returns. The word "return," as used in the succeeding subdivisions of this subparagraph, refers to a return made in respect of any of the taxes described in the preceding sentence except as such word is expressly limited in any such subdivision to the return of a particular tax.

(ii) *Return of individual.* A return of an individual shall be open to inspection—

(*a*) By the individual for whom the return was made;

(*b*) If the individual for whom the return was made is legally incompetent, by the committee, trustee, or guardian of his estate;

(*c*) If the individual for whom the return was made has died, (*1*) by the administrator, executor, or trustee of his estate, and (*2*) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(*d*) If the property of the individual for whom the return was made is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(*e*) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(iii) *Joint return of income tax.* A joint income tax return of husband and wife shall be open to inspection—

(*a*) By either of the individuals for whom the return was made;

(*b*) If either of the individuals for whom the return was made is legally

incompetent, by the committee, trustee, or guardian of the estate of such individual;

(c) If either of the individuals for whom the return was made has died, (1) by the administrator, executor, or trustee of the estate of such decedent, and (2) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(d) If the property of either of the individuals for whom the return was made is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(e) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(iv) *Return of partnership.* A return of a partnership shall be open to inspection—

(a) By any person who was a member of the partnership during any part of the period covered by the return upon submission of satisfactory evidence of such membership;

(b) If an individual who was a member of the partnership during any part of the period covered by the return is legally incompetent, by the committee, trustee, or guardian of his estate;

(c) If an individual who was a member of the partnership during any part of the period covered by the return has died, (1) by the administrator, executor, or trustee of his estate, and (2) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(d) If the property of the partnership is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(e) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(v) *Return of estate.* A return of an estate shall be open to inspection—

(a) By the administrator, executor, or trustee of the estate;

(b) In the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of the decedent for whose estate the return was made, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return, or, if any such heir at law, next of kin, or beneficiary has died or is legally incompetent, by the administrator, executor, committee, trustee, or guardian of his estate, upon a like submission of evidence; and

(c) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(vi) *Return of trust.* A return of a trust shall be open to inspection—

(a) By the trustee or trustees, jointly or severally;

(b) By any person who was a beneficiary of the trust during any part of the period covered by the return, upon submission of satisfactory evidence that the person was such a beneficiary;

(c) If any individual who was a beneficiary of the trust during any part of the period covered by the return is legally incompetent, by the committee, trustee, or guardian of his estate;

(d) If any individual who was a beneficiary of the trust during any part of the period covered by the return has died, (1) by the administrator, executor, or trustee of his estate, and (2) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; and

(e) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(vii) *Return of corporation.* A return of a corporation shall be open to inspection—

(a) By any person designated by action of its board of directors, or other similar governing body, upon submission of satisfactory evidence of such action;

(b) By any officer or employee of the corporation upon written request signed by any principal officer and attested by the secretary, or other officer, under the corporate seal, if any;

(c) By the duly constituted attorney in fact of the corporation;

(d) If the property of the corporation is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee; and

(e) In the discretion of the Secretary or the Commissioner or the delegate of either, if the corporation has been dissolved, by any person who under the regulations in this subdivision (vii) might have inspected the return at the date of dissolution.

For provisions relating to inspection of corporation income or unemployment tax returns by shareholders, see section 6103(c) and § 301.6103(c)-1.

(2) *Returns in respect of estate tax.* A return or notice in respect of estate tax imposed by chapter 11 of the Code shall be open to inspection—

(i) By the executor, or his successor in office, or the duly constituted attorney in fact of such executor or successor; and

(ii) In the discretion of the Secretary or the Commissioner or the delegate of either, by any other person upon submission of satisfactory evidence that such person has a material interest either in ascertaining any fact disclosed by the return or notice or in obtaining information as to the payment of the tax.

(3) *Returns in respect of gift tax.* A return in respect of gift tax imposed by chapter 12 of the Code shall be open to inspection—

(i) By the donor or his duly constituted attorney in fact; and

(ii) In the discretion of the Secretary or the Commissioner or the delegate of either, by any other person upon submission of satisfactory evidence that such person has a material interest either in ascertaining any fact disclosed by the return or in obtaining information as to the payment of the tax.

(4) *Applications for inspection.* Applications for permission to inspect returns under this paragraph shall be made in writing to the internal revenue officer (district director or Director of International Operations) with whom the return was filed and shall set forth (i) the name and address of the person for whom the return was made, (ii) the kind of tax reported on the return, (iii) the taxable period covered by the return, (iv) the reason why inspection is desired, and (v) a statement showing that the applicant is a person entitled under this paragraph to make the inspection requested.

(d) *Inspection by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of returns in respect of certain taxes*—(1) *Inspection of estate and gift tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.* Returns and notices in respect of estate tax imposed by chapter 11 of the Code and returns in respect of gift tax imposed by chapter 12 of the Code may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration, provided a like cooperation is given by the State, District of Columbia, the Commonwealth of Puerto Rico, or the possession to the Commissioner and his representatives with respect to the inspection of returns of estate, inheritance, legacy, succession, gift, or other tax of the State, District of Columbia, Commonwealth of Puerto Rico, or possession for use in the administration of the Federal tax laws.

(2) *Inspection of unemployment tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.* Returns in respect of the unemployment tax imposed by chapter 23 of the Code may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, provided (i) such government has

a law certified to the Secretary as having been approved in accordance with section 3304, and (ii) the inspection is solely for the purpose of administering such law.

(3) *Inspection of excise tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.* Returns in respect of the excise taxes imposed by chapter 5 (tax on transfers to avoid income tax); chapter 32 (manufacturers excise taxes); subchapters B, C, and D of chapter 33 (communications tax, transportation taxes, and tax on safe deposit boxes, respectively); subchapter B of chapter 37 (tax on coconut and palm oil); and chapter 41 (interest equalization tax) may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration.

(4) *Inspection of income tax returns by the District of Columbia, the Commonwealth of Puerto Rico, or possessions.* Returns in respect of income tax imposed by chapter 1, 2, 3, or 6 of the Code, may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration.

(5) *Applications for inspection*—(i) *In general.* Application for the inspection provided for in subparagraph (1), (2), (3), or (4) of this paragraph shall be made in writing and signed by the governor of the State or the executive head of the District of Columbia, the Commonwealth of Puerto Rico, or possession, and shall be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. The application shall state—

(*a*) The title of the official, body, or commission by whom or which inspection is to be made;

(*b*) By specific reference, the law of the State, District of Columbia, Commonwealth of Puerto Rico, or possession which such official, body, or commission is charged with administering and the law under which he or it is so charged;

(*c*) The purpose for which the inspection is to be made; and

(*d*) If inspection of estate or gift tax returns is requested, that the State, District of Columbia, Commonwealth of Puerto Rico, or possession, as the case may be, gives to the Commissioner and his representatives like cooperation with respect to the inspection of returns of estate, inheritance, legacy, succession, gift, or other tax of the State, District of Columbia, Commonwealth of Puerto Rico, or possession, for use in the administration of the Federal tax laws.

(ii) *Returns filed in internal revenue district within or including State or other entity requesting inspection*—(*a*) *General inspection.* Upon application by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, permission may be granted for general inspection of returns of the taxes specified in subparagraph (1), (2), (3), or (4) of this paragraph which are filed in an internal revenue district within or including such State or District or, in the case of the Commonwealth of Puerto Rico or a possession, with the Director of International Operations. If such general inspection is desired, the application made to the Commissioner in accordance with subdivision (i) of this subparagraph shall include a statement that general inspection is desired of a specified class or classes of returns (for example, estate tax returns, gift tax returns, etc.). Permission granted to a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession for the general inspection provided for in this subdivision shall, except as hereinafter provided in the case of unemployment tax returns continue in effect until such time as the Secretary or the Commissioner or the delegate of either, by written notice to the governor of the State or the executive head of the District of Columbia, the Commonwealth of Puerto Rico, or possession, provides that such inspection will be permitted only on the basis of periodic applications therefor. Permission for general inspection of unemployment tax returns will terminate without notice at such time as the State, District of Columbia, Commonwealth of Puerto Rico, or possession ceases to have a law certified to the Secretary as having been approved in accordance with section 3304. The governor of the State or the executive head of the District of Columbia, the Commonwealth of Puerto Rico, or possession, as the case may be, shall supply in writing to the internal revenue officer (district director or Director of International Operations) with whom the returns to be inspected were filed a list of the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application to the Commissioner, and shall keep such list current by appropriate deletions or additions as may be necessary.

(*b*) *Inspection of specific returns.* Permission granted pursuant to (*a*) of this subdivision for general inspection of returns of a particular tax includes permission to inspect specifically identified returns of such tax when desired. However, if a State, the District of Columbia, the Commonwealth of Puerto Rico, or possession is interested only in examining certain returns of particular taxpayers, the application for inspection of such returns shall be made to the Commissioner as provided in subdivision (i) of this subparagraph and, in addition to the information outlined in such subdivision, shall state the name and address of each taxpayer whose return or returns it is desired to inspect, the kind of tax reported on each such return, the taxable period covered by each such return, and the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application.

(iii) *Returns filed in other internal revenue districts.* In the case of returns filed in an internal revenue district other than one within or including the State or District of Columbia requesting inspection or, if the inspection is requested by the Commonwealth of Puerto Rico or a possession, filed elsewhere than with the Director of International Operations, permission for the inspection provided for in subparagraphs (1), (2), (3), and (4) of this paragraph will be granted only with respect to specifically identified returns. The application for such inspection shall be made to the Commissioner as provided in subdivision (i) of this subparagraph and, in addition to the information outlined in such subdivision and in subdivision (ii)(*b*) of this subparagraph, shall specify the internal revenue district or office in which the returns to be inspected are believed to have been filed.

(6) *Time and place of inspection.* A convenient time and place for the inspection of returns permitted under this paragraph will be arranged by the internal revenue officer (district director or Director of International Operations) with whom the returns were filed.

(7) *Cross reference.* For other provisions relating to inspection of returns on behalf of States or political subdivisions thereof, see section 6103(b) and § 301.6103(b)–1.

(e) *Inspection of returns by Department of the Treasury.* Officers and employees of the Department of the Treasury whose official duties require inspection of returns made in respect of any tax described in paragraph (a)(2) of this section may inspect any such returns without making written application therefor. If the head of a bureau or office in the Department of the Treasury, not a part of the Internal Revenue Service, desires to inspect, or to have an employee of his bureau or office inspect, any such return in connection with some matter officially before him for reasons other than tax administration purposes, the inspection may, in the discretion of the Secretary or the Commissioner or the delegate of either, be permitted upon written application by the head of the bureau or office desiring the inspection. The application shall be made to the Commissioner of Internal Revenue, Washington, D.C. 20224 and shall show (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, and (4) the reason why inspection is desired. The information obtained from inspection pursuant to this paragraph may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(f) *Inspection of returns by executive departments other than the Department of the Treasury and by other establish-*

ments of the Federal Government. Except as provided in paragraphs (d) and (g) of this section, if the head of an executive department (other than the Department of the Treasury), or of any other establishment of the Federal Government, desires to inspect, or to have some other officer or employee of his department or establishment inspect, a return in respect of any tax described in paragraph (a)(2) of this section in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury or the Commissioner of Internal Revenue or the delegate of either, be permitted upon written application signed by the head of the executive department or other Government establishment desiring the inspection. The application shall be made to the Commissioner of Internal Revenue, Washington, D.C. 20224 and shall set forth (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, (4) the reason why inspection is desired, and (5) the name and the official designation of the person by whom the inspection is to be made. The information obtained from inspection pursuant to this paragraph may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(g) *Inspection of returns by U.S. attorneys and attorneys of Department of Justice.* A return in respect of any tax described in paragraph (a)(2) of this section shall be open to inspection by a U.S. attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The application for inspection shall be in writing and shall show (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, and (4) the reason why inspection is desired. The application shall, where the inspection is to be made by a U.S. attorney, be signed by such attorney, and, where the inspection is to be made by an attorney of the Department of Justice, be signed by the Attorney General, Deputy Attorney General, or an Assistant Attorney General. The application may be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224 or to the internal revenue officer (district director or Director of International Operations) with whom the return was filed.

(h) *Use of returns in litigation.* Returns made in respect of any tax described in paragraph (a)(2) of this section, or copies thereof, may be furnished by the Secretary or the Commissioner or the delegate of either to a U.S. attorney or an attorney of the Department of Justice for official use in proceedings before a U.S. grand jury or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings or litigation. The original return will be furnished only in exceptional cases, and then only if it is made to appear that the ends of justice may otherwise be defeated. Returns or copies thereof will be furnished without written application therefor to U.S. attorneys and attorneys of the Department of Justice for official use in the prosecution of claims and demands by, and offenses against, the United States, or the defense of claims and demands against the United States or officers or employees thereof, in cases arising under the internal revenue laws or related statutes which were referred by the Department of the Treasury to the Department of Justice for such prosecution or defense. In all other cases, written application for a return or copies thereof shall be made to the Commissioner of Internal Revenue, Washington, D.C. 20224 or where it is desired that a return or copies thereof be furnished by the internal revenue officer (district director or Director of International Operations) with whom the return was filed, the application shall be made to such officer. The application shall be signed by the U.S. attorney if the return or copy is for his use, or by the Attorney General, the Deputy Attorney General, or an Assistant Attorney General if the return or copy is for the use of an attorney of the Department of Justice. For provisions relating to the certification of copies of returns, see § 301.6103(a)–2. If a return, or copy thereof, is furnished pursuant to this paragraph, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use. Neither the original nor a copy of a return desired for use in litigation in court will be furnished if the United States is not interested in the result, but this provision is not a limitation on the use of copies of returns by the persons entitled thereto. See paragraphs (e) and (f) of this section for use, in proceedings to which the United States is a party, of information obtained by executive departments and other Federal Government establishments from inspection of returns.

(i) *Disclosures by internal revenue officers for investigative purposes.* An internal revenue officer engaged in an official investigation of the liability in connection with any return or notice in respect of estate tax imposed by chapter 11, or any return in respect of gift tax imposed by chapter 12, of the Code may disclose the returned value of any item, the amount of any specific deduction, or other limited information, if the disclosure is necessary in order to verify such value, deduction, or other information, or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purpose of the investigation, and in no case extends to such information as the amount of the estate or gift, the amount of the tax, or other general data.

(j) *Inspection of accepted offers in compromise.* Subject to such rules and under such circumstances as the Secretary or the Commissioner shall determine to be in the public interest, returns in respect of income tax imposed by chapter 1, 2, 3, or 6, estate tax imposed by chapter 11, or gift tax imposed by chapter 12, of the Code, shall be open to inspection to the extent necessary to permit examination of any accepted offer in compromise under section 7122 relative to the liability for any such tax.

§ 301.6103(a)–2 Copies of returns.

Any person who may be permitted to inspect a return under section 6103 and § 301.6103(a)–1, § 301.6103(b)–1, or § 301.6103(c)–1 may be furnished with a copy of such return upon request. If the request for a copy of a return is made other than at the time of inspection of such return by the applicant, the request shall be in writing, shall adequately identify the return a copy of which is desired, and shall be accompanied by satisfactory evidence that the applicant qualifies as one of the persons or governmental agencies to whom or which inspection of the return may be permitted. Except as otherwise provided in this section, applications for copies of returns should be submitted to the Commissioner of Internal Revenue, Washington, D.C. 20224, who is authorized to furnish such copies and to certify them upon request under the official seal of his office or under the official seal of the Department of the Treasury. Where the applicant is (a) a person who may be permitted under paragraph (c) of § 301.6103(a)–1 to inspect a return, (b) an official of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States entitled to inspect returns under paragraph (d) of § 301.6103(a)–1 or under § 301.6103(b)–1, or (c) a shareholder entitled under § 301.6103(c)–1 to inspect returns of the corporation of which he is a shareholder, the application for a copy of the return should be submitted to, and such copy may be furnished by, the internal revenue officer (district director or the Director of International Operations) with whom the return was filed. Any copy so furnished by the district director or the Director of International Operations may, upon request, be certified by him under his official seal. The district director or the Director of International Operations is authorized, when so directed by the Commissioner, to furnish to any bureau or office of the Treasury Department or to any other department or agency of the Government copies of any returns which such bureau, office, department, or agency is permitted to inspect under paragraph (e) or (f) of § 301.6103(a)–1, and to certify such copies under the official seal of his office. Applications for copies of returns available to U.S. attorneys or attorneys of the Department of Justice pursuant to paragraph (g) or (h) of § 301.6103(a)–1 may be submitted to, and such copies may be furnished and certified under seal by, the Commissioner or, where desired, the district director or the Director of International Operations, as the case may be, with whom the returns were filed. Where such application is required to be in writing it shall be signed by the U.S. attorney if the copy is for his use, or by the Attorney General, the Deputy Attorney

General, or an Assistant Attorney General if the copy is for the use of an attorney of the Department of Justice. The Commissioner may prescribe a reasonable fee for furnishing copies of returns.

§ 301.6103(a)–100 Inspection by Department of Health, Education, and Welfare of individual income tax returns.

Pursuant to the provisions of section 6103(a) and of the Executive order issued thereunder,[1] and in the interest of the internal management of the Government, any individual income tax return made in respect of a tax imposed under chapter 1 or chapter 2 of the Code shall be open to inspection by the Department of Health, Education, and Welfare as may be needed in its administration of the provisions of title II of the Social Security Act, as amended (42 U.S.C. ch. 7). Upon request, the inspection of an individual income tax return may be made by any officer or employee of the Department of Health, Education, and Welfare duly authorized by the Secretary of such Department to make such inspection. The request to inspect an income tax return or returns of a particular individual shall be made, in writing, by the Secretary or any duly authorized officer or employee of the Department of Health, Education, and Welfare to the Commissioner of Internal Revenue or to any officer or employee of the Internal Revenue Service designated by the Commissioner. The written request shall be in such form and manner as may be prescribed by the Commissioner of Internal Revenue. Upon receipt of such a request, any officer or employee of the Internal Revenue Service duly authorized by the Commissioner of Internal Revenue may make the individual income tax return or returns available for inspection by any duly authorized officer or employee of the Department of Health, Education, and Welfare or may furnish such Department with a copy of the return or with any data on such return. Any information thus obtained shall be held confidential, except to the extent necessary to effectuate the purposes for which the returns are open to inspection.

§ 301.6103(a)–101 Inspection of returns by committees of Congress other than those enumerated in section 6103(d).

(a) Pursuant to the provisions of section 6103(a), any return with respect to income, estate, or gift tax imposed by the Code shall be open to inspection by any committee of the Congress, or any subcommittee of a committee of the Congress, specially authorized to inspect such returns by an Executive order issued under the aforementioned statutory provisions. Such inspection shall be subject to the conditions and restrictions imposed by the Executive order and the rules and regulations hereinafter prescribed.

[1] See E. O. 10619; 3 CFR 1954–1958 Comp.

(b) Only such of the aforementioned returns as are specified in a resolution adopted by the committee in accordance with the rules of the appropriate house of the Congress then applicable to the reporting of a measure or recommendation from such committee shall be open to inspection. Such resolution shall set forth the names and addresses of the taxpayers whose returns it is necessary to inspect and the taxable periods covered by the returns. The inspection of returns authorized in this section may be made by the committee of the Congress, or the subcommittee of a committee of the Congress, authorized as provided in paragraph (a) of this section, acting directly as a committee or as a subcommittee, or by or through such examiners or agents as such committee or subcommittee may designate or appoint in its written request hereinafter mentioned. Upon written request by the chairman of such committee or of such subcommittee to the Secretary of the Treasury, giving the names and addresses of the taxpayers whose returns it is desired to inspect and the taxable periods covered by the returns and stating that the resolution hereinbefore mentioned with respect to the inspection of such returns has been duly adopted by such committee or by the committee under which such subcommittee functions, the Secretary or any officer or employee of the Department of the Treasury, with the approval of the Secretary, shall furnish such committee or subcommittee with any data relating to or contained in any such return or shall make such return available for inspection by such committee or subcommittee or by the examiners or agents designated or appointed by such committee or subcommittee. Such data shall be furnished, or such return shall be made available for inspection, in an office of the Internal Revenue Service. Any information thus obtained by such committee or subcommittee shall be held confidential: *Provided, however,* That any portion thereof relevant or pertinent to the purpose of the investigation may be submitted by the investigating committee to the appropriate house of the Congress.

(c) This section shall not be applicable to any committee authorized by section 6103(d) to inspect returns.

§ 301.6103(a)–102 Inspection by Securities and Exchange Commission of transcript cards and corporate and individual income tax returns.

Pursuant to the provisions of section 6103(a) and of the Executive order issued thereunder,[1] and in the interest of internal management of the Government, corporate and individual income tax returns made for taxable years ending after December 31, 1956, and statistical transcript cards prepared by the Internal Revenue Service from income tax returns of corporations made for taxable years beginning after December 31, 1953, and ending after August 16, 1954, shall be open to inspection by the Securities and Exchange Commission as may be needed in gathering statistical information in carrying out its functions under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj), as amended, or in complying with directives or recommendations of the Bureau of the Budget pursuant to section 103 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18b), relating to the development of programs for preparing statistical information by Executive agencies. Upon request, such inspection may be made by any officer or employee of the Securities and Exchange Commission duly authorized by the Chairman of such Commission to make it. Upon written notice by the Chairman of the Securities and Exchange Commission to the Secretary of the Treasury, stating the type of statistical transcript cards or income tax returns of which inspection is desired, the Secretary, or any officer or employee of the Treasury Department with the approval of the Secretary, may furnish the Securities and Exchange Commission with any data on such cards or returns or may make them available for inspection and the taking of such data as the Chairman of the Securities and Exchange Commission may designate. Such data shall be furnished, or such returns or cards shall be made available for inspection, in the Office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except to the extent that it shall be published or disclosed in statistical form, provided such publication shall not disclose, directly or indirectly, the name or address of any taxpayer.

[1] See Executive Order 10814 3 CFR 1959–1963 Comp.

§ 301.6103(a)–103 Inspection of returns by the Advisory Commission on Intergovernmental Relations.

Pursuant to the provisions of sections 6103(a) and 6106 of the Internal Revenue Code of 1954 (68A Stat. 753, 756; 26 U.S.C. 6103(a), 6106) and of the Executive order issued thereunder,[1] any return with respect to income tax, tax on transfers to avoid income tax, estate tax, gift tax, unemployment tax, manufacturers excise taxes, communications tax, transportation taxes, tax on safe deposit boxes, or tax on coconut and palm oil imposed by such Code shall be open to inspection by the Advisory Commission on Intergovernmental Relations for the purpose of making studies and investigations in connection with the performance of its function of recommending methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers. The inspection of returns herein authorized may be made by any member or employee of the Commission duly authorized by the Chairman of the Commission to make such inspection. Upon written notice by the Chairman to the

[1] See Executive Order 10962 3 CFR 1959–1963 Comp.

Secretary of the Treasury stating the kinds of returns which it is desired to inspect, the Secretary of the Treasury, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Commission with any data on such returns or may make the returns available for inspection and the taking of such data as the Chairman may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

§ 301.6103(a)–104 Inspection by Department of Commerce of income tax returns made under the Internal Revenue Code of 1954.

Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder,[2] and in the interest of the internal management of the Government, income tax returns made under such Code shall be open to inspection by the Department of Commerce. The inspection of returns herein authorized may be made by any officer or employee of the Department of Commerce duly authorized by the Secretary of Commerce to make such inspection. Upon written notice by the Secretary of Commerce to the Secretary of the Treasury stating the classes of returns which it is desired to inspect, the Secretary of the Treasury, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Department of Commerce with any data on such returns or may make the returns available for inspection and the taking of such data as the Secretary of Commerce may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

§ 301.6103(a)–105 Inspection by Renegotiation Board of income tax returns made under the Internal Revenue Code of 1954.

Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder,[2] and in the interest of the internal management of the Government, income tax returns made under such Code shall be open to inspection by the Renegotiation Board. The inspection of returns herein authorized may be made by any officer or employee of the Renegotiation Board duly authorized by the Chairman of the Board to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury stating the classes of returns which it is desired to inspect, the Secretary, or any officer or employee of the Department or the Treasury with the approval of the Secretary, may furnish the Renegotiation Board with any data on such returns or may make the returns available for inspection and the taking of such data as the Chairman of the Board may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

§ 301.6103(a)–106 Inspection by Federal Trade Commission of income tax returns of corporations made under the Internal Revenue Code of 1954.

Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder,[1] and in the interest of the internal management of the Government, income tax returns of corporations made under such Code shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914 (38 Stat. 717). The inspection of returns herein authorized may be made by any officer or employee of the Federal Trade Commission duly authorized by the Chairman of the Commission to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury, the Secretary, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Federal Trade Commission with any data on such returns or may make the returns available for inspection and the taking of such data as the Chairman of the Commission may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

§ 301.6103(a)–107 Inspection of certain interest equalization tax information returns by the Board of Governors of the Federal Reserve System and the Federal Reserve Banks.

Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)), as amended by section 3(c) of the Interest Equalization Tax Act (Pub. L. 88–563, 78 Stat. 844), and the Executive orders issued thereunder,[1] any information return made by a commercial bank under the Interest Equalization Tax Act shall be open to inspection by the Board of Governors of the Federal Reserve System and the Federal Reserve Banks. Such inspection may be made by—

(a) A member or employee of the Board of Governors of the Federal Reserve System duly authorized by the Board, or

(b) An officer or employee of a Federal Reserve Bank duly authorized by the president of such bank.

Upon written notice by the Board of Governors of the Federal Reserve System or the president of a Federal Reserve Bank to the Secretary of the Treasury stating that it is desired to inspect information returns made by commercial banks under the Interest Equalization Tax Act, the Secretary of the Treasury, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Board or the Bank with any data on such returns or make the returns available for inspection and the taking of such data as the Board or the president of the Bank may designate. Such data may be furnished, or such returns may be made available for inspection, in the offices of the Board of Governors of the Federal Reserve System or in the offices of the Federal Reserve Bank, as the case may be. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any person filing such a return.

§ 301.6103(b) Statutory provisions; publicity of returns and lists of taxpayers; inspection by States.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(b) *Inspection by States*—(1) *State officers.* The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of any corporation, at such times and in such manner as the Secretary or his delegate may prescribe.

(2) *State bodies or commissions.* All income returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be pre-

[1] See Executive Order 10907 3 CFR 1959–63 Comp.

[2] See Executive Order 10911 3 CFR 1959–63 Comp.

[1] See Executive Order 10908 3 CFR 1959–63 Comp.

[1] See E.O. 11176, and 11213, 3 CFR 1964–65 Comp.

scribed by regulations made by the Secretary or his delegate. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws.

§ 301.6103(b)–1 Inspection by States.

(a) *Corporation returns of income tax or unemployment tax.* Under the provisions of sections 6103(b)(1) and 6106, the proper tax officers of a State shall have access, upon application made in accordance with the provisions of this paragraph, to the returns filed by any corporation with respect to the taxes imposed by chapters 1, 3, and 6 of the Code and with respect to the unemployment tax imposed by chapter 23 of the Code, or to abstracts of such returns. Application for access to the returns of any corporation, or abstracts thereof, shall be in writing signed by the governor of the State and addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. The application shall set forth the reason why access is desired; the names and official positions of the officers designated to have such access; and, with respect to each return to which access is desired, the name and address of the corporation filing the return, the kind of tax (income tax or unemployment tax) reported on the return, and the taxable year covered by the return.

(b) *Income tax returns*—(1) *In general.* Income tax returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 of the Code shall, upon application made in accordance with the provisions of this paragraph, be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, or any properly designated representative of such official, body, or commission, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in section 6103(b)(2). The application shall be made in writing and signed by the governor of the State and shall be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. The application shall state—

(i) The title of the official, body, or commission by whom or which the inspection is to be made;

(ii) By specific reference, the State tax law which such official, body, or commission is charged with administering and the law under which he or it is so charged;

(iii) The purpose for which the inspection is to be made; and

(iv) If the inspection is for the purpose of obtaining information to be furnished to local taxing authorities, (*a*) the title of the official, body, or commission of each political subdivision of the State, lawfully charged with the administration of the tax laws of such political subdivision, to whom or to which the information secured by the inspection is to be furnished, and (*b*) the purpose for which the information is to be used by such official, body, or commission.

(2) *Returns filed in internal revenue district within or including State*—(i) *General inspection.* Permission may be granted by the Commissioner to any State for general inspection of returns of the taxes imposed by chapters 1, 2, 3, and 6 of the Code which are filed in an internal revenue district within or including such State. If such general inspection is desired, the application made to the Commissioner in accordance with subparagraph (1) of this paragraph shall include a statement that general inspection is desired of returns filed in the internal revenue district or districts within or including the State with respect to the taxes imposed by chapters 1, 2, 3, and 6 of the Code. Permission granted for the general inspection provided for in this subdivision shall continue in effect until such time as the Commissioner by written notice to the governor of the State provides that such inspection will be permitted only on the basis of periodic applications therefor. The governor shall supply to the district director with whom the returns to be inspected were filed a written list of the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application to the Commissioner, and shall keep such list current by appropriate deletions or additions as may be necessary.

(ii) *Inspection of specific returns.* Permission for the general inspection provided in subdivision (i) of this subparagraph includes permission to inspect a specifically identified return when desired. However, a State interested only in examining the returns of particular taxpayers may inspect such returns on written application therefor to the Commissioner. The application in such case shall state, in addition to the information outlined in subparagraph (1) of this paragraph, the name and address of each taxpayer whose return or returns it is desired to inspect, the taxable year covered by each such return, and the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application.

(3) *Returns filed in other internal revenue districts.* In the case of returns filed with the Director of International Operations or in an internal revenue district other than one within or including the State requesting the inspection, permission for the inspection provided for in subparagraph (1) of this paragraph will be granted only with respect to specifically identified returns. The application for such inspection shall be made to the Commissioner as provided in subparagraph (1) of this paragraph and, in addition to the information outlined in such subparagraph and in subparagraph (2)(ii) of this paragraph, shall specify the internal revenue district or office in which the returns to be inspected are believed to have been filed.

(c) *Time and place of inspection.* The internal revenue officer (district director or Director of International Operations) with whom the returns were filed is authorized to make such returns available in accordance with permission granted by the Commissioner pursuant to this section. Such officer shall set a convenient time and place for the inspection. The inspection will be permitted only in the presence of an internal revenue officer or employee and only in an office of the Internal Revenue Service during the regular hours of business of such office.

(d) *Definition of return.* For purposes of section 6103(b) and this section, the term "return" includes information returns, schedules, lists, and other written statements filed with the Internal Revenue Service which are designed to be supplemental to or to become a part of the return, and, in the discretion of the Commissioner, other records or reports containing information included or required by statute to be included in the return. An application for exemption from income tax under section 501(a) filed by an organization described in section 501(c) or (d) in order to establish its exemption is not a return for purposes of section 6103(b). For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104–1.

(e) *Cross reference.* For additional provisions relating to inspection of returns on behalf of States, see paragraph (d) of § 301.6103(a)–1. For penalties for unauthorized disclosure of information, see section 7213.

§ 301.6103(c) Statutory provisions; publicity of returns and lists of taxpayers; inspection by shareholders.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(c) *Inspection by shareholders.* All bona fide shareholders of record owning 1 percent or more of the outstanding stock of any corporation shall, upon making request of the Secretary or his delegate, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

§ 301.6103(c)–1 Inspection of corporation returns by shareholders.

(a) *In general.* Under the provisions of sections 6103(c) and 6106, a bona fide shareholder of record owning one percent or more of the outstanding stock of a corporation shall be allowed, upon request, to examine the annual income tax returns and unemployment tax returns of such corporation and its subsidiaries. A person is not a bona fide shareholder of record within the meaning of section 6103(c) if he acquired his shares for the purpose of obtaining the right to inspect the returns of the corporation. The privilege of inspecting returns in accordance with section 6103(c) and this section is personal to the shareholder and cannot be delegated. In the case of a corporation which has been dissolved, the returns may be ex-

amined by any shareholder who would have been entitled to examine them at the date of dissolution.

(b) *Applications.* Request for permission to inspect returns under this section shall be made in writing and verified by affidavit. The request shall be submitted to the district director or the Director of International Operations, as the case may be, with whom the return was filed. The request shall set forth (1) the name and address of the applicant, (2) the name and address of the corporation whose return or returns it is desired to inspect, (3) the kind of tax and the taxable period covered by each return it is desired to inspect, (4) the amount of the corporation's outstanding capital stock, (5) the number of shares owned by the applicant and the date or dates on which he acquired them, (6) whether the applicant has the beneficial as well as the record title to such shares, and (7) that the applicant did not acquire the shares for the purpose of obtaining the right to inspect the returns of the corporation. The request shall be accompanied by evidence establishing that the applicant is a bona fide shareholder of record of the required amount of stock of the corporation. Such evidence may be in the form of a certificate signed by the president or vice president of the corporation and countersigned by the secretary under the corporate seal.

(c) *Time and place of inspection.* The district director or the Director of International Operations, upon being satisfied from the evidence presented that the applicant meets the statutory requirements, shall grant permission to examine the returns and shall set a convenient time and place for the examination. Examination of returns by shareholders will be permitted only in the presence of an internal revenue officer or employee and only in an office of the Internal Revenue Service during the regular hours of business of such office.

(d) *Definition of return.* For purposes of section 6103(c) and this section, the term "return" includes information returns, schedules, lists, and other written statements filed with the Internal Revenue Service which are designed to be supplemental to or to become a part of the return, and, in the discretion of the Commissioner, other records or reports containing information included or required by statute to be included in the return. An application for exemption from income tax under section 501 (a) filed by an organization described in section 501 (c) or (d) in order to establish its exemption is not a return for purposes of section 6103(c). For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104–1.

(e) *Penalties.* For penalties for unauthorized disclosure of information, see section 7213.

§ 301.6103(d) Statutory provisions; publicity of returns and lists of taxpayers; inspection by committees of Congress.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(d) *Inspection by committees of Congress*—(1) *Committees on Ways and Means and Finance.* (A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) *Joint Committee on Internal Revenue Taxation.* The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

§ 301.6103(d)–1 Inspection by committees of Congress.

(a) *Committees on Ways and Means and Finance and joint and select committees specially authorized to investigate returns.* The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return. Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine. Any revelant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(b) *Joint Committee on Internal Revenue Taxation.* The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and the right to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be. See also section 8023 for authority of the Joint Committee to obtain additional data.

(c) *Application for tax exemption.* The application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501(a) for any taxable year, and any other papers which are in the possession of the Internal Revenue Service and which relate to such application, shall, in accordance with section 6104(a)(2), be made available to any committee of Congress designated in paragraph (a) or (b) of this section as if such papers constituted returns.

§ 301.6103(e) Statutory Provisions; publicity of returns and lists of taxpayers; declarations of estimated tax.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(e) *Declarations of estimated tax.* For purposes of this section, a declaration of estimated tax shall be held and considered a return under this chapter.

§ 301.6103(f) Statutory provisions; publicity of returns and lists of taxpayers; inspection of list of taxpayers.

SEC. 6103. *Publicity of returns and lists of taxpayers.* * * *

(f) *Inspection of list of taxpayers.* The Secretary or his delegate shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the principal internal revenue officer for the internal revenue district in which the return was filed, and in such other places as he may determine, lists containing the name and the post office address of each person making an income tax return in such district.

§ 301.6103(f)–1 Public lists of persons making returns of income tax and of unemployment tax.

In accordance with the provisions of sections 6103(f) and 6106, the district director for each internal revenue district (including the Director of International Operations) shall prepare as soon as practicable in each year and make available to public inspection in his office during regular hours of business—

(a) Lists containing the name and post office address of each person filing an income tax return in such district; and

(b) Lists containing the name and post office address of each person filing a return in such district in respect of unemployment tax imposed by chapter 23 of the Code.

NOTE: §§ 301.6104 to 301.6104–2, inclusive, were prescribed by Treasury Decision 6331, approved October 30, 1958, and amended in respect of § 301.6104–1 by Treasury Decision 6391, approved June 25, 1959.

§ 301.6104 Statutory provisions; publicity of information required from certain exempt organizations and certain trusts.

SEC. 6104. *Publicity of information required from certain exempt organizations and certain trusts*—(a) *Inspection of applications for tax exemption*—(1) *Public inspection*—(A) *In general.* If an organization described in section 501 (c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application filed by the organization with respect to which the Secretary or his delegate made his determination that such organization was entitled to exemption under section 501(a), together with any papers submitted in support of such application, shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application filed after the date of the enactment of this subparagraph, a copy of such application shall be open to public inspection at the appropriate field office of the Internal Revenue Service (determined under regulations prescribed by the Secretary or his delegate). Any inspection under this subparagraph may be made at such times, and in such manner, as the Secretary or his delegate shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subparagraph, the Secretary or his delegate shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 which it has been determined describes such organization.

(B) *Withholding of certain information.* Upon request of the organization submitting any supporting papers described in subparagraph (A), the Secretary or his delegate shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. The Secretary or his delegate shall withhold from public inspection any information contained in supporting papers described in subparagraph (A) the public disclosure of which he determines would adversely affect the national defense.

(2) *Inspection by committee of Congress.* Section 6103(d) shall apply with respect to—

(A) The application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501(a) for any taxable year, and

(B) Any other papers which are in the possession of the Secretary or his delegate and which relate to such application,

as if such papers constituted returns.

(b) *Inspection of annual information returns.* The information required to be furnished by sections 6033(b) and 6034, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary or his delegate may prescribe.

[Sec. 6104 as amended by sec. 75(a), Technical Amendments Act 1958 (72 Stat. 1660)]

§ 301.6104–1 Public inspection of applications for tax exemption.

(a) *Applications open to inspection*—(1) *In general.* An application for exemption, together with any supporting documents, filed by an organization described in section 501 (c) or (d) (or in the corresponding provisions of any prior revenue law) shall be open to public inspection on or after November 3, 1958, in accordance with section 6104(a)(1) and the provisions of this section, if the Commissioner or district director has determined, on the basis of such application, that such organization is exempt from taxation for any taxable year under section 501(a) (or under the corresponding provisions of any prior revenue law). Certain applications for exemption have been destroyed pursuant to Congressional authorization and therefore will not be available for inspection.

(2) *Claim for exemption filed under section 503 or 504 and the regulations thereunder.* Claims for exemption filed to reestablish exempt status after denial thereof under the provisions of section 503 or 504 (or under the corresponding provisions of any prior revenue law), relating to denial of exemption because of certain prohibited transactions or an unreasonable accumulation of income, are considered to be applications for exemption for purposes of section 6104(a)(1) and this section.

(3) *Requirement of exempt status.* An application for exemption and supporting documents shall not be available for public inspection before the organization filing such application has been determined, on the basis of such application, to be exempt from taxation for any taxable year. On the other hand, if the organization has been determined to be exempt for any taxable year, the application for exemption with respect to which such determination was made shall not be withheld from public inspection on the grounds that such organization is determined not to be entitled to exemption for any other taxable year or years.

(b) *Meaning of terms*—(1) *Application for exemption.* (i) For purposes of this section, the term "application for exemption" means the documents described in subdivision (ii) of this subparagraph which the organization was required to file when it applied for exemption.

(ii) (*a*) With respect to an organization for which an application for exemption form is prescribed, the application for exemption includes such form and all documents and statements required to be filed by such form.

(*b*) With respect to an organization described in section 501 (c) or (d) for which no application for exemption form is prescribed, the application for exemption includes the application letter and a conformed copy of the articles of incorporation, declaration of trust, or other instrument of similar import, setting forth the permitted powers or activities of the organization, the bylaws or other code of regulations, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization, and statements showing the character of the organization, the purpose for which it was organized, its actual activities, sources of income and receipts and the disposition thereof, and whether or not any of its income or receipts is credited to surplus or may inure to the benefit of any private shareholder or individual.

(*c*) With respect to a mutual insurance company, the application for exemption shall, in addition to the statements and documents required to be submitted by the form, include copies of the policies or certificates of membership issued by such company.

(*d*) With respect to a title holding company described in section 501(c)(2), if the organization for which title is held has not been specifically notified in writing by the Internal Revenue Service that it is held to be exempt under section 501(a), the application for exemption shall, in addition to the statements and documents required to be submitted by the form, include the statements or documents which would be considered to be included in the application for exemption of the organization for which title is held.

(*e*) With respect to a State chartered credit union described in section 501(c)(14), the application for exemption shall, in addition to the statements and documents indicated in (*b*) of this subdivision, include a statement indicating the State and date of incorporation and showing that the State credit union law with respect to loans, investments, and dividends, if any, is being complied with.

(*f*) With respect to an organization which is described in section 501(c)(3) and which files its application for exemption after July 26, 1959, the application for exemption shall, in addition to the statements and documents required to be submitted by the form, include a detailed statement of the proposed activities of such organization.

(iii) The term "application for exemption" does not include a request for a ruling as to whether a proposed transaction is a prohibited transaction under section 503 (or under the corresponding provisions of any prior revenue law).

(2) *Supporting document.* For purposes of this section, the term "supporting document" means any statement or document submitted by an organization in support of its application for exemption which is not specifically required by subdivision (ii) of subparagraph (1) of this paragraph. For example, a legal brief submitted in support of an application for exemption is a supporting document.

(c) *Withholding of certain information*—(1) *Trade secrets, patents, processes, styles of work, or apparatus*—(i) *In general.* Any information which is submitted by an organization whose application for exemption is open to inspection under this section and which is determined by the Commissioner to relate to any trade secret, patent, process, style of work, or apparatus of the organization submitting such information shall, upon request in writing of such organization, be withheld from public inspection under section 6104(a)(1) and this section, if the Commissioner determines that the disclosure of such information would adversely affect the organization.

(ii) *Request for withholding of information.* Requests for the withholding of information from public inspection as

provided in subdivision (i) of this subparagraph shall—

(a) In the case of applications for exemption filed before November 3, 1958, be made to the Commissioner of Internal Revenue, Attention: Public Information Division, Washington 25, D.C.; or

(b) In the case of applications for exemption filed on or after November 3, 1958, be filed with the office with which the taxpayer filed the documents in which the material to be withheld is contained.

The request shall clearly identify the material desired to be withheld (the document, page, paragraph, and line) and shall include the reasons for the organization's position that the information is of the type which may be withheld from public inspection.

(iii) *Determination.* An organization which has filed a request under the provisions of this subparagraph will be notified of the determination as to whether the information to which the request relates will be withheld from public inspection.

(2) *National defense material.* The Internal Revenue Service shall withhold from public inspection any information which is submitted by an organization whose application for exemption is open to inspection under this section the public disclosure of which the Commissioner determines would adversely affect the national defense.

(d) *Place of inspection.* Applications for exemption, together with any supporting documents, which are open to public inspection under section 6104(a)(1) shall be available for inspection on or after November 3, 1958, in the Office of the Director, Public Information Division, Internal Revenue Service, Washington 25, D.C., regardless of when or where such applications were filed except for such applications as have been destroyed pursuant to Congressional authority. In addition, in the case of an application for exemption filed on or after September 3, 1958, a copy of such application (as defined in paragraph (b)(1) of this section), but not the supporting documents, shall also be available for public inspection on or after November 3, 1958, in the office of the district director with whom the application was required to be filed.

(e) *Procedure for public inspection of applications for exemption*—(1) *Request for inspection.* Applications for exemption and the supporting documents shall be available for public inspection only upon request. If inspection at the national office is desired, the request shall be made in writing to the Commissioner of Internal Revenue, Attention: Director, Public Information Division, Washington 25, D.C. Requests for inspection in the office of a district director shall be made in writing to the appropriate district director. All requests for inspection must include the name and address of the organization which filed the application for exemption the inspection of which is requested. In addition, if such organization has more than one application for exemption open to public inspection under the provisions of section 6104(a)(1), only the most recent of such applications shall be made available for inspection unless the request for inspection specifically states otherwise.

(2) *Time and extent of inspection.* A person requesting public inspection in the manner specified in subparagraph (1) of this paragraph shall be notified by the Internal Revenue Service when the material he desires to inspect will be made available for his inspection. An application for exemption will be made available for public inspection at such reasonable and proper times as not to interfere with its use by the Internal Revenue Service or to exclude other persons from inspecting it. In addition, the Commissioner or district director may limit the number of applications for exemption to be made available to any person for inspection on a given date. The public inspection authorized by section 6104(a)(1) will be allowed only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Copies.* Notes may be taken of the material opened for inspection under this section, and copies may be made manually but not photographically. Copies of such material will be furnished by the Internal Revenue Service to any person making request therefor. Requests for such copies shall be made in the same manner as requests for inspection (see subparagraph (1) of this paragraph) to the office of the Internal Revenue Service in which such material is available for inspection as provided in paragraph (d) of this section. If made at the time of inspection, the request for copies need not be in writing. Any copies furnished will be certified upon request. The Commissioner may prescribe a reasonable fee for furnishing copies of applications and supporting documents pursuant to this section.

(f) *Statement of exempt status.* A statement setting forth the following information with respect to an organization shall be furnished to any person, upon request in writing, after the application for exemption of such organization is open to public inspection under section 6104(a)(1):

(1) The subsection and paragraph of section 501 (or the corresponding provision of any prior revenue law) under which the organization has been determined, on the basis of such application, to qualify for exemption from taxation; and

(2) Whether the organization is currently held to be exempt.

Request for such information may be made in writing to the Commissioner of Internal Revenue, Attention: Public Information Division, Washington 25, D.C., or to the district director with whom the organization's application for exemption was required to be filed.

§ 301.6104–2 Publicity of information on certain information returns.

(a) *In general.* The following information, together with the name and address of the organization or trust furnishing such information, shall be a matter of public record:

(1) The information furnished on Part II of Form 990–A.

(2) The information furnished pursuant to section 6034 (relating to annual information required of trusts claiming a charitable deduction under section 642(c)) on Form 1041–A.

Such information may be used by the Commissioner for the purpose of making and publishing statistical or other studies.

(b) *Place of inspection.* Information furnished on the public portion of returns for years ending prior to December 31, 1962, shall be available to any person during the regular hours of business in the office of the district director with whom the Form 990–A or 1041–A was required to be filed; and information furnished on the public portion of returns for taxable years ending on or after December 31, 1962, shall be available to any person in the Office of the Director, Public Information Division, Internal Revenue Service, Washington, D.C. 20224, as well as in the office of the district director with whom the forms were required to be filed.

(c) *Procedure for public inspection of Forms 990–A and 1041–A*—(1) *Requests for inspection.* Forms 990–A and 1041–A shall be available for public inspection only upon request. If inspection at the National Office is desired, the request shall be made in writing to the Commissioner of Internal Revenue, Attention: Director, Public Information Division, Washington, D.C. 20224. Requests for inspection in the office of a district director shall be made in writing to the appropriate district director. All requests for inspection must include the name and address of the organziation which filed the return, the type of return, and the taxable year for which filed.

(2) *Time and extent of inspection.* A person requesting public inspection in the manner specified in subparagraph (1) of this paragraph shall be notified by the Internal Revenue Service when the material he desires to inspect will be made available for his inspection. Forms 990–A and 1041–A will be made available for public inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from inspecting them. In addition, the Commissioner or district director may limit the number of returns to be made available to any person for inspection on a given date. Inspection will be allowed only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Copies.* Notes may be taken of the material opened for inspection under this section. Copies may be made manually or photographically in the National Office subject to reasonable supervision by the Public Information Division with regard to the facilities and equipment to be employed; and copies may be made manually but not photographically in the offices of the district

directors. Copies of the material opened for inspection will be furnished by the Internal Revenue Service to any person making request therefor. Requests for such copies shall be made in the same manner as requests for inspection (see subparagraph (1) of this paragraph) to the office of the Internal Revenue Service in which such material is available for inspection as provided in paragraph (b) of this section. If made at the time of inspection, the request for copies need not be in writing. Any copies furnished will be certified upon request. The Commissioner may prescribe a reasonable fee for furnishing copies of returns pursuant to this section.

§ 301.6105 Statutory provisions; compilation of relief from excess profits tax cases.

SEC. 6105. *Compilation of relief from excess profits tax cases.* The Secretary or his delegate shall compile for each fiscal year beginning after June 30, 1941, by internal revenue districts, and alphabetically arranged, all cases in which relief has been allowed during such year under the provisions of section 722 of the Internal Revenue Code of 1939, as amended, by the Secretary or his delegate and by the Tax Court of the United States, as the case may be. Such compilation shall contain the name and address of each taxpayer to which relief has been so allowed, the business in which the taxpayer is engaged, the amount of the excess profits credit before such allowance, the increase in such credit claimed, the increase in such credit allowed, and the amount of the gross reduction in the tax under subchapter E of chapter 2 of the Internal Revenue Code of 1939, as amended, and of the gross increase in the tax under chapter 1 of such Code, which results from the operation of section 722 of the Internal Revenue Code of 1939, as amended. In the case of relief allowed by the Tax Court of the United States, the Secretary or his delegate shall set forth the data previously reported under this section or section 722(g) of the Internal Revenue Code of 1939, as amended, with respect to relief previously allowed in such case by the Secretary or his delegate. Such compilation shall be published in the FEDERAL REGISTER.

§ 301.6105–1 Compilation of relief from excess profits tax cases.

Pursuant to and in accordance with the provisions of section 6105, the Commissioner shall make and publish in the FEDERAL REGISTER a compilation, for each fiscal year beginning after June 30, 1941, of all cases in which relief under the provisions of section 722 of the Internal Revenue Code of 1939, as amended, has been allowed during such fiscal year by the Commissioner and by the Tax Court of the United States.

§ 301.6106 Statutory provisions; publicity of unemployment tax returns.

SEC. 6106. *Publicity of unemployment tax returns.* Returns filed with respect to the tax imposed by chapter 23 shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns described in section 6103, except that paragraph (2) of subsections (a) and (b) of section 6103 and section 7213(a)(2) shall not apply.

§ 301.6106–1 Publicity of unemployment tax returns.

For provisions relating to publicity of returns made in respect of unemployment tax imposed by chapter 23 of the Code, see §§ 301.6103(a)–1, 301.6103(b)–1, 301.6103(c)–1, 301.6103(d)–1, and 301.6103(f)–1.

§ 301.6107 Statutory provisions; list of special taxpayers for public inspection.

SEC. 6107. *List of special taxpayers for public inspection.* In the principal internal revenue office in each internal revenue district there shall be kept, for public inspection, an alphabetical list of the names of all persons who have paid special taxes under subtitle D or E within such district. Such list shall be prepared and kept pursuant to regulations prescribed by the Secretary or his delegate, and shall contain the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality there shall be furnished to him a certified copy thereof, as of a public record, for which a fee of $1 for each 100 words or fraction thereof in the copy or copies so requested may be charged.

§ 301.6107–1 Public list of persons paying special taxes.

Each district director shall prepare and keep in his office, for public inspection, an alphabetical list showing the name of each person who shall have paid within his district any of the special taxes imposed by subtitles D or E of the Code, together with the time, place, and business for which such tax was paid. The district director shall furnish, as of a public record, a certified copy of such list, or any portion thereof to any prosecuting officer of any State, county, or municipality upon written request by such officer. A fee of $1 for each 100 words or fraction thereof in the copy or copies so requested may be charged.

§ 301.6108 Statutory provisions; publication of statistics of income.

SEC. 6108. *Publication of statistics of income.* The Secretary or his delegate shall prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.

§ 301.6108–1 Publication of statistics of income.

Pursuant to and in accordance with the provisions of section 6108, statistics reasonably available with respect to the operation of the income tax laws shall be prepared and published annually by the Commissioner.

§ 301.6109 Statutory provisions; identifying numbers.

SEC. 6109. *Identifying numbers*—(a) *Supplying of identifying numbers.* When required by regulations prescribed by the Secretary or his delegate:

(1) *Inclusion in returns.* Any person required under the authority of this title to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.

(2) *Furnishing number to other persons.* Any person with respect to whom a return, statement, or other document is required under the authority of this title to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(3) *Furnishing number of another person.* Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(b) *Limitation.* (1) Except as provided in paragraph (2), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subsection (a) as a return, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subsection (a), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

(c) *Requirement of information.* For purposes of this section, the Secretary or his delegate is authorized to require such information as may be necessary to assign an identifying number to any person.

[Sec. 6109 as added by sec. 1(a), Act of Oct. 5, 1961 (Public Law 87-397, 75 Stat. 828)]

§ 301.6109–1 Identifying numbers.

For provisions concerning the requesting and furnishing of identifying numbers, and their inclusion in returns, statements, or other documents, see the regulations relating to the particular tax.

§ 301.6110 Statutory provisions; cross references.

SEC. 6110. *Cross references.* (1) For reports of Secretary of Agriculture concerning cotton futures, see section 4876.

(2) For inspection of returns, order forms, and prescriptions concerning narcotics, see section 4773.

(3) For inspection of returns, order forms, and prescriptions concerning marihuana, see section 4773.

(4) For authority of Secretary or his delegate to furnish list of special taxpayers, see section 4775.

(5) For inspection of records, returns, etc., concerning gasoline or lubricating oils, see section 4102.

[Sec. 6110 as renumbered by sec. 1(a), Act of Oct. 5, 1961 (Public Law 87-397, 75 Stat. 828)]

Time and Place for Paying Tax

PLACE AND DUE DATE FOR PAYMENT OF TAX

§ 301.6151 Statutory provisions; time and place for paying tax shown on returns.

SEC. 6151. *Time and place for paying tax shown on returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the

time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Exceptions*—(1) *Income tax not computed by taxpayer.* If the taxpayer elects under section 6014 not to show the tax on the return, the amount determined by the Secretary or his delegate as payable shall be paid within 30 days after the mailing by the Secretary or his delegate to the taxpayer of a notice stating such amount and making demand therefor.

(2) *Use of Government depositaries.* For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 301.6151–1 Time and place for paying tax shown on returns.

For provisions concerning the time and place for paying tax shown on returns with respect to a particular tax, see the regulations relating to such tax.

§ 301.6152 Statutory provisions; installment payments.

SEC. 6152. *Installment payments*—(a) *Privilege to elect to make installment payments*—(1) *Corporations.* A corporation subject to the taxes imposed by chapter 1 may elect to pay the unpaid amount of such taxes in installments as follows:

(A) With respect to taxable years ending before December 31, 1954, four installments, the first two of which shall be 45 percent, respectively, of such taxes and the last two of which shall be 5 percent, respectively, of such taxes;

(B) With respect to taxable years ending on or after December 31, 1954, two equal installments.

(2) *Estates of decedents.* A decedent's estate subject to the tax imposed by chapter 1 may elect to pay such tax in four equal installments.

(b) *Dates prescribed for payment of installments*—(1) *Four installments.* In any case (other than payment of estimated income tax) in which the tax may be paid in four installments, the first installment shall be paid on the date prescribed for the payment of the tax, the second installment shall be paid on or before 3 months, the third installment or or before 6 months, and the fourth installment on or before 9 months, after such date.

(2) *Two installments.* In any case (other than payment of estimated income tax) in which the tax may be paid in two installments, the first installment shall be paid on the date prescribed for the payment of the tax, and the second installment shall be paid on or before 3 months after such date.

(c) *Proration of deficiency to installments.* If an election has been made to pay the tax imposed by chapter 1 in installments and a deficiency has been assessed, the deficiency shall be prorated to such installments. Except as provided in section 6861 (relating to jeopardy assessments), that part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as and as part of such installment. That part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate.

(d) *Acceleration of payment.* If any installment (other than an installment of estimated income tax) is not paid on or before the date fixed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary or his delegate.

[Sec. 6152 as amended by sec. 3, Act of Sept. 1, 1954 (Pub. Law 767, 83d Cong., 68 Stat. 1130)]

§ 301.6152–1 Installment payments.

For provisions relating to the installment payments of income taxes, see § 1.6152–1 of this chapter (Income Tax Regulations).

§ 301.6153 Statutory provisions; installment payments of estimated income tax by individuals.

SEC. 6153. *Installment payments of estimated income tax by individuals*—(a) *General rule.* The amount of estimated tax (as defined in section 6015(c)) with respect to which a declaration is required under section 6015 shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by section 6073(a) to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by section 6073(a) to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year,

(4) If the declaration is filed after September 15 of the taxable year, and is not required by section 6073(a) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed in section 6073(a) (including cases in which an extension of time for filing the declaration has been granted under section 6081), paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 6073(a), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(b) *Farmers or fishermen.* If an individual referred to in section 6073(b) (relating to income from farming or fishing) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) *Amendments of declaration.* If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) *Application to short taxable years.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(e) *Fiscal years.* In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(f) *Installments paid in advance.* At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

[Sec. 6153 as amended by sec. 1 (a)(3), (c), Act of Sept. 25, 1962 (Pub. Law 87–682, 76 Stat. 575)]

§ 301.6153–1 Installment payments of estimated income tax by individuals.

For provisions relating to installment payments of estimated income tax by individuals, see § § 1.6153–1 to 1.6153–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6154 Statutory provisions; installment payments of estimated income tax by corporations.

SEC. 6154. *Installment payments of estimated income tax by corporations*—(a) *Amount of estimated income tax required to be paid.* The amount of estimated tax (as defined in section 6016(b)) with respect to which a declaration is required under section 6016 shall be paid as follows:

If the taxable year ends—	*The amount required to be paid shall be the following percentage of the estimated tax*
On or after Dec. 31, 1955, and before Dec. 31, 1956	10
On or after Dec. 31, 1956, and before Dec. 31, 1957	20
On or after Dec. 31, 1957, and before Dec. 31, 1958	30
On or after Dec. 31, 1958 and before Dec. 31, 1959	40
On or after Dec. 31, 1959	50

(b) *Time for payment of installment.* If the declaration is filed on or before the 15th day of the 9th month of the taxable year, the amount determined under subsection (a) shall be paid in two equal installments. The first installment shall be paid on or before the 15th day of the 9th month of the taxable year, and the second installment shall be paid on or before the 15th day of the 12th month of the taxable year. If the declaration is filed after the 15th day of the 9th month of the taxable year, the amount determined under subsection (a) shall be paid in full on or before the 15th day of the 12th month of the taxable year.

(c) *Amendment of declaration.* If any amendment of a declaration is filed, installments payable on the 15th day of the 12th month, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment.

(d) *Application to short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(e) *Installments paid in advance.* At the election of the corporation, any installment

of the estimated tax may be paid prior to the date prescribed for its payment.

§ 301.6154–1 Installment payments of estimated income tax by corporations.

For provisions relating to installment payments of estimated income tax by corporations, see §§ 1.6154–1 to 1.6154–3, inclusive, of this chapter (Income Tax Regulations).

§ 301.6155 Statutory provisions; payment on notice and demand.

SEC. 6155. *Payment on notice and demand*—(a) *General rule.* Upon receipt of notice and demand from the Secretary or his delegate, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to tax, and assessable penalties) stated in such notice and demand.

(b) *Cross references.* (1) For restrictions on assessment and collection of deficiency assessment of taxes subject to the jurisdiction of the Tax Court, see sections 6212 and 6213.

(2) For provisions relating to assessment of claims allowed in a bankruptcy or receivership proceeding, see section 6873.

(3) For provisions relating to jeopardy assessments, see subchapter A of Chapter 70.

§ 301.6155–1 Payment on notice and demand.

Upon receipt of notice and demand from the district director (including the Director of International Operations) or the director of the regional service center, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to the tax, and assessable penalties) stated in such notice and demand.

§ 301.6156 Statutory provisions; installment payments of tax on use of highway motor vehicles.

SEC. 6156. *Installment payments of tax on use of highway motor vehicles*—(a) *Privilege to pay tax in installments.* If the taxpayer files a return of the tax imposed by section 4481 on or before the date prescribed for the filing of such return, he may elect to pay the tax shown on such return in equal installments in accordance with the following table:

If liability is incurred in:	*The number of installments shall be*—
July, August, or September	4
October, November, or December	3
January, February, or March	2

(b) *Dates for paying installments.* In the case of any tax payable in installments by reason of an election under subsection (a)—

(1) The first installment shall be paid on the date prescribed for payment of the tax,

(2) The second installment shall be paid on or before the last day of the third month following the calendar quarter in which the liability was incurred,

(3) The third installment (if any) shall be paid on or before the last day of the sixth month following the calendar quarter in which the liability was incurred, and

(4) The fourth installment (if any) shall be paid on or before the last day of the ninth month following the calendar quarter in which the liability was incurred.

(c) *Proration of additional tax to installments.* If an election has been made under subsection (a) in respect of tax reported on a return filed by the taxpayer and tax required to be shown but not shown on such return is assessed before the date prescribed for payment of the last installment; the additional tax shall be prorated equally to the installments for which the election was made. That part of the additional tax so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as and as part of such installment. That part of the additional tax so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate.

(d) *Acceleration of payments.* If the taxpayer does not pay any installment under this section on or before the date prescribed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary or his delegate.

(e) *Section inapplicable to certain liabilities.* This section shall not apply to any liability for tax incurred in—

(1) April, May, or June of any year, or

(2) July, August, or September of 1972.

[Sec. 6156 as added by sec. 203(c)(1), Federal-Aid Highway Act of 1961 (75 Stat. 125)]

§ 301.6156–1 Installment payments of tax on use of highway motor vehicles.

For provisions relating to installment payments of the tax on use of highway motor vehicles, see § 41.6156–1 of this chapter (Highway Motor Vehicle Use Tax Regulations).

§ 301.6157 Statutory provisions; payment of taxes under provisions of the Tariff Act.

SEC. 6157. *Payment of taxes under provisions of the Tariff Act.* For collection under the provisions of the Tariff Act of 1930 of the taxes imposed by sesction 4501(b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

[Sec. 6156 as renumbered by sec. 203(c)(1), Federal-Aid Highway Act 1961 (75 Stat. 125)]

EXTENSIONS OF TIME FOR PAYMENT

§ 301.6161 Statutory provisions; extension of time for paying tax.

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

(2) *Estate tax.* If the Secretary or his delegate finds—

(A) That the payment, on the due date, of any part of the amount determined by the executor as the tax imposed by chapter 11,

(B) That the payment, on the date fixed for the payment of any installment under section 6166, of any part of such installment (including any part of a deficiency prorated to an installment the date for payment of which had not arrived), or

(C) That the payment upon notice and demand of any part of a deficiency prorated under the provisions of section 6166 to installments the date for payment of which had arrived,

would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 10 years from the date prescribed by section 6151(a) for payment of the tax.

(b) *Amount determined as deficiency.* Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may extend, to the extent provided below, the time for payment of the amount determined as a deficiency:

(1) In the case of a tax imposed by chapter 1 or 12, for a period not to exceed 18 months from the date fixed for payment of the deficiency, and, in exceptional cases, for a further period not to exceed 12 months;

(2) In the case of a tax imposed by chapter 11, for a period not to exceed 4 years from the date otherwise fixed for payment of the deficiency.

An extension under this subsection may be granted only where it is shown to the satisfaction of the Secretary or his delegate that the payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1, to the estate in the case of a tax imposed by chapter 11, or to the donor in the case of a tax imposed by chapter 12. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(c) *Claims in bankruptcy or receivership proceedings.* Extensions of time for payment of any portion of a claim for tax under chapter 1 or chapter 12, allowed in bankruptcy or receivership proceedings, which is unpaid, may be had in the same manner and subject to the same provisions and limitations as provided in subsection (b) in respect of a deficiency in such tax.

(d) *Cross references*—(1) *Period of limitation.* For extension of the period of limitation in case of an extension under subsection (a)(2) or subsection (b)(2), see section 6503(d).

(2) *Security.* For authority of the Secretary or his delegate to require security in case of an extension under subsection (a)(2) or subsection (b), see section 6165.

[Sec. 6161 as amended by sec. 206(c), Technical Amendments Act 1958 (72 Stat. 1684)]

§ 301.6161–1 Extension of time for paying tax.

For provisions concerning the extension of time for paying a particular tax or for paying an amount determined as a deficiency, see the regulations relating to such tax.

§ 301.6162 Statutory provisions; extension of time for payment of tax on gain attributable to liquidation of personal holding companies.

SEC. 6162. *Extension of time for payment of tax on gain attributable to liquidation of personal holding companies*—(a) *Extension permitted.* The Secretary or his delegate may (under regulations prescribed by the Secretary or his delegate) extend (for a period not to exceed 5 years from the date fixed for the payment of the tax) the time for the payment of such portion of the amount determined as the tax under chapter 1 by the taxpayer for any taxable year beginning before January 1, 1956, as is attributable to the short-term or long-term capital gain derived by the taxpayer from the receipt by him of property other than money on a complete liquidation of a corporation to which section 331(a)(1) or 342 applies. This section shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions in complete liquidation), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company. An extension under this section shall be granted only if it is shown to the satisfaction of the Secretary or his delegate that the

failure to grant the extension will result in undue hardship to the taxpayer.

(b) *Security.* For authority of the Secretary or his delegate to require security in the case of such an extension, see section 6165.

§ 301.6162–1 Extension of time for payment of tax on gain attributable to liquidation of personal holding companies.

For provisions relating to the extension of time for payment of tax on gain attributable to liquidation of personal holding companies, see § 1.6162–1 of this chapter (Income Tax Regulations).

§ 301.6163 Statutory provisions; extension of time for payment of estate tax on value of reversionary or remainder interest in property.

SEC. 6163. *Extension of time for payment of estate tax on value of reversionary or remainder interest in property*—(a) *Extension permitted.* If the value of a reversionary or remainder interest in property is included under chapter 11 in the value of the gross estate, the payment of the part of the tax under chapter 11 attributable to such interest may, at the election of the executor, be postponed until 6 months after the termination of the precedent interest or interests in the property, under such regulations as the Secretary or his delegate may prescribe.

(b) *Extension to prevent undue hardship.* If the Secretary or his delegate finds that the payment of the tax at the expiration of the period of postponement provided for in subsection (a) would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 2 years from the expiration of such period of postponement.

(c) *Cross references*—(1) *Interest.* For provisions requiring the payment of interest for the period of such extension, see section 6601(b).

(2) *Security.* For authority of the Secretary or his delegate to require security in the case of such extension, see section 6165.

[Sec. 6163 as amended by sec. 66(b)(1), Technical Amendments Act 1958 (72 Stat. 1658)]

§ 301.6163–1 Extension of time for payment of estate tax on value of reversionary or remainder interest in property.

For provisions relating to the extension of time for payment of estate tax on value of reversionary or remainder interest in property, see § 20.6163–1 of this chapter (Estate Tax Regulations).

§ 301.6164 Statutory provisions; extension of time for payment of taxes by corporations expecting carrybacks.

SEC. 6164. *Extension of time for payment of taxes by corporations expecting carrybacks*—(a) *In general.* If a corporation, in any taxable year, files with the Secretary or his delegate a statement, as provided in subsection (b), with respect to an expected net operating loss carryback from such taxable year, the time for payment of all or part of any tax imposed by subtitle A for the taxable year immediately preceding such taxable year shall be extended, to the extent and subject to the conditions and limitations hereinafter provided in this section.

(b) *Contents of statement.* The statement shall be filed at such time and in such manner and form as the Secretary or his delegate may by regulations prescribe. Such statement shall set forth that the corporation expects to have a net operating loss carryback, as provided in section 172(b), from the taxable year in which such statement is made, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

(1) The estimated amount of the expected net operating loss;

(2) The reasons, facts, and circumstances which cause the corporation to expect such net operating loss;

(3) The amount of the reduction of the tax previously determined attributable to the expected carryback, such tax previously determined being ascertained in accordance with the method prescribed in section 1314(a); and such reduction being determined by applying the expected carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The tax and the part thereof the time for payment of which is to be extended; and

(5) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

The Secretary or his delegate shall, upon request, furnish a receipt for any statement filed, which shall set forth the date of such filing.

(c) *Amount to which extension relates and installment payments.* The amount the time for payment of which may be extended under subsection (a) with respect to any tax shall not exceed the amount of such tax shown on the return, increased by any amount assessed as a deficiency (or as interest or addition to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to the date of such filing, and the total amount of the tax the time for payment of which may be extended shall not exceed the amount stated under subsection (b)(3). For purposes of this subsection, an amount shall not be considered as required to be paid unless shown on the return or assessed as a deficiency (or as interest or addition to the tax), and an amount assessed as a deficiency (or as interest or addition to the tax) shall be considered to be required to be paid prior to the date of filing of the statement if the 10th day after notice and demand for its payment occurs prior to such date. If an extension of time under this section relates to only a part of the tax, the time for payment of the remainder shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 6152.

(d) *Period of extension.* The extension of time for payment provided in this section shall expire—

(1) On the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss, or

(2) If an application for tentative carryback adjustment provided in section 6411 with respect to such loss is filed before the expiration of the period prescribed in paragraph (1), on the date on which notice is mailed by certified mail or registered mail by the Secretary or his delegate to the taxpayer that such application is allowed or disallowed in whole or in part.

(e) *Revised statements.* Each statement filed under subsection (a) with respect to any taxable year shall be in lieu of the last statement previously filed with respect to such year. If the amount the time for payment of which is extended under a statement filed is less than the amount under the last statement previously filed, the extension of time shall be terminated as to the difference between the two amounts.

(f) *Termination.* The Secretary or his delegate is not required to make any examination of the statement, but he may make such examination thereof as he deems necessary and practicable. The Secretary or his delegate shall terminate the extension as to any part of the amount to which it relates which he deems should be terminated because, upon such examination, he believes that, as of the time such examination is made, all or any part of the statement clearly is in a material respect erroneous or unreasonable.

(g) *Payments on termination.* If an extension of time is terminated under subsection (e) or (f) with respect to any amount, then—

(1) No further extension of time shall be made under this section with respect to such amount, and

(2) The time for payment of such amount shall be considered to be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in installments as provided in section 6152.

(h) *Jeopardy.* If the Secretary or his delegate believes that collection of the amount to which an extension under this section relates is in jeopardy, he shall immediately terminate such extension, and notice and demand shall be made by him for payment of such amount.

(i) *Consolidated returns.* If the corporation seeking an extension of time under this section made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises or for the preceding taxable year affected by such loss, the provisions of such section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

[Sec. 6164 as amended by sec. 89(b), Technical Amendments Act 1958 (72 Stat. 1668)]

§ 301.6164–1 Extensions of time for payment of taxes by corporations expecting carrybacks.

For provisions relating to the extension of time for payment of taxes by corporations expecting carrybacks, see §§ 1.6164–1 to 1.6164–9, inclusive, of this chapter (Income Tax Regulations).

§ 301.6165 Statutory provisions; bonds where time to pay tax or deficiency has been extended.

SEC. 6165. *Bonds where time to pay tax or deficiency has been extended.* In the event the Secretary or his delegate grants any extension of time within which to pay any tax or any deficiency therein, the Secretary or his delegate may require the taxpayer to furnish a bond in such amount (not exceeding double the amount with respect to which the extension is granted) conditioned upon the payment of the amount extended in accordance with the terms of such extension.

§ 301.6165–1 Bonds where time to pay the tax or deficiency has been extended.

For provisions concerning bonds where time to pay a tax or deficiency has been extended, see the regulations relating to the particular tax.

§ 301.6166 Statutory provisions; extension of time for payment of estate tax where estate consists largely of interest in closely held business.

SEC. 6166. *Extension of time for payment of estate tax where estate consists largely*

of interest in closely held business—(a) *Extension permitted.* If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds either—

(1) 35 percent of the value of the gross estate of such decedent, or

(2) 50 percent of the taxable estate of such decedent,

the executor may elect to pay part or all of the tax imposed by section 2001 in two or more (but not exceeding 10) equal installments. Any such election shall be made not later than the time prescribed by section 6075(a) for filing the return of such tax (including extensions thereof), and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe. If an election under this section is made, the provisions of this subtitle shall apply as though the Secretary or his delegate were extending the time for payment of the tax. For purposes of this section, value shall be value determined for Federal estate tax purposes.

(b) *Limitation.* The maximum amount of tax which may be paid in installments as provided in this section shall be an amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as the value of the interest in a closely held business which qualifies under subsection (a) bears to the value of the gross estate.

(c) *Closely held business.* For purposes of this section, the term "interest in a closely held business" means—

(1) An interest as a proprietor in a trade or business carried on as a proprietorship.

(2) An interest as a partner in a partnership carrying on a trade or business, if—

(A) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

(B) Such partnership had 10 or less partners,

(3) Stock in a corporation carrying on a trade or business, if—

(A) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

(B) Such corporation had 10 or less shareholders.

For purposes of this subsection, determinations shall be made as of the time immediately before the decedent's death.

(d) *Special rule for interests in two or more closely held businesses.* For purposes of subsections (a), (b), and (h)(1), interests in two or more closely held businesses, with respect to each of which there is included in determining the value of the decedent's gross estate more than 50 percent of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 50 percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

(e) *Date for payment of installments.* If an election is made under subsection (a), the first installment shall be paid on or before the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is one year after the date prescribed by this subsection for payment of the preceding installment.

(f) *Proration of deficiency to installments.* If an election is made under subsection (a) to pay any part of the tax imposed by section 2001 in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(g) *Time for payment of interest.* If the time for payment of any amount of tax has been extended under this section, interest payable under section 6601 on any unpaid portion of such amount shall be paid annually at the same time as, and as a part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Secretary or his delegate. In applying section 6601(b) (relating to the application of the 4-percent rate of interest in the case of certain extensions of time to pay estate tax) in the case of a deficiency, the entire amount which is prorated to installments under this section shall be treated as an amount of tax the payment of which is extended under this section.

(h) *Acceleration of payment*—(1) *Withdrawal of funds from business; disposition of interest.* (A) If—

(i) Aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under subsection (a), made with respect to such interest, equal or exceed 50 percent of the value of such trade or business, or

(ii) 50 percent or more in value of an interest in a closely held business which qualifies under subsection (a) is distributed, sold, exchanged, or otherwise disposed of,

then the extension of time for payment of tax provided in this section shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(B) In the case of a distribution in redemption of stock to which section 303 (or so much of section 304 as relates to section 303) applies—

(i) Subparagarph (A)(i) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed, and

(ii) Subparagraph (A)(ii) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (e) for payment of the first installment which becomes due after the date of the distribution, there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

(C) Subparagraph (A)(ii) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368(a)(1) nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies; but any stock received in such an exchange shall be treated for purposes of such subparagraph as an interest qualifying under subsection (a).

(D) Subparagraph (A)(ii) does not apply to a transfer of property of the decedent by the executor to a person entitled to receive such property under the decendent's will or under the applicable law of decent and distribution.

(2) *Undistributed income of estate.* (A) If an election is made under this section and the estate has undistributed net income for any taxable year after its fourth taxable year, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in section 643) exceeds the sum of—

(i) The amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a) (relating to deduction for distributions, etc.);

(ii) The amount of tax imposed for the taxable year on the estate under chapter 1; and

(iii) The amount of the Federal estate tax (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

(3) *Failure to pay installment.* If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(i) *Transitional rules*—(1) *In general.* If—

(A) A deficiency in the tax imposed by section 2001 is assessed after the date of the enactment of this section, and

(B) The estate qualifies under paragraph (1) or (2) of subsection (a),

the executor may elect to pay the deficiency in installments. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(2) *Time of election.* An election under this subsection shall be made not later than 60 days after issuance of notice and demand by the Secretary or his delegate for the payment of the deficiency, and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) *Effect of election on payment.* If an election is made under this subsection, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to the installments which would have been due if an election had been timely made under this section at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this subsection. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

(4) *Application of subsection (h)(2).* In the case of an election under this subsection, subsection (h)(2) shall not apply with re-

spect to undistributed net income for any taxable year ending before January 1, 1960.

(j) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to the application of this section.

(k) *Cross references*—(1) *Interest.* For provisions requiring the payment of interest at the rate of 4 percent per annum for the period of an extension, see section 6601(b).

(2) *Security.* For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

(3) *Period of limitation.* For extension of the period of limitation in the case of an extension under this section, see section 6503(d).

[Sec. 6166 as added by sec. 206(a), Technical Amendments Act 1958 (72 Stat. 1681)]

§ 301.6166–1 Extension of time for payment of estate tax where estate consists largely of interest in closely held business.

For provisions relating to the extension of time for payment of estate tax where estate consists largely of interest in closely held business, see §§ 20.6166–1 to 20.6166–4, inclusive, of this chapter (Estate Tax Regulations).

Assessment

In General

§ 301.6201 Statutory provisions; assessment authority.

Sec. 6201. *Assessment authority*—(a) *Authority of Secretary or delegate.* The Secretary or his delegate is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) *Taxes shown on return.* The Secretary or his delegate shall assess all taxes determined by the taxpayer or by the Secretary or his delegate as to which returns or lists are made under this title.

(2) *Unpaid taxes payable by stamp*—(A) *Omitted stamps.* Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary or his delegate, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary or his delegate determines to be liable for such tax.

(B) *Check or money order not duly paid.* In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) *Erroneous income tax prepayment credits.* If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

(b) *Estimated income tax.* No unpaid amount of estimated tax under section 6153 or 6154 shall be assessed.

(c) *Compensation of child.* Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section 73(a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) *Deficiency proceedings.* For special rules applicable to deficiencies of income, estate, and gift taxes, see subchapter B.

§ 301.6201–1 Assessment authority.

(a) *In general.* The district director is authorized and required to make all inquiries necessary to the determination and assessment of all taxes imposed by the Internal Revenue Code of 1954 or any prior internal revenue law. The district director is further authorized and required, and the director of the regional service center is authorized, to make the determinations and the assessments of such taxes. However, certain inquiries and determinations are, by direction of the Commissioner, made by other officials, such as assistant regional commissioners. The term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the district director and the director of the regional service center to make assessments includes the following:

(1) *Taxes shown on return.* The district director or the director of the regional service center shall assess all taxes determined by the taxpayer or by the district director or the director of the regional service center and disclosed on a return or list.

(2) *Unpaid taxes payable by stamp.* (i) If without the use of the proper stamp:

(*a*) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(*b*) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs;

the district director, upon such information as he can obtain, must estimate the amount of the tax which has not been paid and the district director or the director of the regional service center must make assessment therefor upon the person the district director determines to be liable for the tax. However, the district director or the director of the regional service center may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(ii) If a taxpayer gives a check or money order as a payment for stamps but the check or money order is not paid upon presentment, then the district director or the director of the regional service center shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the district director.

(3) *Erroneous income tax prepayment credits.* If the amount of income tax withheld or the amount of estimated income tax paid is overstated by a taxpayer on a return or on a claim for refund, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund shall be assessed by the district director or the director of the regional service center in the same manner as in the case of a mathematical error on the return. See section 6213(b)(1), relating to exceptions to restrictions on assessment.

(b) *Estimated income tax.* Neither the district director nor the director of the regional service center shall assess any amount of estimated income tax required to be paid under section 6153 or 6154 which is unpaid.

(c) *Compensation of child.* Any income tax assessed against a child, to the extent of the amount attributable to income included in the gross income of the child solely by reason of section 73(a) or the corresponding provision of prior law, if not paid by the child, shall, for the purposes of the income tax imposed by chapter 1 of the Code (or the corresponding provisions of prior law), be considered as having also been properly assessed against the parent. In any case in which the earnings of the child are included in the gross income of the child solely by reason of section 73(a) or the corresponding provision of prior law, the parent's liability is an amount equal to the amount by which the tax assessed against the child (and not paid by him) has been increased by reason of the inclusion of such earnings in the gross income of the child. Thus, if for the calendar year 1954 the child has income of $1,000 from investments and of $3,000 for services rendered, and the latter amount is includible in the gross income of the child under section 73(a) and the child has no wife or dependents, the tax liability determined under section 3 is $625. If the child had only the investment income of $1,000, his tax liability would be $62. If the tax of $625 is assessed against the child, the difference between $625 and $62, or $563, is the amount of such tax which is considered to have been properly assessed against the parent, if not paid by the child.

§ 301.6202 Statutory provisions; establishment by regulations of mode or time of assessment.

Sec. 6202. *Establishment by regulations of mode or time of assessment.* If the mode or time for the assessment of any internal revenue tax (including interest, additional amounts, additions to the tax, and assessable penalties) is not otherwise provided for, the Secretary or his delegate may establish the same by regulations.

§ 301.6203 Statutory provisions; method of assessment.

Sec. 6203. *Method of assessment.* The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary or his delegate in accordance with rules or regulations prescribed by the

Secretary or his delegate. Upon request of the taxpayer, the Secretary or his delegate shall furnish the taxpayer a copy of the record of the assessment.

§ 301.6203–1 Method of assessment.

The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

§ 301.6204 Statutory provisions; supplemental assessments.

SEC. 6204. *Supplemental assessments*—(a) *General rule.* The Secretary or his delegate may, at any time within the period prescribed for assessment, make a supplemental assessment whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(b) *Restrictions on assessment.* For restrictions on assessment of deficiencies in income, estate, and gift taxes, see section 6213.

§ 301.6204–1 Supplemental assessments.

If any assessment is incomplete or incorrect in any material respect, the district director or the director of the regional service center, subject to the restrictions with respect to the assessment of deficiencies in income, estate, and gift taxes, and subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

§ 301.6205 Statutory provisions; special rules applicable to certain employment taxes.

SEC. 6205. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) *Guam or American Samoa as employer.* For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) *Underpayments.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

[Sec. 6205 as amended by sec. 103(r)(1), Social Security Amendments 1960 (74 Stat. 940)]

§ 301.6205–1 Special rules applicable to certain employment taxes.

For regulations under section 6205, see § 31.6205–1 of this chapter (Employment Tax Regulations).

§ 301.6206 Statutory provisions; special rules applicable to excessive claims under sections 6420 and 6421.

SEC. 6206. *Special rules applicable to excessive claims under sections 6420 and 6421.* Any portion of a payment made under section 6420 or 6421 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if it were a tax imposed by section 4081 and as if the person who made the claim were liable for such tax. The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for the filing of the claim under section 6420 or 6421, as the case may be.

[Sec. 6206 as added by sec. 4(b)(1), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90), and as amended by sec. 208(d)(1), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.6206–1 Special rules applicable to excessive claims under sections 6420 and 6421.

For regulations under section 6206, see § 48.6206–1 of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.6207 Statutory provisions; cross references.

SEC. 6207. *Cross references.* (1) For prohibition of suits to restrain assessment of any tax, see section 7421.

(2) For prohibition of assessment of taxes against insolvent banks, see section 7507.

(3) For assessment where property subject to tax has been sold in a distraint proceeding without the tax having been assessed prior to such sale, see section 6342.

(4) For assessment with respect to taxes required to be paid by chapter 52, see section 5703.

(5) For assessment in case of distilled spirits removed from place where distilled and not deposited in bonded warehouse, see section 5006(c).

(6) For period of limitation upon assessment, see chapter 66.

(7) For assessment under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501(b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

[Sec. 6206 as renumbered 6207 by sec. 4(b)(1), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90), and as amended by sec. 204(2), (3), Excise Tax Technical Changes Act 1958 (72 Stat. 1428)]

DEFICIENCY PROCEDURES

§ 301.6211 Statutory provisions; definition of a deficiency.

SEC. 6211. *Definition of a deficiency*—(a) *In general.* For purposes of this title in the case of income, estate, and gift taxes, imposed by subtitles A and B, the term "deficiency" means the amount by which the tax imposed by subtitles A or B exceeds the excess of—

(1) The sum of

(A) The amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) The amount of rebates, as defined in subsection (b)(2), made.

(b) *Rules for application of subsection (a).* For purposes of this section—

(1) The tax imposed by chapter 1 and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451.

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitles A or B was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

(3) The computation by the Secretary or his delegate, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

§ 301.6211–1 Deficiency defined.

(a) In the case of the income tax imposed by subtitle A of the Code, the estate tax imposed by chapter 11, subtitle B, of the Code, or the gift tax imposed by chapter 12, subtitle B, of the Code, the term "deficiency" means the excess of the tax (income, estate, or gift tax, as the case may be) over the sum of the amount shown as such tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as a deficiency; but such sum shall first be reduced by the amount of rebates made. If no return is made, or if the return (except a return of income tax on Form 1040A pursuant to sec. 6014) does not show any tax, for the purpose of the definition "the amount shown as the tax by the taxpayer upon his return" shall be considered as zero. Accordingly, in any such case, if no deficiencies with respect to the tax have been as-

sessed, or collected without assessment, and no rebates with respect to the tax have been made, the deficiency is the amount of the tax imposed by subtitle A, chapter 11, or chapter 12. Additional tax shown on an "amended return", so-called, filed after the due date of the return, is a deficiency within the meaning of the Code.

(b) For purposes of the definition, the income tax imposed by subtitle A and the income tax shown on the return shall both be determined without regard to the credit provided in section 31 for income tax withheld at the source and without regard to so much of the credit provided in section 32 for income taxes witheld at the source as exceeds 2 percent of the interest on tax-free covenant bonds described in section 1451. Payments on account of estimated income tax, like other payments of tax by the taxpayer, shall likewise be disregarded in the determination of a deficiency.

(c) The computation by the district director, pursuant to section 6014(a), of the income tax imposed by subtitle A shall be considered as having been made by the taxpayer and the tax so computed shall be considered as the tax shown by the taxpayer upon his return.

(d) If so much of the credit claimed on the return for income taxes withheld at the source as exceeds 2 percent of the interest on tax-free convenant bonds is greater than the amount of such credit allowable, the unpaid portion of the tax attributable to such difference will be collected not as a deficiency but as an underpayment of the tax shown on the return.

(e) This section may be illustrated by the following examples:

Example (1). The amount of income tax shown by the taxpayer upon his return for the calendar year 1954 was $1,600. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. He claimed a credit in the amount of $2,050 for tax withheld at source on wages under section 3402, and a refund of $450 (not a rebate under section 6211) was made to him as an overpayment of tax for the taxable year. It is later determined that the correct tax for the taxable year is $1,850. A deficiency of $250 is determined as follows:

Tax imposed by subtitle A		$1,850
Tax shown on return	$1,600	
Tax previously assessed (or collected without assessment) as a deficiency	None	
Total	1,600	
Amount of rebates made	None	
Balance		1,600
Deficiency		250

Example (2). The taxpayer made a return for the calendar year 1954 showing a tax of $1,250 before any credits for tax withheld at the source. He claimed a credit in the amount of $800 for tax withheld at source on wages under section 3402 and $60 for tax paid at source under section 1451 upon interest on bonds containing a tax-free covenant. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. The district director determines that the 2 percent tax paid at the source on tax-free covenant bonds is $40 instead of $60 as claimed by the taxpayer and that the tax imposed by subtitle A is $1,360 (total tax $1,400 less $40 paid at source on tax-free covenant bonds). A deficiency in the amount of $170 is determined as follows:

Tax imposed by subtitle A ($1,400 minus $40)		$1,360
Tax shown on return ($1,250 minus $60)	$1,190	
Tax previously assessed (or collected without assessment) as a deficiency	None	
Total	1,190	
Amount of rebates made	None	
Balance		1,190
Deficiency		170

(f) As used in section 6211, the term "rebate" means so much of an abatement, credit, refund, or other repayment as is made on the ground that the tax imposed by subtitle A or B of the Code is less than the excess of (1) the amount shown as the tax by the taxpayer upon his return increased by the amount previously assessed (or collected without assessment) as a deficiency over (2) the amount of rebates previously made. For example, assume that the amount of income tax shown by the taxpayer upon his return for the taxable year is $600 and the amount claimed as a credit under section 31 for income tax withheld at the source is $900. If the district director determines that the tax imposed by subtitle A is $600 and makes a refund of $300, no part of such refund constitutes a "rebate" since the refund is not made on the ground that the tax imposed by subtitle A is less than the tax shown on the return. If, however, the district director determines that the tax imposed by subtitle A is $500 and refunds $400, the amount of $100 of such refund would constitute a rebate since it is made on the ground that the tax imposed by subtitle A ($500) is less than the tax shown on the return ($600). The amount of such rebate ($100) would be taken into account in arriving at the amount of any deficiency subsequently determined.

§ 301.6212 Statutory provisions; notice of deficiency.

SEC. 6212. *Notice of deficiency*—(a) *In general.* If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitles A or B, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

(b) *Address for notice of deficiency*—(1) *Income and gift taxes.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A or chapter 12, if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax return.* In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary or his delegate has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) *Estate tax.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) *Further deficiency letters restricted*—(1) *General rule.* If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical errors), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) *Cross references.* For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of election to take standard deduction where taxpayer and his spouse made separate returns, see section 144(b).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033 (a)(3)(C) and (D).

(C) Deficiency attributable to gain on sale or exchange of personal residence, see section 1034(j).

(D) Deficiency attributable to war loss recoveries where prior benefit rule is elected, see section 1335.

[Sec. 6212 as amended by secs. 76, 89(b), Technical Amendments Act 1958 (72 Stat. 1661, 1665)]

§ 301.6212–1 Notice of deficiency.

(a) *General rule.* If a district director (or an assistant regional commissioner, appellate) determines that there is a deficiency in respect of income, estate, or gift tax imposed by subtitle A or B of the Code, he is authorized to notify the taxpayer of the deficiency by registered mail prior to September 3, 1958, and by either registered or certified mail on and after September 3, 1958.

(b) *Address for notice of deficiency*—(1) *Income and gift taxes.* Unless the district director for the district in which the return in question was filed has been notified under the provisions of section 6903 as to the existence of a fiduciary relationship, notice of a deficiency in respect of income tax or of gift tax shall be sufficient if mailed to the taxpayer at his last known address, even though such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax returns.* If a joint income tax return has been filed by husband and wife, the district director (or assistant regional commissioner, appellate) may, unless the district director for the district in which such joint return was filed has been notified by either spouse that a separate residence

has been established, send either a joint or separate notice of deficiency to the taxpayers at their last known address. If, however, the proper district director has been so notified, a separate notice of deficiency that is a duplicate original of the joint notice, must be sent by registered mail prior to September 3, 1958, and by either registered or certified mail on and after September 3, 1958, to each spouse at his or her last known address. The notice of separate residences should be addressed to the district director for the district in which the joint return was filed.

(3) *Estate tax.* In the absence of notice, under the provisions of section 6903 as to the existence of a fiduciary relationship, to the district director for the district in which the estate tax return was filed, notice of a deficiency in respect of the estate tax imposed by chapter 11, subtitle B, of the Code shall be sufficient if addressed in the name of the decedent or other person subject to liability and mailed to his last known address.

(c) *Further deficiency letters restricted.* If the district director (or assistant regional commissioner, appellate) mails to the taxpayer notice of a deficiency, and the taxpayer files a petition with the Tax Court within the prescribed period, no additional deficiency may be determined with respect to income tax for the same taxable year, gift tax for the same calendar year, or estate tax with respect to the taxable estate of the same decedent. This restriction shall not apply in the case of fraud, assertion of greater deficiencies before the Tax Court as provided in section 6214(a), mathematical errors as provided in section 6213(b)(1), or jeopardy assessments as provided in section 6861(c).

§ 301.6213 Statutory provisions; restrictions applicable to deficiencies; petition to Tax Court.

SEC. 6213. *Restrictions applicable to deficiencies; petition to Tax Court*—(a) *Time for filing petition and restriction on assessment.* Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(b) *Exceptions to restrictions on assessment*—(1) *Mathematical errors.* If the taxpayer is notified that, on account of a mathematical error appearing upon the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c)(1) (restricting further deficiency letters), or section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(2) *Assessments arising out of tentative carryback adjustments.* If the Secretary or his delegate determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback with respect to which such amount was applied, credited, or refunded, he may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the return.

(3) *Assessment of amount paid.* Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(c) *Failure to file petition.* If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary or his delegate.

(d) *Waiver of restrictions.* The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary or his delegate, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) *Cross references.* (1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201(a)(3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905(c).

(B) Recovery of foreign estate tax, see section 2016.

§ 301.6213–1 Restrictions applicable to deficiencies; petition to Tax Court.

(a) *Time for filing petition and restrictions on assessment*—(1) *Time for filing petition.* Within 90 days after notice of the deficiency is mailed (or within 150 days after mailing in the case of such notice addressed to a person outside the States of the Union and the District of Columbia), as provided in section 6212, a petition may be filed with the Tax Court of the United States for a redetermination of the deficiency. In determining such 90-day or 150-day period, Saturday, Sunday, or a legal holiday in the District of Columbia is not counted as the 90th or 150th day. In determining the time for filing a petition with the Tax Court in the case of a notice of deficiency mailed to a resident of Alaska prior to 12:01 p.m., e.s.t., January 3, 1959, and in the case of a notice of deficiency mailed to a resident of Hawaii prior to 4 p.m., e.d.s.t., August 21, 1959, the term "States of the Union" does not include Alaska or Hawaii, respectively, and the 150-day period applies. In determining the time within which a petition to the Tax Court may be filed in the case of a notice of deficiency mailed to a resident of Alaska after 12:01 p.m., e.s.t., January 3, 1959, and in the case of a notice of deficiency mailed to a resident of Hawaii after 4 p.m., e.d.s.t., August 21, 1959, the term "States of the Union" includes Alaska and Hawaii, respectively, and the 90-day period applies.

(2) *Restrictions on assessment.* Except as otherwise provided by this section, by section 6861(a) (relating to jeopardy assessments of income, estate, and gift taxes), by section 6871(a) (relating to immediate assessment of claims for income, estate, and gift taxes in bankruptcy and receivership cases), or by section 7485 (in case taxpayer petitions for a review of a Tax Court decision without filing bond), no assessment of a deficiency in respect of a tax imposed by subtitle A or B of the Code and no levy or proceeding in court for its collection shall be made until notice of deficiency has been mailed to the taxpayer, nor until the expiration of the 90-day or 150-day period within which a petition may be filed with the Tax Court, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. As to the date on which a decision of the Tax Court becomes final, see section 7481. Notwithstanding the provisions of section 7421(a), the making of an assessment or the beginning of a proceeding or levy which is forbidden by this paragraph may be enjoined by a proceeding in the proper court.

(b) *Exceptions to restrictions on assessment of deficiencies*—(1) *Mathematical errors.* If a taxpayer is notified of an additional amount of tax due on account of a mathematical error appearing upon the return, such notice is not deemed a notice of deficiency, and the taxpayer has no right to file a petition with the Tax Court upon the basis of such notice, nor is the assessment of such additional amount prohibited by section 6213(a).

(2) *Tentative carryback adjustments.* (i) If the district director or the director of the regional service center determines that any amount applied, credited, or refunded under section 6411(b) with respect to an application for a tentative carryback adjustment is in excess of the overassessment properly attributable to the carryback upon which such application was based, the district director or the director of the regional service center may assess the amount of the excess as a deficiency as if such deficiency were due to a mathematical error appearing on the return. That is, the district director or the director of the regional service center may assess an amount equal to the excess, and such amount may be collected, without regard to the restrictions on assessment and collection imposed by section 6213(a). Thus, the district direc-

tor or the director of the regional service center may assess such amount without regard to whether the taxpayer has been mailed a prior notice of deficiency. Either before or after assessing such an amount, the district director or the director of the regional service center will notify the taxpayer that such assessment has been or will be made. Such notice will not constitute a notice of deficiency, and the taxpayer may not file a petition with the Tax Court of the United States based on such notice. However, the taxpayer, within the applicable period of limitation, may file a regular claim for credit or refund based on the carryback, if he has not already filed such a claim, and may maintain a suit based on such claim if it is disallowed or if it is not acted upon by the Internal Revenue Service within 6 months from the date the claim was filed.

(ii) The method provided in subdivision (i) of this subparagraph to recover any amount applied, credited, or refunded in respect of an application for a tentative carryback adjustment which should not have been so applied, credited, or refunded is not an exclusive method. Two other methods are available to recover such amount: (*a*) By way of a deficiency notice under section 6212; or (*b*) by a suit to recover an erroneous refund under section 7405. Any one or more of the three available methods may be used to recover any amount which was improperly applied, credited, or refunded in respect of an application for a tentative carryback adjustment.

(3) *Assessment of amount paid.* Any payment made after the mailing of a notice of deficiency which is made by the taxpayer as a payment with respect to the proposed deficiency may be assessed without regard to the restrictions on assessment and collection imposed by section 6213(a) even though the taxpayer has not filed a waiver of restrictions on assessment as provided in section 6213 (d). A payment of all or part of the deficiency asserted in the notice together with the assessment of the amount so paid will not affect the jurisdiction of the Tax Court. If any payment is made before the mailing of a notice of deficiency, the district director or the director of the regional service center is not prohibited by section 6213(a) from assessing such amount, and such amount may be assessed if such action is deemed to be proper. If such amount is assessed, the assessment is taken into account in determining whether or not there is a deficiency for which a notice of deficiency must be issued. Thus, if such a payment satisfies the taxpayer's tax liability, no notice of deficiency will be mailed and the Tax Court will have no jurisdiction over the matter. In any case in which there is a controversy as to the correct amount of the tax liability, the assessment of any amount pursuant to the provisions of section 6213(b)(3) shall in no way be considered to be the acceptance of an offer by the taxpayer to settle such controversy.

(4) *Jeopardy.* If the district director believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately, as provided in section 6861 (a).

(c) *Failure to file petition.* If no petition is filed with the Tax Court within the period prescribed in section 6213(a), the district director or the director of the regional service center shall assess the amount determined as the deficiency and of which the taxpayer was notified by registered or certified mail and the taxpayer shall pay the same upon notice and demand therefor. In such case the district director will not be precluded from determining a further deficiency and notifying the taxpayer thereof by registered or certified mail. If a petition is filed with the Tax Court the taxpayer should notify the district director who issued the notice of deficiency that the petition has been filed in order to prevent an assessment of the amount determined to be the deficiency.

(d) *Waiver of restrictions.* The taxpayer may at any time by a signed notice in writing filed with the district director waive the restrictions on the assessment and collection of the whole or any part of the deficiency. The notice must in all cases be filed with the district director or other authorized official under whose jurisdiction the audit or other consideration of the return in question is being conducted. The filing of such notice with the Tax Court does not constitute filing with the district director within the meaning of the Code. After such waiver has been acted upon by the district director and the assessment has been made in accordance with its terms, the waiver cannot be withdrawn.

§ 301.6214 Statutory provisions; determinations by Tax Court.

SEC. 6214. *Determinations by Tax Court*—(a) *Jurisdiction as to increase of deficiency, additional amounts, or additions to the tax.* The Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or addition to the tax should be assessed, if claim therefor is asserted by the Secretary or his delegate at or before the hearing or a rehearing.

(b) *Jurisdiction over other years.* The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year shall consider such facts with relation to the taxes for other years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

(c) *Final decisions of Tax Court.* For purposes of this chapter and subtitles A or B the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 7481.

§ 301.6215 Statutory provisions; assessment of deficiency found by Tax Court.

SEC. 6215. *Assessment of deficiency found by Tax Court*—(a) *General rule.* If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary or his delegate. No part of the amount determined as a deficiency by the Secretary or his delegate but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

(b) *Cross references.* (1) For assessment or collection of the amount of the deficiency determined by the Tax Court pending appellate court review, see section 7485.

(2) For dismissal of petition by Tax Court as affirmation of deficiency as determined by the Secretary or his delegate, see section 7459(d).

(3) For decision of Tax Court that tax is barred by limitation as its decision that there is no deficiency, see section 7459(e).

(4) For assessment of damages awarded by Tax Court for instituting proceedings merely for delay, see section 6673.

(5) For treatment of certain deficiencies as having been paid, in connection with sale of surplus war-built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (60 Stat. 48; 50 U.S.C. App. 1742).

(6) For rules applicable to Tax Court proceedings, see generally subchapter C of chapter 76.

(7) For proration of deficiency to installments, see section 6152(c).

(8) For extension of time for paying amount determined as deficiency, see section 6161(b).

§ 301.6215–1 Assessment of deficiency found by Tax Court.

Where a petition has been filed with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed by the district director or the director of the regional service center and the unpaid portion of the amount so assessed shall be paid by the taxpayer upon notice and demand therefor.

§ 301.6216 Statutory provisions; cross references.

SEC. 6216. *Cross references.* (1) For procedures relating to bankruptcy and receivership, see subchapter B of chapter 70.

(2) For procedures relating to jeopardy assessments, see subchapter A of chapter 70.

(3) For procedures relating to claims against transferees and fiduciaries, see chapter 71.

Collection

GENERAL PROVISIONS

§ 301.6301 Statutory provisions; collection authority.

SEC. 6301. *Collection authority.* The Secretary or his delegate shall collect the taxes imposed by the internal revenue laws.

§ 301.6301–1 Collection authority.

The taxes imposed by the internal revenue laws shall be collected by district directors of internal revenue. See, however, section 6304, relating to the collection of certain taxes under the provisions of the Tariff Act of 1930 (19 U.S.C. ch. 4).

§ 301.6302 Statutory provisions; mode or time of collection.

SEC. 6302. *Mode or time of collection*—(a) *Establishment by regulations.* If the mode or time for collecting any tax is not provided for by this title, the Secretary or his delegate may establish the same by regulations.

(b) *Discretionary method.* Whether or not the method of collecting any tax im-

posed by chapters 21, 31, 32, 33, section 4481 of chapter 36, sections 4501(a) or 4511 of chapter 37, or section 4701 or 4721 of chapter 39 is specifically provided for by this title, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax.

(c) *Use of Government depositaries.* The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

[Sec. 6302 as amended by sec. 206(b), Highway Revenue Act 1956 (70 Stat. 391)]

§ 301.6302–1 Mode or time of collection of taxes.

(a) *Employment and excise taxes.* For provisions relating to the mode or time of collection of certain employment and excise taxes and the use of Federal Reserve banks and authorized commercial banks in connection with the payment thereof, see the regulations relating to the particular tax.

(b) *Income taxes.* (1) For provisions relating to the use of Federal Reserve banks or authorized commercial banks in depositing income and estimated income taxes of certain corporations, see § 1.6302–1 of this chapter (Income Tax Regulations).

(2) For provisions relating to the use of Federal Reserve banks or authorized commercial banks in depositing the tax required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6302–2 of this chapter.

§ 301.6303 Statutory provisions; notice and demand for tax.

SEC. 6303. *Notice and demand for tax*—(a) *General rule.* Where it is not otherwise provided by this title, the Secretary or his delegate shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.* Except where the Secretary or his delegate believes collection would be jeopardized by delay, if any tax is assessed prior to the last date prescribed for payment of such tax, payment of such tax shall not be demanded under subsection (a) until after such date.

§ 301.6303–1 Notice and demand for tax.

(a) *General rule.* Where it is not otherwise provided by the Code, the district director or the director of the regional service center shall, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice within 60 days does not invalidate the notice. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.* If any tax is assessed prior to the last date prescribed for payment of such tax, demand that such tax be paid will not be made before such last date, except where it is believed collection would be jeopardized by delay.

§ 301.6304 Statutory provisions; collection under the Tariff Act.

SEC. 6304. *Collection under the Tariff Act.* For collection under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501(b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

RECEIPT OF PAYMENT

§ 301.6311 Statutory provisions; payment by check or money order.

SEC. 6311. *Payment by check or money order*—(a) *Authority to receive.* It shall be lawful for the Secretary or his delegate to receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) *Check or money order unpaid*—(1) *Ultimate liability.* If a check or money order so received is not duly paid, the person by whom such check or money order has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check or money order had not been tendered.

(2) *Liability of banks and others.* If any certified, treasurer's or cashier's check or any money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank or trust company on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of such assets in preference to any other claims whatsoever against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

§ 301.6311–1 Payment by check or money order.

(a) *Authority to receive*—(1) *In general.* (i) District directors may accept checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or money orders in payment for internal revenue taxes, provided such checks or money orders are collectible in U.S. currency at par, and subject to the further provisions contained in this section. District directors may accept such checks or money orders in payment for internal revenue stamps to the extent and under the conditions prescribed in subparagraph (2) of this paragraph. A check or money order in payment for internal revenue taxes or internal revenue stamps should be made payable to the Internal Revenue Service. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term "money order" means: (*a*) U.S. postal, bank, express, or telegraph money order; (*b*) money order issued by a domestic building and loan association (as defined in section 7701(a)(19)) or by a similar association incorporated under the laws of a possession of the United States; (*c*) a money order issued by such other organization as the Commissioner may designate; and (*d*) a money order described in subdivision (ii) of this subparagraph in cases therein described. However, the district director may refuse to accept any personal check whenever he has good reason to believe that such check will not be honored upon presentment.

(ii) An American citizen residing in a country with which the United States maintains direct exchange of money orders on a domestic basis may pay his tax by postal money order of such country. For a list of such countries, see section 171.27 of the Postal Manual of the United States.

(iii) If one check or money order is remitted to cover two or more persons' taxes, the remittance should be accompanied by a letter of transmittal clearly identifying—

(*a*) Each person whose tax is to be paid by the remittance;

(*b*) The amount of the payment on account of each such person; and

(*c*) The kind of tax paid.

(2) *Payment for internal revenue stamps*—(i) *In general.* The district director may accept checks and money orders described in subparagraph (1) of this paragraph in payment for internal revenue stamps other than stamps for taxes imposed under chapter 34 of the Code (relating to documentary stamps). However, the district director may refuse to accept any personal check whenever he has good reason to believe that such check will not be honored upon presentment. For special provisions relating to documentary stamps, see subdivision (ii) of this subparagraph.

(ii) *Documentary stamps.* The district director may accept in payment for taxes imposed under chapter 34 of the Code (relating to documentary stamps) certified, cashiers' or treasurers' checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States or money orders described in subparagraph (1) of this paragraph. However, if an application has been submitted by a person desiring to tender personal checks for such taxes and the application has been approved by the district director, the district director may accept such personal checks as are described in subparagraph (1)(i) of this paragraph. The application shall be made to the district director and shall contain the applicant's name, address,

firm name (if any), such financial information as will enable the district director to determine the amount of the credit to be extended to the applicant, and the approximate value of stamps to be purchased during the period fixed by the district director. The district director is authorized to approve or disapprove such application and, if the application is approved, to fix the maximum amount of the value of the documentary stamps for which personal checks will be accepted and to prescribe such other limitations and conditions as he deems appropriate. The district director may, for good cause, discontinue at any time the acceptance of personal checks under the provisions of this subdivision.

(3) *Payment of tax on distilled spirits, wine, beer, cigars, or cigarettes; proprietor in default.* Where a check or money order tendered in payment for taxes on distilled spirits, wines, beer, or rectified products (imposed under chapter 51 of the Code), or cigars or cigarettes (imposed under chapter 52 of the Code) is not paid on presentment, or where a taxpayer is otherwise in default in payment of such taxes, any remittance for such taxes made during the period of such default, and until the Assistant Regional Commissioner (Alcohol and Tobacco Tax) finds that the revenue will not be jeopardized by the acceptance of personal checks (if acceptable to the district director under subparagraph (1) of this paragraph), shall be in cash, or shall be in the form of a certified, cashier's, or treasurer's check, drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or a money order as described in subparagraph (1) of this paragraph.

(b) *Checks or money orders not paid*—(1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check) or money order in payment for taxes or stamps is not released from his liability until the check or money order is paid; and, if the check or money order is not duly paid, he shall also be liable for all legal penalties and additions, to the same extent as if such check or money order had not been tendered. For the penalty in case a check or money order is not duly paid, see section 6657 and § 301.6657–1. For assessment of the amount of a check or money order not duly paid, see section 6201(a)(2)(B) and paragraph (a)(2)(ii) of § 301.6201–1.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check or money order is not duly paid, the United States shall have a lien for the amount of such check upon all assets of the bank or trust company on which drawn or for the amount of such money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank. In addition, the Government has the right to exact payment from the person required to make the payment.

(c) *Payment in nonconvertible foreign currency.* For rules relating to payment of income taxes and taxes under the Federal Insurance Contributions Act in nonconvertible foreign currency, see section 6316 and the regulations thereunder.

§ 301.6312 Statutory provisions; payment by U.S. notes and certificates of indebtedness.

SEC. 6312. *Payment by U.S. notes and certificates of indebtedness*—(a) *General rule.* It shall be lawful for the Secretary or his delegate to receive, at par with an adjustment for accrued interest, Treasury bills, notes and certificates of indebtedness issued by the United States in payment of any internal revenue taxes, or in payment for internal revenue stamps, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) *Cross references.* (1) For authority to receive silver certificates, see section 5 of the act of June 19, 1934 (48 Stat. 1178; 31 U.S.C. 405a).

(2) For full legal tender status of all coins and currencies of the United States, see section 43(b)(1) of the Agricultural Adjustment Act, as amended (48 Stat. 52, 113; 31 U.S.C. 462).

(3) For authority to receive obligations under the Second Liberty Bond Act, see section 20(b) of that act, as amended (56 Stat. 189; 31 U.S.C. 754b).

§ 301.6312–1 Treasury certificates of indebtedness, Treasury notes, and Treasury bills acceptable in payment of internal revenue taxes or stamps.

(a) Treasury certificates of indebtedness, Treasury notes, or Treasury bills of any series (not including interim receipts issued by Federal reserve banks in lieu of definitive certificates, notes, or bills) may be tendered at or before maturity in payment of internal revenue taxes due on the date (or in payment for stamps purchased on the date), on which the certificates, notes, or bills mature, or in payment of internal revenue taxes due on a specified prior date, but only if such certificates, notes, or bills, according to the express terms of their issue, are made acceptable in payment of such taxes or for the purchase of stamps. If the taxes for which the certificates, notes, or bills are tendered in payment become due, or the stamps are purchased, on the same date as that on which such certificates, notes, or bills mature, they will be accepted at par plus accrued interest, if any, payable with the principal (not represented by coupons attached) in payment of such taxes or stamps. If the taxes for which the certificates, notes, or bills are tendered in payment become due, or the stamps are purchased, on a date prior to that on which the certificates, notes, or bills mature, they will be accepted at the value specified in the terms under which such certificates, notes, or bills were issued. All interest coupons attached to Treasury certificates of indebtedness or Treasury notes shall be detached by the taxpayer before such certificates or notes are tendered in payment of taxes or stamps.

(b) Receipts given by a district director for Treasury certificates of indebtedness, Treasury notes, or Treasury bills received in payment of internal revenue taxes or for stamps as provided in this section shall contain an adequate description of such certificates, notes, or bills, and a statement of the value, including accrued interest, if any, payable with the principal (not represented by coupons attached), at which accepted, and shall show that the certificates, notes, or bills are tendered by the taxpayer and received by the district director, subject to no conditions, qualification, or reservation whatsoever, in payment of an amount of taxes or for stamps no greater than such value. Any certificate, note, or bill offered in payment of internal revenue taxes or for stamps subject to any condition, qualification, or reservation, or for any greater amount than the value at which acceptable in payment of taxes or stamps, as specified in the terms under which such certificate, note, or bill was issued, shall not be deemed to be duly tendered and shall be returned to the taxpayer.

(c) For the purpose of saving taxpayers the expense of transmitting Treasury certificates of indebtedness, Treasury notes, or Treasury bills to the office of the district director in whose district the taxes are payable, or stamps are to be purchased, taxpayers desiring to pay taxes, or purchase stamps, with such certificates, notes, or bills acceptable in payment of taxes or for the purchase of stamps may deposit such certificates, notes, or bills with a Federal reserve bank or branch, or with the Office of the Treasurer of the United States, Treasury Building, Washington, D.C. In such cases, the Federal reserve bank or branch, or the Office of the Treasurer of the United States, shall issue a receipt in the name of the district director, describing the certificates, notes, or bills by par or dollar face amount and stating on the face of the receipt that the certificates, notes, or bills represented thereby are held by the bank or branch, or the Office of the Treasurer of the United States, for redemption at the value specified in the terms under which the certificates, notes, or bills were issued, and for application of the proceeds in payment of taxes due or for the purchase of stamps on a specified date by the taxpayer named therein.

(d) In the case of payments of tax required to be deposited with Government depositaries by regulations under section 6302 of the Code, certificates, notes, or bills referred to in paragraph (a) of this section may be deposited with a Federal Reserve bank or branch, or with the Office of the Treasurer of the United States, in part or full satisfaction of such tax liability. As in the case of all remittances of amounts so required to be deposited, each such deposit of certificates, notes, or bills shall be accompanied by the appropriate deposit form in accordance with the regulations under section 6302. In such cases, notwithstanding paragraphs (b) and (c) of this section, receipts for such certificates,

notes or bills shall no longer be issued in the name of the district director.

§ 301.6312–2 Certain Treasury savings notes acceptable in payment of certain internal revenue taxes.

According to the express terms of their issue, the following series of Treasury savings notes are presently acceptable in payment of income taxes (current and back, personal and corporation taxes, and excess profits taxes) and estate and gift taxes (current and back):

(a) Treasury Savings Notes, Series A,
(b) Treasury Savings Notes, Series B,
(c) Treasury Savings Notes, Series C.

§ 301.6313 Statutory provisions; fractional parts of a cent.

SEC. 6313. *Fractional parts of a cent.* In the payment of any tax imposed by this title not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

§ 301.6313–1 Fractional parts of a cent.

In the payment of any tax not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall not be disregarded in the computation of taxes.

§ 301.6314 Statutory provisions; receipt for taxes.

SEC. 6314. *Receipt for taxes*—(a) *General rule.* The Secretary or his delegate shall, upon request, give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no receipts shall be issued in lieu of a stamp representing a tax.

(b) *Duplicate receipts for payment of estate taxes.* The Secretary or his delegate shall, upon request, give to the person paying the tax under chapter 11 (relating to the estate tax) duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(c) *Cross references.* (1) For receipt required to be furnished by employer to employee with respect to employment taxes, see section 6051.

(2) For receipt of discharge of executor from personal liability, see section 2204.

§ 301.6314–1 Receipt for taxes.

(a) *In general.* The district director shall issue a receipt for each tax payment made in cash (other than a payment for stamps sold and delivered). In the case of payments made by check, the canceled check is usually a sufficient receipt. However, upon request, the district director shall issue a receipt for such payment (other than a payment for stamps sold and delivered). No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is in cash or otherwise.

(b) *Duplicate receipt for payment of estate taxes.* Upon request, the district director will issue duplicate receipts to the person paying the estate tax, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts. For definition of the term "executor", see section 2203.

§ 301.6315 Statutory provisions; payments of estimated income tax.

SEC. 6315. *Payments of estimated income tax.* Payments of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year.

§ 301.6315–1 Payments of estimated income tax.

The payment of any installment of the estimated income tax (see sections 6015 and 6016) shall be considered payment on account of the income tax for the taxable year for which the estimate is made. The aggregate amount of the payments of estimated tax should be entered upon the income tax return for such taxable year as payments to be applied against the tax shown on such return.

§ 301.6316 Statutory provisions; payment by foreign currency.

SEC. 6316. *Payment by foreign currency.* The Secretary or his delegate is authorized in his discretion to allow payment of taxes in the currency of a foreign country under such circumstances and subject to such conditions as the Secretary or his delegate may by regulations prescribe.

§ 301.6316–1 Payment of income tax in foreign currency.

Subject to the provisions of §§ 301.6316–3 to 301.6316–5, inclusive, that portion of the income tax which is attributable to amounts received by a citizen of the United States in nonconvertible foreign currency may be paid in such currency—

(a) For any taxable year beginning on or after January 1, 1955, and before January 1, 1964, if such amounts—

(1) Are disbursed from funds made available to a foundation or commission established in a foreign country pursuant to an agreement made under the authority of section 32(b) of the Surplus Property Act of 1944, as amended (50 U.S.C. App. 1641(b)(2)), or reestablished under the authority of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451);

(2) Constitute either a grant made for authorized purposes of the agreement or compensation for personal services performed in the employ of the foundation or commission;

(3) Are at least 75 percent of the entire amount of the grant or compensation; and

(4) Are treated as income from sources without the United States under the provisions of sections 861 to 864, inclusive, and §§ 1.861–1 to 1.864, inclusive, of this chapter (Income Tax Regulations); and

(b) For any taxable year beginning on or after January 1, 1964, if such amounts—

(1) Are disbursed from funds made available either to a foundation or commission, established pursuant to an agreement made under the authority of section 32(b) of the Surplus Property Act of 1944, as amended, or to a foundation or commission established or continued pursuant to an agreement made under the authority of the Mutual Educational and Cultural Exchange Act of 1961, as amended; or are paid from grants made to such citizen, or to a foundation or an educational or other institution, under the authority of the Mutual Educational and Cultural Exchange Act of 1961, as amended, or section 104 (h), (j), (k), (o), or (p) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704 (h), (j), (k), (o), (p));

(2) Constitute either a grant made for a purpose authorized under any such agreement or law, or compensation for personal services performed in the employ of any organization engaged in administering any program or activity pursuant to any such agreement or law;

(3) Are at least 70 percent of the entire amount of the grant or compensation; and

(4) Are treated as income from sources without the United States under the provisions of sections 861 to 864, inclusive, and §§ 1.861–1 to 1.864, inclusive, of this chapter (Income Tax Regulations).

§ 301.6316–2 Definitions.

For purposes of §§ 301.6316–1 to 301.6316–9, inclusive:

(a) The term "tax", as used in §§ 301.6316–1, 301.3316–3, 301.6316–4, 301.6316–5, and 301.6316–6 means the income tax imposed for the taxable year by chapter 1 of the Internal Revenue Code of 1954, and as used in § 301.6316–7 means the Federal Insurance Contributions Act taxes imposed by chapter 21 of the Code (or by the corresponding provisions of the Internal Revenue Code of 1939). The term "tax", as used in §§ 301.6316–8 and 301.6316–9 shall relate to either of such taxes, whichever is appropriate.

(b) The term "nonconvertible foreign currency" means currency of the government of a foreign country which, owing to (1) monetary, exchange, or other restrictions imposed by the foreign country, (2) an agreement entered into with the United States of America, or (3) the terms and conditions of the U.S. Government grant, is not convertible into U.S. dollars or into other money which is convertible into U.S. dollars. The term shall not, however, include currency which, notwithstanding such restrictions, agreement, terms, or conditions, is in fact converted into U.S. dollars or into property which is readily disposable for U.S. dollars.

(c) If the taxpayer computes taxable income under the accrual method, then the term "received" shall be construed to mean "accrued."

§ 301.6316–3 Allocation of tax attributable to foreign currency.

(a) *Adjusted gross income ratio.* The portion of the tax which is attributable to amounts received in nonconvertible foreign currency shall, for purposes of applying § 301.6316–1 to the currency of each foreign country, be the amount by which:

(1) The amount which bears the same ratio to the entire tax for the taxable

year as (i) the taxpayer's adjusted gross income received in that currency bears to (ii) the adjusted gross income determined under section 62 by taking into account the entire gross income and all deductions allowable under that section without distinction as to amounts received in foreign currency, exceeds

(2) The total of the allowable credits against tax, and payments on account of tax, which are properly allocable to the amount of that currency included in gross income.

(b) *Example.* (1) For the calendar year 1955 Mr. Jones and his wife filed a joint return on which the adjusted gross income is as follows, after amounts received in foreign currency had been properly translated into United States dollars for tax computation purposes:

Fulbright grant received by Mr. Jones in nonconvertible foreign currency	$8,000
Dividends received by Mr. Jones entitled to dividends-received credit	500
Compensation for personal services of Mrs. Jones	3,000
Net profit from business carried on by Mrs. Jones	2,500
Total adjusted gross income	14,000

(2) The following amounts are allowable as properly deductible from adjusted gross income, no determination being made as to whether or not any part of them is properly allocable to the Fulbright grant:

Deduction for personal exemptions	$3,000
Charitable contributions	500
Interest expense	400
Taxes	300
Total allowable deductions	4,200

(3) For the taxable year the following amounts are allowable as credits against the tax, or as payments on account of the tax:

Foreign tax credit for foreign taxes paid on Fulbright grant		$300.00
Dividends-received credit		20.00
Credit for income tax withheld upon compensation of Mrs. Jones		304.80
Payments of estimated tax (see § 301.6316–6 (b) (2) for determination of amounts):		
U.S. dollars	$426.32	
Foreign currency	893.88	
		1,320.20
Total allowable credits and payments		1,945.00

(4) The portion of the tax which is attributable to amounts received in nonconvertible foreign currency is $33.49, determined as follows:

Adjusted gross income	$14,000.00
Less: Allowable deductions	4,200.00
Taxable income	9,800.00
Tax computed under section 2	2,148.00
Ratio of adjusted gross income received in nonconvertible foreign currency to entire adjusted gross income ($8,000 ÷ $14,000) (percent)	57.14
Portion of tax attributable to nonconvertible foreign currency ($2,148 × 57.14 percent)	1,227.37
Less:	
Credit for foreign taxes paid on Fulbright grant	$300.00
Payment in foreign currency of estimated tax	893.88
	1,193.88
Portion of tax attributable to amounts received in nonconvertible foreign currency	33.49

§ 301.6316–4 Return requirements.

(a) *Place for filing.* A return of income which includes amounts received in foreign currency on which the tax is paid in accordance with § 301.6316–1 shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225. For the time for filing income tax returns, see sections 6072 and 6081 and §§ 1.6072–1, 1.6081–1, and 1.6081–2 of this chapter (Income Tax Regulations).

(b) *Statements required.* (1) A statement, prepared by the taxpayer, and certified by the foundation, commission, or other person having control of the payments made to the taxpayer in nonconvertible foreign currency, shall be attached to the return showing that for the taxable year involved the taxpayer is entitled to pay tax in foreign currency in accordance with section 6316 and the regulations thereunder. This statement shall disclose the total amount of grants or compensation received by the taxpayer during the taxable year under the authority of section 32(b) of the Surplus Property Act of 1944, as amended (50 U.S.C. App. 1641(b)(2)), or of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451), or section 104 (h), (j), (k), (o), or (p) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704 (h), (j), (k), (o), (p)), and the amount thereof paid in nonconvertible foreign currency. It shall also state that with respect to the grant or compensation the applicable percentage requirement of § 301'6316–1 is satisfied.

(2) The taxpayer shall also attach to the return a detailed statement showing (i) the computation, in the manner prescribed by § 301.6316–3, of the portion of the tax attributable to amounts received in nonconvertible foreign currency and (ii) the rates of exchange used in determining the tax liability in U.S. dollars. See paragraph (c) of § 301.6316–5.

§ 301.6316–5 Manner of paying tax by foreign currency.

(a) *Time and place to pay.* The unpaid tax required to be shown on a return filed in accordance with § 301.6316–4, whether payable in whole or in part in foreign currency, is due and payable to the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, at the time the return is filed. However, see paragraph (d) of this section with respect to the depositing of the foreign currency with the disbursing officer of the Department of State.

(b) *Certified statement.* Every taxpayer who desires to pay tax in foreign currency under the provisions of § 301.6316–1 shall first obtain the certified statement referred to in paragraph (b)(1) of § 301.6316–4.

(c) *Determination of the tax.* In determining the tax payable for the taxable year in U.S. dollars, the taxpayer, with respect to amounts described in paragraph (a) of § 301.6316–1, or amounts described in paragraph (b) of § 301.6316–1 received before November 1, 1965, shall use the rates of exchange which most clearly reflect the correct tax liability in dollars, whether it be the official rate, the open market rate, or any other appropriate rate. With respect to amounts described in paragraph (b) of § 301.6316–1 received on or after November 1, 1965, the taxpayer shall use the official rate of exchange in determining the tax payable for the taxable year in U.S. dollars. After determining the correct tax liability in U.S. dollars the taxpayer shall then ascertain, in accordance with the principles of § 301.6316–3, the portion of the tax which is attributable to amounts received in nonconvertible foreign currency.

(d) *Deposit of foreign currency with disbursing officer.* (1) After the portion of the tax which is attributable to amounts received in nonconvertible foreign currency is determined in U.S. dollars, the amount so determined shall be deposited in the same nonconvertible foreign currency with the disbursing officer of the Department of State for the foreign country where the fund is located from which the payments in nonconvertible foreign currency are made to the taxpayer. The amount of foreign currency to be deposited shall be that amount which, when converted at the rate of exchange used on the date of deposit by that disbursing officer for the acquisition of such currency for his official disbursements, equals the portion of the tax so determined in U.S. dollars.

(2) The disbursing officer may rely upon the taxpayer for the determination of the amount of tax payable in foreign currency but may not accept any such currency for deposit until the taxpayer has presented for inspection the certified statement referred to in paragraph (b)(1) of § 301.6316–4. Upon acceptance of foreign currency for deposit the disbursing officer shall give the taxpayer a receipt in duplicate showing the name and address of the depositor, the date of the deposit, the amount of foreign currency deposited, and its equivalent in U.S. dollars on the date of deposit.

(3) Every taxpayer making a deposit of foreign currency in accordance with this paragraph shall attach to the return required to be filed in accordance with § 301.6316–4, in part or full payment of the taxes shown thereon, the original of the receipt given by the disbursing officer and shall pay to the Director of International Operations in U.S. dollars the balance, if any, of the tax shown to be due. Tender of such receipt to the Director of International Operations shall be considered as payment of tax in an

amount equal to the U.S. dollars represented by the receipt.

(4) A taxpayer shall make the deposit required by this paragraph in ample time to permit him to attach the receipt to his return for filing within the time prescribed by section 6072 or 6081 and §§ 1.6072–1, 1.6081–1, and 1.6081–2 of this chapter (Income Tax Regulations).

§ 301.6316–6 Declarations of estimated tax.

(a) *Filing of declaration.* A declaration of estimated tax in respect of amounts on which the tax is to be paid in foreign currency under the provisions of § 301.6316–1 shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, and shall have attached thereto the statements required by paragraph (b)(1) and (2)(i) of § 301.6316–4 in respect of the tax return except that the statement certified by the foundation, commission, or other person having control of the payments to the taxpayer in nonconvertible foreign currency may be based upon amounts expected to be received by the taxpayer during the taxable year if they are not in fact known at the time of certification. A copy of this certified statement shall be retained by the taxpayer for the purpose of exhibiting it to the disbursing officer when making installment deposits of foreign currency under the provisions of paragraph (c) of this section. For the time for filing declarations of estimated tax, see sections 6073 and 6081 and §§ 1.6073–1 to 1.6073–4, inclusive, and §§ 1.6081–1 and 1.6081–2 of this chapter (Income Tax Regulations).

(b) *Determination of estimated tax—(1) Allocation of tax attributable to foreign currency.* In determining the amount of estimated tax for purposes of this section, all items of income, deduction, and credit, whether or not attributable to amounts received in nonconvertible foreign currency, shall be taken into account. The portion of the estimated tax which is attributable to amounts to be received during the taxable year in nonconvertible foreign currency shall be determined consistently with the manner prescribed by § 301.6316–3.

(2) *Example.* (i) For the calendar year 1955 Mr. Jones and his wife filed a joint declaration of estimated tax in the determination of which the adjusted gross income was estimated to be as follows, after amounts to be received in foreign currency had been properly translated into U.S. dollars for tax computation purposes:

Fulbright grant to be received by Mr. Jones in nonconvertible foreign currency	$8,000
Dividends to be received by Mr. Jones entitled to dividends-received credit	375
Compensation to be received by Mrs. Jones for personal services	3,000
Net profit to be derived from business carried on by Mrs. Jones	1,625
Total estimated adjusted gross income	13,000

(ii) The following amounts were determined to be allowable as properly deductible from estimated adjusted gross income, no determination being made as to whether or not any part of them was properly allocable to the Fulbright grant:

Deduction for personal exemptions	$3,000
Charitable contributions	300
Interest expense	400
Taxes	300
Total allowable deductions	4,000

(iii) The following estimated amounts were determined to be allowable as credits against the tax for the taxable year:

Foreign tax credit for foreign taxes to be paid on Fulbright grant	$300.00
Credit for income tax expected to be withheld upon compensation of Mrs. Jones	304.80
Dividends-received credit	15.00
Total allowable estimated credits	619.80

(iv) The portion of the estimated tax which is attributable to amounts to be received during the taxable year in nonconvertible foreign currency is $893.88, determined as follows:

Estimated adjusted gross income	$13,000.00
Less: Allowable deductions	4,000.00
Estimated taxable income	9,000.00
Tax computed under section 2	1,940.00
Ratio of estimated adjusted gross income to be received in nonconvertible foreign currency to entire estimated adjusted gross income ($8,000÷$13,000) (percent)	61.54
Portion of above tax attributable to nonconvertible foreign currency ($1,940×61.54 percent)	1,193.88
Less: Credit for foreign taxes expected to be paid on Fulbright grant	300.00
Portion of estimated tax which is attributable to amounts to be received during the taxable year in nonconvertible foreign currency	893.88

(v) The portion of the estimated tax which is payable in U.S. dollars is $426.32, determined as follows:

Tax computed under section 2	$1,940.00
Less: Total allowable estimated credits	619.80
Total estimated tax	1,320.20
Less: Portion of estimated tax payable in foreign currency	893.88
Portion of estimated tax payable in U.S. dollars	426.32

(c) *Payment of estimated tax.* (1) The provisions of § 301.6316–5 relating to the certified statement, determination of the tax, and the depositing of the foreign currency shall apply for purposes of this section. The full amount of estimated tax payable in foreign currency, as determined under paragraph (b) of this section, may be deposited before the date prescribed for the payment thereof.

(2) Every taxpayer making a deposit of foreign currency in accordance with this paragraph shall tender to the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, the original of the receipt from the disbursing officer as payment, to the extent of the amount represented thereby in U.S. dollars, of the estimated tax. For the dates prescribed for the payment of estimated tax, see sections 6153 and 6161 and §§ 1.6153–1 to 1.6153–4, inclusive, and § 1.6161–1 of this chapter (Income Tax Regulations). A taxpayer should make the deposit required by this paragraph in ample time to permit him to tender such receipt by the date prescribed for payment of the estimated tax.

(d) *Credit on return for the taxable year.* The receipt given by the disbursing officer of the Department of State and tendered in payment of estimated tax under this section shall, for purposes of paragraph (a)(2) of § 301.6316–3, be considered as payment on account of the tax for the taxable year. The amount so considered to be paid shall be the amount in U.S. dollars represented by the receipt.

§ 301.6316–7 Payment of Federal Insurance Contributions Act taxes in foreign currency.

(a) *In general.* The taxes imposed on employees and employers by sections 3101 and 3111, respectively, of chapter 21 of the Code (Federal Insurance Contributions Act) or the corresponding sections of the Internal Revenue Code of 1939 may, with respect to wages (as defined in section 3121(a) of chapter 21 of the Code or the corresponding section of the Internal Revenue Code of 1939) paid in nonconvertible foreign currency (as defined in paragraph (b) of § 301.6316–2) for services performed on or after January 1, 1951, be paid in that currency if all such wages—

(1) Are paid from funds made available to a foundation or commission established in a foreign country pursuant to an agreement made under the authority of section 32(b) of the Surplus Property Act of 1944, as amended (50 U.S.C. App. 1641(b)(2)), or established or continued pursuant to an agreement made under authority of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451); and

(2) Are paid to a U.S. citizen for services performed in the employ of such foundation or commission.

(b) *Return requirements—(1) Statements required.* (i) A return on which payment of Federal Insurance Contributions Act taxes is made in accordance with this section shall have attached thereto a statement, certified by the foundation or commission filing the return, stating that the foundation or commission is an organization established pursuant to an agreement made under authority of section 32(b) of the Surplus Property Act of 1944, as amended, or established or continued pursuant to an agreement made under authority of the Mutual Educational and Cultural Exchange Act of 1961, as amended.

(ii) The taxpayer shall also attach to the return a statement showing the rates of exchange used in determining in United States dollars the wages reported on the return and the taxes due with respect thereto. See paragraph (c)(1) of this section.

(2) *Cross references.* For the place for filing returns of the Federal Insurance Contributions Act taxes, see § 31.6091–1(c) of this chapter (Employment Tax Regulations). For the time for filing returns of the Federal Insurance Contributions Act taxes, see § 31.6071(a)–1 of this chapter (Employment Tax Regulations).

(c) *Payment of tax*—(1) *Determination of the tax.* In determining in U.S. dollars the wages required to be reported on the return and the taxes due with respect thereto, the taxpayer shall use the rate of exchange which most clearly reflects the correct equivalent in dollars, whether it be the official rate, the open market rate, or any other appropriate rate.

(2) *Deposit of foreign currency with disbursing officer.* (i) After determination is made in U.S. dollars of the Federal Insurance Contributions Act taxes with respect to wages paid in nonconvertible foreign currency, the amount so determined shall be deposited in the same nonconvertible foreign currency with the disbursing officer of the Department of State for the foreign country where the fund is located from which such wages were paid. The amount of the foreign currency to be deposited shall be that amount which, when converted at the rate of exchange used on the date of deposit by the disbursing officer for the acquisition of such currency for his official disbursements, equals the taxes determined in U.S. dollars.

(ii) The disbursing officer may rely upon the taxpayer for the determination of the amount of tax payable in foreign currency but may not accept any such currency for deposit until the taxpayer has presented for inspection the certified statement referred to in paragraph (b)(1) of this section. Upon acceptance of foreign currency for deposit the disbursing officer shall give the taxpayer a receipt in duplicate showing the name and address of the depositor, the date of the deposit, the amount of foreign currency deposited and its equivalent in U.S. dollars on the date of deposit, and the kind of tax for which the deposit is made.

(iii) Every taxpayer making a deposit of foreign currency in accordance with this paragraph shall attach to the return required to be filed in accordance with paragraph (b) of this section the original of the receipt given by the disbursing officer. Tender of such receipt to the Director of International Operations shall be considered as payment of tax in an amount equal to the U.S. dollars represented by the receipt.

(iv) A taxpayer shall make the deposit required by this paragraph in ample time to permit it to attach the receipt to its return for filing within the time prescribed by § 31.6071(a)–1 of this chapter (Employment Tax Regulations).

§ 301.6316–8 Refunds and credits in foreign currency.

(a) *Refunds.* The refund of any overpayment of tax which has been paid under section 6316 in foreign currency may, in the discretion of the Commissioner, be made in the same foreign currency by which the tax was paid. The amount of any such refund made in foreign currency shall be the amount of the overpayment in U.S. dollars converted, on the date of the refund check, at the rate of exchange then used for his official disbursements by the disbursing officer of the Department of State in the country where the foreign currency was originally deposited.

(b) *Credits.* Unless otherwise in the best interest of the Internal Revenue Service, no credit of any overpayment of tax which has been paid under section 6316 in foreign currency shall be allowed against any outstanding liability of the person making the overpayment except in respect of that portion or the liability which, in accordance with § 301.6316–1 or § 301.6316–7, would otherwise be permitted to be paid in the same foreign currency.

§ 301.6316–9 Interest, additions to tax, etc.

Any reference in §§ 301.6316–1 to 301.6316–8, inclusive, to "tax" shall be deemed also to refer to the interest, additions to the tax, additional amounts, and penalties attributable to the tax.

Lien for Taxes

§ 301.6321 Statutory provisions; lien for taxes.

SEC. 6321. *Lien for taxes.* If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 301.6321–1 Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. For the special lien for estate and gift taxes, see section 6324 and § 301.6324–1.

§ 301.6322 Statutory provisions; period of lien.

SEC. 6322. *Period of lien.* Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

§ 301.6323 Statutory provisions; validity against mortgagees, pledgees, purchasers, and judgment creditors.

SEC. 6323. *Validity against mortgagees, pledgees, purchasers, and judgment creditors*—(a) *Invalidity of lien without notice.* Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under State or territorial laws.* In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With clerk of district court.* In the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.* In the office of the clerk of the U.S. District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of notice.* If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the U.S. district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) *Exception in case of securities*—(1) *Exception.* Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of security.* As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

§ 301.6323–1 Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors.

(a) *Invalidity of lien without notice*—(1) *Filing of notice.* The lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice of lien has been filed. (See, however, section 6323(c) and paragraph (b) of

this section, relating to the circumstances under which the lien is not valid with respect to a security even though notice thereof is duly filed.) The place for the filing of the notice of lien is:

(i) The office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has designated an office within the State or Territory for the filing of such notice;

(ii) The office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(iii) The office of the clerk of the U.S. District Court for the District of Columbia if the property subject to the lien is situated in the District of Columbia.

(2) *Meaning of terms.* (i) As used in section 6323 and this section:

(a) The term "purchaser" means a person who, for a valuable present consideration, acquires property or an interest in property.

(b) The term "judgment creditor" means a person who has obtained a valid judgment in a court of record and of competent jurisdiction for the recovery of specifically designated property or for a certain sum of money and, in the case of a judgment for the recovery of a certain sum of money, who has a perfected lien under such judgment on the property involved. The term "judgment" does not include an inchoate lien, such as an attachment lien, unless and until such lien has ripened into a judgment. United States v. Security Trust and Savings Bank (1950) 340 U.S. 47. Nor does the term "judgment" include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity, such as, for example, the action of State taxing authorities. United States v. Gilbert Associates (1953) 345 U.S. 361; and United States v. City of New Britain (1954) 347 U.S. 81.

(ii) The determination whether a person is a mortgagee, pledgee, purchaser, or judgment creditor, entitled to the protection of section 6323(a), shall be made by reference to the realities and the facts in a given case rather than to the technical form or terminology used to designate such person. Thus, a person who is in fact and in law a mortgagee, pledgee, or purchaser will be entitled as such to the protection of section 6323(a) even though such person is otherwise designated under the law of a State, such as the Uniform Commercial Code.

(3) *Form of notice.* The form to be used for filing the notice of lien shall be Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws." Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien. For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

(b) *Exception in case of securities*—(1) *Exception.* Even though a notice of lien provided for in section 6321 has been filed in the manner prescribed in section 6323(a), the lien shall not be valid with respect to a security, as defined in section 6323(c)(2), as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien. An adequate and full consideration in money or money's worth, as used in section 6323(c), means that the consideration must have been an adequate and full equivalent reducible to a money value. A purchase of property made in the ordinary course of business (that is, a transaction which is bona fide and made at arm's length) will be considered as made for an adequate and full consideration in money or money's worth. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(2) *Definition of security.* As used in section 6323(c), the term "security" means: Any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(c) *Disclosure of amount of outstanding lien.* (1) If a notice of lien has been filed, the district director to whom the assessment which gave rise to the lien is charged is authorized to disclose information as to the amount of the outstanding obligation secured by the lien to any person who has a proper interest in determining the amount of the outstanding obligation. Any person desiring such information should present to the district director a written request. Such request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting such information. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon satisfactory proof of such right or of the intention to obtain such right, be considered to have a proper interest.

(2) If the district director determines that the applicant is entitled to the information requested, he will disclose to such applicant the total amount of the outstanding obligation secured by the lien.

(3) The Commissioner may disclose the amount of any outstanding obligation secured by the lien if he determines such action is warranted under the facts and circumstances in the particular case.

(4) The provisions of this paragraph apply to any notice of lien filed under section 6323 or corresponding provisions of prior internal revenue laws.

(d) *Application of section 6323 to liens imposed under section 3670 of the Internal Revenue Code of 1939.* In the case of any lien arising under section 3670 of the Internal Revenue Code of 1939 or the corresponding provisions of prior law (relating to the general tax lien) which is in effect on January 1, 1955, the provisions of section 6323 shall be applicable to such lien on and after such date in lieu of the provisions of section 3672 of the Internal Revenue Code of 1939 or the corresponding provisions of prior law.

§ 301.6324 Statutory provisions; special liens for estate and gift taxes.

SEC. 6324. *Special liens for estate and gift taxes*—(a) *Liens for estate tax.* Except as otherwise provided in subsection (c) (relating to transfers of securities)—

(1) *Upon gross estate.* Unless the estate tax imposed by chapter 11 is sooner paid in full, it shall be a lien for 10 years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(2) *Liability of transferees and others.* If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.

(3) *Continuance after discharge of executor.* The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money, or money's worth, in which case such part (or such interest) shall not be subject to a lien or

to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser, mortgagee, or pledgee by the heirs, legatees, devisees, or distributees.

(b) *Lien for gift tax.* Except as otherwise provided in subsection (c) (relating to transfers of securities), the gift tax imposed by chapter 12 shall be a lien upon all gifts made during the calendar year, for 10 years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.

(c) *Exception in case of securities.* The lien imposed by subsection (a) or (b) shall not be valid with respect to a security, as defined in section 6323(c)(2), as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

§ 301.6324–1 Special liens for estate and gift taxes; personal liability of transferees and others.

(a) *Estate tax.* (1) The lien imposed by section 6324(a) attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency in tax found to be due upon review and audit. If the estate tax is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, shall be personally liable for such tax to the extent of the value, at the time of the decedent's death, of such property.

(2) Unless the tax is paid in full, and except as otherwise provided in section 6324(c) (relating to transfers of securities), the lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except that such lien shall be divested with respect to:

(i) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof;

(ii) Such property as is transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth, by the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive (or the corresponding provisions of the Internal Revenue Code of 1939), or such property as is transferred by the transferee of such person. In such case, a like lien attaches to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except such part thereof as may be transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth. See paragraph (b)(1) of § 301.6323–1 for the meaning of the term "an adequate and full consideration in money or money's worth";

(iii) Such portion of the gross estate (or any interest therein) as has been transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth, if payment is made of the full amount of tax determined by the district director pursuant to a request of the executor for discharge from personal liability as authorized by section 2204 (relating to discharge of executor from personal liability), but there is substituted a like lien upon the consideration received from such purchaser, mortgagee, or pledgee by the heirs, legatees, devisees, or distributees; and

(iv) Such property as to which the district director has issued a certificate releasing the lien pursuant to section 6325.

(b) *Lien for gift tax.* Except as provided in section 6324(c) (relating to securities), a lien attaches upon all gifts made during the calendar year for the amount of the tax imposed upon the gifts made during such year. The lien extends for a period of 10 years from the time the gifts were made, unless the tax is sooner paid. If the tax is not paid when due, the donee of any gift becomes personally liable for the tax to the extent of the value of his gift. Any part of the property comprised in the gift which is transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth, is divested of the lien, but a like lien to the extent of the value of such gift attaches to all the property (including after-acquired property) of the donee (or the transferee), except any part transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth. See paragraph (b)(1) of § 301.6323–1 for the meaning of the term "an adequate and full consideration in money or money's worth".

(c) *Application of lien imposed by section 6321.* The general lien under section 6321 and the special lien under subsection (a) or (b) of section 6324 for the estate or gift tax are not exclusive of each other, but are cumulative. Each lien will arise when the conditions precedent to the creation of such lien are met and will continue in accordance with the provisions applicable to the particular lien. Thus, the special lien may exist without the general lien being in force, or the general lien may exist without the special lien being in force, or the general lien and the special lien may exist simultaneously, depending upon the facts and pertinent statutory provisions applicable to the respective liens.

(d) *Application of section 6324 to estate and gift tax liens imposed under the Internal Revenue Code of 1939.* In the case of any lien arising under section 827 or 1009 of the Internal Revenue Code of 1939 (relating to liens for estate and gift taxes, respectively) which is in effect on January 1, 1955, the provisions of section 6324 shall be applicable to such lien on and after such date in lieu of the provisions of section 827 or 1009 of the 1939 Code.

§ 301.6325 Statutory provisions; release of lien or partial discharge of property.

SEC. 6325. *Release of lien or partial discharge of property*—(a) *Release of lien.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such rules or regulations.

(b) *Partial discharge of property*—(1) *Property double the amount of the liability.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority to such lien.

(2) *Part payment or interest of United States valueless.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) there is paid over to the Secretary or his delegate in part satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the fair market value of such part and to such liens thereon as have priority to the lien of the United States.

(c) *Estate or gift tax.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfield or provided for.

(d) *Effect of certificate of release or discharge.* A certificate of release or of discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) *Cross references.* (1) For single bond complying with the requirements of both subsection (a) (2) and section 6165, see section 7102.

(2) For other provisions relating to bonds, see generally chapter 73.

(3) For provisions relating to suits to enforce lien, see section 7403.

(4) For provisions relating to suits to clear title to realty, see section 7424.

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6325–1 Release of lien or partial discharge of property.

(a) *Release of lien*—(1) *Liability satisfied or unenforceable.* Any district director may issue a certificate of release of a lien imposed with respect to any internal revenue tax, whenever he finds that the entire liability for the tax has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the district director.

(2) *Bond accepted.* The district director may, in his discretion, issue a certificate of release of any tax lien if he is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the district director and the taxpayer. For provisions relating to bonds, see sections 7101 and 7102 and §§ 301.7101–1 and 301.7102–1.

(b) *Discharge of specific property from the lien*—(1) *Property double the amount of the liability.* (i) The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to any tax lien if he determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by such lien and of the amount of all other liens upon such property which have priority to such lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property. For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(ii) The following example illustrates a case in which a certificate of discharge may not be given under this subparagraph:

Example. The Federal tax liability secured by a lien is $1,000. The fair market value of all property which after the discharge will continue to be subject to the Federal tax lien is $10,000. There is a prior mortgage on the property of $5,000, including interest, and the property is subject to a prior lien of $100 for real estate taxes. Accordingly, the taxpayer's equity in the property over and above the amount of the mortgage and real estate taxes is $4,900, or nearly five times the amount required to pay the assessed tax on which the Federal tax lien is based. Nevertheless, a discharge under this subparagraph is not permissible. In the illustration, the sum of the amount of the Federal tax liability ($1,000) and of the amount of the prior mortgage and the lien for real estate taxes ($5,000+$100=$5,100) is $6,100. Double this sum is $12,200, but the fair market value of the remaining property is only $10,000. Hence, a discharge of the property is not permissible under this subparagraph, since the Code requires that the fair market value of the remaining property be at least double the sum of two amounts, one amount being the outstanding Federal tax liability and the other amount being all prior liens upon such property. In order that the discharge may be issued, it would be necessary that the remaining property be worth not less than $12,200.

(2) *Part payment.* The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to the lien if there is paid over to him in part satisfaction of the liability secured by the lien an amount determined by him to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the district director will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued, as such value has been determined by the district director in the light of the fair market value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(3) *Interest of the United States valueless.* The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to the lien if he determines that the interest of the United States in the property to be so discharged has no value. For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge of property from a Federal tax lien shall submit to the district director responsible for the collection of the tax a written application in triplicate, under penalties of perjury, requesting that the certificate be issued. The application shall contain the following information:

(i) A clear description of the property with respect to which the discharge is desired (setting forth the description of each parcel of realty on a separate page) and, where applicable, of the property remaining subject to the lien;

(ii) The reason the discharge is sought;

(iii) A description of the Federal tax lien in respect of which the certificate of discharge is sought, including the amount, nature of the tax, the dates of assessment, and, if applicable, an appropriate reference to the registry and the page and volume of the book in which the notice of Federal tax lien is filed, indexed, or recorded, and the date of the filing of the notice;

(iv) A statement in numbered paragraphs of all facts material to the application, including the amount, character, and dates (both of execution and of record) of all encumbrances of record prior to the Federal lien, with an appropriate reference to the registry and the page and volume of the book in which each such encumbrance is recorded;

(v) The amounts, character, and dates of execution of any unrecorded encumbrances believed to be prior to the Federal tax lien, including information as to how and when such encumbrances arose;

(vi) In support of the application, the applicant must furnish proof sufficient to establish the fair market value of the property with respect to which the discharge is sought, and, where applicable, proof sufficient to establish the fair market value of the property which will remain subject to the lien; and

(vii) Any other information which in the opinion of the applicant might have a bearing upon the determination to be made.

Applications submitted under subparagraph (1) or (3) of this paragraph do not require the submission of any sum of money for the discharge of the property from a tax lien. Since the amount to be paid for the issuance, under subparagraph (2) of this paragraph, of a certificate of discharge of property from a Federal tax lien is a matter for the determination of the district director after consideration of the facts and law involved, no sum of money or check should be submitted with the application. The district director shall cause a thorough investigation to be made as to the proof and accuracy of all material statements made in the application. Upon completion of such investigation the district

director will make his determination and advise the applicant of the decision reached.

(c) *Estate or gift tax liability fully satisfied or provided for—(1) Certificate of discharge.* If the district director determines that the tax liability for estate or gift tax has been fully satisfied, he may issue a certificate of discharge of any or all property from the lien imposed thereon. If the district director determines that the tax liability for estate or gift tax has been adequately provided for, he may issue a certificate discharging particular items of property from the lien. The issuance of such a certificate is a matter resting within the discretion of the district director, and a certificate will be issued only in case there is actual need therefor. The primary purpose of such discharge is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. The tax will be considered fully satisfied only when investigation has been completed and payment of the tax, including any deficiency determined, has been made.

(2) *Application for certificate of discharge.* An application for a certificate of discharge of property from the lien for estate or gift tax should be filed with the district director responsible for the collection of the tax. It should be made in writing under penalties of perjury and should explain the circumstances that require the discharge, and should fully describe the particular items for which the discharge is desired. Where realty is involved each parcel sought to be discharged from the lien should be described on a separate page and each such description submitted in duplicate. In the case of an estate tax lien, the application should show the applicant's relationship to the estate, such as executor, heir, devisee, legatee, beneficiary, transferee, or purchaser. If the estate or gift tax return has not been filed, a statement under penalties of perjury may be required showing (i) the value of the property to be discharged, (ii) the basis for such valuation, (iii) in the case of the estate tax, the approximate value of the gross estate and the approximate value of the total real property included in the gross estate, (iv) in the case of the gift tax, the total amount of gifts made during the calendar year and the prior calendar years subsequent to the enactment of the Revenue Act of 1932 and the approximate value of all real estate subject to the gift tax lien, and (v) if the property is to be sold or otherwise transferred, the name and address of the purchaser or transferee and the consideration, if any, paid or to be paid by him.

(3) For provisions relating to transfer certificates in the case of nonresident estates, see § 20.6325–1 of this chapter (Estate Tax Regulations).

(d) *Effect of certificate of release or discharge of specific property.* A certificate of release of lien or a certificate discharging specific property from the lien issued under section 6325 shall be conclusive that the lien upon the property covered by the certificate is extinguished.

§ 301.6326 Statutory provisions; cross references.

SEC. 6326. *Cross references.* (1) For lien in case of tax on distilled spirits, see section 5004.

(2) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U.S.C. 35).

(3) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57(j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U.S.C. 93).

(4) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876–877; 11 U.S.C. 107).

(5) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (52 Stat. 938; 11 U.S.C. 1080).

(6) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(7) For priority of lien of the United States in case of insolvency, see R.S. 3466 (31 U.S.C. 191).

SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

§ 301.6331 Statutory provisions; levy and distraint.

SEC. 6331. *Levy and distraint*—(a) *Authority of Secretary or delegate.* If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) *Seizure and sale of property.* The term "levy" as used in this title includes the power of distraint and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) *Successive seizures.* Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary or his delegate may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) *Cross references.* (1) For provisions relating to jeopardy, see subchapter A of chapter 70.

(2) For proceedings applicable to sale of seized property, see section 6335.

§ 301.6331–1 Levy and distraint.

(a) *Authority to levy—(1) In general.* If any person liable to pay any tax neglects or refuses to pay such tax within 10 days after notice and demand, the district director to whom the assessment is charged or, upon his request, any other district director may proceed to collect the tax by levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to such person or on which there is a lien provided by section 6321 or 6324 (or the corresponding provision of prior law) for the payment of such tax. As used in section 6331 and this section, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with any costs and expenses that may accrue in addition thereto. For exemption of certain property from levy, see section 6334 and the regulations thereunder. Property subject to a Federal tax lien, which has been sold or otherwise transferred by the taxpayer, may be seized in the hands of the transferee or of any subsequent transferee. Levy may be made by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, such as, for example, receivables, bank accounts, evidences of debt, securities, and accrued salaries, wages, commissions, and other compensation.

(2) *Jeopardy cases.* If the district director finds that the collection of any tax is in jeopardy, he may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331 (a).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such custody is incident to a bankruptcy or receivership proceeding, except where the proceeding has progressed to such a point that the levy would not interfere with the work of the court or where the court grants permission to levy. Any assets which under applicable provisions of law are not under the control of the court may be levied upon, for example, property exempt from court custody under State law or the bankrupt's earnings and property acquired after the date of bankruptcy. However, levy upon such property is not mandatory and the Government may rely upon payment of taxes in the proceeding.

(4) *Certain types of compensation—(i) Federal employees.* Levy may be made upon the accrued salary or wages of any

officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, the term "employer" means (a) the officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or (b) any other officer or employee designated by the head of the branch, department, agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee.

(ii) *State and municipal employees.* Accrued salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) *Seamen.* Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), accrued wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See section 6334(c).

(b) *Successive seizures.* Whenever any property or rights to property upon which a levy has been made are not sufficient to satisfy the claim of the United States for which the levy is made, the district director may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom such claim exists or on which there is a lien imposed by section 6321 or 6324 (or the corresponding provision of prior law) for the payment of such claim until the amount due from such person, together with all costs and expenses, is fully paid.

§ 301.6332 Statutory provisions; surrender of property subject to levy.

SEC. 6332. *Surrender of property subject to levy*—(a) *Requirement.* Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for violation.* Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

(c) *Person defined.* The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

§ 301.6332–1 Surrender of property subject to levy.

(a) *Requirement*—(1) *In general.* Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the district director, surrender such property or rights (or discharge such obligation) to the district director, except such part of the property or right as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(2) *Property held by banks.* Notwithstanding subparagraph (1) of this paragraph, if a levy has been made upon property or rights to property subject to levy which a bank engaged in the banking business in the United States or a possession of the United States is in possession of (or obligated with respect to), the Commissioner shall not enforce the levy with respect to any deposits held in an office of the bank outside the United States or a possession of the United States, unless the notice of levy specifies that the district director intends to reach such deposits. The notice of levy shall not specify that the district director intends to reach such deposits unless the district director believes—

(i) That the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(ii) That the taxpayer is not within the jurisdiction of a U.S. court at the time the levy is made, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the Code.

For purposes of this subparagraph, the term "possession of the United States" includes Guam, the Midway Islands, the Panama Canal Zone, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Wake Island.

(b) *Penalty for violation.* Any person who fails or refuses, upon demand of the district director, to surrender any property or rights to property subject to levy, as required by section 6332(a), shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

(c) *Person defined.* The term "person," as used in section 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property or to discharge the obligation. Thus, in the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, the term "person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality, who as such officer or employee is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see paragraph (a)(4)(i) of § 301.6331–1.

§ 301.6333 Statutory provisions; production of books.

SEC. 6333. *Production of books.* If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary or his delegate, exhibit such books or records to the Secretary or his delegate.

§ 301.6333–1 Production of books.

If a levy has been made or is about to be made on any property or rights to property, any person, having custody or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the internal revenue officer who has made or is about to make the levy, exhibit such books or records to such officer.

§ 301.6334 Statutory provisions; property exempt from levy.

SEC. 6334. *Property exempt from levy*—(a) *Enumeration.* There shall be exempt from levy—

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value;

(3) *Books and tools of a trade, business, or profession.* So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State or Territory, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) *Undelivered mail.* Mail, addressed to any person, which has not been delivered to the addressee.

(b) *Appraisal.* The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary or his delegate shall summon three disinterested individuals who shall make the valuation.

(c) *No other property exempt.* Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

[Sec. 6334 as amended by sec. 406, Social Security Amendments 1958 (72 Stat. 1047); as amended by sec. 812, Excise Tax Reduction Act of 1965 (79 Stat. 170)]

SEC. 12 [Railroad Retirement Act of 1937, as amended]. Notwithstanding any other law of the United States, or of any State, Territory, or of the District of Columbia, no annuity or pension payment shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

[SEC. 12 as amended by sec. 4, Act of Aug. 12, 1955 (Pub. Law 383, 84th Cong., 69 Stat. 716), effective as of Aug. 29, 1935 (45 U.S.C. 2281)]

SEC. 2 [Railroad Unemployment Insurance Act]. * * *

(e) Notwithstanding any other law of the United States, or of any State, Territory, or the District of Columbia, no benefits shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

[Sec. 2 as amended by sec. 4, Act of Aug. 12, 1955 (Pub. Law 383, 84th Cong., 69 Stat. 716), effective as of June 25, 1938 (45 U.S.C. 352 (e))]

SEC. 562 [Title 38, United States Code]. *Special provisions relating to pension.* * * *

(c) Special pension shall not be subject to any attachment, execution, levy, tax lien, or detention under any process whatever.

[38 U.S.C. 562(c), enacted into positive law by Act of Sept. 2, 1958 (Pub. Law 85-857, 72 Stat. 1105)]

SEC. 1440 [Title 10, United States Code]. *Annuities not subject to legal process.* No annuity payable under this chapter (Chapter 73) is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

[10 U.S.C. 1440, enacted into positive law by Act of Aug. 10, 1956 (Pub. Law 1028, 84th Cong., 70A Stat. 111)]

§ 301.6334-1 Property exempt from levy.

(a) *Enumeration.* There shall be exempt from levy—

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of his family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value.

(3) *Books and tools of a trade, business, or profession.* So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State or Territory, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) *Undelivered mail.* Mail, addressed to any person, which has not been delivered to the addressee.

(b) *Appraisal.* The internal revenue officer seizing property of the type described in section 6334(a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *Other property.* Annuity or pension payments under the Railroad Retirement Act (45 U.S.C. ch. 9), benefits under the Railroad Unemployment Insurance Act (45 U.S.C. ch. 11), special pensions under 38 U.S.C. 562, and annuities payable under 10 U.S.C. ch. 73 are exempt from levy. No other property or rights to property are exempt from levy except the property specifically exempted by section 6334(a). No provision of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

§ 301.6335 Statutory provisions; sale of seized property.

SEC. 6335. *Sale of seized property*—(a) *Notice of seizure.* As soon as practicable after seizure of property, notice in writing shall be given by the Secretary or his delegate to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the same manner as that prescribed in subsection (a), and shall cause a notification to be published in some newspaper within the county wherein such seizure is made, or, if there be no newspaper published in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331(a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

(c) *Sale of indivisible property.* If any property liable to levy is not divisible, so as to enable the Secretary or his delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of such property shall be sold.

(d) *Time and place of sale.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under subsection (b). The place of sale shall be within the county in which the property is seized, except by special order of the Secretary or his delegate.

(e) *Manner and conditions of sale*—(1) *Minimum price.* Before the sale the Secretary or his delegate shall determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale the amount of the minimum price, the property shall be declared to be purchased at such price for the United States; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the Secretary or his delegate shall take into account the expense of making the levy and sale.

(2) *Additional rules applicable to sale.* The Secretary or his delegate shall by regulations prescribe the manner and other conditions of the sale of property seized by levy. If one or more alternative methods or conditions are permitted by regulations, the Secretary or his delegate shall select the alternatives applicable to the sale. Such regulations shall provide:

(A) That the sale shall not be conducted in any manner other than—

(i) by public auction, or

(ii) by public sale under sealed bids.

(B) In the case of the seizure of several items of property, whether such items shall be offered separately, in groups, or in the aggregate; and whether such property shall be offered both separately (or in groups) and in the aggregate, and sold under whichever method produces the highest aggregate amount.

(C) Whether the announcement of the minimum price determined by the Secretary or his delegate may be delayed until the receipt of the highest bid.

(D) Whether payment in full shall be required at the time of acceptance of a bid, or whether a part of such payment may be deferred for such period (not to exceed 1 month) as may be determined by the Secretary or his delegate to be appropriate.

(E) The extent to which methods (including advertising) in addition to those prescribed in subsection (b) may be used in giving notice of the sale.

(F) Under what circumstances the Secretary or his delegate may adjourn the sale from time to time (but such adjournments shall not be for a period to exceed in all 1 month).

(3) *Payment of amount bid.* If payment in full is required at the time of acceptance of a bid and is not then and there paid, the Secretary or his delegate shall forthwith proceed to again sell the property in the manner provided in this subsection. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the Secretary or his delegate, the sale may be declared by the Secretary or his delegate to be null and void for failure to make full

payment of the purchase price and the property may again be advertised and sold as provided in subsections (b) and (c) and this subsection. In the event of such readvertisement and sale any new purchaser shall receive such property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited.

(f) *Stay of sale of seized property pending Tax Court decision.* For restrictions on sale of seized property pending Tax Court decision, see section 6863(b)(3).

§ 301.6335–1 Sale of seized property.

(a) *Notice of seizure.* As soon as practicable after seizure of property, the internal revenue officer seizing the property shall give notice in writing to the owner of the property (or, in the case of personal property, to the possessor thereof). The written notice shall be delivered to the owner (or to the possessor, in the case of personal property) or left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* (1) As soon as practicable after seizure of the property, the district director shall give notice of sale in writing to the owner. Such notice shall be delivered to the owner or left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice shall also be published in some newspaper within the county wherein such seizure is made. However, if there is no newspaper published in such county, such notice shall be posted at the post office nearest the place where the seizure is made, and in not less than two other public places.

(2) The district director may use other methods of giving notice of sale and of advertising seized property in addition to those referred to in subparagraph (1) of this paragraph when he believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.

(3) Whenever levy is made without regard to the 10-day period provided in section 6331(a) (relating to cases in which collection is in jeopardy), a public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to perishable goods) is applicable.

(c) *Time, place, manner, and conditions of sale.* The time, place, manner, and conditions of the sale of property seized by levy shall be as follows:

(1) *Time and place of sale.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under section 6335 (b) (see paragraph (b) of this section). The place of sale shall be within the county in which the property is seized, except that if it appears to the district director under whose supervision the seizure was made that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, he may order that the sale be held in such other place. The sale shall be held at the time and place stated in the notice of sale.

(2) *Adjournment of sale.* When it appears to the district director that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the district director may adjourn, or cause the internal revenue officer conducting the sale to adjourn, the sale from time to time, but the date of the sale shall not be later than one month after the date fixed in the original notice of sale.

(3) *Minimum price.* The district director shall determine a minimum price, taking into account the expenses of levy and sale, for which the property shall be sold. If no person offers for such property at the sale the amount of the minimum price, the property shall be declared purchased at such price for the United States; otherwise, the property shall be declared to be sold to the highest bidder. The internal revenue officer conducting the sale shall either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, and, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(4) *Offering of property.*—(i) *Sale of indivisible property.* If any property levied upon is not divisible, so as to enable the district director by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property shall be sold. For application of surplus proceeds of sale, see section 6342(b).

(ii) *Separately, in groups, or in the aggregate.* The seized property may be offered for sale—

(*a*) As separate items, or

(*b*) As groups of items, or

(*c*) In the aggregate, or

(*d*) Both as separate items (or in groups) and in the aggregate. In such cases, the property shall be sold under the method which produces the highest aggregate amount.

The district director shall select whichever of the foregoing methods of offering the property for sale as, in his opinion, is most feasible under all the facts and circumstances of the case, except that if the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal property as a group, or as groups, or as separate items, are first offered separately.

(iii) *Condition of title and of property.* Only the right, title, and interest of the delinquent taxpayer in and to the property seized shall be offered for sale, and such interest shall be offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid as against the delinquent taxpayer and are superior to the lien of the United States. All seized property shall be offered for sale "as is" and "where is" and without recourse against the United States. No guaranty or warranty, express or implied, shall be made by the internal revenue officer offering the property for sale, as to the validity of the title, quality, quantity, weight, size, or condition of any of the property, or its fitness for any use or purpose. No claim shall be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, express or implied.

(iv) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the district director in the public notice of sale:

(*a*) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(*b*) If the aggregate price of all property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed 1 month from the date of the sale.

(5) *Method of sale.* The district director shall sell the property either—

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sale under sealed bids:

(*a*) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(*b*) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the district director upon request. The form shall be completed in accordance with the instructions thereon.

(*c*) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. (In the case of alternative bids submit-

ted by the same bidder for items of property offered separately, or in groups, or in the aggregate, the bidder shall remit the full amount of the highest alternative bid submitted, if that bid is $200 or less. If the highest alternative bid submitted is more than $200, the bidder shall remit 20 percent of the highest alternative bid or $200, whichever is greater.) Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(d) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope his name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the internal revenue officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(e) *Consideration of bids.* The public notice of sale shall specify whether the property is to be sold separately, by groups, or in the aggregate or by a combination of these methods, as provided in subparagraph (4)(ii) of this paragraph. If the notice specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in the extension of prices in any bid, the unit price will govern. The internal revenue officer conducting the sale shall have the right to waive any technical defects in a bid. In the event two or more highest bids are equal in amount, the internal revenue officer conducting the sale shall determine the successful bidder by drawing lots. After the opening, examination, and consideration of all bids, the internal revenue officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in connection with an unsuccessful bid shall be returned at the conclusion of the sale.

(f) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(6) *Payment of bid price.* All payments for property sold under this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(7) *Delivery and removal of personal property.* Responsibility of the United States for the protection or preservation of seized personal property shall cease immediately upon acceptance of the highest bid. The risk of loss is on the purchaser of personal property upon acceptance of his bid. Possession of any personal property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for personal property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after the acceptance of the bid shall be borne by the purchaser.

(8) *Default in payment.* If payment in full is required upon acceptance of the bid and is not then and there paid, the internal revenue officer conducting the sale shall forthwith proceed again to sell the property in the manner provided in section 6335(e) and this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the district director, the sale may be declared by the district director to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b), (c), and (e) of section 6335 and this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the United States.

(9) *Stay of sale of seized property pending Tax Court decision.* For restrictions on sale of seized property pending Tax Court decision, see section 6863(b)(3) and § 301.6863–2.

§ 301.6336 Statutory provisions; sale of perishable goods.

SEC. 6336. *Sale of perishable goods.* If the Secretary or his delegate determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and—

(1) *Return to owner.* If the owner of the property can be readily found, the Secretary or his delegate shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner—

(A) Pays to the Secretary or his delegate an amount equal to the appraised value, or

(B) Gives bond in such form, with such sureties, and in such amount as the Secretary or his delegate shall prescribe, to pay the appraised amount at such time as the Secretary or his delegate determines to be appropriate in the circumstances.

(2) *Immediate sale.* If the owner does not pay such amount or furnish such bond in accordance with this section, the Secretary or his delegate shall as soon as practicable make public sale of the property in accordance with such regulations as may be prescribed by the Secretary or his delegate.

§ 301.6336–1 Sale of perishable goods.

(a) *Appraisal of certain seized property.* If the district director determines that any property seized by levy is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and return it to the owner if the owner complies with the conditions prescribed in paragraph (b) of this section or, if the owner does not comply with such conditions, dispose of the property in accordance with paragraph (c) of this section.

(b) *Return to owner.* If the owner of the property can be readily found, the district director shall give him written notice of his determination of the appraised value of the property. However, if the district director determines that the circumstances require immediate action, he may give the owner an oral notice of his determination of the appraised value of the property, which notice shall be confirmed in writing prior to sale. The property shall be returned to the owner if, within the time specified in the notice, the owner—

(1) Pays to the district director an amount equal to the appraised value, or

(2) Gives an acceptable bond as prescribed by section 7101 and § 301.7101–1. Such bond shall be in an amount not less than the appraised value of the property and shall be conditioned upon the payment of such amount at such time as the district director determines to be appropriate in the circumstances.

(c) *Immediate sale.* If the owner does not pay the amount of the appraised value of the seized property within the time specified in the notice, or furnish bond as provided in paragraph (b) of this section within such time, the district director shall as soon as practicable make public sale of the property in accordance with the following terms and conditions—

(1) *Notice of sale.* If the owner can readily be found, a notice shall be given to him. A notice of sale also shall be posted in two public places in the county in which the property is to be sold. The notice shall specify the time and place of sale, the property to be sold, and the manner and conditions of sale. The district director may give such other notice and in such other manner as he deems advisable under the circumstances.

(2) *Sale.* The property shall be sold at public auction to the highest bidder.

(3) *Terms.* The purchase price shall be paid in full upon acceptance of the highest bid. The payment shall be made in cash, or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

§ 301.6337 Statutory provisions; redemption of property.

SEC. 6337. *Redemption of property*—(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Secretary or his delegate at any time prior to the sale thereof, and upon such payment the Secretary or his delegate shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale*—(1) *Period.* The owners of any real property sold as provided in section 6335, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 1 year after the sale thereof.

(2) *Price.* Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Secretary or his delegate, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum.

(c) *Record.* When any lands sold are redeemed as provided in this section, the Secretary or his delegate shall cause entry of the fact to be made upon the record mentioned in section 6340, and such entry shall be evidence of such redemption.

§ 301.6337–1 Redemption of property.

(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the district director at any time prior to the sale of the property. Upon such payment the district director shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale*—(1) *Period.* The owner of any real estate sold as provided in section 6335, his heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within one year after the sale thereof.

(2) *Price.* Such property or tract of property may be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the district director for the internal revenue district in which the property is situated, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum. In case real and personal property (or several tracts of real property) are purchased in the aggregate, the redemption price of the real property (or of each of the several tracts) shall be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups shall be treated as the value.

(c) *Record.* When any real property is redeemed, the district director shall cause entry of the fact to be made upon the record of sale kept in accordance with section 6340, and such entry shall be evidence of such redemption. The party who redeems the property shall notify the district director of the internal revenue district in which the property is situated of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

§ 301.6338 Statutory provisions; certificate of sale; deed of real property.

SEC. 6338. *Certificate of sale; deed of real property*—(a) *Certificate of sale.* In the case of property sold as provided in section 6335, the Secretary or his delegate shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property.* In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time provided in section 6337, the Secretary or his delegate shall execute (in accordance with the laws of the State in which such real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property so purchased by him, reciting the facts set forth in the certificate.

(c) *Real property purchased by United States.* If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor after its preparation and the endorsement of approval as to its form by the U.S. attorney for the district in which the property is situated, and the Secretary or his delegate shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

[SEC. 6338 as amended by sec. 78, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6338–1 Certificate of sale; deed of real property.

(a) *Certificate of sale.* In the case of property sold as provided in section 6335 (relating to sale of seized property), the district director shall give to the purchaser a certificate of sale upon payment in full of the purchase price. A certificate of sale of real property shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property.* In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time prescribed in section 6337, the district director shall execute (in accordance with the laws of the State in which the real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at the sale or his assigns, upon surrender of the certificate of sale, a deed of the real property so purchased, reciting the facts set forth in the certificate.

(c) *Deed to real property purchased by the United States.* If real property is declared purchased by the United States at a sale pursuant to section 6335, the district director shall at the proper time execute a deed therefor after its preparation and the endorsement of approval as to the form by the U.S. attorney for the district in which the property is situated, and the district director shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

§ 301.6339 Statutory provisions; legal effect of certificate of sale of personal property and deed of real property.

SEC. 6339. *Legal effect of certificate of sale of personal property and deed of real property*—(a) *Certificate of sale of property other than real property.* In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) *As conveyances.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) *Deed of real property.* In the case of the sale of real property pursuant to section 6335—

(1) *Deed as evidence.* The deed of sale given pursuant to section 6338 shall be prima

facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the Secretary or his delegate as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

[Sec. 6339 as amended by sec. 79, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6339–1 Legal effect of certificate of sale of personal property and deed of real property.

(a) *Certificate of sale of property other than real property.* In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) *As conveyance.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of corporate stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

(b) *Deed to real property.* In the case of the sale of real property pursuant to section 6335—

(1) *Deed as evidence.* The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the district director as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

§ 301.6340 Statutory provisions; records of sale.

SEC. 6340. *Records of sale*—(a) *Requirement.* The Secretary or his delegate shall, for each internal revenue district, keep a record of all sales of real property under section 6335 and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the Secretary or his delegate shall be evidence in any court of the truth of the facts therein stated.

§ 301.6340–1 Records of sale.

(a) *Requirement.* Each district director shall keep a record of all sales under section 6335 of real property situated within his district and of redemptions of such property. The records shall set forth (1) the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, the date of the deed, and, in the case of redemption of the property, (2) the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the district director shall be evidence in any court of the truth of the facts therein stated.

§ 301.6341 Statutory provisions; expense of levy and sale.

SEC. 6341. *Expense of levy and sale.* The Secretary or his delegate shall determine the expenses to be allowed in all cases of levy and sale.

§ 301.6341–1 Expense of levy and sale.

The district director shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the district director shall properly apportion the expenses to the real property (or to each tract).

§ 301.6342 Statutory provisions; application of proceeds of levy.

SEC. 6342. *Application of proceeds of levy*—(a) *Collection of liability.* Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332, or by sale of seized property) shall be applied as follows:

(1) *Expense of levy and sale.* First, against the expenses of the proceedings under this subchapter;

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying paragraph (1) shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying paragraphs (1) and (2) shall then be applied against the liability in respect of which the levy was made.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Secretary or his delegate to the person or persons legally entitled thereto.

§ 301.6342–1 Application of proceeds of levy.

(a) *Collection of liability.* Any money realized by proceedings under subchapter D, chapter 64, of the Code (whether by seizure, by surrender under section 6332, or by sale of seized property), shall be applied as follows:

(1) *Expense of levy and sale.* First, against the expenses of the proceedings as allowable under section 6341;

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying subparagraph (1) of this paragraph shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying subparagraphs (1) and (2) of this paragraph shall then be applied against the liability in respect of which the levy was made.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of paragraph (a) of this section shall, upon application and satisfactory proof in support thereof, be credited or refunded by the district director to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto.

§ 301.6343 Statutory provisions; authority to release levy.

SEC. 6343. *Authority to release levy.* It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

§ 301.6343–1 Authority to release levy.

(a) *Authority.* The district director may release the levy upon all or part of the property or rights to property levied upon as provided in paragraphs (b) and (c) of this section. A levy may be released under paragraph (b) of this section only if the delinquent taxpayer complies with such of the conditions thereunder as the district director may require and if the district director determines that such action will facilitate the collection of the liability. A release pur-

suant to paragraph (c) of this section is considered to facilitate the collection of the liability. The release under this section shall not operate to prevent any subsequent levy.

(b) *Conditions for release.* The district director may release the levy as authorized under paragraph (a) of this section, if—

(1) *Escrow arrangement.* The delinquent taxpayer offers, and there is accepted by the district director, a satisfactory arrangement placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.

(2) *Bond.* The delinquent taxpayer delivers an acceptable bond to the district director conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form provided in section 7101 and § 301.7101–1.

(3) *Payment of amount of U.S. interest in the property.* There is paid to the district director an amount determined by him to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(4) *Assignment of salaries and wages.* The delinquent taxpayer executes an agreement directing his employer to pay to the district director amounts deducted from the employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with the district director, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(5) *Installment payment arrangement.* The delinquent taxpayer makes satisfactory arrangements with the district director to pay the amount of the liability in installments.

(6) *Extension of statute of limitations.* The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with section 6502 (a) (2) and § 301.6502–1.

(c) *Release where value of interest of United States is insufficient to meet expenses of sale.* The district director may release the levy as authorized under paragraph (a) of this section if he determines that the value of the interest of the United States in the seized property, or in the part of the seized property to be released, is insufficient to cover the expenses of the sale of such property.

§ 301.6344 Statutory provisions; cross references.

SEC. 6344. *Cross references*—(a) *Length of period.* For period within which levy may be begun in case of—

(1) Income, estate, and gift taxes, see sections 6502(a) and 6503(a)(1).

(2) Employment and miscellaneous excise taxes, see section 6502(a).

(b) *Delinquent collection officers.* For distraint proceedings against delinquent internal revenue officers, see section 7803(d).

(c) *Other references.* For provisions relating to—

(1) Stamps, marks and brands, see section 6807.

(2) Administration of real estate acquired by the United States, see section 7506.

Abatements, Credits, and Refunds

PROCEDURE IN GENERAL

§ 301.6401 Statutory provisions; amounts treated as overpayments.

SEC. 6401. *Amounts treated as overpayments*—(a) *Assessment and collection after limitation period.* The term "overpayment" includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.

(b) *Excessive withholding.* If the amount allowable as a credit under section 31 (relating to credit for tax withheld at the source under chapter 24) exceeds the taxes imposed by chapter 1 against which such credit is allowable, the amount of such excess shall be considered an overpayment.

(c) *Rule where no tax liability.* An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

§ 301.6401–1 Amounts treated as overpayments.

(a) The term "overpayment" includes:

(1) Any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(2) Any amount allowable for a taxable year as a credit under section 31 (relating to credit for income tax withheld at source on wages) which exceeds the correct income tax imposed by chapter 1 of the Code for such year.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

§ 301.6402 Statutory provisions; authority to make credits or refunds.

SEC. 6402. *Authority to make credits or refunds*—(a) *General rule.* In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

(b) *Credits against estimated tax.* The Secretary or his delegate is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary (or his delegate) to be an overpayment of the income tax for a preceding taxable year.

§ 301.6402–1 Authority to make credits or refunds.

The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment, and the balance, if any, shall be refunded to such person by the Commissioner.

§ 301.6402–2 Claims for credit or refund.

(a) *Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) The claim, together with appropriate supporting evidence, must be filed in the office of the district director for the internal revenue district in which the tax was paid. As to interest in the case of credits or refunds, see section 6611. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on Saturday, Sunday, or a legal holiday.

(b) *Grounds set forth in claim.* (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

(2) Neither the district director nor the director of the regional service center has authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* Claims by the taxpayer for the refunding of overpayments of taxes, interest, penalties, and additions to tax shall be made on Form 843. For special rules applicable to income tax, see § 301.6402–3. For other provisions relating to credits and refunds of taxes other than income tax, see the regulations relating to the particular tax.

(d) *Separate claims for separate taxable periods.* In the case of income, gift, and Federal unemployment taxes, a separate claim shall be made for each type of tax for each taxable year or period.

(e) *Proof of representative capacity.* If a return is filed by an individual and, after his death, a refund claim is filed by his legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim

showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(f) *Mailing of refund check.* (1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in subparagraph (2) of this paragraph, the checks may be sent direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and, in the case of actions arising in the U.S. district courts, will be sent to the appropriate U.S. attorney, and, in actions arising in the U.S. Court of Claims, to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see section 3477 of the Revised Statutes (31 U.S.C. 203).

§ 301.6402–3 Special rules applicable to income tax.

(a) In the case of income tax, claims for refund may not only be made on Form 843 but may also be made on any individual, fiduciary, or corporation income tax return (other than the return of a departing alien on Form 1040C), or on any amended income tax return.

(b) A properly executed individual, fiduciary, or corporation income tax return shall, at the election of the taxpayer, constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return. For purposes of section 6511, such claim shall be considered as filed on the date on which such return is considered as filed, except that if the requirements of § 301.7502–1, relating to timely mailing treated as timely filing, are met the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return was mailed. An election to treat the return as a claim for refund or credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return is filed. If the taxpayer elects to have all or part of the overpayment shown by his return applied to his estimated income tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year or the installments thereof.

(c) The filing of a properly executed income tax return on Form 1040A shall, in any case in which the taxpayer is not required to show his tax on such form, constitute an election by the taxpayer to have the return treated as a claim for refund, and such return shall constitute a claim for refund within the meaning of section 6402 and section 6511 for the amount of the overpayment shown by the computation of the tax made by the district director or the director of the regional service center on the basis of the return. For purposes of section 6511, such claim shall be considered as filed on the date on which such return is considered as filed, except that if the requirements of § 301.7502–1, relating to timely mailing treated as timely filing, are met the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return was mailed.

(d) In any case in which a taxpayer elects to have an overpayment refunded to him he may not thereafter change his election to have the overpayment applied as a payment on account of his estimated income tax.

§ 301.6402–4 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of his tax liability, made before the filing of his return, may exceed the amount of tax shown on the return. For example, such payments may arise in the case of the income tax when the estimated tax or the credit for income tax withheld at the source on wages exceeds the amount of tax shown on the return, or where a corporation obtains an extension of time for filing its return and makes installment payments based on its estimate of its tax liability which exceed the tax liability shown on the return subsequently filed. In any case in which the district director or the director of the regional service center determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, he may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of §§ 301.6402–2 and 301.6402–3 are applicable to such overpayment, and taxpayers should submit claims for refund (if the income tax return is not itself a claim for refund, as provided in § 301.6402–3) to protect themselves in the event the district director or the director of the regional service center fails to make such determination and credit or refund. The provisions of section 6405 (relating to reports of refunds of more than $100,000 to the Joint Committee on Internal Revenue Taxation) are not applicable to the overpayments described in this section caused by timely payments of tax which exceed the amount of tax shown on a timely return.

§ 301.6403 Statutory provisions; overpayment of installment.

SEC. 6403. *Overpayment of installment.* In the case of a tax payable in installments, if the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402.

§ 301.6403–1 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in section 6402 and §§ 301.6402–1 to 301.6402–4, inclusive.

§ 301.6404 Statutory provisions; abatements.

SEC. 6404. *Abatements.*—(a) *General rule.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

(1) Is excessive in amount, or

(2) Is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) Is erroneously or illegally assessed.

(b) *No claim for abatement of income, estate, and gift taxes.* No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or B.

(c) *Small tax balances.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary or his delegate determines under uniform rules prescribed by the Secretary or his delegate that the administration and collection costs involved would not warrant collection of the amount due.

§ 301.6404–1 Abatements.

(a) The district director or the director of the regional service center may abate any assessment, or unpaid portion thereof, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitations applicable thereto, or if the assessment has been erroneously or illegally made.

(b) No claim for abatement may be filed with respect to income, estate, or gift tax.

(c) Except in case of income, estate, or gift tax, if more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to the district director, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 843 in accordance with the instructions relat-

ing to such form and shall be filed with the district director for the internal revenue district in which the tax would otherwise have been paid.

(d) The Commissioner may issue uniform instructions to district directors authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

§ 301.6405 Statutory provisions; reports of refunds and credits.

SEC. 6405. *Reports of refunds and credits*—(a) *By Treasury to Joint Committee.* No refund or credit of any income, war profits, excess profits, estate, or gift tax in excess of $100,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary or his delegate, is submitted to the Joint Committee on Internal Revenue Taxation.

(b) *By Joint Committee to Congress.* A report to Congress shall be made annually by such committee of such refunds and credits, including the names of all persons and corporations to whom amounts are credited or payments are made, together with the amounts credited or paid to each.

(c) *Tentative adjustments.* Any credit or refund allowed or made under section 6411 shall be made without regard to the provisions of subsection (a) of this section. In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of $100,000, there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Secretary or his delegate shall determine the correct amount of the tax.

§ 301.6405–1 Reports of refunds and credits.

Section 6405 requires that a report be made to the Joint Committee on Internal Revenue Taxation of proposed refunds or credits of any income, war profits, excess profits, estate, or gift tax in excess of $100,000.

§ 301.6406 Statutory provisions; prohibition of administrative review of decisions.

SEC. 6406. *Prohibition of administrative review of decisions.* In the absence of fraud or mistake in mathematical calculation, the findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by the internal revenue laws and the allowance or nonallowance by the Secretary or his delegate of interest on any credit or refund under the internal revenue laws shall not, except as provided in subchapters C and D of chapter 76 (relating to the Tax Court), be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

§ 301.6407 Statutory provisions; date of allowance of refund or credit.

SEC. 6407. *Date of allowance of refund or credit.* The date on which the Secretary or his delegate first authorizes the scheduling of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.

§ 301.6407–1 Date of allowance of refund or credit.

The date on which the district director or the director of the regional service center, or an authorized certifying officer designated by either of them, first certifies the allowance of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.

RULES OF SPECIAL APPLICATION

§ 301.6411 Statutory provisions; tentative carryback adjustments.

SEC. 6411. *Tentative carryback adjustments*—(a) *Application for adjustment.* A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback, provided in section 172(b), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss from which the carryback results and within a period of 12 months from the end of such taxable year, in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss;

(2) The amount of the tax previously determined for the prior taxable year affected by such carryback, the tax previously determined being ascertained in accordance with the method prescribed in section 1314(a);

(3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The unpaid amount of such tax, not including any amount required to be shown under paragraph (5);

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year of such loss, as to which an extension of time for payment under section 6164 is in effect; and

(6) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations. An application under this subsection shall not constitute a claim for credit or refund.

(b) *Allowance of adjustments.* Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss from which such carryback results, whichever is the later, the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary or his delegate may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under sec. 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) *Consolidated returns.* If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises, or for the preceding taxable year affected by such loss, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

§ 301.6411–1 Tentative carryback adjustments.

For regulations under section 6411, see §§ 1.6411–1 to 1.6411–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6412 Statutory provisions; floor stocks refunds.

SEC. 6412. *Floor stocks refunds*—(a) *In general*—(1) *Passenger automobiles, etc.* Where before July 1, 1968, any article subject to the tax imposed by section 4061(a)(2) has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after July 1, 1968, if claim for such credit or refund is filed with the Secretary or his delegate on or before November 10, 1968, based upon a request submitted to the manufacturer, producer, or importer before October 1, 1968, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before November 10, 1968, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund.

(2) *Trucks and buses, tires, tubes, tread rubber, and gasoline.* Where before October 1, 1972, any article subject to the tax imposed by section 4061(a)(1), 4071(a)(1), (3), or (4), or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale (or, in the case of tread rubber, is intended for sale or is held for use), there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after October 1, 1972, if claim for such credit or refund is filed with the Secretary or his delegate on or before February 10, 1973, based upon a request submitted to the manufacturer, producer, or importer before January 1, 1973, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before February 10, 1973, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on

such article or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline. No credit or refund shall be allowable under this paragraph with respect to inner tubes for bicycle tires (as defined in section 4221 (e)(4)(B)).

(3) [Deleted]

(4) *Definitions.* For purposes of this section—

(A) The term "dealer" includes a wholesaler, jobber, distributor, or retailer, or, in the case of tread rubber subject to tax under section 4071(a)(4), includes any person (other than the manufacturer, producer, or importer thereof) who holds such tread rubber for sale or use.

(B) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(b) *Limitation on eligibility for credit or refund.* No manufacturer, producer, or importer shall be entitled to credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed under this section.

(c) *Other laws applicable.* All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4061, 4071, and 4081 shall, insofar as applicable and not inconsistent with subsections (a) and (b) of this section, apply in respect of the credits and refunds provided for in subsection (a) to the same extent as if such credits or refunds constituted overpayments of such taxes.

(d) [Deleted]

(e) *Cross reference.* For floor stocks refunds in case of certain alcohol and tobacco taxes, see sections 5063 and 5707.

[Sec. 6412 as amended by sec. 3(b)(4), Tax Rate Extension Act 1955 (69 Stat. 15); sec. 3(b)(4), Tax Rate Extension Act 1956 (70 Stat. 67); sec. 19, Act of May 29, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221); sec. 208 (a), Highway Revenue Act 1956 (70 Stat. 392); sec. 3(b)(4), Tax Rate Extension Act 1957 (71 Stat. 10); sec. 3(b)(4), Tax Rate Extension Act 1958 (72 Stat. 260); sec. 162(a), Excise Tax Technical Changes Act 1958 (72 Stat. 1306); sec. 3(b)(3), Tax Rate Extension Act 1959 (73 Stat. 158); sec. 201(c)(4), Federal-Aid Highway Act 1959 (73 Stat. 614); sec. 202(b)(3), Public Debt and Tax Rate Extension Act 1960 (74 Stat. 291); sec. 2, Act of July 6, 1960 (Pub. Law 86-592, 74 Stat. 330); sec. 2(b), Act of Mar. 31, 1961 (Pub. Law 87-15, 75 Stat. 40); sec. 206 (c), (d), Federal-Aid Highway Act 1961 (75 Stat. 127); sec. 3(b)(3), Tax Rate Extension Act 1961 (75 Stat. 193); sec. 302(d), Tariff Classification Act 1962 (76 Stat. 77); sec. 3(b)(3), Tax Rate Extension Act 1962 (76 Stat. 114); sec. 18(b), Sugar Act Amendments 1962 (76 Stat. 166)]

§ 301.6413 Statutory provisions; special rules applicable to certain employment taxes.

SEC. 6413. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) *Guam or American Samoa as employer.* For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) *Overpayments of certain employment taxes.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

(c) *Special refunds*—(1) *In general.* If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed $3,600, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed $4,200, or (B) during any calendar year after the calendar year 1958, the wages received by him during such year exceed $4,800, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first $4,800 of such wages received in such calendar year after 1958.

(2) *Applicability in case of Federal and State employees, employees of certain foreign corporations, and governmental employees in Guam and American Samoa*—(A) *Federal employees.* In the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed $3,600 for the calendar year 1951, 1952, 1953, or 1954, $4,200 for the calendar year 1955, 1956, 1957, or 1958, or $4,800 for any calendar year after 1958, determined by each such head or agent as constituting wages paid to an employee.

(B) *State employees.* For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) *Employees of certain foreign corporations.* For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(l) as would be wages if such services constituted employment; the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121(l); the term "tax" or "tax imposed by section 3101," includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121(l) has been paid to the Secretary or his delegate.

(D) *Governmental employees in Guam.* In the case of remuneration received from the Government of Guam or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of Guam and each agent designated by him who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer.

(E) *Governmental employees in American Samoa.* In the case of remuneration received from the Government of American Samoa or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendary year, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(b) shall, for purposes of this subsection, be deemed a separate employer.

(d) *Refund or credit of Federal unemployment tax.* Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

[Sec. 6413 as amended by sec. 202, Social Security Amendments 1954 (68 Stat. 1089); sec. 402(d), Social Security Amendments 1958 (72 Stat. 1043); sec. 103(r)(2), (3), (4), Social Security Amendments 1960 (74 Stat. 940)]

§ 301.6413–1 Special rules applicable to certain employment taxes.

For regulations under section 6413, see §§ 31.6413(a)–1 to 31.6413(c)–1, inclusive, of this chapter (Employment Tax Regulations).

§ 301.6414 Statutory provisions; income tax withheld.

SEC. 6414. *Income tax withheld.* In the case of an overpayment of tax imposed by chapter 24, or by chapter 3, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent.

§ 301.6414–1 Income tax withheld.

(a) For rules relating to the refund or credit of income tax withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6414–1 of this chapter (Income Tax Regulations).

(b) For rules relating to the refund or credit of income tax withheld under chapter 24 of the Code from wages, see § 31.6414–1 of this chapter (Employment Tax Regulations).

§ 301.6415 Statutory provisions; credits or refunds to persons who collected certain taxes.

SEC. 6415. *Credits or refunds to persons who collected certain taxes*—(a) *Allowance of credits or refunds.* Credit or refund of any overpayment of tax imposed by section 4231(1), 4231(2), 4231(3), 4241, 4251, 4261, or 4286 may be allowed to the person who collected the tax and paid it to the Secretary or his delegate if such person establishes, under such regulations as the Secretary or his delegate may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtains the consent of such person to the allowance of such credit or refund. For purposes of this subsection, in the case of any payment outside the United States in respect of which tax is imposed under paragraph (1), (2), or (3) of section 4231, the person who paid for the admission or for the use of the box or seat shall be considered the person from whom the tax was collected.

(b) *Credit on returns.* Any person entitled to a refund of tax imposed by section 4231(1), 4231(2), 4231(3), 4241, 4251, 4261, or 4286 paid, or collected and paid, to the Secretary or his delegate by him may, instead of filing a claim for refund, take credit therefor against taxes imposed by such section due upon any subsequent return.

(c) *Refund of overcollections.* In case any person required under section 4231(1), 4231(2), 4231(3), 4241, 4251, 4261, or 4286 to collect any tax shall make an overcollection of such tax, such person shall, upon proper application, refund such overcollection to the person entitled thereto.

(d) *Refund of taxable payment.* Any person making a refund of any payment on which tax imposed by section 4231(1), 4231(2), 4231(3), 4241, 4251, 4261, or 4286 has been collected may repay therewith the amount of tax collected on such payment.

[Sec. 6415 as amended by sec. 4(b)(4), Tax Rate Extension Act 1958 (72 Stat. 260); sec. 163(d)(1), Excise Tax Technical Changes Act 1958 (72 Stat. 1311)]

§ 301.6415–1 Credits or refunds to persons who collected certain taxes.

For regulations under section 6415, see Part 49 of this chapter (Facilities and Services Excise Tax Regulations).

§ 301.6416 Statutory provisions; certain taxes on sales and services.

SEC. 6416. *Certain taxes on sales and services*—(a) *Condition to allowance*—(1) *General rule.* No credit or refund of any overpayment of tax imposed by section 4231 (4), (5), or (6) (cabarets, etc.), chapter 31 (retailers taxes), or chapter 32 (manufacturers taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary or his delegate, that he—

(A) Has not included the tax in the price of the article, admission, or service with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article, admission, or service;

(B) Has repaid the amount of the tax—

(i) In the case of any tax imposed by chapter 31 (other than the tax imposed by section 4041(a)(1) or (b)(1)), to the purchaser of the article,

(ii) In the case of any tax imposed by chapter 32 and the tax imposed by section 4041 (a)(1) or (b)(1) (diesel and special motor fuels), to the ultimate purchaser of the article, or

(iii) In the case of any tax imposed by section 4231 (4), (5), or (6) (cabarets, etc.) to the person who paid for the admission, refreshment, service, or merchandise;

(C) In the case of an overpayment under subsection (b)(2), (b)(3) (C) or (D), or (b)(4) of this section—

(i) Has repaid or agreed to repay the amount of the tax to the utimate [ultimate] vendor of the article, or

(ii) Has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or

(D) Has filed with the Secretary or his delegate the written consent of the person referred to in subparagraph (B) (i), (ii), or (iii), as the case may be, to the allowance of the credit or the making of the refund.

(2) *Exceptions.* This subsection shall not apply to—

(A) The tax imposed by section 4041 (a)(2) or (b)(2) (use of diesel and special motor fuels), and

(B) An overpayment of tax under paragraph (1), (3) (A) or (B), or (5) of subsection (b) of this section.

(3) *Special rules.* For purposes of this subsection—

(A) Any tax collected under section 4231 (6) from a concessionaire and paid to the Secretary or his delegate shall be treated as paid by the concessionaire;

(B) If tax under chapter 31 was paid by a supplier pursuant to an agreement under section 6011(c), either the person who (without regard to section 6011(c)) was required to return and pay the tax or the supplier may be treated as the person who paid the tax;

(C) In any case in which the Secretary or his delegate determines that an article is not taxable, the term "ultimate purchaser" (when used in paragraph (1)(B)(ii) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such article for sale; but only if claim for credit or refund by reason of this subparagraph is filed on or before the day for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date of such determination; and

(D) In applying paragraph (1)(C) to any overpayment under paragraph (2)(F), (3) (C) or (D), or (4) of subsection (b), the term "ultimate vendor" means the ultimate vendor of the other article.

(b) *Special cases in which tax payments considered overpayments.* Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) *Price readjustments.* If the price of any article in respect of which a tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including (in the case of a tax imposed by chapter 32) a readjustment for local advertising (but only to the extent provided in section 4216(f) (2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. The preceding sentence shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) *Specified uses and resales.* The tax paid under chapter 32 (or under section 4041 (a)(1) or (b)(1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) Exported (except in any case to which subsection (g) applies);

(B) Used or sold for use as supplies for vessels or aircraft;

(C) Sold to a State or local government for the exclusive use of a State or local government;

(D) Sold to a nonprofit educational organization for its exclusive use;

(E) Resold to a manufacturer or producer for use by him as provided in subparagraph (A), (B), (E), or (F) of paragraph (3);

(F) In the case of a tire, inner tube, or receiving set, resold for use as provided in subparagraphs (C) or (D) of paragraph (3) and the other article referred to in such subparagraph is by any person exported or sold as provided in such subparagraph;

(G) In the case of a liquid taxable under section 4041, sold for use as fuel in a diesel-powered highway vehicle or as fuel for the propulsion of a motor vehicle, motorboat, or airplane, if (i) the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid, or (ii) such liquid was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes;

(H) In the case of a liquid in respect of which tax was paid under section 4041 at the rate of 3 cents or 4 cents a gallon, used during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes; except that (i) this subparagraph shall apply only if the 60 percent passenger fare revenue test set forth in section 6421(b)(2) is met with respect to such quarter, and (ii) the amount of such overpayment for such quarter shall be an amount determined by multiplying 1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon of liquid so used by the percentage which such person's commuter fare revenue (as defined in section 6421(d)(2)) derived from such scheduled service during such quarter was of his total passenger fare revenue derived from such scheduled service during such quarter;

(I) In the case of a liquid in respect of which tax was paid under section 4041(a)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use as a fuel in a diesel-powered highway vehicle (i) which (at the time of such use or resale) is not registered, and is

not required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(J) In the case of a liquid in respect of which tax was paid under section 4041(b)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use otherwise than as a fuel for the propulsion of a highway vehicle (i) which (at the time of such use or resale) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a highway vehicle owned by the United States, is used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(K) In the case of any article taxable under section 4061(b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061(a));

(L) In the case of tread rubber in respect of which tax was paid under section 4071(a)(4), used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072(c)), unless credit or refund of such tax is allowable under subsection (b)(3);

(M) In the case of gasoline, used or sold for use in production of special motor fuels referred to in section 4041(b);

(N) In the case of lubricating oil, used or sold for nonlubricating purposes;

(O) In the case of lubricating oil in respect of which tax was paid at the rate of 6 cents a gallon, used or sold for use as cutting oils (within the meaning of section 4092(b)); except that the amount of such overpayment shall not exceed an amount computed at the rate of 3 cents a gallon;

(P) In the case of any musical instrument taxable under section 4151, sold to a religious institution for exclusively religious purposes;

(Q) In the case of unexposed motion picture film, used or sold for use in the making of newsreel motion picture film.

(3) *Tax-paid articles used for further manufacture, etc.* If the tax imposed by chapter 32 has been paid with respect to the sale of any article by the manufacturer, producer, or importer thereof to a second manufacturer or producer, such tax shall be deemed to be an overpayment by such second manufacturer or producer if—

(A) In the case of any article other than an article to which subparagraph (B), (C), (D), or (E) applies, such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 manufactured or produced by him;

(B) In the case of—

(i) A part or accessory taxable under section 4061(b),

(ii) A radio or television component taxable under section 4141, or

(iii) A camera lens taxable under section 4171,

such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, any other article manufactured or produced by him;

(C) In the case of—

(i) A tire or inner tube taxable under section 4071, or

(ii) An automobile radio or television receiving set taxable under section 4141,

such article is sold by the second manufacturer or producer on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft;

(D) In the case of a radio receiving set or an automobile radio receiving set—

(i) Such set is used by the second manufacturer or producer as a component part of any other article manufactured or produced by him, and

(ii) Such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft;

(E) In the case of—

(i) A bicycle tire (as defined in section 4221(e)(4)(B)), or

(ii) An inner tube for such a tire,

such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, a bicycle (other than a rebuilt or reconditioned bicycle); or

(F) In the case of gasoline taxable under section 4081, such gasoline is used by the second manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

For purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

(4) *Tires, inner tubes, and automobile radio and television receiving sets.* If—

(A) (i) A tire or inner tube taxable under section 4071, or automobile radio or television receiving set taxable under section 4141, is sold by the manufacturer, producer, or importer thereof on or in connection with, or with the sale of, any other article manufactured or produced by him, or

(ii) A radio receiving set or an automobile radio receiving set is used by the manufacturer thereof as a component part of any other article manufactured or produced by him; and

(B) Such other article is by any person exported, sold to a State or local government for the exlusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft,

any tax imposed by chapter 32 in respect of such tire, inner tube, or receiving set which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.

(5) *Return of certain installment accounts.* If—

(A) Tax was paid under section 4053(b)(1) or 4216(e)(1) in respect of any installment account,

(B) Such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) The consideration is readjusted as provided in such agreement,

the part of the tax paid under section 4053(b)(1) or 4216(e)(1) proportionate to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

(c) *Credit for tax paid on tires, inner tubes, or radio or television receiving sets.* If tires, inner tubes, or automobile radio or television receiving sets on which tax has been paid under chapter 32 are sold on or in connection with, or with the sale of, another article taxable under chapter 32, there shall (under regulations prescribed by the Secretary or his delegate) be credited (without interest) against the tax imposed on the sale of such other article, an amount determined by multiplying the applicable percentage rate of tax for such other article by—

(1) The purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) if such tires or inner tubes were taxable under section 4071 (relating to tax on tires and inner tubes) or, in the case of automobile radio or television receiving sets, if such sets were taxable under section 4141; or

(2) If such tires, inner tubes, or automobile radio or television receiving sets were taxable under section 4218 (relating to use by manufacturer, producer, or importer), the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires, inner tubes, or sets are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Secretary or his delegate.

The credit provided by this subsection shall be allowable only in respect of the first sale on or in connection with, or with the sale of, another article on the sale of which tax is imposed under chapter 32.

(d) *Mechanical pencils taxable as jewelry.* If any article, on the sale of which tax has been paid under section 4201, is further manufactured or processed resulting in an article taxable under section 4001, the person who sells such article at retail shall, in the computation of the retailers' excise tax due on such sale, be entitled to a credit or refund, without interest, in an amount equal to the tax paid under section 4201.

(e) *Refund to exporter or shipper.* Under regulations prescribed by the Secretary or his delegate the amount of any tax imposed by subchapter E of chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foreign country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

(f) *Credit on returns.* Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary or his delegate may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return.

(g) *Automobiles, etc.* Under regulations prescribed by the Secretary or his delegate, subsection (b)(2)(A) shall apply, in the case of any article subject to the tax imposed by sections 4061(a), 4111, 4121, and 4141, only if the article with respect to which the tax was paid was sold by the manufacturer, producer, or importer for export after receipt by him of notice of intent to export or to resell for export.

(h) *Accounting procedures for like articles.* Under regulations prescribed by the Secretary or his delegate, if any person uses or resells like articles, then for purposes of

this section the manufacturer, producer, or importer of any such article may be identified, and the amount of tax paid under chapter 32 in respect of such article may be determined—

(1) On a first-in-first-out basis,

(2) On a last-in-first-out basis, or

(3) In accordance with any other consistent method approved by the Secretary or his delegate.

(i) *Meaning of terms.* For purposes of this section, any term used in this section has the same meaning as when used in chapter 31, 32, or 33, as the case may be.

[Sec. 6416 as amended by sec. 2, Act of Aug. 11, 1955 (Pub. Law 355, 84th Cong., 69 Stat. 676); secs. 1 (h), (i), 2(b), Act of Aug. 11, 1955 (Pub. Law 367, 84th Cong., 69 Stat. 690); sec. 2(b), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90); sec. 208(b), Highway Revenue Act 1956 (70 Stat. 393); sec. 4(b) (5), (6), Tax Rate Extension Act 1958 (72 Stat. 260); sec. 163 (a), (c), Excise Tax Technical Changes Act 1958 (72 Stat. 1306); sec. 201(d)(1), Federal-Aid Highway Act 1959 (73 Stat. 614); sec. 3, Act of Apr. 8, 1960 (Pub. Law 86-418, 74 Stat. 38); sec. 2, Act of Sept. 14, 1960 (Pub. Law 86-781, 74 Stat. 1018); sec. 205 (c), (d), Federal-Aid Highway Act 1961 (75 Stat. 126); sec. 5(c)(3), Tax Rate Extension Act 1962 (76 Stat. 119)]

§ 301.6416–1 Certain taxes on sales and services.

For regulations under section 6416, see Part 48 of this chapter (Manufacturers and Retailers Excise Tax Regulations) and Part 49 of this chapter (Facilities and Services Excise Tax Regulations).

§ 301.6417 Statutory provisions; coconut and palm oil.

SEC. 6417. *Coconut and palm oil*—(a) *Sales to States or political subdivisions.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any oil, combination, or mixture, upon the processing of which a tax has been paid under section 4511, shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(b) *Exportation.* Upon the exportation to any foreign country or to a possession of the United States of any article, wholly or in chief value of an article, with respect to the processing of which a tax has been paid under subchapter B of chapter 37, the exporter thereof shall be entitled to a refund of the amount of such tax.

§ 301.6417–1 Coconut and palm oil.

For regulations under section 6417, see §§ 46.6417–1 and 46.6417–2 of this chapter (Regulations Relating to Miscellaneous Excise Taxes Payable by Return).

§ 301.6418 Statutory provisions; sugar.

SEC. 6418. *Sugar*—(a) *Use as livestock feed or for distillation of alcohol.* Upon the use of any manufactured sugar, or article manufactured therefrom, as livestock feed, or in the production of livestock feed, or for the distillation of alcohol, there shall be paid by the Secretary or his delegate to the person so using such manufactured sugar, or article manufactured therefrom, the amount of any tax paid under section 4501 with respect thereto.

(b) *Exportation.* Upon the exportation from the United States to a foreign country, or the shipment from the United States to any possession of the United States except Puerto Rico, of any manufactured sugar, or any article manufactured wholly or partly from manufactured sugar, with respect to which tax under the provisions of section 4501(a) has been paid, the amount of such tax shall be paid by the Secretary or his delegate to the consignor named in the bill of lading under which the article was exported or shipped to a possession, or to the shipper, or to the manufacturer of the manufactured sugar or of the articles exported, if the consignor waives any claim thereto in favor of such shipper or manufacturer.

[Sec. 6418 as amended by sec. 21(b), Act of May 29, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221); sec. 302(c), Tariff Classification Act 1962 (76 Stat. 77)]

§ 301.6418–1 Sugar.

For regulations under section 6418, see §§ 46.6418–1 and 46.6418–2 of this chapter (Regulations Relating to Miscellaneous Excise Taxes Payable by Return).

§ 301.6419 Statutory provisions; excise tax on wagering.

SEC. 6419. *Excise tax on wagering*—(a) *Credit or refund generally.* No overpayment of tax imposed by chapter 35 shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary or his delegate, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary or his delegate written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax imposed by chapter 35 shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary or his delegate, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) *Credit or refund on wagers laid-off by taxpayer.* Where any taxpayer lays off part or all of a wager with another person who is liable for tax imposed by chapter 35 on the amount so laid off, a credit against such tax shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary or his delegate; and no interest shall be allowed with respect to any amount so credited or refunded.

§ 301.6419–1 Excise tax on wagering.

For regulations under sections 6419, see §§ 44.6419–1 and 44.6419–2 of this chapter (Wagering Tax Regulations).

§ 301.6420 Statutory provisions; gasoline used on farms.

SEC. 6420. *Gasoline used on farms*—(a) *Gasoline.* If gasoline is used on a farm for farming purposes, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

(1) The number of gallons so used, by

(2) The rate of tax on gasoline under section 4081 which applied on the date he purchased such gasoline.

(b) *Time for filing claim; period covered.* Not more than one claim may be filed under this section by any person with respect to gasoline used during the 1-year period ending on June 30 of any year. No claim shall be allowed under this section with respect to any 1-year period unless filed on or before September 30 of the year in which such 1-year period ends.

(c) *Meaning of terms.* For purposes of this section—

(1) *Use on a farm for farming purposes.* Gasoline shall be treated as used on a farm for farming purposes only if used (A) in carrying on a trade or business, (B) on a farm situated in the United States, and (C) for farming purposes.

(2) *Farm.* The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(3) *Farming purposes.* Gasoline shall be treated as used for farming purposes only if used—

(A) By the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator; except that if such use is by any person other than the owner, tenant, or operator of such farm, then (i) for purposes of this subparagraph, in applying subsection (a) to this subparagraph, and for purposes of section 6416(b)(2)(G)(ii) (but not for purposes of section 4041), the owner, tenant, or operator of the farm on which gasoline or a liquid taxable under section 4041 is used shall be treated as the user and ultimate purchaser of such gasoline or liquid, and (ii) for purposes of applying section 6416(b)(2)(G)(ii), any tax paid under section 4041 in respect of a liquid used on a farm for farming purposes (within the meaning of this subparagraph) shall be treated as having been paid by the owner, tenant, or operator of the farm on which such liquid is used;

(B) By the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant, or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;

(C) By the owner, tenant, or operator of a farm, in connection with—

(i) The planting, cultivating, caring for, or cutting of trees, or

(ii) The preparation (other than milling) of trees for market,

incidental to farming operations; or

(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

(4) *Gasoline.* The term "gasoline" has the meaning given to such term by section 4082(b).

(d) *Exempt sales; other payments or refunds available.* No amount shall be paid under this section with respect to any gasoline which the Secretary or his delegate determines was exempt from the tax imposed

by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary or his delegate determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(e) *Applicable laws*—(1) *In general.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) *Examination of books and witnesses.* For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(3) *Fractional parts of a dollar.* Section 7504 (granting the Secretary discretion with respect to fractional parts of a dollar) shall not apply.

(f) *Regulations.* The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(g) *Effective date.* This section shall apply only with respect to gasoline purchased after December 31, 1955.

(h) *Cross references.* (1) For exemption from tax in case of diesel fuel and special motor fuels used on a farm for farming purposes, see section 4041(d).

(2) For civil penalty for excessive claim under this section, see section 6675.

(3) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

[Sec. 6420 as added by sec. 1, Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 87), and as amended by sec. 163(d)(2), Excise Tax Technical Changes Act 1958 (72 Stat. 1311)]

§ 301.6420–1 Gasoline used on farms.

For regulations under section 6420, see §§ 48.6420(a)–1 to 48.6420(h)–1, inclusive, of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.6421 Statutory provisions; gasoline used for certain nonhighway purposes or by local transit systems.

SEC. 6421. *Gasoline used for certain nonhighway purposes or by local transit systems*—(a) *Nonhighway uses.* If gasoline is used otherwise than as a fuel in a highway vehicle (1) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (2) which, in the case of a highway vehicle owned by the United States, is used on the highway, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon.

(b) *Local transit systems*—(1) *Allowance.* If gasoline is used during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes, the Secretary or his delegate shall, subject to the provisions of paragraph (2), pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

(A) 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon, by

(B) The percentage which the ultimate purchaser's commuter fare revenue derived from such scheduled service during such quarter was of his total passenger fare revenue derived from such scheduled service during such quarter.

(2) *Limitation.* Paragraph (1) shall apply in respect of gasoline used during any calendar quarter only if at least 60 percent of the total passenger fare revenue derived during such quarter from scheduled service described in paragraph (1) by the person filing the claim was attributable to commuter fare revenue derived during such quarter by such person from such scheduled service.

(c) *Time for filing claims; period covered*—(1) *General rule.* Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during the 1-year period ending on June 30 of any year. No claim shall be allowed under this paragraph with respect to any 1-year period unless filed on or before September 30 of the year in which such 1-year period ends.

(2) *Exception.* If $1,000 or more is payable under this section to any person with respect to gasoline used during a calendar quarter, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed.

(d) *Definitions.* For purposes of this section—

(1) *Gasoline.* The term "gasoline" has the meaning given to such term by section 4082(b).

(2) *Commuter fare revenue.* The term "commuter fare revenue" means revenue attributable to fares derived from the transportation of persons and attributable to—

(A) Amounts paid for transportation which do not exceed 60 cents,

(B) Amounts paid for commutation or season tickets for single trips of less than 30 miles, or

(C) Amounts paid for commutation tickets for 1 month or less.

(e) *Exempt sales; other payments or refunds available*—(1) *Exempt sales.* No amount shall be paid under this section with respect to any gasoline which the Secretary or his delegate determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary or his delegate determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(2) *Gasoline used on farms.* This section shall not apply in respect of gasoline which was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes.

(f) *Applicable laws*—(1) *In general.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) *Examination of books and witnesses.* For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(g) *Regulations.* The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(h) *Effective date.* This section shall apply only with respect to gasoline purchased after June 30, 1956, and before October 1, 1972.

(i) *Cross references.* (1) For reduced rate of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see subsections (a) and (b) of section 4041.

(2) For partial refund of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see section 6416(b)(2)(I) and (J).

(3) For partial refund of tax in case of diesel fuel and special motor fuels used by local transit systems, see section 6416(b)(2)(H).

(4) For civil penalty for excessive claims under this section, see section 6675.

(5) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

[Sec. 6421 as added by sec. 208(c), Highway Revenue Act 1956 (70 Stat. 394), and as amended by sec. 2, Act of July 25, 1956 (Pub. Law 796, 84th Cong., 70 Stat. 644); secs. 163(d)(3), 164, Excise Tax Technical Changes Act 1958 (72 Stat. 1312); sec. 201(d)(2), Federal-Aid Highway Act 1959 (73 Stat. 615); sec. 201(e), Federal-Aid Highway Act 1961 (75 Stat. 124); sec. 5(c)(2), Tax Rate Extension Act 1962 (76 Stat. 118)]

§ 301.6421–1 Gasoline used for certain nonhighway purposes or by local transit systems.

For regulations under section 6421, see §§ 48.6421(a)–1 to 48.6421(g)–1, inclusive, of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.6422 Statutory provisions; cross references.

SEC. 6422. *Cross references.* (1) for limitations on credits and refunds, see subchapter B of chapter 66.

(2) For overpayment arising out of adjustments incident to involuntary liquidation of inventory, see section 1321.

(3) For overpayment in case of adjustments to accrued foreign taxes, see section 905(c).

(4) For credit or refund in case of deficiency dividends paid by a personal holding company, see section 547.

(5) For refund, credit, or abatement of amounts disallowed by courts upon review of Tax Court decision, see section 7486.

(6) For abatement or refund of tax on transfers to avoid income tax, see section 1494(b).

(7) For abatement or refund in case of tax on silver bullion, see section 4894.

(8) For overpayment in certain renegotiations of war contracts, see section 1481.

(9) For refund or redemption of stamps, see chapter 69.

(10) For abatement, credit, or refund in case of jeopardy assessments, see chapter 70.

(11) For treatment of certain overpayments as having been refunded, in connec-

tion with sale of surplus war-built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (60 Stat. 48; 50 U.S.C. App. 1742.)

(12) For restrictions on transfers and assignments of claims against the United States, see R.S. 3477 (31 U.S.C. 203).

(13) For set-off of claims against amounts due the United States, see the act of March 3, 1875, as amended by section 13 of the act of March 3, 1933 (47 Stat. 1516; 31 U.S.C. 227).

(14) For special provisions relating to alcohol and tobacco taxes, see subtitle E.

[Sec. 6420 as renumbered 6422 by sec. 1, Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 87); sec. 208(c), Highway Revenue Act 1956 (70 Stat. 394); and as amended by sec. 204(4), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.6423 Statutory provisions; conditions to allowance in the case of alcohol and tobacco taxes.

SEC. 6423. *Conditions to allowance in the case of alcohol and tobacco taxes*—(a) *Conditions.* No credit or refund shall be allowed or made, in pursuance of a court decision or otherwise, of any amount paid or collected as an alcohol or tobacco tax unless the claimant establishes (under regulations prescribed by the Secretary or his delegate)—

(1) That he bore the ultimate burden of the amount claimed; or

(2) That he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount; or

(3) That (A) the owner of the commodity furnished him the amount claimed for payment of the tax, (B) he has filed with the Secretary or his delegate the written consent of such owner to the allowance to the claimant of the credit or refund, and (C) such owner satisfies the requirements of paragraph (1) or (2).

(b) *Filing of claims.* No credit or refund of any amount to which subsection (a) applies shall be allowed or made unless a claim therefor has been filed by the person who paid the amount claimed, and, except as hereinafter provided in this subsection, unless such claim is filed after April 30, 1958, and within the time prescribed by law, and in accordance with regulations prescribed by the Secretary or his delegate. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim. Any claimant who has on or before April 30, 1958, filed a claim for any amount to which subsection (a) applies may, if such claim was not barred from allowance on April 30, 1958, file a superseding claim after April 30, 1958, and on or before April 30, 1959, conforming to the requirements of this section and covering the amount (or any part thereof) claimed in such prior claim. No claim filed before May 1, 1958, for the credit or refund of any amount to which subsection (a) applies shall be held to constitute a claim for refund or credit within the meaning of, or for purposes of, section 7422(a); except that any claimant who instituted a suit before June 15, 1957, for recovery of any amount to which subsection (a) applies shall not be barred by this subsection from the maintenance of such suit as to any amount claimed in such suit on such date if in such suit he establishes the conditions to allowance required under subsection (a) with respect to such amount.

(c) *Period not extended.* Any suit or proceeding, with respect to any amount to which subsection (a) applies, which is barred on April 30, 1958, shall remain barred. No claim for credit or refund of any such amount which is barred from allowance on April 30, 1958, shall be allowed after such date in any amount.

(d) *Application of section.* This section shall apply only if the credit or refund is claimed on the grounds that an amount of alcohol or tobacco tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This section shall not apply to—

(1) Any claim for drawback,

(2) Any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed, and

(3) Any amount claimed with respect to a commodity which has been lost, where a suit or proceeding was instituted before June 15, 1957.

(e) *Meaning of terms.* For purposes of this section—

(1) *Alcohol or tobacco tax.* The term "alcohol or tobacco tax" means—

(A) Any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) In the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax.

(2) *Tax.* The term "tax" includes a tax and an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

(3) *Ultimate burden.* The claimant shall be treated as having borne the ultimate burden of an amount of an alcohol or tobacco tax for purposes of subsection (a)(1), and the owner referred to in subsection (a)(3) shall be treated as having borne such burden for purposes of such subsection, only if—

(A) He has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(B) No understanding or agreement exists for any such relief or shifting, and

(C) If he has neither sold nor contracted to sell the commodities involved in such claim, he agrees that there will be no such relief or shifting, and furnishes such bond as the Secretary or his delegate may require to insure faithful compliance with his agreement.

[Sec. 6423 as added by Act of Feb. 11, 1958 (Pub. Law 85-323, 72 Stat. 8)]

§ 301.6423–1 Conditions to allowance in the case of alcohol and tobacco taxes.

For regulations under section 6423, see Part 170 of this chapter, relating to distilled spirits, wine and beer; Part 296 of this chapter, relating to tobacco materials, tobacco products, and cigarette papers and tubes; and Part 285 of this chapter, relating to cigarette papers and tubes—manufacturers and importers.

Limitations

LIMITATIONS ON ASSESSMENT AND COLLECTION

§ 301.6501(a) Statutory provisions; limitations on assessment and collection; general rule.

SEC. 6501. *Limitations on assessment and collection*—(a) *General rule.* Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

[Sec. 6501(a) as amended by sec. 165(a), Excise Tax Technical Changes Act 1958 (72 Stat. 1313)]

§ 301.6501(a)–1 Period of limitations upon assessment and collection.

(a) The amount of any tax imposed by the Code (other than a tax collected by means of stamps) shall be assessed within 3 years after the return was filed. For rules applicable in cases where the return is filed prior to the due date thereof, see section 6501(b). In the case of taxes payable by stamp, assessment shall be made at any time after the tax became due and before the expiration of 3 years after the date on which any part of the tax was paid. For exceptions and additional rules, see subsections (b) to (g) of section 6501, and for cross references to other provisions relating to limitations on assessment and collection, see sections 6501(h) and 6504.

(b) No proceeding in court without assessment for the collection of any tax shall be begun after the expiration of the applicable period for the assessment of such tax.

§ 301.6501(b) Statutory provisions; limitations on assessment and collection; time return deemed filed.

SEC. 6501. *Limitations on assessment and collection.* * * *

(b) *Time return deemed filed*—(1) *Early return.* For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) *Return of certain employment taxes and tax imposed by chapter 3.* For purposes of this section, if a return of tax imposed by chapter 3, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) *Return executed by Secretary.* Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary or his delegate pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) *Return of excise taxes.* For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

[Sec. 6501(b) as amended by sec. 810(a), Excise Tax Reduction Act 1965 (79 Stat. 169); sec. 105(f)(3), Foreign Investors Tax Act 1966 (80 Stat. 1568)]

§ 301.6501(b)–1 Time return deemed filed for purposes of determining limitations.

(a) *Early return.* Any return, other than a return of tax referred to in paragraph (b) of this section, filed before the last day prescribed by law or regulations for the filing thereof (determined

without regard to any extension of time for filing) shall be considered as filed on such last day.

(b) *Returns of social security tax and of income tax withholding.* If a return on or after November 13, 1966, of tax imposed by chapter 3 of the Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), or if a return of tax imposed by chapter 21 of the Code (relating to the Federal Insurance Contributions Act) or by chapter 24 of the Code (relating to collection of income tax at source on wages), for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed filed on April 15 of such succeeding calendar year. For example, if quarterly returns of the tax imposed by chapter 24 of the Code are filed for the four quarters of 1955 on April 30, July 31, and October 31, 1955, and on January 31, 1956, the period of limitation for assessment with respect to the tax required to be reported on such return is measured from April 15, 1956. However, if any of such returns is filed after April 15, 1956, the period of limitation for assessment of the tax required to be reported on that return is measured from the date it is in fact filed.

(c) *Returns executed by district directors or other internal revenue officers.* The execution of a return by a district director or other authorized internal revenue officer or employee under the authority of section 6020(b) shall not start the running of the statutory period of limitations on assessment and collection.

§ 301.6501(c) Statutory provisions; limitations on assessment and collection; exceptions.

SEC. 6501. *Limitations on assessment and collection.* * * *

(c) *Exceptions*—(1) *False return.* In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) *Willful attempt to evade tax.* In case of a willful atempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time.

(3) *No return.* In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) *Extension by agreement.* Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chatper 11, both the Secretary or his delegate and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(5) *Tax resulting from changes in certain income tax or estate tax credits.* For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) *Tax resulting from certain distributions or from termination as life insurance company.* In the case of any tax imposed under section 802(a) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applies, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applies, such tax may be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceases to be an insurance company, the second taxable year for which the taxpayer is not a life insurance company, or the taxable year in which the distribution is actually made, as the case may be.

[Sec. 6501(c) as amended by sec. 3(g), Life Insurance Company Income Tax Act 1959 (73 Stat. 140); sec. 3(b)(4), Act of Oct. 23, 1962 (Pub. Law 87-858, 76 Stat. 1137)]

§ 301.6501(c)-1 Exceptions to general period of limitations on assessment and collection.

(a) *False return.* In the case of a false or fraudulent return with intent to evade any tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after such false or fraudulent return is filed.

(b) *Willful attempt to evade tax.* In the case of a willful attempt in any manner to defeat or evade any tax imposed by the Code (other than a tax imposed by subtitle A or B, relating to income, estate, or gift taxes), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *No return.* In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after the date prescribed for filing the return.

(d) *Extension by agreement.* The time prescribed by section 6501 for the assessment of any tax (other than the estate tax imposed by chapter 11 of the Code) may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the district director or an assistant regional commissioner. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§ 301.6501(d) Statutory provisions; limitations on assessment and collection; request for prompt assessment.

SEC. 6501. *Limitations on assessment and collection.* * * *

(d) *Request for prompt assessment.* Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary or his delegate) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1)(A) Such written request notifies the Secretary or his delegate that the corporation contemplates dissolution at or before the expiration of such 18-month period, (B) the dissolution is in good faith begun before the expiration of such 18-month period, and (C) the dissolution is completed;

(2)(A) Such written request notifies the Secretary or his delegate that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) A dissolution has been completed at the time such written request is made.

[Sec. 6501(d) as amended by sec. 80, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6501(d)-1 Request for prompt assessment.

(a) Except as otherwise provided in section 6501 (c), (e), or (f), any tax for which a return is required and for which:

(1) A decedent or an estate of a decedent may be liable, other than the estate tax imposed by chapter 11 of the Code, or

(2) A corporation which is contemplating dissolution, is in the process of dissolution, or has been dissolved, may be liable,

shall be assessed, or a proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after the receipt of a written request for prompt assessment thereof.

(b) The executor, administrator, or other fiduciary representing the estate of the decedent, or the corporation, or the fiduciary representing the dissolved corporation, as the case may be, shall, after the return in question has been filed, file the request for prompt assessment in writing with the district director for the internal revenue district in which such return was filed. The request, in order to be effective, must be transmitted separately from any other document, must set forth the classes of tax and the taxable periods for which the prompt assessment is requested, and must clearly indicate that it is a request for prompt assessment under the provisions of section 6501(d). The effect of such a request is to limit the time in which an assessment of tax may be made, or a proceeding in court without assessment for collection of tax may be begun, to a period of 18 months from the date the request is filed with the proper district director. The request does not extend the time within which an assessment may be made, or a proceeding in court without assessment may be begun, beyond 3 years from the date the return was filed. This special period of limitations will not apply to any return filed after a request for prompt assessment has been made unless an additional request is filed in the manner provided herein.

(c) In the case of a corporation the 18-month period shall not apply unless:

(1) The written request notifies the district director that the corporation contemplates dissolution at or before the expiration of such 18-month period; the dissolution is in good faith begun before the expiration of such 18-month period; and the dissolution so begun is completed either before or after the expiration of such 18-month period; or

(2) The written request notifies the district director that a dissolution has in good faith been begun, and the dissolution is completed either before or after the expiration of such 18-month period; or

(3) A dissolution has been completed at the time the written request is made.

§ 301.6501(e) Statutory provisions; limitations on assessments and collection; omission from gross income.

SEC. 6501. *Limitations on assessment and collection.* * * *

(e) *Omission from gross income.* Except as otherwise provided in subsection (c)—

(1) *Income taxes.* In the case of any tax imposed by subtitle A—

(A) *General rule.* If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph—

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

(B) *Constructive dividends.* If the taxpayer omits from gross income an amount properly includible therein under section 551 (b) (relating to the inclusion in the gross income of U.S. shareholders of their distributive shares of the undistributed foreign personal holding company income), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(2) *Estate and gift taxes.* In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the year items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

§ 301.6501(e)–1 Omission from return.

(a) *Income taxes*—(1) *General rule.* (i) If the taxpayer omits from the gross income stated in the return of a tax imposed by subtitle A of the Code an amount properly includible therein which is in excess of 25 percent of the gross income so stated, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(ii) For purposes of this subparagraph, the term "gross income", as it relates to a trade or business, means the total of the amounts received or accrued from the sale of goods or services, to the extent required to be shown on the return, without reduction for the cost of such sales or services. An item shall not be considered as omitted from gross income if information, sufficient to apprise the district director of the nature and amount of such item, is disclosed in the return or in any schedule or statement attached to the return.

(2) *Constructive dividends.* If a taxpayer omits from gross income an amount properly includible therein under section 551(b) as his distributive share of the undistributed foreign personal holding company income, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(b) *Estate and gift taxes.* (1) If the taxpayer omits from the gross estate as stated in the estate tax return, or from the total amount of the gifts made during the year as stated in the gift tax return, an item or items properly includible therein the amount of which is in excess of 25 percent of the gross estate as stated in the return, or 25 percent of the total amount of the gifts as stated in the return the tax may be assessed on a proceeding in court for the collection thereof may be begun without assessment, at any time within 6 years after the return was filed.

(2) For purposes of this paragraph, an item disclosed in the return or in any schedule or statement attached to the return in a manner sufficient to apprise the district director of the nature and amount thereof shall not be taken into account in determining items omitted from the gross estate or total gifts, as the case may be. Further, there shall not be taken into account in computing the 25 percent omission from the gross estate stated in the estate tax return or from the total gifts stated in the gift tax return, any increases in the valuation of assets disclosed on the return.

(c) *Exception.* The provisions of this section do not limit the application of section 6501(c).

§ 301.6501(f) Statutory provisions; limitations on assessment and collection; personal holding company tax.

SEC. 6501. *Limitations on assessment and collection.* * * *

(f) *Personal holding company tax.* If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth—

(1) The items of gross income, described in section 543(a), received by the corporation during such year, and

(2) The names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

§ 301.6501(f)–1 Personal holding company tax.

If a corporation which is a personal holding company for any taxable year fails to file with its income tax return for such year a schedule setting forth the items of gross income described in section 543(a) received by the corporation during such year, and the names and addresses of the individuals who owned, within the meaning of section 544, at any time during the last half of such taxable year, more than 50 percent in value of the outstanding capital stock of the corporation, the personal holding company tax for such year may be assessed, or a proceeding in court for the collection thereof may be begun without assessment, at any time within 6 years after the return for such year was filed.

§ 301.6501(g) Statutory provisions; limitations on assessment and collection; certain income tax returns of corporations.

SEC. 6501. *Limitations on assessment and collection.* * * *

(g) *Certain income tax returns of corporations*—(1) *Trusts or partnerships.* If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed such return shall be deemed the return of the corporation for purposes of this section.

(2) *Exempt organizations.* If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

[Sec. 6501(g) as amended by sec. 81(a), Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6501(g)–1 Certain income tax returns of corporations.

(a) *Trusts or partnerships.* If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A of the Code, and if the taxpayer is later held to be a corporation for the taxable year for which the return was filed, such return shall be deemed to be the return of the corporation for the purpose of section 6501.

(b) *Exempt organizations.* If a taxpayer determines in good faith that it

is an exempt organization and files a return as such under section 6033, and if the taxpayer is later held to be a taxable organization for the taxable year for which the return was filed, such return shall be deemed to be the return of the organization for the purpose of section 6501.

§ 301.6501(h) Statutory provisions; limitations on assessment and collection; net operating loss carrybacks.

SEC. 6501. *Limitations on assessment and collection.* * * *

(h) *Net operating loss carrybacks.* In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss which results in such carryback may be assessed, or within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to such taxable year) issued under section 317 of the Trade Expansion Act of 1962, whichever is later.

[Sec. 6501(h) as added by sec. 81(b), Technical Amendments Act 1958 (72 Stat. 1663); and as amended by sec. 317(c), Trade Expansion Act 1962 (76 Stat. 890)]

§ 301.6501(h)–1 Net operating loss carrybacks.

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss which results in such carryback may be assessed, or within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to such taxable year) issued under section 317 of the Trade Expansion Act of 1962, whichever is later.

§ 301.6501(i) Statutory provisions; limitations on assessment and collection; foreign tax carrybacks.

SEC. 6501. *Limitations on assessment and collection.* * * *

(i) *Foreign tax carrybacks.* In the case of a deficiency attributable to the application to the taxpayer of a carryback under section 904(d) (relating to carryback and carryover of excess foreign taxes), such deficiency may be assessed at any time before the expiration of 1 year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(d) which result in such carryback.

[Sec. 6501(i) as added by sec. 3(c), Act of Sept. 14, 1960 (Pub. Law 86-780, 74 Stat. 1013)]

§ 301.6501(i)–1 Foreign tax carrybacks; taxable years beginning after December 31, 1957.

With respect to taxable years beginning after December 31, 1957, a deficiency attributable to the application to the taxpayer of a carryback under section 904(d) (relating to carryback and carryover of excess foreign taxes), may be assessed at any time before the expiration of 1 year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(d) which result in such carryback.

§ 301.6501(j) Statutory provisions; limitations on assessment and collection; investment credit carrybacks.

SEC. 6501. *Limitations on assessment and collection.* * * *

(j) *Investment credit carrybacks.* In the case of a deficiency attributable to the application to the taxpayer of an investment credit carryback, such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed.

[Sec. 6501(j) as added by sec. 2(e)(1), Revenue Act 1962 (76 Stat. 971)]

§ 301.6501(j)–1 Investment credit carryback; taxable years ending after December 31, 1961.

With respect to taxable years ending after December 31, 1961, a deficiency attributable to the application to the taxpayer of an investment credit carryback may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused investment credit which results in such carryback may be assessed.

§ 301.6501(k) Statutory provisions; limitations on assessment and collection; joint income return after separate return.

SEC. 6501. *Limitations on assessment and collection.* * * *

(k) *Joint income return after separate return.* For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

[Sec. 6501(h) as redesignated by sec. 81(b), Technical Amendments Act 1958 (72 Stat. 1663); sec. 3(c), Act of Sept. 14, 1960 (Pub. Law 86-780, 74 Stat. 1013); sec. 2(e)(1), Revenue Act 1962 (76 Stat. 971)]

§ 301.6502 Statutory provisions; collection after assessment.

SEC. 6502. *Collection after assessment*—(a) *Length of period.* Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) Within 6 years after the assessment of the tax, or

(2) Prior to the expiration of any period for collection agreed upon in writing by the Secretary or his delegate and the taxpayer before the expiration of such 6-year period (or, if there is a release of levy under section 6343 after such 6-year period, then before such release.)

The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) *Date when levy is considered made.* The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) is given.

§ 301.6502–1 Collection after assessment.

(a) *Length of period*—(1) *General rule.* In any case in which a tax has been assessed within the statutory period of limitation properly applicable thereto, a proceeding in court to collect such tax may be begun, or levy for the collection of such tax may be made, within 6 years after the assessment thereof.

(2) *Extension by agreement.* (i) The 6-year period of limitation on collection after assessment of any tax may, prior to the expiration thereof, be extended for any period of time agreed upon in writing by the taxpayer and the district director. The extension shall become effective upon execution of the agreement by both the taxpayer and the district director.

(ii) The period of limitation on collection after assessment of any tax (including any extension of such period) may be extended after the expiration thereof if there has been a levy on any part of the taxpayer's property prior to such expiration and if the extension is agreed upon in writing prior to a release of the levy under the provisions of section 6343. An extension under this subdivision has the same effect as an agreement made prior to the expiration of the period of limitation on collection after assessment, and during the period of the extension collection may be enforced as to all property or rights to property owned by the taxpayer whether or not seized under the levy which was released.

(iii) Any period agreed upon under the provisions of this subparagraph may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) *Date when levy is considered made.* The date on which a levy on property or rights to property is made is the date on which the notice of seizure provided in section 6335(a) is given.

§ 301.6503(a) Statutory provisions; suspension of running of period of limitation; issuance of statutory notice of deficiency.

SEC. 6503. *Suspension of running of period of limitation*—(a) *Issuance of statutory notice of deficiency*—(1) *General rule.* The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, and gift taxes), shall (after the mailing of a notice under section 6212(a)) be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(2) *Corporation joining in consolidated income tax return.* If a notice under section 6212(a) in respect of a deficiency in tax imposed by subtitle A for any taxable year is mailed to a corporation, the suspension of the running of the period of limitations provided in paragraph (1) of this subsection shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year.

§ 301.6503(a)–1 Suspension of running of period of limitation; issuance of statutory notice of deficiency.

(a) *General rule.* Upon the mailing of a notice of deficiency for income, estate, or gift tax under the provisions of section 6212, the period of limitation on assessment and collection of any deficiency is suspended for 90 days if the notice of deficiency is addressed to a person within the States of the Union and the District of Columbia, or 150 days if such notice is addressed to a person outside the States of the Union and the District of Columbia (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th or 150th day), plus an additional 60 days thereafter in either case. If a proceeding in respect of the deficiency is placed on the docket of the Tax Court, the period of limitation is suspended until the decision of the Tax Court becomes final, and for an additional 60 days thereafter. If a notice of deficiency is mailed to a taxpayer within the period of limitation and the taxpayer does not appeal therefrom to the Tax Court, the notice of deficiency so given does not suspend the running of the period of limitation with respect to any additional deficiency shown to be due in a subsequent deficiency notice.

Example. A taxpayer filed a return for the calendar year 1954 on April 15, 1955; the notice of deficiency was mailed to him (at an address within the United States) on April 15, 1958; and he filed a petition with the Tax Court on July 14, 1958. The decision of the Tax Court became final on November 6, 1959. The running of the period of limitation for assessment is suspended from April 15, 1958, to January 5, 1960, which date is 60 days after the date (November 6, 1959), on which the decision became final. If in this example the taxpayer had failed to file a petition with the Tax Court, the running of the period of limitation for assessment would then be suspended from April 15, 1958 (the date of notice), to September 12, 1958 (that is, for the 90-day period in which he could file a petition with the Tax Court, and for 60 days thereafter).

(b) *Corporations joining in consolidated return.* If a notice under section 6212(a) with respect to a deficiency in tax imposed by subtitle A of the Code for any taxable year is mailed to a corporation, the suspension of the running of the period of limitation provided in section 6503(a)(1) shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year. Under § 1.1502–16 of this chapter (Income Tax Regulations), relating to consolidated returns, notices of deficiency are mailed only to the common parent.

§ 301.6503(b) Statutory provisions; suspension of running of period of limitation; assets of taxpayer in control or custody of court.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(b) *Assets of taxpayer in control or custody of court.* The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer (other than the estate of a decedent or of an incompetent) are in the control or custody of the court in any proceeding before any court of the United States or of any State or Territory or of the District of Columbia, and for 6 months thereafter.

§ 301.6503(b)–1 Suspension of running of period of limitation; assets of taxpayer in control or custody of court.

Where the assets of a taxpayer (other than the estate of a decedent or of an incompetent) are in the control or custody of the court in any proceeding before any court of the United States or of any State or Territory of the United States or of the District of Columbia, the period of limitation on collection after assessment prescribed in section 6502 is suspended for the period such assets are in the control or custody of the court, and for 6 months thereafter.

§ 301.6503(c) Statutory provisions; suspension of running of period of limitation; location of property outside the United States or removal of property from the United States.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(c) *Location of property outside the United States or removal of property from the United States.* In case collection is hindered or delayed because property of the taxpayer is situated or held outside the United States or is removed from the United States, the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period collection is so hindered or delayed. The total suspension of time under this subsection shall not in the aggregate exceed 6 years.

§ 301.6503(c)–1 Suspension of running of period of limitation; location of property outside the United States or removal of property from the United States.

The running of the period of limitation on collection after assessment prescribed in section 6502 is suspended for the period of time that collection is hindered or delayed because property of the taxpayer is situated or held outside the United States or is removed from the United States. The total suspension of time under this provision shall not in the aggregate exceed 6 years. In any case in which the district director determines that collection is so hindered or delayed, he shall make and retain in the files of his office a written report which shall identify the taxpayer and the tax liability, shall show what steps were taken to collect the tax liability, shall state the grounds for his determination that property of the taxpayer is situated or held outside, or is removed from, the United States, and shall show the date on which it was first determined that collection was so hindered or delayed. The term "property" includes all property or rights to property, real or personal, tangible or intangible, belonging to the taxpayer. The suspension of the running of the period of limitation on collection shall be considered to begin on the date so determined by the district director. A copy of the report shall be mailed to the taxpayer at his last known address.

§ 301.6503(d) Statutory provisions; suspension of running of period of limitation; extensions of time for payment of estate tax.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(d) *Extensions of time for payment of estate tax.* The running of the period of limitations for collection of any tax imposed by chapter 11 shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161 (a)(2) or (b)(2) or under the provisions of section 6166.

[Sec. 6503(d) as amended by sec. 206(d), Small Business Tax Revision Act 1958 (72 Stat. 1685)]

§ 301.6503(d)–1 Suspension of running of period of limitation; extension of time for payment of estate tax.

Where an estate is granted an extension of time as provided in section 6161 (a)(2) or (b)(2), or under the provisions of section 6166, for payment of any estate tax, the running of the period of limitations for collection of such tax is suspended for the period of time for which the extension is granted.

§ 301.6503(e) Statutory provisions; suspension of running of period of limitation; certain powers of appointment.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(e) *Certain powers of appointment.* The running of the period of limitations for assessment or collection of any tax imposed by chapter 11 shall be suspended in respect of the estate of a decedent claiming a deduction under section 2055(b)(2) until 30 days after the expiration of the period for assessment or collection of the tax imposed by chapter 11 on the estate of the surviving spouse.

[Sec. 6503(e) as added by sec. 2, Act of Aug. 6, 1956 (Pub. Law 1011, 84th Cong., 70 Stat. 1075)]

§ 301.6503(e)–1 Suspension of running of period of limitation; certain powers of appointment.

Where the estate of a decedent is allowed an estate tax charitable deduction under the provisions of section 2055 (b)(2) (with respect to property over which the decedent's surviving spouse was given a power of appointment exercisable in favor of charitable organizations) subject to the later disallowance of the deduction if all conditions set forth in section 2055(b)(2) are not complied with, the running of the period of limitation for assessment or collection of any estate tax imposed on the decedent's estate is suspended until 30 days after the expiration of the period for assessment or collection of the estate tax imposed on the estate of the decedent's surviving spouse.

§ 301.6503(f) Statutory provisions; suspension of running of period of limitation; cross references.

SEC. 6503. *Suspension of running of period of limitations.* * * *

(f) *Cross references.* For suspension in case of—

(1) Deficiency dividends of a personal holding company, see section 547(f).

(2) Bankruptcy and receiverships, see subchapter B of chapter 70.

(3) Claims against transferees and fiduciaries, see chapter 71.

[Sec. 6503(f) as redesignated by sec. 2, Act of Aug. 6, 1956 (Pub. Law 1011, 84th Cong., 70 Stat. 1075)]

§ 301.6504 Statutory provisions; cross references.

SEC. 6504. *Cross references.* For limitation period in case of—

(1) Adjustments incident to involuntary liquidation of inventory, see section 1321.

(2) Adjustments to accrued foreign taxes, see section 905(c).

(3) Change of election to take standard deduction where taxpayer and his spouse make separate returns, see section 144(b).

(4) Involuntary conversion of property, see section 1033(a)(3) (C) and (D).

(5) Gain upon sale or exchange of residence, see section 1034(j).

(6) War loss recoveries where prior benefit rule is elected, see section 1335.

(7) Recovery of unconstitutional Federal taxes, see section 1346.

(8) Limitations on deductions allowable to individuals in certain cases, see section 270(d).

(9) Application by executor for discharge from personal liability for estate tax, see section 2204.

(10) Insolvent banks and trust companies, see section 7507.

(11) Service in a combat zone, etc., see section 7508.

(12) Claims against transferees and fiduciaries, see chapter 71.

(13) Assessments to recover excessive amounts paid under section 6420 (relating to gasoline used on farms) and assessments of civil penalties under section 6675 for excessive claims under section 6420, see section 6206.

(14) Assessments to recover excessive amounts paid under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems) and assessments of civil penalties under section 6675 for excessive claims under section 6421, see section 6206.

(15) Assessment and collection of interest, see section 6601(h).

[Sec. 6504 as amended by sec. 4(d), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(e)(5), Highway Revenue Act 1956 (70 Stat. 397); sec. 84(b), Technical Amendments Act 1958 (72 Stat. 1664)]

LIMITATIONS ON CREDIT OR REFUND

§ 301.6511(a) Statutory provisions; limitations on credit or refund; period of limitation on filing claim.

SEC. 6511. *Limitations on credit or refund*—(a) *Period of limitation on filing claim.* Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

[Sec. 6511(a) as amended by sec. 82(a), Technical Amendments Act 1958 (72 Stat. 1663)]

§ 301.6511(a)–1 Period of limitation on filing claim.

(a) In the case of any tax (other than a tax payable by stamp):

(1) If a return is filed, a claim for credit or refund of an overpayment must be filed by the taxpayer within 3 years from the time the return was filed or within 2 years from the time the tax was paid, whichever of such periods expires the later.

(2) If no return is filed, the claim for credit or refund of an overpayment must be filed by the taxpayer within 2 years from the time the tax was paid.

(b) In the case of any tax payable by means of a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid. For provisions relating to redemption of unusued stamps, see section 6805.

(c) For limitations on allowance of credit or refund, special rules, and exceptions, see subsections (b) through (e) of section 6511. For limitations in the case of a petition to the Tax Court, see section 6512. For rules as to time return is deemed filed and tax considered paid, see section 6513.

§ 301.6511(b) Statutory provisions; limitations on credit or refund; limitation on allowance of credits and refunds.

SEC. 6511. *Limitations on credit or refund.* * * *

(b) *Limitation on allowance of credits and refunds*—(1) *Filing of claim within prescribed period.* No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) *Limit on amount of credit or refund*—(A) *Limit where claim filed within 3-year period.* If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) *Limit where claim not filed within 3-year period.* If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) *Limit if no claim filed.* If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

[Sec. 6511(b)(2) as amended by sec. 82 (b), (c), Technical Amendments Act 1958 (72 Stat. 1663)]

§ 301.6511(b)–1 Limitations on allowance of credits and refunds.

(a) *Effect of filing claim.* Unless a claim for credit or refund of an overpayment is filed within the period of limitation prescribed in section 6511(a), no credit or refund shall be allowed or made after the expiration of such period.

(b) *Limit on amount to be credited or refunded.* (1) In the case of any tax (other than a tax payable by stamp):

(i) If a return was filed, and a claim is filed within 3 years from the time the return was filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

(ii) If a return was filed, and a claim is filed after the 3-year period described in subdivision (i) of this subparagraph but within 2 years from the time the tax was paid, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(iii) If no return was filed, but a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(iv) If no claim is filed, the amount of the credit or refund allowed or made by the district director or the director of the regional service center shall not exceed the amount that would have been allowable under the preceding subdivisions of this subparagraph if a claim had been filed on the date the credit or refund is allowed.

(2) In the case of a tax payable by stamp:

(i) If a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(ii) If no claim is filed, the amount of the credit or refund allowed or made by the district director or the director of the regional service center shall not exceed the portion of the tax paid within the 3 years immediately preceding the allowance of the credit or refund.

For provisions relating to redemption of unused stamps, see section 6805.

§ 301.6511(c) Statutory provisions; limitations on credit or refund; special rules applicable in case of extension of time by agreement.

SEC. 6511. *Limitations on credit or refund.* * * *

(c) *Special rules applicable in case of extension of time by agreement.* If an agreement under the provisions of section 6501(c)(4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund—

(1) *Time for filing claim.* The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b) (1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).

(2) *Limit on amount.* If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the por-

tion of the tax paid within the period which would be applicable under subsection (b)(2) if a claim had been filed on the date the agreement was executed.

(3) *Claims not subject to special rule.* This subsection shall not apply in the case of a claim filed, or credit or refund allowed if no claim is filed, either—

(A) Prior to the execution of the agreement or

(B) More than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

§ 301.6511(c)–1 Special rules applicable in case of extension of time by agreement.

(a) *Scope.* If, within the period prescribed in section 6511(a) for the filing of a claim for credit or refund, an agreement extending the period for assessment of a tax has been made in accordance with the provisions of section 6501(c)(4), the special rules provided in this section become applicable. This section shall not apply to any claim filed, or credit or refund allowed if no claim is filed, either (1) prior to the execution of an agreement extending the period in which assessment may be made, or (2) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(b) *Period in which claim may be filed.* Claim for credit or refund of an overpayment may be filed, or credit or refund may be allowed if no claim is filed, at any time within which an assessment may be made pursuant to an agreement, or any extension thereof, under section 6501(c)(4), and for 6 months thereafter.

(c) *Limit on amount to be credited or refunded.* (1) If a claim is filed within the time prescribed in paragraph (b) of this section, the amount of the credit or refund allowed or made shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(2) If no claim is filed, the amount of credit or refund allowed or made within the time prescribed in paragraph (b) of this section shall not exceed the portion of the tax paid after the execution of the agreement and before the making of the credit or refund, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(d) *Effective date of agreement.* The agreement referred to in this section shall become effective when signed by the taxpayer and the district director or an assistant regional commissioner.

§ 301.6511(d) Statutory provisions; limitations on credit or refund; special rules applicable to income taxes.

Sec. 6511. *Limitations on credit or refund.* * * * (d) *Special rules applicable to income taxes*—(1) *Seven-year period of limitation with respect to bad debts and worthless securities.* If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(A) The deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or, under section 165(g), of a loss from worthlessness of a security, or

(B) The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover,

in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(2) *Special period of limitation with respect to net operating loss carrybacks*—(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that—

(i) With respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(ii) With respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) *Applicable rules.* If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411(a). In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, to the extent that such deduction is affected by a carryback which was not in issue in such proceeding.

(3) *Special rules relating to foreign tax credit*—(A) *Special period of limitation with respect to foreign taxes paid or accrued.* If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(B) *Exception in the case of foreign taxes paid or accrued.* In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).

(4) *Special period of limitation with respect to investment credit carrybacks*—(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment attributable to an investment credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) *Applicable rules.* If the allowance of a credit or refund of an overpayment of tax attributable to an investment credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to the investment credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.

[Sec. 6511(d) as amended by sec. 82(d), Technical Amendments Act 1958 (72 Stat. 1663); sec. 1(a), Act of Sept. 16, 1959 (Pub. Law 86-280, 73 Stat. 563); sec. 317(d), Trade Expansion Act 1962 (76 Stat. 891); sec. 2(e)(2), Revenue Act 1962 (76 Stat. 971)]

§ 301.6511(d)–1 Overpayment of income tax on account of bad debts, worthless securities, etc.

(a) (1) If the claim for credit or refund relates to an overpayment of income tax on account of—

(i) The deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or, under section 165(g), of a loss from the worthlessness of a security, or

(ii) The effect that the deductibility of a debt or loss described in subdivision (i) of this subparagraph has on the application to the taxpayer of a carryover, then in lieu of the 3-year period from the time the return was filed in which claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be 7 years from the date prescribed by law for filing the return (determined without regard to any extension of time for filing such return) for the taxable year for which the claim is made or the credit or refund allowed or made.

(2) If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of a debt or loss, described in subparagraph (1) of this paragraph, has on the application to the taxpayer of a net operating loss carryback provided in section 172(b), the period in which claim for credit or refund may be filed shall be whichever of the following two periods expires later:

(i) Seven years from the last date prescribed for filing the return (determined without regard to any extension of time for filing such return) for the taxable year of the net operating loss which results in such carryback, or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the net operating loss which resulted in the carryback.

(3) In the case of a claim for credit or refund involving items described in this section, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in subparagraph (1) of this paragraph. If the claim involves an overpayment based not only on the deductibility of items described in subparagraph (1) of this paragraph but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the deductibility of items described in subparagraph (1) of this paragraph, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b)(2) or (c), or within the period provided in any other applicable provision of law.

(4) If the claim involves an overpayment based not only on the deductibility of items described in subparagraph (1) of this paragraph but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment.

(b) If a claim for credit or refund is not filed within the applicable period described in paragraph (a) of this section, then credit or refund may be allowed or made only if claim therefor is filed or if such credit or refund is allowed within any period prescribed in section 6511 (a), (b), or (c), whichever is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or, if no claim was filed, in the case of credit or refund allowed within such applicable period as prescribed in section 6511 (b) or (c).

(c) The provisions of this section and section 6511(d)(1) do not apply to an overpayment resulting from the deductibility of a debt that became partially worthless during the taxable year, but only to an overpayment resulting from the deductibility of a debt which became entirely worthless during such year.

(d) The provisions of paragraph (a) of this section with regard to an overpayment caused by the deductibility of a bad debt under section 166 or section 832(c), or of a loss from the worthlessness of a security under section 165(g), are likewise applicable to an overpayment caused by the effect that the deductibility of such bad debt or loss has on the application to the taxpayer of a carryover or of a carryback.

§ 301.6511(d)–2 Overpayment of income tax on account of net operating loss carryback.

(a) *Special period of limitation.* (1) If the claim for credit or refund relates to an overpayment of income tax attributable to a net operating loss carryback, provided in section 172(b), then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following 2 periods expires later:

(i) The period which ends with the expiration of the 15th day of the fortieth month (or 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss which resulted in the carryback; or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the net operating loss which resulted in the carryback;

except that—

(*a*) With respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(*b*) With respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

(2) In the case of a claim for credit or refund involving a net operating loss carryback described in subparagraph (1) of this paragraph, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on a net operating loss carryback described in subparagraph (1) of this paragraph but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the net operating loss carryback, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b)(2) or (c), or within the period provided in any other applicable provision of law.

(3) If the claim involves an overpayment based not only on a net operating loss carryback described in subparagraph (1) of this paragraph but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for credit or refund is not filed, and if credit or refund is not allowed, within the period prescribed in this paragraph, then credit or refund may be allowed or made only if claim therefor is filed, or if such credit or refund is allowed, within the period prescribed in section 6511 (a), (b), or (c), whichever is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or if no claim was filed, in case of credit or refund allowed, within such applicable period. For the limitations on the allowance of interest for an overpayment where credit or refund is subject to the provisions of this section, see section 6611(f).

(b) *Barred overpayments.* If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises), such credit or refund may be allowed or made under the provisions of section 6511(d)(2)(B) if a claim therefor is filed within the period provided by section 6511(d)(2)(A) and paragraph (a) of this section for

filing a claim for credit or refund of an overpayment attributable to a carryback. Similarly, if the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law (other than section 7122), such application, credit, or refund may be allowed or made if an application for a tentative carryback adjustment is filed within the period provided in section 6411(a). Thus, for example, even though the tax liability (not including the net operating loss deduction or the effect of such deduction) for a given taxable year has previously been litigated before the Tax Court, credit or refund of an overpayment may be allowed or made despite the provisions of section 6512(a), if claim for such credit or refund is filed within the period provided in section 6511(d)(2)(A) and paragraph (a) of this section. In the case of a claim for credit or refund of an overpayment attributable to a carryback, or in the case of an application for a tentative carryback adjustment, the determination of any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, to the extent that such deduction is affected by a carryback which was not in issue in such proceeding.

§ 301.6511(d)–3 Special rules applicable to credit against income tax for foreign taxes.

(a) *Period in which claim may be filed.* In the case of an overpayment of income tax resulting from a credit, allowed under the provisions of section 901 or under the provisions of any treaty to which the United States is a party, for taxes paid or accrued to a foreign country or possession of the United States, a claim for credit or refund must be filed by the taxpayer within 10 years from the last date prescribed for filing the return (determined without regard to any extension of time for filing such return) for the taxable year with respect to which the claim is made. Such 10-year period shall be applied in lieu of the 3-year period prescribed in section 6511(a).

(b) *Limit on amount to be credited or refunded.* In the case of a claim described in paragraph (a) of this section, the amount of the credit or refund allowed or made may exceed the portion of the tax paid within the period prescribed in section 6511 (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit against income tax referred to in paragraph (a) of this section.

§ 301.6511(d)–4 Overpayment of income tax on account of investment credit carryback.

(a) *Special period of limitation.* (1) If the claim for credit or refund relates to an overpayment of income tax attributable to an investment credit carryback, provided in section 46(b), then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following 2 periods expires later:

(i) The period which ends with the expiration of the 15th day of the fortieth month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which resulted in the carryback; or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the unused investment credit which resulted in the carryback.

(2) In the case of a claim for credit or refund involving an investment credit carryback described in subparagraph (1) of this paragraph, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on an investment credit carryback described in subparagraph (1) of this paragraph but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the investment credit carryback, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b)(2) or (c), or within the period provided in any other applicable provision of law.

(3) If the claim involves an overpayment based not only on an investment credit carryback described in subparagraph (1) of this paragraph but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for credit or refund is not filed, and if credit or refund is not allowed, within the period prescribed in this paragraph, then credit or refund may be allowed or made only if claim therefor is filed, or if such credit or refund is allowed, within the period prescribed in section 6511 (a), (b), or (c), whichever is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or if no claim was filed, in case of credit or refund allowed, within such applicable period. For the limitations on the allowance of interest for an overpayment where credit or refund is subject to the provisions of this section, see section 6611(f).

(b) *Barred overpayments.* If the allowance of a credit or refund of an overpayment of tax attributable to an investment credit carryback is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises), such credit or refund may be allowed or made under the provisions of section 6511(d)(4)(B) if a claim therefor is filed within the period provided by section 6511(d)(4)(A) and paragraph (a) of this section for filing a claim for credit or refund of an overpayment attributable to a carryback. In the case of a claim for credit or refund of an overpayment attributable to a carryback, the determination of any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to the investment credit, and the effect of such credit, to the extent that such credit is affected by a carryback which was not in issue in such proceeding.

§ 301.6511(e) Statutory provisions; limitations on credit or refund; special rules in case of manufactured sugar.

SEC. 6511. *Limitations on credit or refund.*
* * *

(e) *Special rules in case of manufactured sugar*—(1) *Use as livestock feed or for distillation of alcohol.* No payment shall be allowed under section 6418(a) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(2) *Exportation.* No payment shall be allowed under section 6418(b) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

§ 301.6511(e)–1 Special rules applicable to manufactured sugar.

(a) *Use as livestock feed and for distillation of alcohol.* No payment shall be allowed or made under section 6418 (a) unless within 2 years after the date the right to such payment has accrued a claim therefor is filed by the person entitled thereto. Such right accrues as of the date the manufactured sugar, or article manufactured therefrom, is used for a purpose for which payment is allowable under section 6418(a).

(b) *Exportation.* No payment shall be allowed or made under section 6418 (b) unless within 2 years after the date the right to such payment has accrued a claim therefor is filed by the person entitled thereto. Such right accrues as of the date the articles are exported.

§ 301.6511(f) Statutory provisions; limitations on credit or refund; cross references.

SEC. 6511. *Limitations on credit or refund.* * * *

(f) *Cross references.* (1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2011(c), 2014(b), and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013(b)(3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420(b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421(c).

[Sec. 6511(f) as amended by sec. 4(e), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(e)(6), Highway Revenue Act 1956 (70 Stat. 397)]

§ 301.6512 Statutory provisions; limitations in case of petition to Tax Court.

SEC. 6512. *Limitations in case of petition to Tax Court*—(a) *Effect of petition to Tax Court.* If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency under section 6212(a) (relating to deficiencies of income, estate, and gift taxes) and if the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), no credit or refund of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, in respect of which the Secretary or his delegate has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Tax Court which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(3) As to any amount collected after the period of limitation upon the making of levy or beginning a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(b) *Overpayment determined by Tax Court*—(1) *Jurisdiction to determine.* If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, in respect of which the Secretary or his delegate determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer.

(2) *Limit on amount of credit or refund.* No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(A) After the mailing of the notice of deficiency,

(B) Within the period which would be applicable under section 6511 (b)(2), (c), or (d), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment, or

(C) Within the period which would be applicable under section 6511 (b)(2), (c), or (d), in respect of any claim for refund filed within the applicable period specified in section 6511 and before the date of the mailing of the notice of deficiency—

(i) Which had not been disallowed before that date,

(ii) Which had been disallowed before that date and in respect of which a timely suit for refund could have been commenced as of that date, or

(iii) In respect of which a suit for refund had been commenced before that date and within the period specified in section 6532.

[Sec. 6512 as amended by sec. 4, Act of Oct. 23, 1962 (Pub. Law 87-870, 76 Stat. 1161)]

§ 301.6512-1 Limitations in case of petition to Tax Court.

(a) *Effect of petition to Tax Court*—(1) *General rule.* If a person, having a right to file a petition with the Tax Court with respect to a deficiency in income, estate, or gift tax imposed by subtitle A or B of the Code, has filed such petition within the time prescribed in section 6213(a), no credit or refund of income tax for the same taxable year, or of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, in respect of which a district director (or an assistant regional commissioner, appellate) has determined the deficiency, shall be allowed or made, and no suit in any court for the recovery of any part of such tax shall be instituted by the taxpayer, except as to items set forth in subparagraph (2) of this paragraph.

(2) *Exceptions.* The exceptions to the rule stated in subparagraph (1) of this paragraph are as follows:

(i) An overpayment determined by a decision of the Tax Court which has become final;

(ii) Any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(iii) Any amount collected after the expiration of the period of limitation upon levying or beginning a proceeding in court for collection.

(b) *Overpayment determined by Tax Court.* If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, or of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, in respect of which a district director (or an assistant regional commissioner, appellate) has determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the overpayment determined by the Tax Court shall be credited or refunded to the taxpayer when the decision of the Tax Court has become final. (See section 7481, relating to the date when Tax Court decision becomes final.) No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(1) After the mailing of the notice of deficiency, or

(2) Within the period which would be applicable under section 6511 (b)(2), (c), or (d) (see §§ 301.6511(b)-1, 301.6511(c)-1, 301.6511(d)-1, 301.6511(d)-2, and 301.6511(d)-3), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment.

(c) *Jeopardy assessments.* In the case of a jeopardy assessment made under section 6861(a), if the amount which should have been assessed as determined by a decision of the Tax Court which has become final is less than the amount already collected, the excess payment shall be credited or refunded subject to a determination being made by the Tax Court with respect to the time of payment as stated in paragraph (b) of this section.

(d) *Disallowance of deficiency by reviewing court.* If the amount of the deficiency determined by the Tax Court (in a case where collection has not been stayed by the filing of a bond) is disallowed in whole or in part by the reviewing court, then the overpayment resulting from such disallowance shall be credited or refunded without the making of claim therefor, subject to a determination being made by the Tax Court with respect to the time of payment as stated in paragraph (b) of this section. (See section 7481, relating to date Tax Court decision becomes final.)

(e) *Collection in excess of amount determined by Tax Court.* Where the amount collected is in excess of the amount computed in accordance with the decision of the Tax Court which has become final, the excess payment shall be credited or refunded within the period of limitation provided in section 6511.

(f) *Collection after expiration of statutory period.* Where an amount is collected after the statutory period of limitation upon the beginning of levy or a proceeding in court for collection has expired (see section 6502, relating to collection after assessment), the taxpayer may file a claim for refund of the amount so collected within the period of limitation provided in section 6511. In any such case, the decision of the Tax Court as to whether the statutory period upon collection of the tax expired before notice of the deficiency was mailed shall, when the decision becomes final, be conclusive.

§ 301.6513 Statutory provisions; time return deemed filed and tax considered paid.

SEC. 6513. *Time return deemed filed and tax considered paid*—(a) *Early return or advance payment of tax.* For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511 (b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

(b) *Prepaid income tax.* For purposes of section 6511 or 6512—

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to

have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(3) Any tax withheld at the source under chapter 3 shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing the return under section 6012 for the taxable year (determined without regard to any extension of time for filing) with respect to which such tax is allowable as a credit under section 1462. For this purpose, any exemption granted under section 6012 from the requirement of filing a return shall be disregarded.

(c) *Return and payment of social security taxes and income tax withholding.* Notwithstanding subsection (a), for purposes of section 6511 with respect to any tax imposed by chapter 3, 21, or 24—

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration or other amount paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) *Overpayment of income tax credited to estimated tax.* If any overpayment of income tax is, in accordance with section 6402(b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

[Sec. 6513 as amended by sec. 105(f) (1) and (2), Foreign Investors Tax Act 1966 (80 Stat. 1567).]

§ 301.6513–1 Time return deemed filed and tax considered paid.

(a) *Early return or advance payment of tax.* For purposes of section 6511, a return filed before the last day prescribed by law or regulations for the filing thereof shall be considered as filed on such last day. For purposes of section 6511 (b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for payment shall be considered made on such last day. An extension of time for filing a return or for paying any tax, or an election to pay any tax in installments, shall not be given any effect in determining under this section the last day prescribed for filing a return or paying any tax.

(b) *Prepaid income tax.* For purposes of section 6511 (relating to limitations on credit or refund) or section 6512 (relating to limitations in case of petition to Tax Court)—

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 of the Code (relating to collection of income tax at source on wages) shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31 (relating to tax withheld on wages),

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the income tax return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return), and

(3) Any tax withheld at the source on or after November 13, 1966, under chapter 3 of the Code (relating to tax withheld on nonresident aliens and foreign corporations and tax-free covenant bonds) shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing his income tax return under section 6012 for the taxable year (determined without regard to any extension of time for filing such return) with respect to which such tax is allowable as a credit under section 1462 (relating to withheld tax as credit to recipient of income).

Subparagraph (3) of this paragraph shall apply even though the recipient of the income has been granted under section 6012 and the regulations thereunder an exemption from the requirement of making an income tax return for the taxable year.

(c) *Return and payment of social security taxes and income tax withholding.* Notwithstanding paragraph (a) of this section, if a return (or payment) on or after November 13, 1966, of tax imposed by chapter 3 of the Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), or if a return (or payment) of tax imposed by chapter 21 of the Code (relating to the Federal Insurance Contributions Act) or by chapter 24 of the Code (relating to the collection of income tax at source on wages), for any period ending with or within a calendar year is filed or paid before April 15 of the succeeding calendar year, for purposes of section 6511 (relating to limitations on credit or refund) the return shall be considered filed, or the tax considered paid, on April 15 of such succeeding calendar year.

(d) *Overpayment of income tax credited to estimated tax.* If a taxpayer elects under the provisions of section 6402(b) to credit an overpayment of income tax for a taxable year against estimated tax for the succeeding taxable year, the amount so credited shall be considered a payment of income tax for such succeeding taxable year (whether or not claimed as a credit on the estimated tax return for such succeeding taxable year). If the treatment of such amount as a payment of income tax for the succeeding taxable year results in an overpayment for such succeeding taxable year, the period of limitations applicable to such overpayment is determined by reference to that taxable year. An election so to credit an overpayment of income tax precludes the allowance of a claim for credit or refund of such overpayment for the taxable year in which the overpayment arises.

§ 301.6514(a) Statutory provisions: credits or refunds after period of limitation.

SEC. 6514. *Credits or refunds after period of limitation.*—(a) *Credits or refunds after period of limitation.* A refund of any portion of an internal revenue tax shall be considered erroneous and a credit of any such portion shall be considered void—

(1) *Expiration of period for filing claim.* If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(2) *Disallowance of claim and expiration of period for filing suit.* In the case of a claim filed within the proper time and disallowed by the Secretary or his delegate, if the credit or refund was made after the expiration of the period of limitation for filing suit, unless within such period suit was begun by the taxpayer.

(3) *Recovery of erroneous refunds.* For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405.

§ 301.6514(a)–1 Credits or refunds after period of limitation.

(a) A refund of any portion of any internal revenue tax (or any interest, additional amount, addition to the tax, or assessable penalty) shall be considered erroneous and a credit of any such portion shall be considered void:

(1) If made after the expiration of the period of limitation prescribed by section 6511 for filing claim therefor, unless prior to the expiration of such period claim was filed, or

(2) In the case of a timely claim, if the credit or refund was made after the expiration of the period of limitation prescribed by section 6532(a) for the filing of suit, unless prior to the expiration of such period suit was begun.

(b) For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405.

§ 301.6514(b) Statutory provisions; credit after period of limitation.

SEC. 6514. *Credits or refunds after period of limitation.* * * *

(b) *Credit after period of limitation.* Any credit against a liability in respect of any taxable year shall be void if any payment in respect to such liability would be considered an overpayment under section 6401 (a).

§ 301.6514(b)–1 Credit against barred liability.

Any credit against a liability in respect of any taxable year shall be void if the collection of such liability would be barred by the applicable statute of limitations at the time such credit is made.

§ 301.6515 Statutory provisions; cross references.

SEC. 6515. *Cross references.* For limitations in case of—

(1) Adjustments incident to involuntary liquidation of inventory, see section 1321.

(2) War loss recoveries where prior benefit rule is elected, see section 1335.

(3) Deficiency dividends of a personal holding company, see section 547.

(4) Overpayment in certain renegotiations of war contracts, see section 1481.

(5) Tentative carryback adjustments, see section 6411.

(6) Service in a combat zone, etc., see section 7508.

(7) Suits for refund by taxpayers, see section 6532(a).

MITIGATION OF EFFECT OF PERIOD OF LIMITATIONS

§ 301.6521 Statutory provisions; mitigation of effect of limitation in case of related taxes under different chapters.

SEC. 6521. *Mitigation of effect of limitation in case of related taxes under different chapters*—(a) *Self-employment tax and tax on wages.* In the case of the tax imposed by chapter 2 (relating to tax on self-employment income) and the tax imposed by section 3101 (relating to tax on employees under the Federal Insurance Contributions Act)—

(1) If an amount is erroneously treated as self-employment income, or if an amount is erroneously treated as wages, and

(2) If the correction of the error would require an assessment of one such tax and the refund or credit of the other tax, and

(3) If at any time the correction of the error is authorized as to one such tax but is prevented as to the other tax by any law or rule of law (other than section 7122, relating to compromises),

then, if the correction authorized is made, the amount of the assessment, or the amount of the credit or refund, as the case may be, authorized as to the one tax shall be reduced by the amount of the credit or refund, or the amount of the assessment, as the case may be, which would be required with respect to such other tax for the correction of the error if such credit or refund, or such assessment, of such other tax were not prevented by any law or rule of law (other than section 7122, relating to compromises).

(b) *Definitions.* For purposes of subsection (a), the terms "self-employment income" and "wages" shall have the same meaning as when used in section 1402(b).

§ 301.6521–1 Mitigation of effect of limitation in case of related employee social security tax and self-employment tax.

(a) Section 6521 may be applied in the correction of a certain type of error involving both the tax on self-employment income under section 1401 and the employee tax under section 3101 if the correction of the error as to one tax is, on the date the correction is authorized, prevented in whole or in part by the operation of any law or rule of law other than section 7122, relating to compromises. Examples of such law are section 6212(c), 6401(a), 6501, 6511, 6512(a), 6514, 6532, 6901 (c), (d) and (e), 7121, and 7459(e).

(b) If the liability for either tax with respect to which the error was made has been compromised under section 7122, the provisions of section 6521 limiting the correction with respect to the other tax do not apply.

(c) Section 6521 is not applicable if, on the date of the authorization, correction of the effect of the error is permissible as to both taxes without recourse to such section.

(d) If, because an amount of wages, as defined in section 3121(a), is erroneously treated as self-employment income, as defined in section 1402(b), or an amount of self-employment income is erroneously treated as wages, it is necessary in correcting the error to assess the correct tax and give a credit or refund for the amount of the tax erroneously paid, and if either, but not both, of such adjustments is prevented by any law or rule of law (other than section 7122), the amount of the assessment, or the amount of the credit or refund, authorized shall reflect the adjustment which would be made in respect of the other tax (either the tax on self-employment income under section 1401 or the employee tax under section 3101) but for the operation of such law or rule of law. For example, assume that during 1955 A paid $10 as tax on an amount erroneously treated as "wages", when such amount was actually self-employment income, and that credit or refund of the $10 is not barred. A should have paid a self-employment tax of $15 on the amount. If the assessment of the correct tax, that is, $15, is barred by the statute of limitations, no credit or refund of the $10 shall be made without offsetting against such $10 the $15, assessment of which is barred. Thus, no credit or refund in respect of the $10 can be made.

(e) As another example, assume that during 1955 a taxpayer reports wages of $4,200 and net earnings from self-employment of $900. By reason of the limitations of section 1402(b) he shows no self-employment income. Assume further that by reason of a final decision by the Tax Court of the United States, further adjustments to the taxpayer's income tax liability are barred. The question of the amount of his wages, as defined in section 3121, was not in issue in the Tax Court litigation, but it is subsequently determined (within the period of limitations applicable under the Federal Insurance Contributions Act) that $700 of the $4,200 reported as wages was not for employment as defined in section 3121 (b). Therefore, the taxpayer is entitled to the allowance of a refund of the $14 tax paid on such remuneration under section 3101. The reduction of his wages from $4,200 to $3,500 would result in the determination of $700 self-employment income, the tax on which is $21 for the year. Under section 6521, the overpayment of $14 would be offset by the barred deficiency of $21, thus eliminating the refund otherwise allowable. If the facts were changed so that the taxpayer erroneously paid tax on self-employment income of $700, having been taxed on only $3,500 as wages, and within the period of limitations applicable under the Federal Insurance Contributions Act, it is determined that his wages were $4,200, the tax of $14 under section 3101, otherwise collectible, would be eliminated by offsetting under section 6521 the barred overpayment of $21. The balance of the barred overpayment, $7, cannot be credited or refunded.

(f) Another illustration of the operation of section 6521 is the case of a taxpayer who, for 1955, is erroneously taxed on $2,500 as wages, the tax on which is $50, and who reports no self-employment income. After the period of limitations has run on the refund of the tax under the Federal Insurance Contributions Act, it is determined that the amount treated as wages should have been reported as net earnings from self-employment. The taxpayer's self-employment income would then be $2,500 and the tax thereon would be $75. Assume that the period of limitations applicable to subtitle A of the Code has not expired, and that a notice of deficiency may properly be issued. Under section 6521, the amount of the deficiency of $75 must be reduced by the barred overpayment of $50.

§ 301.6521–2 Law applicable in determination of error.

The question of whether there was an erroneous treatment of self-employment income or of wages is determined under the provisions of law and regulations applicable with respect to the year or other taxable period as to which the error was made. The fact that the error was in pursuance of an interpretation, either judicial or administrative, accorded such provisions of law and regulations at the time the action involved was taken is not necessarily determinative of this question. For example, if a later judicial decision authoritatively alters such interpretation so that such action is contrary to the applicable provisions of the law and regulations as later interpreted, the error comes within the scope of section 6521.

PERIODS OF LIMITATION IN JUDICIAL PROCEEDINGS

§ 301.6531 Statutory provisions; periods of limitation on criminal prosecutions.

SEC. 6531. *Periods of limitation on criminal prosecutions.* No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years—

(1) For offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;

(2) For the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

(3) For the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document);

(4) For the offense of willfully failing to pay any tax, or make any return (other than a return required under authority of part III of subchapter A of chapter 61) at the time or times required by law or regulations;

(5) For offenses described in sections 7206 (1) and 7207 (relating to false statements and fraudulent documents);

(6) For the offense described in section 7212(a) (relating to intimidation of officers and employees of the United States);

(7) For offenses described in section 7214 (a) committed by officers and employees of the United States; and

(8) For offenses arising under section 371 of Title 18 of the United States Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

The time during which the person committing any of the various offenses arising under the internal revenue laws is outside the United States or is a fugitive from justice within the meaning of section 3290 of Title 18 of the United States Code, shall not be taken as any part of the time limited by law for the commencement of such proceedings. (The preceding sentence shall also be deemd an amendment to section 3748(a) of the Internal Revenue Code of 1939, and shall apply in lieu of the sentence in section 3748 (a) which relates to the time during which a person commiting an offense is absent from the district wherein the same is committed, except that such amendment shall apply only if the period of limitations under section 3748 would, without the application of such amendment, expire more than 3 years after the date of enactment of this title, and except that such period shall not, with the application of this amendment, expire prior to the date which is 3 years after the date of enactment of this title.) Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the date which is 9 months after the date of the making of the complaint before the commissioner of the United States. For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable.

§ 301.6532 Statutory provisions; periods of limitation on suits.

SEC. 6532. *Periods of limitation on suits*—(a) *Suits by taxpayers for refund*—(1) *General rule.* No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary or his delegate renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) *Extension of time.* The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary or his delegate.

(3) *Waiver of notice of disallowance.* If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed.

(4) *Reconsideration after mailing of notice.* Any consideration, reconsideration, or action by the Secretary or his delegate with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

(b) *Suits by United States for recovery of erroneous refunds.* Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is begun within 2 years after the making of such refund, except that such suit may be brought at any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

[Sec. 6532 as amended by sec. 89(b), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6532–1 Periods of limitation on suits by taxpayers.

(a) No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

(1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

(2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof.

Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any internal revenue tax, penalty, or other sum may be brought after the expiration of 2 years from the date of mailing by registered mail prior to September 3, 1958, or by either registered or certified mail on or after September 3, 1958, by a district director, a director of an internal revenue service center, or an assistant regional commissioner to a taxpayer of a notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) The 2-year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by a district director, a director of an internal revenue service center, or an assistant regional commissioner.

(c) The taxpayer may sign a waiver of the requirement that he be mailed a notice of disallowance. Such waiver is irrevocable and will commence the running of the 2-year period described in paragraph (a) of this section on the date the waiver is filed. The waiver shall set forth:

(1) The type of tax and the taxable period covered by the taxpayer's claim for refund;

(2) The amount of the claim;

(3) The amount of the claim disallowed;

(4) A statement that the taxpayer agrees the filing of the waiver will commence the running of the 2-year period provided for in section 6532(a)(1) as if a notice of disallowance had been sent the taxpayer by either registered or certified mail.

The filing of such a waiver prior to the expiration of 6 months from the date the claim was filed does not permit the filing of a suit for refund prior to the time specified in section 6532(a)(1) and paragraph (a) of this section.

(d) Any consideration, reconsideration, or other action with respect to a claim after the mailing by registered mail prior to September 3, 1958, or by either registered or certified mail on or after September 3, 1958, of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a).

§ 301.6532–2 Periods of limitation on suits by the United States.

The United States may not recover any erroneous refund by civil action under section 7405 unless such action is begun within 2 years after the making of such refund. However, if any part of the refund was induced by fraud or misrepresentation of a material fact, the action to recover the erroneous refund may be brought at any time within 5 years from the date the refund was made.

§ 301.6533 Statutory provisions; cross references.

SEC. 6533. *Cross references.* (1) For period of limitation in respect of civil actions for fines, penalties, and forfeitures, see section 2462 of Title 28 of the United States Code.

(2) For extensions of time by reason of armed service in a combat zone, see section 7508.

(3) For suspension of running of statute until 3 years after termination of hostilities, see section 3287 of Title 18.

Interest

INTEREST ON UNDERPAYMENTS

§ 301.6601 Statutory provisions; interest on underpayment, nonpayment, or extensions of time for payment, of tax.

SEC. 6601. *Interest on underpayment, nonpayment, or extensions of time for payment, of tax*—(a) *General rule.* If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 6 percent per annum shall be paid for the period from such last date to the date paid.

(b) *Extensions of time for payment of estate tax.* If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6161(a)(2) or 6166, or if the time for payment of an amount of such tax is postponed or extended as provided by section 6163, interest shall be paid at the rate of 4 percent, in lieu of 6 percent as provided in subsection (a).

(c) *Last date prescribed for payment.* For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) *Extensions of time disregarded.* The last date prescribed for payment shall be determined without regard to any extension of time for payment.

(2) *Installment payments.* In the case of an election under section 6152(a) or 6156(a) to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6152(b) or 6156(b), as the case may be, and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment of any portion of the tax not shown on the return.

(3) *Jeopardy.* The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior to the last date otherwise prescribed for such payment.

(4) *Last date for payment not otherwise prescribed.* In the case of taxes payable by stamp and in all other cases in which the

last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary or his delegate).

(d) *Suspension of interest in certain income, estate, and gift tax cases.* In the case of a deficiency as defined in section 6211 (relating to income, estate, and gift taxes), if a waiver of restrictions under section 6213(d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary or his delegate for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(e) *Income tax reduced by carryback*—(1) *Net operating loss carryback.* If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss arises.

(2) *Investment credit carryback.* If the credit allowed by section 38 for any taxable year is increased by reason of an investment credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the investment credit carryback arises.

(f) *Applicable rules.* Except as otherwise provided in this title—

(1) *Interest treated as tax.* Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.

(2) *No interest on interest.* No interest under this section shall be imposed on the interest provided by this section.

(3) *Interest on penalties, additional amounts, or additions to the tax.* Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(4) *Payments made within 10 days after notice and demand.* If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(g) *Satisfaction by credits.* If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(h) *Limitation on assessment and collection.* Interest prescribed under this section or any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

(i) *Exception as to estimated tax.* This section shall not apply to any failure to pay estimated tax required by section 6153 (or section 59 of the Internal Revenue Code of 1939) or section 6154.

(j) *No interest on certain adjustments.* For provisions prohibiting interest on certain adjustments in tax, see section 6205(a).

[Sec. 6601 as amended by secs. 66(c), 83(a)(1), 84(a), Technical Amendments Act 1958 (72 Stat. 1658, 1663, 1664); sec. 206(e), Small Business Tax Revision Act 1958 (72 Stat. 1685); sec. 203(c)(2), Federal-Aid Highway Act 1961 (75 Stat. 126); sec. 2(e)(3), Revenue Act 1962 (76 Stat. 972)]

SEC. 83(c) [Technical Amendments Act of 1958]. *Interest attributable to net operating loss carryback for certain taxable years ending in 1954.* If by reason of enactment of section 172(b)(1)(A) of the Internal Revenue Code of 1954—

(1) A deficiency resulted for the first taxable year preceding a taxable year ending after December 31, 1953, and before August 17, 1954, and

(2) An overpayment resulted for the second preceding taxable year,

no interest shall be payable with respect to any portion of such deficiency for any period during which there existed a corresponding amount of such overpayment with respect to which interest is not payable.

[Sec. 83(e), Technical Amendments Act 1958 (72 Stat. 1664)]

§ 301.6601–1 Interest on underpayments.

(a) *General rule.* Interest at the rate of 6 percent per annum shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

(b) *Exceptions to the general rule*—(1) *Satisfaction by credits made after December 31, 1957.* If any portion of a tax is satisfied by the credit of an overpayment after December 31, 1957, interest shall not be imposed under section 6601 on such portion of the tax for any period during which interest on the overpayment would have been allowable if the overpayment had been refunded. The provisions of this subdivision may be illustrated by the following examples:

Example (1). An examination of A's income tax returns for the calendar years 1955 and 1956 discloses an underpayment of $800 for 1955 and an overpayment of $500 for 1956. Interest under section 6601(a) ordinarily accrues on the underpayment of $800 from April 15, 1956, to the date of payment. However, the 1956 overpayment of $500 is credited after December 31, 1957, against the underpayment in accordance with the provisions of section 6402(a) and § 301.6402–1. Under such circumstances interest on the $800 underpayment runs from April 15, 1956, the last date prescribed for payment of the 1955 tax, to April 15, 1957, the date the overpayment of $500 was made. Since interest would have been allowed on the overpayment, if refunded, from April 15, 1957, to a date not more than 30 days prior to the date of the refund check, no interest is imposed after April 15, 1957, on $500, the portion of the underpayment satisfied by credit. Interest continues to run, however, on $300 (the $800 underpayment for 1955 less the $500 overpayment for 1956) to the date of payment.

Example (2). An examination of A's income tax returns for the calendar years 1956 and 1957 discloses an overpayment, occurring on April 15, 1957, of $700 for 1956 and an underpayment of $400 for 1957. After April 15, 1958, the last date prescribed for payment of the 1957 tax, the district director credits $400 of the overpayment against the underpayment. In such a case, interest will accrue upon the overpayment of $700 from April 15, 1957, to April 15, 1958, the due date of the amount against which the credit is taken. Interest will also accrue under section 6611 upon $300 ($700 overpayment less $400 underpayment) from April 15, 1958, to a date not more than 30 days prior to the date of the refund check. Since a refund of the portion of the overpayment credited against the underpayment would have resulted in interest running upon such portion from April 15, 1958, to a date not more than 30 days prior to the date of the refund check, no interest is imposed upon the underpayment.

(2) *Time for payment of estate tax extended or postponed.* In the case of estate tax—

(i) If an extension of time has been granted, in accordance with section 6161(a)(2) or section 6166, for paying any portion of the tax shown on an estate tax return, or

(ii) If the time for payment of the portion of the tax attributable to a reversionary or remainder interest is extended or postponed in accordance with the provisions of section 6163,

such portion shall bear interest at the rate of 4 percent per annum from the expiration of 15 months after the date of the decedent's death to the date of the expiration of the period of the extension or postponement or to the date on which payment is received, whichever is earlier. If any part of such portion is paid before the date of the expiration of the period of the extension or postponement, such part shall bear interest only to the date on which payment is received. If, however, the full amount of the tax to which the extension or postponement applies is not paid on or before the date of the expiration of the period of the extension or postponement, the unpaid amount shall bear interest at the rate of 6 percent per annum from the date of the expiration of the period of the extension or postponement to the date on which payment is received.

(c) *Last date prescribed for payment.* The term "last date prescribed for payment", as used in section 6601 and this section, means the last date prescribed for payment as determined under the provisions of chapter 62 of the Code and the following rules:

(1) In determining the last date prescribed for payment, any extension of time granted for payment of tax (including any postponement elected under section 6163(a)) shall be disregarded. The granting of an extension of time for the payment of tax does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. Thus, except as provided in paragraph (b) of this section, interest at the rate of 6 percent per annum is payable on any unpaid portion of the tax for the period during which such portion remains unpaid by reason of an extension of time for the payment thereof.

(2) (i) If a tax or portion thereof is payable in installments in accordance with an election made under section

6152(a) or 6156(a), the last date prescribed for payment of any installment of such tax or portion thereof shall be determined under the provisions of section 6152(b) or 6156(b), as the case may be, and interest shall run on any unpaid installment from such last date to the date on which payment is received. However, in the event installment privileges are terminated for failure to pay an installment when due as provided by section 6152(d) and the time for the payment of any remaining installment is accelerated by the issuance of a notice and demand therefor, interest shall run on such unpaid installment from the date of the notice and demand to the date on which payment is received. But see section 6601(f)(4).

(ii) If the tax shown on a return is payable in installments, interest will run on any tax not shown on the return from the last date prescribed for payment of the first installment. If a deficiency is prorated to any unpaid installments, in accordance with section 6152(c), interest shall run on such prorated amounts from the date prescribed for the payment of the first installment to the date on which payment is received.

(3) If, by reason of jeopardy, a notice and demand for payment of any tax is issued before the last date otherwise prescribed for payment, such last date shall nevertheless be used for the purpose of the interest computation, and no interest shall be imposed for the period commencing with the date of the issuance of the notice and demand and ending on such last date. If the tax is not paid on or before such last date, interest will automatically accrue from such last date to the date on which payment is received.

(4) In the case of taxes payable by stamp and in all other cases where the last date for payment of the tax is not otherwise prescribed, such last date for the purpose of the interest computation shall be deemed to be the date on which the liability for the tax arose. However, such last date shall in no event be later than the date of issuance of a notice and demand for the tax.

(d) *Suspension of interest; waiver of restrictions on assessment.* In the case of a deficiency determined by a district director (or an assistant regional commissioner, appellate) with respect to any income, estate, or gift tax, if the taxpayer files with such internal revenue officer an agreement waiving the restrictions on assessment of such deficiency, and if notice and demand for payment of such deficiency is not made within 30 days after the filing of such waiver, no interest shall be imposed on the deficiency for the period beginning immediately after such 30th day and ending on the date notice and demand is made. In the case of an agreement with respect to a portion of the deficiency, the rules as set forth in this paragraph are applicable only to that portion of the deficiency to which the agreement relates.

(e) *Income tax reduced by carryback.* (1) The carryback of a net operating loss or an investment credit shall not affect the computation of interest on any income tax for the period commencing with the last date prescribed for the payment of such tax and ending with the last day of the taxable year in which the loss or credit arises. For example, if the carryback of a net operating loss or an investment credit to a prior taxable period eliminates or reduces a deficiency in income tax for that period, the full amount of the deficiency will nevertheless bear interest at the rate of 6 percent per annum from the last date prescribed for payment of such tax until the last day of the taxable year in which the loss or credit arose. Interest will continue to run beyond such last day on any portion of the deficiency which is not eliminated by the carryback.

(2) Where an extension of time for payment of income tax has been granted under section 6164 to a corporation expecting a net operating loss carryback, interest is payable at the rate of 6 percent per annum on the amount of such unpaid tax from the last date prescribed for payment thereof without regard to such extension.

(3) Where there has been an allowance of an overpayment attributable to a net operating loss carryback or an investment credit carryback and all or part of such allowance is later determined to be excessive, interest shall be computed on the excessive amount from the last day of the year in which the net operating loss or investment credit arose until the date on which the repayment of such excessive amount is received.

(f) *Applicable rules.* (1) Any interest prescribed by section 6601 shall be assessed and collected in the same manner as tax and shall be paid upon notice and demand by the district director or the director of the regional service center. Any reference in the Code (except in subchapter B, chapter 63, relating to deficiency procedures) to any tax imposed by the Code shall be deemed also to refer to the interest imposed by section 6601 on such tax. Interest on a tax may be assessed and collected at any time within the period of limitation on collection after assessment of the tax to which it relates. For rules relating to the period of limitation on collection after assessment, see section 6502.

(2) No interest under section 6601 shall be payable on any interest provided by such section.

(3) Interest shall not be imposed on any assessable penalty, addition to the tax, or additional amount unless such assessable penalty, addition to the tax, or additional amount is not paid within 10 days from the date of notice and demand therefor. If interest is imposed, it shall be imposed only for the period from the date of the notice and demand to the date on which payment is received.

(4) If notice and demand is made for any amount and such amount is paid within 10 days after the date of such notice and demand, interest shall not be imposed for the period after the date of such notice and demand.

(5) No interest shall be imposed for failure to pay estimated tax as required by section 59 of the Internal Revenue Code of 1939 or section 6153 or 6154 of the Internal Revenue Code of 1954.

§ 301.6602 Statutory provision; interest on erroneous refund recoverable by suit.

SEC. 6602. *Interest on erroneous refund recoverable by suit.* Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by suit pursuant to section 7405, shall bear interest at the rate of 6 percent per annum from the date of the payment of the refund.

§ 301.6602–1 Interest on erroneous refund recoverable by suit.

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by a civil action pursuant to section 7405, shall bear interest at the rate of 6 percent per annum from the date of the payment of the refund.

INTEREST ON OVERPAYMENTS

§ 301.6611 Statutory provisions; interest on overpayments.

SEC. 6611. *Interest on overpayments.* (a) *Rate.* Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 percent per annum.

(b) *Period.* Such interest shall be allowed and paid as follows:

(1) *Credits.* In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.

(2) *Refunds.* In the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary or his delegate) preceding the date of the refund check by not more than 30 days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(c) [Repealed]

(d) *Advance payment of tax, payment of estimated tax, and credit for income tax withholding.* The provisions of section 6513 (except the provisions of subsection (c) thereof), applicable in determining the date of payment of tax for purposes of determining the period of limitation on credit or refund, shall be applicable in determining the date of payment for purposes of subsection (a).

(e) *Income tax refund within 45 days of due date of tax.* If any overpayment of tax imposed by subtitle A is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return), no interest shall be allowed under subsection (a) on such overpayment.

(f) *Refund of income tax caused by carryback:*—(1) *Net operating loss carryback.* For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss arises.

(2) *Investment credit carryback.* For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from an investment credit carryback, such overpayment shall be deemed not to have been made prior to the close of the taxable

year in which such investment credit carryback arises.

(g) *Refund of income tax caused by carryback of foreign taxes.* For purposes of subsection (a), if any overpayment of tax results from a carryback of tax paid or accrued to foreign countries or possessions of the United States, such overpayment shall be deemed not to have been paid or accrued prior to the close of the taxable year under this subtitle in which such taxes were in fact paid or accrued.

(h) *Prohibition of administrative review.* For prohibition of administrative review, see section 6406.

[Sec. 6611 as amended by secs. 42(b), 83 (b), (c), Technical Amendments Act 1958 (72 Stat. 1640, 1664); sec. 2(e)(4), Revenue Act 1962 (76 Stat. 972)]

§ 301.6611–1 Interest on overpayments.

(a) *General rule.* Except as otherwise provided, interest shall be allowed on any overpayment of any tax at the rate of 6 percent per annum from the date of overpayment of the tax.

(b) *Date of overpayment.* Except as provided in section 6401(a), relating to assessment and collection after the expiration of the applicable period of limitation, there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which (when added to previous payments) is in excess of the tax liability (including any interest, addition to the tax, or additional amount) and the dates of payment of all amounts subsequently paid with respect to such tax liability. For rules relating to the determination of the date of payment in the case of an advance payment of tax, a payment of estimated tax, and a credit for income tax withholding, see paragraph (d) of this section.

(c) *Examples.* The application of paragraph (b) may be illustrated by the following examples:

Example (1). Corporation X files an income tax return on March 15, 1955, for the calendar year 1954 disclosing a tax liability of $1,000 and elects to pay the tax in installments. Subsequent to payment of the final installment, the correct tax liability is determined to be $900.

Tax liability

Assessed	$1,000
Correct liability	900
Overassessment	100

Record of payments

Mar. 15, 1955	$500
June 15, 1955	500

Since the correct liability in this case is $900, the payment of $500 made on March 15, 1955, and $400 of the payment made on June 15, 1955, are applied in satisfaction of the tax liability. The balance of the payment made on June 15, 1955 ($100) constitutes the amount of the overpayment, and the date on which such payment was made would be the date of the overpayment from which interest would be computed.

Example (2). Corporation Y files an income tax return for the calendar year 1954 on March 15, 1955, disclosing a tax liability of $50,000, and elects to pay the tax in installments. On October 15, 1956, a deficiency in the amount of $10,000 is assessed and is paid in equal amounts on November 15 and November 26, 1956. On April 15, 1957, it is determined that the correct tax liability of the taxpayer for 1954 is only $35,000.

Tax liability

Original assessment	$50,000
Deficiency assessment	10,000
Total assessed	60,000
Correct liability	35,000
Overassessment	25,000

Record of payments

Mar. 15, 1955	$25,000
June 15, 1955	25,000
Nov. 15, 1956	5,000
Nov. 26, 1956	5,000

Since the correct liability in this case is $35,000, the entire payment of $25,000 made on March 15, 1955, and $10,000 of the payment made on June 15, 1955, are applied in satisfaction of the tax liability. The balance of the payment made on June 15, 1955 ($15,000), plus the amounts paid on November 15 ($5,000), and November 26, 1956 ($5,000), constitute the amount of the overpayment. The dates of the overpayments from which interest would be computed are as follows:

Date	Amount of overpayment
June 15, 1955	$15,000
Nov. 15, 1956	5,000
Nov. 26, 1956	5,000

The amount of any interest paid with respect to the deficiency of $10,000 is also an overpayment.

(d) *Advance payment of tax, payment of estimated tax, and credit for income tax withholding.* In the case of an advance payment of tax, a payment of estimated income tax, or a credit for income tax withholding, the provisions of section 6513 (except the provisions of subsection (c) thereof), applicable in determining the date of payment of tax for purposes of the period of limitations on credit or refund, shall apply in determining the date of overpayment for purposes of computing interest thereon.

(e) *Refund of income tax caused by carryback.* If any overpayment of tax imposed by subtitle A of the Code results from the carryback of a net operating loss or an investment credit, such overpayment, for purposes of this section, shall be deemed not to have been made prior to the end of the taxable year in which the loss or credit arises.

(f) *Refund of income tax caused by carryback of foreign taxes.* For purposes of paragraph (a) of this section, any overpayment of tax resulting from a carryback of tax paid or accrued to foreign countries or possessions of the United States shall be deemed not to have been paid or accrued before the close of the taxable year under subtitle F of the Code in which such taxes were in fact paid or accrued.

(g) *Period for which interest allowable in case of refunds.* If an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date determined by the district director or the director of the regional service center, which shall be not more than 30 days prior to the date of the refund check. The acceptance of a refund check shall not deprive the taxpayer of the right to make a claim for any additional overpayment and interest thereon, provided the claim is made within the applicable period of limitation. However, if a taxpayer does not accept a refund check, no additional interest on the amount of the overpayment included in such check shall be allowed.

(h) *Period for which interest allowable in case of credits*—(1) *General rule.* If an overpayment of tax is credited, interest shall be allowed from the date of overpayment to the due date (as determined under subparagraph (2) of this paragraph) of the amount against which such overpayment is credited.

(2) *Determination of due date*—(i) *In general.* The term "due date", as used in this section, means the last day fixed by law or regulations for the payment of the tax (determined without regard to any extension of time), and not the date on which the district director or the director of the regional service center makes demand for the payment of the tax. Therefore, the due date of a tax (other than an additional assessment subject to the special rule provided by subdivision (iv) of this subparagraph) is the date fixed for the payment of the tax or the several installments thereof.

(ii) *Tax payable in installments*—(a) *In general.* In the case of a credit against a tax, where the taxpayer had properly elected to pay the tax in installments, the due date is the date prescribed for the payment of the installment against which the credit is applied.

(b) *Delinquent installment.* If the taxpayer is delinquent in payment of an installment of tax and a notice and demand has been issued for the payment of the delinquent installment and the remaining installments, the due date of each remaining installment shall then by the date of such notice and demand.

(iii) *Tax or installment not yet due.* If a taxpayer agrees to the crediting of an overpayment against tax or an installment of tax and the schedule of allowance is signed prior to the date on which such tax or installment would otherwise become due, then the due date of such tax or installment shall be the date on which such schedule is signed.

(iv) *Additional assessment satisfied by credit before January 1, 1958.* In the case of a credit made before January 1, 1958, against an additional assessment, the due date of the tax satisfied by the credit is the date the additional assessment was made. For purposes of this subdivision, the term "additional assessment" means a further assessment of a tax of the same character previously paid in part, and includes the assessment of a deficiency as defined in section 6211.

(v) *Assessed interest.* In the case of a credit against assessed interest, the due date is the date of the assessment of such interest.

(vi) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an amount assessed as an additional amount, addition to the tax, or assessable penalty, the due date is the date of the assessment.

(vii) *Estimated income tax for succeeding year.* If the taxpayer elects to have all or part of the overpayment shown by his return applied to his esti-

mated tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated tax for such year or the installments thereof.

(i) [Reserved]

(j) *Refund within 45 days.* If an overpayment of tax imposed by subtitle A of the Code is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return), no interest shall be allowed on such overpayment.

§ 301.6612 Statutory provisions; cross references.

SEC. 6612. *Cross reference*—(a) *Interest on judgments for overpayments.* For interest on judgments for overpayments, see 28 U.S.C. 2411(a).

(b) *Adjustments.* For provisions prohibiting interest on certain adjustments in tax, see section 6413(a).

(c) *Other restrictions on interest.* For other restrictions on interest, see section 2011 (c) (relating to refunds due to credit for State taxes), 2014(e) (relating to refunds attributable to foreign tax credits), 6412 (relating to floor stock refunds), 6413(d) (relating to taxes under the Federal Unemployment Tax Act), 6416 (relating to certain taxes on sales and services), 6419 (relating to the excise tax on wagering), 6420 (relating to payments in the case of gasoline used on the farm for farming purposes), and 6421 (relating to payments in case of gasoline used for certain nonhighway purposes or by local transit systems).

[Sec. 6612 as amended by sec. 4(f), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(e)(7), Highway Revenue Act 1956 (70 Stat. 397)]

Additions to the Tax, Additional Amounts, and Assessable Penalties

ADDITIONS TO THE TAX AND ADDITIONAL AMOUNTS

§ 301.6651 Statutory provisions; failure to file tax return.

SEC. 6651. *Failure to file tax return*—(a) *Addition to the tax.* In case of failure to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(b) *Penalty imposed on net amount due.* For purposes of subsection (a), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(c) *Exception for declarations of estimated tax.* This section shall not apply to any failure to file a declaration of estimated tax required by section 6015 or section 6016.

§ 301.6651–1 Failure to file tax return.

(a) *Addition to the tax*—(1) *In general.* In case of failure to file a return required under authority of—

(i) Subchapter A, chapter 61, of the Code, relating to returns and records (other than sections 6015 and 6016, relating to declarations of estimated tax, and part III thereof, relating to information returns);

(ii) Subchapter A, chapter 51, of the Code, relating to distilled spirits, wines, and beer;

(iii) Subchapter A, chapter 52, of the Code, relating to tobacco, cigars, cigarettes, and cigarette paper and tubes; or

(iv) Subchapter A, chapter 53, of the Code, relating to machineguns and certain other firearms;

and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the district director or the director of the regional service center to be due to reasonable cause and not to willful neglect. (See subparagraph (3) of this paragraph.) The amount to be added to the tax is 5 percent thereof if the failure is for not more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(2) *Month defined.* (i) If the date prescribed for filing the return is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file continues shall constitute a month for purposes of section 6651.

(ii) If the date prescribed for filing the return is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month for purposes of section 6651. If, in the month of February, there is no date corresponding to the date prescribed for filing the return, the period from such date in January through the last day of February shall constitute a month for purposes of section 6651. Thus, if a return is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(iii) If a return is not timely filed, the fact that the date prescribed for filing the return, or the corresponding date in any succeeding calendar month, falls on a Saturday, Sunday, or a legal holiday is immaterial in determining the number of months for which the addition to the tax under section 6651 applies.

(3) *Showing of reasonable cause.* A taxpayer who wishes to avoid the addition to the tax for failure to file a tax return must make an affirmative showing of all facts alleged as a reasonable cause for his failure to file such return on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the district director with whom the return is required to be filed. If the district director or the director of the regional service center determines that the delinquency was due to a reasonable cause, and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause.

(b) *Penalty imposed on net amount due.* The amount of tax required to be shown on the return shall be reduced for purposes of section 6651(a) by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return. For example, under section 6072(a), income tax returns of individuals on a calendar year basis must be filed on or before the 15th day of April following the close of the calendar year. Assume an individual filed his income tax return, Form 1040, for the calendar year 1954 on May 20, 1955, and such delinquency is not due to reasonable cause. The tax shown on the return is $800 and a deficiency of $200 is subsequently assessed, making the tax required to be shown on the return $1,000. Of this amount, $300 has been paid by withholding from wages and $400 has been paid as estimated tax. In addition to interest from April 15, 1955, there will be assessed an additional amount of $30, which is 10 percent (5 percent for the month from April 16 through May 15, and 5 percent for the fractional part of the month from May 16 through May 20) of the net amount of $300 due ($1,000 less $700 paid on or before April 15).

(c) *No addition to tax if fraud penalty assessed.* No addition to the tax under section 6651 shall be assessed with respect to an underpayment of tax if a 50 percent addition to the tax for fraud is assessed with respect to the same underpayment under section 6653(b). See section 6653(d).

§ 301.6652 Statutory provisions; failure to file certain information returns.

SEC. 6652. *Failure to file certain information returns*—(a) *Returns relating to payments of dividends, etc., and certain transfers of stock.* In the case of each failure—

(1) To file a statement of the aggregate amount of payments to another person required by section 6042(a)(1) (relating to payments of dividends aggregating $10 or more), section 6044(a)(1) (relating to payments of patronage dividends aggregating $10 or more), or section 6049(a)(1) (relating to payments of interest aggregating $10 or more),

(2) To make a return required by section 6039(a) (relating to reporting information in connection with certain options) with respect to a transfer of stock or a transfer of legal title to stock, or

(3) To make a return required by section 6052(a) (relating to reporting payment of wages in the form of group-term life insurance) with respect to group-term life insurance on the life of an employee, on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to file a statement referred to in paragraph (1) or failing to make a return referred to in paragraph (2) or (3), $10 for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000.

(b) *Other returns.* In the case of each failure to file a statement of a payment to another person required under authority of section 6041 (relating to certain information at source), section 6042(a)(2) (relating to payments of dividends aggregating less than $10), section 6044(a)(2) (relating to payments of patronage dividends aggregating less than $10), section 6049(a)(2) (relating to payments of interest aggregating less than $10), section 6049(a)(3) (relating to other payments of interest by corporations), or section 6051(d) (relating to information returns with respect to income tax withheld), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing to so file the statement, $1 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during the calendar year shall not exceed $1,000.

(c) *Alcohol and tobacco taxes.* For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

[Sec. 6652 as amended by sec. 85, Technical Amendments Act 1958 (72 Stat. 1664); sec. 19(d), Rev. Act 1962 (76 Stat. 1057); sec. 221(b)(2), Rev. Act 1964 (78 Stat. 74)]

§ 301.6652–1 Failure to file certain information returns.

(a) *Returns with respect to payments made in calendar years after 1962—(1) Payments of dividends, interest, or patronage dividends aggregating $10 or more.* In the case of each failure to file a statement required by—

(i) Section 6042(a)(1), relating to information returns with respect to payments of dividends aggregating $10 or more in a calendar year, in effect with respect to payments made after December 31, 1962,

(ii) Section 6044(a)(1), relating to information returns with respect to certain payments by cooperatives aggregating $10 or more in a calendar year, in effect with respect to payments made on or after the first day of the first taxable year of the cooperative beginning after December 31, 1962, with respect to patronage occurring on or after such first day, or

(iii) Section 6049(a)(1), relating to information returns with respect to payments of interest aggregating $10 or more in a calendar year, in effect with respect to payments made after December 31, 1962, and the regulations under such section, within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the person failing to so file the statement $10 for each such statement not so filed. However, the total amount imposed on the delinquent person for all such failures under section 6652(a) and this section during any calendar year shall not exceed $25,000.

(2) *Other payments.* In the case of each failure to file a statement of a payment made after December 31, 1962, to another person required under authority of—

(i) Section 6041, relating to information returns with respect to certain information at source, or

(ii) Section 6051(d), relating to information returns with respect to payments of wages as defined in section 3401(a),

and the regulations under such section, within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the person failing to so file the statement $1 for each such statement not so filed. However, the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000.

(b) *Returns with respect to payments made in calendar years before 1963 and to certain payments by cooperatives after 1962.* In the case of each failure to file a statement, with respect to a payment to another person, required under authority of—

(1) Section 6041, relating to information returns with respect to certain information at source, in effect with respect to payments made before 1963,

(2) Section 6042(1), relating to information returns with respect to payments of corporate dividends, in effect with respect to payments made before 1963,

(3) Section 6044, relating to information returns with respect to payments of patronage dividends, in effect with respect to payments made by a cooperative with respect to patronage occurring before the first day of the first taxable year of the cooperative beginning after December 31, 1962, or

(4) Section 6051(d), relating to information returns with respect to payments of wages as defined in section 3401(a), in effect with respect to payments made before 1963,

and the regulations under such section, within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the person failing to so file such statement $1 for each such statement not so filed. However, the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000.

(c) *Returns with respect to reporting payments of wages in the form of group-term life insurance provided in a calendar year after December 31, 1963.* In the case of each failure to file a return required by section 6052(a), relating to reporting payment of wages in the form of group-term life insurance provided for any employee on his life in a calendar year after December 31, 1963, and the regulations under such section, within the time prescribed for filing such return (determined with regard to any extension of time for filing), there shall be paid by the person failing to so file such return $10 for each such return not so filed. However, the total amount imposed on the delinquent person for all such failures under section 6652(a) and this section during any calendar year shall not exceed $25,000.

(d) *Returns with respect to transfer of stock or record title thereto pursuant to options exercised on or after January 1, 1964.* In the case of each failure to file a statement of the transfer of stock or of record title thereto as required by section 6039(a) and the regulations under such section within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the corporation failing to so file such statement, $10 for each such statement not so filed. However, the total amount imposed on the delinquent corporation for all such failures under section 6652(a) and this section during any calendar year shall not exceed $25,000.

(e) *Manner of payment.* The penalty imposed under section 6652 and this section on any person shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(f) *Showing of reasonable cause.* The penalty imposed by section 6652 shall not apply with respect to a failure to file a statement within the time prescribed if it is established to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause and not to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause.

(g) *Alcohol and tobacco taxes.* For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E of the Code.

§ 301.6653 Statutory provisions; failure to pay tax.

SEC. 6653. *Failure to pay tax*—(a) *Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.* If any part of any underpayment (as defined in subsection (c)(1) of any tax imposed by subtitle A or by chapter 12 of subtitle B (relating to income taxes and gift taxes) is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) *Fraud.* If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In the case of income taxes and gift taxes, this amount shall be in lieu of

any amount determined under subsection (a).

(c) *Definition of underpayment.* For purposes of this section, the term "underpayment" means—

(1) *Income, estate, and gift taxes.* In the case of tax to which section 6211 (relating to income, estate, and gift taxes) is applicable, a deficiency as defined in that section (except that, for this purpose, the tax shown on a return referred to in section 6211(a)(1)(A) shall be taken into account only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing), and

(2) *Other taxes.* In the case of any other tax, the amount by which such tax imposed by this title exceeds the excess of—

(A) The sum of—

(i) The amount shown as the tax by the taxpayer upon his return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205(a) and 6413(a)), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus

(ii) Any amount, not shown on the return, paid in respect of such tax, over—

(B) The amount of rebates made.

For purposes of subparagraph (B), the term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in subparagraph (A) over the rebates previously made.

(d) *No delinquency penalty if fraud assessed.* If any penalty is assessed under subsection (b) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 (relating to failure to file such return) shall be assessed with respect to the same underpayment.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671(b) who willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under authority of this title, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

[Sec. 6653 as amended by sec. 86, Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6653–1 Failure to pay tax.

(a) *Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.* If any part of any underpayment, as defined in section 6653(c)(1) and paragraph (c)(1) of this section, of any income tax imposed by subtitle A of the Code, or gift tax imposed by chapter 12, subtitle B, of the Code, is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) *Fraud.* (1) If any part of any underpayment of tax, as defined in section 6653(c) and paragraph (c) of this section, required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment.

(2) If a 50 percent addition to the tax for fraud is assessed under section 6653(b) with respect to an underpayment—

(i) The addition to the tax under section 6651, relating to failure to file a tax return, will not be assessed with respect to the same underpayment, and

(ii) In the case of the income taxes imposed by subtitle A and the gift tax imposed by chapter 12 of subtitle B, the 5 percent addition to the tax under section 6653(a), relating to negligence and intentional disregard of rules and regulations, will not be assessed with respect to the same underpayment.

(c) *Definition of underpayment*—(1) *Income, estate, and gift taxes.* In the case of income, estate, and gift taxes, an underpayment for purposes of section 6653 and this section is—

(i) The total amount of all deficiencies as defined in section 6211, if a return was filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, or

(ii) The amount of the tax imposed by subtitle A or B, as the case may be, if a return was not filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return.

(2) *Other taxes.* In the case of any tax other than income, estate, and gift taxes, an underpayment for purposes of section 6653 and this section is the amount by which the tax imposed exceeds—

(i) In the case of any tax with respect to which the taxpayer is required to file a return, the sum of (*a*) the amount shown as tax by the taxpayer upon his return filed in respect of such tax, but only if the return is filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, plus (*b*) any amount not shown on a return filed by the taxpayer which is paid in respect of such tax prior to the date prescribed for filing the return. The "amount shown as tax by the taxpayer upon his return" for the purposes of this subparagraph shall be determined without regard to any credit for an overpayment for any prior tax return period, and without regard to any adjustment made under section 6205(a), or section 6413(a), relating to special rules applicable to certain employment taxes.

(ii) In the case of any tax payable by stamp, the amount paid (on or before the date prescribed for payment) in respect of such tax.

The amounts specified in subdivisions (i) and (ii) of this subparagraph shall be reduced, for purposes of determining the amount of the underpayment, by the amount of any rebates made. For purposes of this subparagraph, the term "rebates" means so much of an abatement, credit, refund, or other repayment as was made on the ground that the tax imposed was less than the excess of the amount specified in subdivision (i) or (ii) of this subparagraph, whichever is applicable, over any rebates previously made.

(d) *No delinquency penalty if fraud assessed.* See paragraph (b)(2) of this section.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671(b)) who willfully fails to pay any tax payable by stamp, coupons, tickets, books or other devices or methods prescribed by the Code or regulations promulgated thereunder, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

§ 301.6654 Statutory provisions; failure by individual to pay estimated income tax.

SEC. 6654. *Failure by individual to pay estimated income tax*—(a) *Addition to the tax.* In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) *Amount of underpayment.* For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax shown on the return for the taxable year, or, if no return was filed, 70 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(c) *Period of underpayment.* The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b)(1) for such installment date.

(d) *Exception.* Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser—

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

(A) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to 70 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

(2) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) *Application of section in case of tax withheld on wages.* For purposes of applying this section—

(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under section 31 (relating to tax withheld at source on wages), and

(2) The amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under section 6153) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(f) *Tax computed after application of credits against tax.* For purposes of subsections (b) and (d), the term "tax" means the tax imposed by chapter 1 reduced by the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

(g) *Short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(h) *Applicability.* This section shall apply only with respect to taxable years beginning after December 31, 1954; and section 294(d) of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955.

[Sec. 6654 as amended by sec. 1(a)(4), Act of Sept. 25, 1962 (Pub. Law 87-682, 76 Stat. 575)]

§ 301.6654–1 Failure by individual to pay estimated income tax.

For regulations under section 6654, see §§ 1.6654–1 to 1.6654–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6655 Statutory provisions; failure by corporation to pay estimated income tax.

SEC. 6655. *Failure by corporation to pay estimated income tax*—(a) *Addition to the tax.* In case of any underpayment of estimated tax by a corporation, except as provided in subsection (d), there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) *Amount of underpayment.* For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent of the tax shown on the return for the taxable year or, if no return was filed, 70 percent of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) *Period of underpayment.* The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the third month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on the 15th day of the 12th month shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b)(1) for the 15th day of the 12th month.

(d) *Exception.* Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser—

(1) The tax shown on the return of the corporation for the preceding taxable year reduced by $100,000, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

(3) (A) An amount equal to 70 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) For the first 6 months or for the first 8 months of the taxable year, in the case of the installment required to be paid in the ninth month, and

(ii) For the first 9 months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the twelfth month.

(B) For purposes of this paragraph, the taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 the taxable income referred to in subparagraph (A), and

(ii) Dividing the resulting amount by the number of months in the taxable year (6 or 8, or 9 or 11, as the case may be) referred to in subparagraph (A).

(e) *Definition of tax.* For purposes of subsections (b), (d)(2), and (d)(3), the term "tax" means the excess of—

(1) The tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

(2) The sum of—

(A) $100,000, and

(B) The credits against tax provided in part IV of subchapter A of chapter 1.

(f) *Short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.6655–1 Failure by corporation to pay estimated income tax.

For regulations under section 6655, see §§ 1.6655–1 to 1.6655–3, inclusive, of this chapter (Income Tax Regulations).

§ 301.6656 Statutory provisions; failure to make deposit of taxes.

SEC. 6656. *Failure to make deposit of taxes*—(a) *Penalty.* In case of failure by any person required by this title or by regulation of the Secretary or his delegate under this title to deposit on the date prescribed therefor any amount of tax imposed by this title in such government depositary as is authorized under section 6302(c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 1 percent of the amount of the underpayment if the failure is for not more than 1 month, with an additional 1 percent for each additional month or fraction thereof during which such failure continues, not exceeding 6 percent in the aggregate. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof deposited on or before the date prescribed therefor.

(b) *Penalty not imposed after due date for return.* For purposes of subsection (a), the failure shall be deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited or beyond the date the tax is paid, whichever is earlier.

§ 301.6656–1 Failure to make deposit of taxes.

(a) *Penalty.* (1) In case of failure by any person required by the Code or regulations prescribed thereunder to deposit any tax in a Government depositary, as is authorized under section 6302(c), within the time prescribed therefor, a penalty shall be imposed on such person unless such failure is shown to the satisfaction of the district director, the Director of International Operations, or the director of the regional service center, as the case may be, to be due to reasonable cause and not to willful neglect. The penalty shall be 1 percent of the amount of the underpayment if the failure is for not more than 1 month, with an additional 1 percent for each additional month or fraction thereof during which failure continues, not to exceed 6 percent in the aggregate. For purposes of this section, the term "underpayment" means the amount of tax required to be deposited

less the amount, if any, which was deposited on or before the date prescribed therefor, and the term "month" shall have the same meaning assigned to such term in paragraph (a)(2) of § 301.6851–1.

(2) A taxpayer who wishes to avoid the penalty for failure to deposit must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury, which should be filed with the district director for the district in which the return with respect to the tax is required to be filed, or with the Director of International Operations, as the case may be. If the district director, the Director of International Operations, or the director of the regional service center determines that the delinquency was due to a reasonable cause, and not to willful neglect, the penalty will not be imposed.

(b) *Penalty not imposed after due date for return.* For the purpose of computing the amount of the penalty imposed by section 6656, the period of failure to make deposit is deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited, or beyond the date the tax is paid, whichever date is earlier. For example, during the months of January, February, and March 1955, the aggregate amount of the employee tax withheld under section 3102, the employer tax for each such month under section 3111, and the income tax withheld at source on wages under section 3402 (exclusive of the employee tax withheld under section 3102 and the employer tax under section 3111 with respect to wages of household employees), amount to $1,000 for each month. Under § 31.6302(c)–1 of this chapter (Employment Tax Regulations), the employer is required to deposit the $1,000 for January on or before February 15, 1955, and the $1,000 for February on or before March 15, 1955, but is not required to deposit the $1,000 for March 1955, prior to the date the return is due. The employer filed his quarterly return on April 30, 1955, the date prescribed for filing such return, accompanied by a remittance of $3,000. Assuming that the employer failed, without reasonable cause, to make timely deposits the penalty under section 6656 for failure to make the January deposit is $30, and the penalty for failure to make the February deposit is $20, computed as follows:

Amount required to be deposited on or before Feb. 15, 1955	$1,000
Less: Amount deposited	0
Underpayment	1,000
(1 percent penalty for each month or fraction thereof, Feb. 15, 1955 to Apr. 30, 1955, 3 months)	3%
Penalty for failure to make January deposit	$30
Amount required to be deposited on or before Mar. 15, 1955	$1,000
Less: Amount deposited	0
Underpayment	1,000
(1 percent penalty for each month or fraction thereof, Mar. 15, 1955 to Apr. 30, 1955, 2 months)	2%
Penalty for failure to make February deposit	20
Total penalty	50

§ 301.6657 Statutory provisions; bad checks.

SEC. 6657. *Bad checks.* If any check or money order in payment of any amount receivable under this title is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand by the Secretary or his delegate, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than $500, the penalty under this section shall be $5 or the amount of such check, whichever is the lesser. This section shall not apply if the person tendered such check in good faith and with reasonable cause to believe that it would be duly paid.

§ 301.6657–1 Bad checks.

(a) *In general.* Except as provided in paragraph (b) of this section, if a check or money order is tendered in the payment of any amount receivable under the Code, and such check or money order is not paid upon presentment, a penalty of one percent of the amount of the check or money order, in addition to any other penalties provided by law shall be paid by the person who tendered such check or money order. If, however, the amount of the check or money order is less than $500, the penalty shall be $5 or the amount of the check or money order, whichever amount is the lesser. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(b) *Reasonable cause.* If payment is refused upon presentment of any check or money order and the person who tendered such check or money order establishes to the satisfaction of the district director that it was tendered in good faith with reasonable cause to believe that it would be duly paid, the penalty set forth in paragraph (a) of this section shall not apply.

§ 301.6658 Statutory provisions; addition to tax in case of jeopardy.

SEC. 6658. *Addition to tax in case of jeopardy.* If a taxpayer violates or attempts to violate section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6658–1 Addition to tax in case of jeopardy.

Upon a finding by the district director that any taxpayer violated, or attempted to violate, section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6659 Statutory provisions; applicable rules.

SEC. 6659. *Applicable rules.*—(a) *Additions treated as tax.* Except as otherwise provided in this title—

(1) The additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes;

(2) Any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

(b) *Procedure for assessing certain additions to tax.* For purposes of subchapter B of chapter 63 (relating to deficiency procedures for income, estate, and gift taxes), subsection (a) shall not apply to any addition to tax under section 6651, 6654, or 6655; except that it shall apply—

(1) In the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211; or

(2) To an addition described in section 6654 or 6655, if no return is filed for the taxable year.

[Sec. 6659 as amended by sec. 1, Act of May 14, 1960 (Pub. Law 86–470, 74 Stat. 132)]

§ 301.6659–1 Applicable rules.

(a) *Additions treated as tax.* Except as otherwise provided in the Code, any reference in the Code to "tax" shall be deemed also to be a reference to any addition to the tax, additional amount, or penalty imposed by chapter 68 of the Code with respect to such tax. Such additions to the tax, additional amounts, and penalties shall become payable upon notice and demand therefor and shall be assessed, collected, and paid in the same manner as taxes.

(b) *Additions to tax for failure to file return or pay tax.* Any addition under section 6651 or section 6653 to a tax shall be considered a part of such tax for the purpose of the assessment and collection of such tax. For applicability of deficiency procedures to additions to the tax, see paragraph (c) of this section.

(c) *Deficiency procedures.*—(1) *Addition to the tax for failure to file tax return.* Subchapter B, chapter 63, of the Code (deficiency procedures) applies to the additions to the income, estate, and gift taxes imposed by section 6651 for failure to file a tax return to the same extent that it applies to such taxes. Accordingly, if there is a deficiency (as defined in section 6211) in the tax (apart from the addition to the tax) where a return has not been timely filed, deficiency procedures apply to the addition to the tax under section 6651. If there is no deficiency in the tax where a return has not been timely filed, the addition to the tax under section 6651 may be assessed and collected without deficiency procedures. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A filed his income tax return for the calendar year 1955 on May 15, 1956, not having been granted an extension of time for such filing. His failure to file on time was not due to reasonable cause. The return showed a liability of $1,000 and it was determined that A is liable under section 6651 for an addition to such tax of $50

(5 percent a month for 1 month). The provisions of subchapter B of chapter 63 (deficiency procedures) do not apply to the assessment and collection of the addition to the tax since such provisions are not applicable to the tax with respect to which such addition was asserted, there being no statutory deficiency for purposes of section 6211.

Example (2). Assume the same facts as in example (1) and assume further that a deficiency of $500 in tax and a further $25 addition to the tax under section 6651 is asserted against A for the calendar year 1955. Thus, the total addition to the tax under section 6651 is $75. Since the provisions of subchapter B of chapter 63 are applicable to the $500 deficiency, they likewise apply to the $25 addition to the tax asserted with respect to such deficiency (but not to the $50 addition to the tax under example (1)).

(2) *Additions to the tax for negligence or fraud.* Subchapter B of chapter 63 (deficiency procedures) applies to all additions to the income, estate, and gift taxes imposed by section 6653 (a) and (b) for negligence and fraud.

(3) *Additions to tax for failure to pay estimated income taxes*—(i) *Return filed by taxpayer.* The addition to the tax for underpayment of estimated income tax imposed by section 6654 (relating to failure by individuals to pay estimated income tax) or section 6655 (relating to failure by corporations to pay estimated income tax) is determined by reference to the tax shown on the return if a return is filed. Therefore, such addition may be assessed and collected without regard to the provisions of subchapter B of chapter 63 (deficiency procedures) if a return is filed since such provisions are not applicable to the assessment of the tax shown on the return. Further, since the additions to the tax imposed by section 6654 or 6655 are determined solely by reference to the amount of tax shown on the return if a return is filed, the assertion of a deficiency with respect to any tax not shown on such return will not make the provisions of subchapter B of chapter 63 (deficiency procedures) apply to the assessment and collection of any additions to the tax under section 6654 or 6655.

(ii) *No return filed by taxpayer.* If the taxpayer has not filed a return and his entire income tax liability is asserted as a deficiency to which the provisions of subchapter B of chapter 63 apply, such provisions likewise will apply to any addition to such tax imposed by section 6654 or 6655.

ASSESSABLE PENALTIES

§ 301.6671 Statutory provisions; rules for application of assessable penalties.

SEC. 6671. *Rules for application of assessable penalties*—(a) *Penalty assessed as tax.* The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary or his delegate, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) *Person defined.* The term "person" as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6671–1 Rules for application of assessable penalties.

(a) *Penalty assessed as tax.* The penalties and liabilities provided by subchapter B, chapter 68, of the Code (sections 6671 to 6675, inclusive) shall be paid upon notice and demand by the district director or the director of the regional service center and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by subchapter B of chapter 68.

(b) *Person defined.* For purposes of subchapter B of chapter 68, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6672 Statutory provisions; failure to collect and pay over tax, or attempt to evade or defeat tax.

SEC. 6672. *Failure to collect and pay over tax, or attempt to evade or defeat tax.* Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 for any offense to which this section is applicable.

§ 301.6672–1 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over such taxes. No penalty under section 6653, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

§ 301.6673 Statutory provisions; damages assessable for instituting proceedings before the Tax Court merely for delay.

SEC. 6673. *Damages assessable for instituting proceedings before the Tax Court merely for delay.* Whenever it appears to the Tax Court that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of $500 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary or his delegate and shall be collected as a part of the tax.

§ 301.6673–1 Damages assessable for instituting proceedings before the Tax Court merely for delay.

Any damages awarded to the United States by the Tax Court under section 6673 against a taxpayer for instituting proceedings before the Tax Court merely for delay shall be assessed at the same time at the deficiency and shall be paid upon notice and demand from the district director or the director of the regional service center and shall be collected as a part of the tax.

§ 301.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.

SEC. 6674. *Fraudulent statement or failure to furnish statement to employee.* In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

§ 301.6674–1 Fraudulent statement or failure to furnish statement to employee.

For regulations under section 6674, see § 31.6674–1 of this chapter (Employment Tax Regulations).

§ 301.6675 Statutory provisions; excessive claims with respect to the use of certain gasoline.

SEC. 6675. *Excessive claims with respect to the use of certain gasoline*—(a) *Civil penalty.* In addition to any criminal penalty provided by law, if a claim is made under section 6420 (relating to gasoline used on farms) or 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems) for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the person making such claim shall be liable to a penalty in an amount equal to whichever of the following is the greater:

(1) Two times the excessive amount; or

(2) $10.

(b) *Excessive amount defined.* For purposes of this section, the term "excessive amount" means in the case of any person the amount by which—

(1) The amount claimed under section 6420 or 6421, as the case may be, for any period, exceeds

(2) The amount allowable under such section for such period.

(c) *Assessment and collection of penalty.* For assessment and collection of penalty provided by subsection (a), see section 6206.

[Sec. 6675 as added by sec. 3, Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90), and as amended by sec. 208(d)(2), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.6675–1 Excessive claims with respect to the use of certain gasoline.

For regulations under section 6675, see § 48.6675–1 of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.6676 Statutory provisions; failure to supply identifying numbers.

SEC. 6676. *Failure to supply identifying numbers*—(a) *Civil penalty.* If any person who is required by regulations prescribed under section 6109—

(1) To include his identifying number in any return, statement, or other document,

(2) To furnish his identifying number to another person, or

(3) To include in any return, statement, or other document made with respect to another person the identifying number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of $5 for each such failure, unless it is shown that such failure is due to reasonable cause.

(b) *Deficiency procedures not to apply.* Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, and gift taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

[Sec. 6676 as added by sec. 1(b), Act of Oct. 5, 1961 (Public Law 87–397, 75 Stat. 828)]

§ 301.6676–1 Penalty for failure to supply identifying number.

(a) *In general.* Except as provided in paragraph (c) of this section, if any person who is required by the regulations under section 6109—

(1) To include his identifying number in any return, statement, or other document,

(2) To furnish his identifying number to another person, or

(3) To include in any return, statement, or other document made with respect to another person the identifying number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of $5 for each such failure. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor. Under § 1.6109–1(b)(2) a payer is required to request the identifying number of the payee. If, after such a request has been made, the payee does not furnish the payer with his identifying number, the penalty will not be assessed against the payer.

(b) *Deficiency procedures not to apply.* Subchapter B, chapter 63, of the Code (deficiency procedures) shall not apply in respect of the assessment or collection of the penalty set forth in paragraph (a) of this section.

(c) *Reasonable cause.* If any person who is required by the regulations under section 6109 to supply an identifying number fails to comply with such requirement at the time prescribed by such regulations, but establishes to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause, the penalty set forth in paragraph (a) of this section shall not apply.

(d) *Persons required to supply identifying numbers.* For regulations under section 6109 relating to persons required to supply an identifying number, see the regulations relating to the particular tax.

§ 301.6678 Statutory provisions; failure to furnish certain statements.

SEC. 6678. *Failure to furnish certain statements.* In the case of each failure to furnish a statement under section 6039(b), 6042(c), 6044(e), 6049(c), and 6052(b) on the date prescribed therefor to a person with respect to whom a return has been made under section 6039(a), 6042(a)(1), 6044(a)(1), 6049(a)(1), or 6052(a), respectively, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to so furnish the statement, $10 for each such statement not so furnished, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000.

[Sec. 6678 as added by sec. 19(e), Rev. Act 1962 (76 Stat. 1058) and as amended by secs. 204(c)(2), 221(b)(3), Rev. Act. 1964 (78 Stat. 37, 75)]

§ 301.6678–1 Failure to furnish statements to payees.

(a) *In general.* In the case of each failure to furnish a statement required—

(1) Under section 6042(c) and § 1.6042–4 to a person with respect to whom a return has been made under section 6042(a)(1), relating to information returns with respect to payment of dividends aggregating $10 or more in a calendar year,

(2) Under section 6044(e) and § 1.6044–5 to a person with respect to whom a return has been made under section 6044(a)(1), relating to information returns with respect to certain payments by cooperatives aggregating $10 or more in a calendar year,

(3) Under section 6049(c) and § 1.6049–3 to a person with respect to whom a return has been made under section 6049(a)(1), relating to information returns with respect to payments of interest aggregating $10 or more in a calendar year,

(4) Under section 6039(b) and § 1.6039–2 to a person with respect to whom a return has been made under section 6039(a), relating to information returns with respect to certain stock option transactions occurring in a calendar year, or

(5) Under section 6052(b) and § 1.6052–2 to a person with respect to whom a return has been made under section 6052(a), relating to information returns with respect to payment of wages in the form of group-term life insurance provided for an employee on his life,

within the time prescribed for furnishing such statement (determined with regard to any extension of time for furnishing), there shall be paid by the person failing to so furnish the statement $10 for each such statement not so furnished. However, the total amount imposed on the delinquent person for all such failures during a calendar year shall not exceed $25,000.

(b) *Manner of payment.* The penalty imposed under section 6678 and this section on any person shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(c) *Showing of reasonable cause.* The penalty imposed by section 6678 shall not apply with respect to a failure to furnish a statement within the time prescribed if it is established to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause and not to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause.

§ 301.6679 Statutory provisions; failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

SEC. 6679. *Failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock*—(a) *Civil penalty.* In addition to any criminal penalty provided by law, any person required to file a return under section 6046 who fails to file such return at the time provided in such section, or who files a return which does not show the information required pursuant to such section, shall pay a penalty of $1,000, unless it is shown that such failure is due to reasonable cause.

(b) *Deficiency procedures not to apply.* Subchapter B of chapter 63 (relating to deficiency procedure for income, estate, and gift taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

[Sec. 6679 as added by sec. 20(c), Revenue Act 1962 (76 Stat. 1062)]

§ 301.6679–1 Failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

(a) *Civil penalty*—(1) *In general.* In addition to any criminal penalty provided by law, each person required to file a return under section 6046, and the regulations thereunder, who fails to file such a return within the time provided, or who files a return which does not show the required information, shall pay a penalty of $1,000, unless such failure is shown to be due to reasonable cause.

(2) *Joint return.* The penalty imposed by section 6679 and this section shall apply to each U.S. citizen, resident, or person filing a joint return pursuant to the provisions of section 6046 and § 1.6046–1, which does not show the required information.

(3) *Showing of reasonable cause.* The penalty imposed by section 6679 shall not apply if it is established to the satisfaction of the Director of International Operations that such failure was due to a reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause. If the taxpayer exercises ordinary business care and prudence and is nevertheless unable to fur-

nish any item of information required under section 6046, and the regulations thereunder, such failure shall be considered due to a reasonable cause. In determining the extent of a taxpayer's ability to obtain information, the percentage of stock owned by such taxpayer and the nature of the other interests in the foreign corporation will be considered.

(b) *Deficiency procedures not to apply.* The penalty imposed by section 6679 may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code.

General Provisions Relating to Stamps

§ 301.6801 Statutory provisions; authority for establishment, alteration, and distribution.

SEC. 6801. *Authority for establishment, alteration, and distribution*—(a) *Establishment and alteration.* The Secretary or his delegate may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the laws relating to internal revenue.

(b) *Preparation and distribution or regulations, forms, stamps and dies.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

§ 301.6801–1 Authority for establishment, alteration, and distribution.

(a) *Establishment and alteration.* The Commissioner may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to internal revenue.

(b) *Preparation and distribution of forms, stamps and dies.* The Commissioner shall prepare and distribute all the instructions, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

§ 301.6802 Statutory provisions; supply and distribution.

SEC. 6802. *Supply and distribution.* The Secretary or his delegate shall furnish, without prepayment, to—

(1) *Postmaster General.* The Postmaster General a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed by the Secretary or his delegate pursuant to section 6302(b) or this chapter, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as—

(A) Are located in county seats, or

(B) Are certified by the Secretary to the Postmaster General as necessary;

(2) *Designated depositary of the United States.* Any designated depositary of the United States a suitable quantity of adhesive stamps to be kept on sale by such designated depositary;

(3) *State agents.* Any person who is—

(A) Duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State, and

(B) Designated by the Secretary or his delegate for the purpose,

a suitable quantity of such adhesive stamps as are required by section 4301, to be kept on sale by such person.

§ 301.6802–1 Supply and distribution.

(a) *Postmaster General.* The Commissioner shall furnish to the Postmaster General, without prepayment, a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed pursuant to section 6302(b) (authorizing a discretionary method for collecting certain specified taxes) or chapter 69 of the Code, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as are located in county seats or as are certified by the Secretary to the Postmaster General as necessary.

(b) *Designated depositary of the United States.* The district director for the district in which any designated depositary of the United States is located shall furnish to such designated depositary, without prepayment, a suitable quantity of adhesive stamps to be kept on sale by the designated depositary.

(c) *State agents.* Any person who is duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State may make application to the district director for the district in which the State agent is located, to be designated for the purpose of being furnished without prepayment, for sale, stamps to be used in payment of the tax imposed by section 4301. The application shall contain the location and post office address of the State agent, and the maximum amount of stamps he desires to maintain on hand. A copy of the agent's appointment as State agent should be attached to the application.

§ 301.6803 Statutory provisions; accounting and safeguarding.

SEC. 6803. *Accounting and safeguarding*—(a) *The Postmaster General*—(1) *Bond and accounting.* The Postmaster General may require each postmaster under paragraph (1) of section 6802 to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe.

(2) *Deposit of receipts.* The Postmaster General shall at least once a month transfer to the Treasury as internal revenue collections all receipts so deposited.

(b) *Depositaries and State agents*—(1) *Bond.* In cases coming within the provisions of paragraph (2) or (3) of section 6802, the Secretary or his delegate may require a bond, with sufficient sureties, in a sum to be fixed by the Secretary or his delegate, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of and for the payment monthly for all quantities or amounts sold or not remaining on hand.

(2) *Regulations.* The Secretary or his delegate may from time to time make such regulations as he may find necessary to insure the safekeeping or prevent the illegal use of all adhesive stamps referred to in paragraphs (2) and (3) of section 6802.

§ 301.6803–1 Accounting and safeguarding.

In cases coming within the provisions of section 6802 (2) and (3) and paragraphs (b) and (c) of § 301.6802–1, the district director may require a bond in such amount as he deems advisable, conditioned for the faithful return, whenever so required, of all quantities or amounts of adhesive stamps undisposed of and for the payment monthly for all quantities or amounts of adhesive stamps sold or not remaining on hand. Such bond shall be furnished in accordance with the provisions contained in section 7101 and § 301.7101–1.

§ 301.6804 Statutory provisions; attachment and cancellation.

SEC. 6804. *Attachment and cancellation.* Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, cancelled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary or his delegate may prescribe by rules or regulations.

§ 301.6804–1 Attachment and cancellation.

For provisions relating to the attachment and cancellation of specific stamps used with respect to a particular tax, see the regulations relating to such tax.

§ 301.6805 Statutory provisions; redemption of stamps.

SEC. 6805. *Redemption of stamps*—(a) *Authorization.* The Secretary or his delegate, subject to regulations prescribed by him, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of any internal revenue law, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use.

(b) *Method and conditions of allowance.* Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Secretary or his delegate, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the Secretary or his delegate, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) *Time for filing claims.* No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

(d) *Finality of decisions.* The findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final, and not subject to revision by any accounting officer.

[Sec. 6805 as amended by sec. 165 (b), (c), Excise Tax Technical Changes Act 1958 (72 Stat. 1313)]

§ 301.6805–1 Redemption of stamps.

(a) *Authorization.* (1) Upon receipt of satisfactory evidence of the facts by the district director, he may make allowance for or redeem stamps issued under the authority of any internal revenue law if—

(i) The stamps have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or

(ii) The owner of the stamps has no use therefor.

(2) If a stamp has been in use for any period of time, it may not be redeemed under section 6805. Similarly, no allowance shall be made for stamps which have been lost or stolen.

(3) For submission of claims for allowance or redemption of certain alcohol and tobacco tax stamps to an assistant regional commissioner (alcohol and tobacco taxes), see subtitle E of the Code and the regulations in Subchapter E of this chapter (Alcohol, Tobacco, and Other Excise Taxes).

(b) *Method and conditions of allowance.* Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof. Claims for the redemption of or allowance for stamps shall be made on Form 843 and filed with the district director within three years from the date of the purchase of the stamps from the Government. The stamps for which redemption or allowance is claimed shall be submitted with the claim. If the stamps are destroyed or damaged to the extent that they cannot be presented for redemption or allowance, proof satisfactory to the district director that they have been destroyed or so damaged must accompany the claim before allowance or redemption shall be made. In any case where the actual date of purchase of the stamps from the Government cannot be established, it must be definitely shown in the claim whether they were so purchased within three years prior to the date of filing of the claim.

(c) *Time for filing claims.* No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

(d) *Finality of decisions.* The findings of fact in and the decision of the district director upon the merits of any claim presented under or authorized by this section, shall in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

§ 301.6806 Statutory provisions; posting occupational tax stamps.

SEC. 6806. *Posting occupational tax stamps.*—(a) *General rule.* Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, shall place and keep conspicuously in his establishment or place of business all stamps denoting payment of said special tax.

(b) *Coin-operated amusement and gaming devices.* The Secretary or his delegate may by regulations require that the stamps denoting the payment of the special tax imposed by section 4461 shall be posted on or in each device in such a manner that it will be visible to any person operating the device.

(c) *Occupational wagering tax.* Every person liable for special tax under section 4411 shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on his person, and exhibit it, upon request, to any officer or employee of the Treasury Department.

§ 301.6806–1 Posting occupational tax stamps.

For provisions relating to the posting of specific stamps used with respect to a particular tax, see the regulations relating to such tax. For penalties for failure to post occupational tax stamps, see section 7273.

§ 301.6807 Statutory provisions; stamping, marking, and branding seized goods.

SEC. 6807. *Stamping, marking, and branding seized goods.* If any article of manufacture or produce requiring brands, stamps, or marks of whatever kind to be placed thereon, is sold upon levy, forfeiture (except as provided in section 5688 with respect to distilled spirits), or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officer selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks so required.

§ 301.6808 Statutory provisions; special provisions relating to stamps.

SEC. 6808. *Special provisions relating to stamps.* For special provisions on stamps relating to—

(1) Capital stock, see chapter 34.

(2) Cotton futures, see subchapter D of chapter 39.

(3) Distilled spirits and fermented liquors, see chapter 51.

(4) Documents and other instruments, see chapter 34.

(5) Filled cheese, see subchapter C of chapter 39.

(6) Machineguns and short-barrelled firearms, see chapter 53.

(7) Oleomargarine, see subchapter F of chapter 38.

(8) Opium, opium for smoking, opiates and coca leaves, and marihuana, see subchapter A of chapter 39.

(9) Playing cards, see subchapter A of chapter 36.

(10) Process, renovated, or adulterated butter, see subchapter C of chapter 39.

(11) Silver bullion, see subchapter F of chapter 39.

(12) Tobacco, snuff, cigars, and cigarettes, see chapter 52.

(13) White phosphorus matches, see subchapter B of chapter 39.

Jeopardy, Bankruptcy and Receiverships

JEOPARDY

TERMINATION OF TAXABLE YEAR

§ 301.6851 Statutory provisions; termination of taxable year.

SEC. 6851. *Termination of taxable year.*—(a) *Income tax in jeopardy.*—(1) *In general.* If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(2) *Corporation in liquidation.* If the Secretary or his delegate finds that the collection of the income tax of a corporation for the current or the preceding taxable year will be jeopardized by the distribution of all or a portion of the assets of such corporation in the liquidation of the whole or any part of its capital stock, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(b) *Reopening of taxable period.* Notwithstanding the termination of the taxable period of the taxpayer by the Secretary or his delegate, as provided in subsection (a), the Secretary or his delegate may reopen such taxable period each time the taxpayer is found by the Secretary or his delegate to have received income, within the current taxable year, since a termination of the period under subsection (a). A taxable period so terminated by the Secretary or his delegate may be reopened by the taxpayer (other than a nonresident alien) if he files with the Secretary or his delegate a true and accurate return of the items of gross income and of the deductions and credits allowed under this title for such taxable period, together with such other information as the Secretary or his delegate may by regulations prescribe. If the taxpayer is a nonresident alien the taxable period so terminated may be reopened by him if he files, or causes to be filed, with the Secretary or his delegate a true and accurate return of his total income derived from all sources within the United States, in the manner prescribed in this title.

(c) *Citizens.* In the case of a citizen of the United States or of a possession of the United States about to depart from the United States, the Secretary or his delegate may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(d) *Departure of alien.* Subject to such exceptions as may, by regulations, be prescribed by the Secretary or his delegate—

(1) No alien shall depart from the United States unless he first procures from the Secretary or his delegate a certificate that he has complied with all the obligations imposed upon him by the income tax laws.

(2) Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying

such taxes if, in the case of an alien about to depart from the United States, the Secretary or his delegate determines that the collection of the tax will not be jeopardized by the departure of the alien.

(e) *Furnishing of bond where taxable year is closed by the Secretary or his delegate.* Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the Secretary or his delegate, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any income or excess profits taxes for prior years.

[Sec. 6851 as amended by sec. 87, Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6851–1 Termination of taxable year.

For regulations under section 6851, see §§ 1.6851–1 to 1.6851–3, inclusive, of this chapter (Income Tax Regulations).

JEOPARDY ASSESSMENTS

§ 301.6861 Statutory provisions; jeopardy assessments of income, estate, and gift taxes.

SEC. 6861. *Jeopardy assessments of income, estate, and gift taxes*—(a) *Authority for making.* If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) *Deficiency letters.* If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212(a), then the Secretary or his delegate shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) *Amount assessable before decision of Tax Court.* The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of section 6212(c) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Tax Court. The Secretary or his delegate may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Secretary or his delegate shall notify the Tax Court of the amount of such assessment, or abatement, if the petition is filed with the Tax Court before the making of the assessment or is subsequently filed, and the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) *Amount assessable after decision of Tax Court.* If the jeopardy assessment is made after the decision of the Tax Court is rendered, such assessment may be made only in respect of the deficiency determined by the Tax Court in its decision.

(e) *Expiration of right to assess.* A jeopardy assessment may not be made after the decision of the Tax Court has become final or after the taxpayer has filed a petition for review of the decision of the Tax Court.

(f) *Collection of unpaid amounts.* When the petition has been filed with the Tax Court and when the amount which should have been assessed has been determined by a decision of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by bond as provided in section 6863(b) shall be collected as part of the tax upon notice and demand from the Secretary or his delegate, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 6402, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the Secretary or his delegate.

(g) *Abatement if jeopardy does not exist.* The Secretary or his delegate may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the Tax Court, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the 10th day after the day on which such jeopardy assessment is abated.

(h) *Cross references.* (1) For the effect of the furnishing of security for payment, see section 6863.

(2) For provision permitting immediate levy in case of jeopardy, see section 6331(a).

§ 301.6861–1 Jeopardy assessments of income, estate, and gift taxes.

(a) *Authority for making.* If a district director believes that the assessment or collection of a deficiency in income, estate, or gift tax will be jeopardized by delay, he is required to assess such deficiency immediately, together with the interest, additional amounts, and additions to the tax provided by law. A jeopardy assessment may be made before or after the mailing of the notice of deficiency provided by section 6212. However, a jeopardy assessment for a taxable year under section 6861 cannot be made after a decision of the Tax Court with respect to such taxable year has become final (see section 7481) or after the taxpayer has filed a petition for review of the decision of the Tax Court with respect to such taxable year. In the case of a deficiency determined by a decision of the Tax Court which has become final or with respect to which the taxpayer has filed a petition for review and has not filed a bond as provided in section 7485, assessment may be made in accordance with the provisions of section 6215, without regard to section 6861.

(b) *Amount of jeopardy assessment.* If a notice of a deficiency is mailed to the taxpayer before it is discovered that delay would jeopardize the assessment or collection of the tax, a jeopardy assessment may be made in an amount greater or less than that included in the deficiency notice. If a deficiency is assessed on account of jeopardy after the decision of the Tax Court is rendered, the jeopardy assessment may be made only with respect to the deficiency determined by the Tax Court.

(c) *Jurisdiction of Tax Court.* If the jeopardy assessment is made before the notice in respect of the tax to which the jeopardy assessment relates has been mailed pursuant to section 6212(a), the district director shall, within 60 days after the making of the assessment, send the taxpayer a notice of deficiency pursuant to such subsection. The taxpayer may file a petition with the Tax Court for a redetermination of the amount of the deficiency within the time prescribed in section 6213(a). If the petition of the taxpayer is filed with the Tax Court, either before or after the making of the jeopardy assessment, the Commissioner, through his counsel, is required to notify the Tax Court of such assessment or of any abatement thereof, and the Tax Court has jurisdiction to redetermine the amount of the deficiency, together with all other amounts assessed at the same time in connection therewith.

(d) *Payment and collection of jeopardy assessment.* After a jeopardy assessment has been made, the district director is required to send notice and demand to the taxpayer for the amount of the jeopardy assessment. Regardless of whether the taxpayer has filed a petition with the Tax Court, he is required to make payment of the amount of such assessment (to the extent that it has not been abated) within 10 days after the sending of notice and demand by the district director, unless before the expiration of such 10-day period he files with the district director a bond as provided in section 6863. Section 6331 provides that, if the district director makes a finding that the collection of the tax is in jeopardy, he may make demand for immediate payment of the amount of the jeopardy assessment and, in such case, the taxpayer shall immediately pay such amount or shall immediately file the bond provided in section 6863. If a petition is not filed with the Tax Court within the period prescribed in section 6213(a), the district director will be so advised, and, if collection of the deficiency has been stayed by the timely filing of a bond as provided in section 6863, he should then give notice and make demand for payment of the amount assessed plus interest. After the Tax Court has rendered its decision and such decision has become final, the district director will be notified of the action taken. He will then send notice and demand for payment of the unpaid portion of the amount determined by the Tax Court, the collection of which has been stayed by the bond. If the amount of the jeopardy assessment is less than the amount determined by the Tax Court, the difference will be assessed and collected as part of the tax upon the issuance of a notice and demand therefor. If the amount of the jeopardy assessment is in excess of the amount determined by the Tax Court, the unpaid portion of such excess will be abated. If any part of the excess amount has been paid, it will be credited or refunded to the taxpayer as provided

in section 6402, without the filing of claim therefor.

(e) *Abatement of excessive assessment.* The district director or the director of the regional service center may, at any time before the decision of the Tax Court is rendered, abate a jeopardy assessment in whole or in part if the district director believes that such assessment is excessive in amount.

(f) *Abatement if jeopardy does not exist.* (1) The district director or the director of the regional service center may abate a jeopardy assessment in whole or in part, if it is shown to the satisfaction of the district director that jeopardy does not exist. An abatement may not be made under this paragraph after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with such court, after the expiration of the period for filing such petition.

(2) After abatement of a jeopardy assessment in whole or in part, a deficiency may be assessed and collected in the manner authorized by law as if the jeopardy assessment or part thereof so abated had not existed. If a notice of deficiency has been sent to the taxpayer before the abatement of the jeopardy assessment in whole or in part, whether such notice was sent before or after the making of the assessment, such abatement will not affect the validity of the notice or of any proceedings for redetermination based thereon. The period of limitation on the making of assessments and the beginning of levy or a proceeding in court for collection in respect of any deficiency shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the date on which such jeopardy assessment is abated in whole or in part. The provisions of this subparagraph may be illustrated by the following example:

Example. On March 18, 1958, 28 days before the last day of the 3-year period of limitations on assessment, a jeopardy assessment is made in respect of a proposed deficiency. On May 2, 1958, before the mailing of the notice of deficiency provided by section 6861(b), this assessment is abated. By virtue of this subparagraph, the last day of the period of limitations for the making of an assessment is June 9, 1958, that is, the 38th day after the date of the abatement. If the notice of deficiency provided for in section 6861(b) has been sent before the abatement, the running of the period of limitations on assessment would have been suspended pursuant to the provisions of the section 6503(a).

(3) Request for abatement of a jeopardy assessment, because jeopardy does not exist, shall be filed with the district director, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the district director to determine that the collection of the deficiency is not in jeopardy. See paragraph (e) of this section with respect to the abatement of jeopardy assessments which are excessive in amount.

§ 301.6862 Statutory provisions; jeopardy assessment of taxes other than income, estate, and gift taxes.

SEC. 6862. *Jeopardy assessment of taxes other than income, estate, and gift taxes*—(a) *Immediate assessment.* If the Secretary or his delegate believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest, additional amounts, and additions to the tax provided for by law). Such tax, additions to the tax, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) *Immediate levy.* For provision permitting immediate levy in case of jeopardy, see section 6331(a).

§ 301.6862–1 Jeopardy assessment of taxes other than income, estate, and gift taxes.

(a) If the district director believes that the collection of any tax (other than income, estate, or gift tax) will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. For example, assume that a taxpayer incurs on January 18, 1955, liability for admissions tax imposed by section 4231, that the last day on which return and payment of such tax is required to be made is April 30, 1955, and that on January 18, 1955, the district director determines that collection of such tax would be jeopardized by delay. In such case, the district director shall immediately assess the tax.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the district director shall, without delay, issue a notice and demand for payment thereof in full. Upon failure or refusal to pay the amount demanded, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331(a). However, the collection of the whole or any part of the amount of the jeopardy assessment may be stayed by timely filing with the district director a bond as provided in section 6863.

§ 301.6863 Statutory provisions; stay of collection of jeopardy assessments.

SEC. 6863. *Stay of collection of jeopardy assessments*—(a) *Bond to stay collection.* When a jeopardy assessment has been made under section 6861 or 6862, the collection of the whole or any amount of such assessment may be stayed by filing with the Secretary or his delegate, within such time as may be fixed by regulations prescribed by the Secretary or his delegate, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, the bond shall, at the request of the taxpayer, be proportionately reduced.

(b) *Further conditions in case of income, estate, or gift taxes.* In the case of taxes subject to the jurisdiction of the Tax Court—

(1) *Prior to petition to Tax Court.* If the bond is given before the taxpayer has filed his petition under section 6213(a), the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this paragraph.

(2) *Effect of Tax Court decision.* The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the Tax Court which has become final. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(3) *Stay of sale of seized property pending Tax Court decision*—(A) *General rule.* Where, notwithstanding the provisions of section 6213(a), a jeopardy assessment has been made under section 6861 the property seized for the collection of the tax shall not be sold—

(i) If section 6861(b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 6213(a) for filing petition with the Tax Court, and

(ii) If petition is filed with the Tax Court (whether before or after the making of such jeopardy assessment under section 6861), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if section 6861(a) were not applicable.

(B) *Exceptions.* Such property may be sold if—

(i) The taxpayer consents to the sale,

(ii) The Secretary or his delegate determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or

(iii) The property is of the type described in section 6336.

(C) *Applicability.* Subparagraphs (A) and (B) shall be applicable only with respect to a jeopardy assessment made on or after January 1, 1955, and shall apply with respect to taxes imposed by this title and with respect to taxes imposed by the Internal Revenue Code of 1939.

§ 301.6863–1 Stay of collection of jeopardy assessments; bond to stay collection.

(a) *General rule.* (1) The collection of a jeopardy assessment of any tax may be stayed by filing with the district director a bond on the form to be furnished by the district director upon request.

(2) The bond may be filed—

(i) At any time before the time collection by levy is authorized under section 6331(a), or

(ii) After collection by levy is authorized and before levy is made on any property or rights to property, or

(iii) In the discretion of the district director, after any such levy has been made and before the expiration of the period of limitations on collection.

(3) The bond must be in an amount equal to the portion (including interest thereon to the date of payment as calculated by the district director) of the jeopardy assessment collection of which is sought to be stayed. See section 7101 and § 301.7101–1, relating to the form of bond and the sureties thereon. The bond shall be conditioned upon the payment of the amount (together with interest thereon), the collection of which is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due.

(4) Upon the filing of a bond in accordance with this section, the collection of so much of the assessment as is covered by the bond will be stayed. The taxpayer may at any time waive the stay of collection of the whole or any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, or if any portion of the jeopardy assessment is abated by the district director, then the bond shall at the request of the taxpayer be proportionately reduced.

(b) *Additional conditions applicable to income, estate, and gift tax assessments.* In the case of a jeopardy assessment of income, estate, or gift tax, the bond must be conditioned upon the payment of so much of the amount included therein as is not abated by a decision of the Tax Court which has become final, together with the interest on such amount. If the Tax Court determines that the amount assessed is greater than the correct amount of the tax, the bond will be proportionately reduced at the request of the taxpayer after the Tax Court renders its decision. If the bond is given before the taxpayer has filed his petition with the Tax Court, it must contain a further condition that if a petition is not filed before the expiration of the period provided in section 6213(a) for the filing of such petition the amount stayed by the bond will be paid upon notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 percent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made after the expiration of the period for filing petition with the Tax Court.

§ 301.6863–2 Collection of jeopardy assessment; stay of sale of seized property pending Tax Court decision.

(a) *General rule.* In the case of a jeopardy assessment made after December 31, 1954, of income, estate, or gift tax imposed by the Internal Revenue Code of 1954 or the Internal Revenue Code of 1939, any property seized for the collection of such assessment shall not (except as provided in paragraph (b) of this section) be sold—

(1) Until the expiration of the period provided in section 6213(a) within which the taxpayer may file a petition for redetermination with the Tax Court, and

(2) If a petition for redetermination is filed with the Tax Court (whether before or after the making of the jeopardy assessment), until the decision of the Tax Court becomes final, except that a petition for review of the Tax Court decision will not operate as a further stay of the sale of the seized property unless the taxpayer files a bond as provided in section 7485.

(b) *Exceptions.* Notwithstanding the provisions of paragraph (a) of this section, any property seized may be sold—

(1) If the taxpayer files with the district director a written consent to the sale, or

(2) If the district director determines that the expenses of conservation and maintenance of the property will greatly reduce the net proceeds from the sale of such property, or

(3) If the property is of a type to which section 6336 (relating to sale of perishable goods) is applicable.

§ 301.6864 Statutory provisions; termination of extended period for payment in case of carryback.

SEC. 6864. *Termination of extended period for payment in case of carryback.* For termination of extensions of time for payment of income tax granted to corporations expecting carrybacks in case of jeopardy, see section 6164(h).

BANKRUPTCY AND RECEIVERSHIPS

§ 301.6871(a) Statutory provisions; claims for income, estate, and gift taxes in bankruptcy and receivership proceedings; immediate assessment.

SEC. 6871. *Claims for income, estate, and gift taxes in bankruptcy and receivership proceedings—(a) Immediate assessment.* Upon the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided by law) determined by the Secretary or his delegate in respect of a tax imposed by subtitle A or B upon such taxpayer shall, despite the restrictions imposed by section 6213(a) upon assessments, be immediately assessed if such deficiency has not theretofore been assessed in accordance with law.

[Sec. 6871(a) as amended by sec. 88(a), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6871(a)–1 Immediate assessment of claims for income, estate, and gift taxes in bankruptcy and receivership proceedings.

(a) Upon (1) the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, (2) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act, 11 U.S.C. chs. 1–14) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act, or (3) the appointment of any receiver for any taxpayer in a receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, the district director shall immediately assess any deficiency of income, estate, or gift tax (together with all interest, additional amounts, or additions to the tax provided by law), determined by him, if such deficiency has not heretofore been assessed in accordance with law. Such assessment shall be made immediately, whether or not a notice of deficiency has been issued, and without regard to the restrictions upon assessment under section 6213.

(b) As used in this section and §§ 301.6871(a)–2 to 301.6873–1, inclusive, the term "proceeding under the Bankruptcy Act" includes a proceeding under chapters I to VII, inclusive, of the Bankruptcy Act, or under section 75 or 77 (11 U.S.C. 203, 205), or chapters X to XIII, inclusive, of such Act, or any other proceeding under the Act.

§ 301.6871(a)–2 Collection of assessed taxes in bankruptcy and receivership proceedings.

(a) During a proceeding under the Bankruptcy Act (11 U.S.C. chs. 1–14) or a receivership proceeding in either a Federal or State court, generally the assets of the taxpayer are under the control of the court in which such proceeding is pending, and the collection of taxes cannot be made by levying upon such assets. However, any assets which under applicable provisions of law are not under the control of the court may be subject to levy. See paragraph (b) of this section and § 301.6871(b)–1 with respect to claims for such taxes. See section 6873 with respect to collection of unpaid claims.

(b) District directors should, promptly after ascertaining the existence of any outstanding liability against a taxpayer in any proceeding under the Bankruptcy Act or in any receivership proceeding, and in any event within the time limited by the appropriate provisions of the Bankruptcy Act, or by the appropriate orders of the court in which such proceeding is pending, file proof of claim covering such liability in the court in which such proceeding is pending. Such proof of claim should be filed whether the unpaid taxes involved have been assessed or not, except in cases where the instructions of the Commissioner direct otherwise; for example, where the payment of the taxes is secured by a sufficient bond. At the same time proof of claim is filed with the bankruptcy or receivership court, the district director will send notice and demand for payment to the taxpayer, together with a copy of such proof of claim.

(c) Under sections 3466 and 3467 of the Revised Statutes (31 U.S.C. 191, 192) and section 64 of the Bankruptcy Act (11 U.S.C. 104), taxes are entitled to the priority over other claims therein specified, and the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which the proceeding under the Bankruptcy Act or

receivership proceeding is pending, may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Sections 75(l), 77(e), 199, 337(2), 455, and 659(6) of the Bankruptcy Act (11 U.S.C. 203(l), 205(e), 599, 737(2), 855, and 1059(6)) also contain provisions with respect to the rights of the United States relative to priority of payment. For the filing of returns by a trustee in bankruptcy or by a receiver, see section 6012(b)(3) and 28 U.S.C. 960. Bankruptcy courts have jurisdiction under the Bankruptcy Act to determine all disputes regarding the amount and validity of taxes claimed in a proceeding under the Bankruptcy Act. A proceeding under the Bankruptcy Act or a receivership proceeding does not discharge any portion of a claim of the United States for taxes except in the case of a proceeding under section 77 or chapter X of the Bankruptcy Act. However, the claim may be settled or compromised as in other cases in court.

(d) For the requirement that a receiver, trustee in bankruptcy, or other like fiduciary give notice as to his qualification as such, see section 6036 and the regulations thereunder.

§ 301.6871(b) Statutory provisions; claims for income, estate, and gift taxes in bankruptcy and receivership proceedings; claim filed despite pendency of Tax Court proceedings.

SEC. 6871. *Claims for income, estate, and gift taxes in bankruptcy and receivership proceedings.* * * *

(b) *Claim filed despite pendency of Tax Court proceedings.* In the case of a tax imposed by subtitle A or B claims for the deficiency and such interest, additional amounts, and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Tax Court; but no petition for any such redetermination shall be filed with the Tax Court after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of the receiver.

[Sec. 6871(b) as amended by sec. 88(b), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6871(b)–1 Claims for income, estate, and gift taxes in proceedings under the Bankruptcy Act and receivership proceedings; claim filed despite pendency of Tax Court proceedings.

(a) If it is determined that a deficiency is due in respect of income, estate, or gift tax and the taxpayer has filed a petition with the Tax Court before (1) the adjudication of bankruptcy in any liquidating proceeding, (2) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act, 11 U.S.C. chs. 1–14) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act, or (3) the appointment of a receiver, the trustee, receiver, debtor in possession, or other like fiduciary, may, upon his own motion, be made a party to the Tax Court proceeding and thereafter may prosecute the appeal before the Tax Court as to that particular determination. No petition shall be filed with the Tax Court for a redetermination of the deficiency after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of the receiver.

(b) Even though the determination of a deficiency is pending before the Tax Court for redetermination, proof of claim for the amount of such deficiency may be filed with the court in which the proceeding under the Bankruptcy Act or receivership proceeding is pending without awaiting final decision of the Tax Court. In case of a final decision of the Tax Court before the payment or the disallowance of the claim in the proceeding under the Bankruptcy Act or receivership proceeding, a copy of the Tax Court's decision may be filed by the district director with the court in which such proceeding is pending.

(c) While a district director is required by section 6871(a) and paragraph (a) of § 301.6871(a)–1 to make immediate assessment of any deficiency, such assessment is not made as a jeopardy assessment within the meaning of section 6861, and consequently the provisions of that section do not apply to any assessment made under section 6871. Therefore, the notice of deficiency provided in section 6861(b) will not be mailed. Although such notice will not be issued, a letter will be sent to the taxpayer or to the trustee, receiver, debtor in possession, or other like fiduciary, notifying him in detail how the deficiency was computed, that he may furnish evidence showing wherein the deficiency is incorrect, and that upon request he will be granted a conference by the district director with respect to such deficiency. However, such letter will not provide for such a conference where a petition was filed with the Tax Court before (1) the adjudication of bankruptcy in a liquidating proceeding, (2) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act), the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act, or (3) the appointment of a receiver.

§ 301.6872 Statutory provisions; suspension of period on assessment.

SEC. 6872. *Suspension of period on assessment.* If the regulations issued pursuant to section 6036 require the giving of notice by any fiduciary in any proceeding under the Bankruptcy Act, or by a receiver in any other court proceeding, to the Secretary or his delegate of his qualification as such, the running of the period of limitations on the making of assessments shall be suspended for the period from the date of the institution of the proceeding to a date 30 days after the date upon which the notice from the receiver or other fiduciary is received by the Secretary or his delegate; but the suspension under this sentence shall in no case be for a period in excess of 2 years.

§ 301.6872–1 Suspension of running of period of limitations on assessment.

If any fiduciary in any proceeding under the Bankruptcy Act (11 U.S.C. chs. 1–14), including a trustee, receiver, or debtor in possession, or a receiver in any other court proceeding is required, pursuant to section 6036, to give notice in writing to the district director of his qualification as such, then the running of the period of limitations on assessment shall be suspended from the date the proceeding is instituted to the date such notice is received by the district director, and for an additional 30 days thereafter. However, the suspension under this section of the running of the period of limitation on assessment shall in no case exceed 2 years.

§ 301.6873 Statutory provisions; unpaid claims.

SEC. 6873. *Unpaid claims*—(a) *General rule.* Any portion of a claim for taxes allowed in a receivership proceeding or any proceeding under the Bankruptcy Act which is unpaid shall be paid by the taxpayer upon notice and demand from the Secretary or his delegate after the termination of such proceeding.

(b) *Cross references.* (1) For suspension of running of period of limitations on collection, see section 6503(b).

(2) For extension of time for payment, see section 6161(c).

§ 301.6873–1 Unpaid claims in bankruptcy or receivership proceedings.

(a) If any portion of the claim allowed by the court in a receivership proceeding, or in any proceeding under the Bankruptcy Act (11 U.S.C. chs. 1–14) remains unpaid after the termination of such proceeding, the district director will send notice and demand for payment thereof to the taxpayer. Such unpaid portion with interest as provided in section 6601 may be collected from the taxpayer by levy or proceeding in court within the period of limitation for collection after assessment. For the general rule as to such period of limitation, see section 6502, and for suspension of the running of the period provided in section 6502, see, for example, section 6503. For suspensions under other provisions of law, see, for example, section 11f of the Bankruptcy Act (11 U.S.C. 29(f)). Extension of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in section 6161(c).

(b) Section 6873 is applicable only where a claim for taxes is allowed in a receivership proceeding or in a proceeding under the Bankruptcy Act. Claims for taxes, interest, additional amounts, or additions to the tax may be collectible in equity or under other provisions of law although no claim was allowed in the proceeding because, for example, such items were not included in a proof of claim filed in the proceeding or no

proof of claim was filed. Except in the case of a proceeding under section 77 or chapter X of the Bankruptcy Act, a tax or a liability in respect thereof is not discharged by a proceeding under such act, whether or not a claim is filed in such proceeding, and provisions suspending the running of the period of limitation on the collection of taxes are applicable, whether or not a claim is filed in such proceeding.

Transferees and Fiduciaries

§ 301.6901 Statutory provisions; transferred assets.

SEC. 6901. *Transferred assets*—(a) *Method of collection.* The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred:

(1) *Income, estate, and gift taxes*—(A) *Transferees.* The liability, at law or in equity, of a transferee of property—

(i) Of a taxpayer in the case of a tax imposed by subtitle A (relating to income taxes),

(ii) Of a decedent in the case of a tax imposed by chapter 11 (relating to estate taxes), or

(iii) Of a donor in the case of a tax imposed by chapter 12 (relating to gift taxes), in respect of the tax imposed by subtitle A or B.

(B) *Fiduciaries.* The liability of a fiduciary under section 3467 of the Revised Statutes (31 U.S.C. 192) in respect of the payment of any tax described in subparagraph (A) from the estate of the taxpayer, the decedent, or the donor, as the case may be.

(2) *Other taxes.* The liability, at law or in equity of a transferee of property of any person liable in respect of any tax imposed by this title (other than a tax imposed by subtitle A or B), but only if such liability arises on the liquidation of a partnership or corporation, or on a reorganization within the meaning of section 368(a).

(b) *Liability.* Any liability referred to in subsection (a) may be either as to the amount of tax shown on a return or as to any deficiency or underpayment of any tax.

(c) *Period of limitations.* The period of limitations for assessment of any such liability of a transferee or a fiduciary shall be as follows:

(1) *Initial transferee.* In the case of the liability of an initial transferee, within 1 year after the expiration of the period of limitation for assessment against the transferor;

(2) *Transferee of transferee.* In the case of the liability of a transferee of a transferee, within 1 year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than 3 years after the expiration of the period of limitation for assessment against the initial transferor;

except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire 1 year after the return of execution in the court proceeding.

(3) *Fiduciary.* In the case of the liability of a fiduciary, not later than 1 year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

(d) *Extension by agreement.* (1) *Extension of time for assessment.* If before the expiration of the time prescribed in subsection (c) for the assessment of the liability, the Secretary or his delegate and the transferee or fiduciary have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee or fiduciary of overpayments of tax made by such transferee or fiduciary or overpayments of tax made by the transferor of which the transferee or fiduciary is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in section 6511(c).

(2) *Extension of time for credit or refund.* If the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee or fiduciary arises, then in applying the limitations under section 6511(c) on the amount of the credit or refund, the periods specified in section 6511(b)(2) shall be increased by the period from the date of such expiration to the date of the agreement.

(e) *Period for assessment against transferor.* For purposes of this section, if any person is deceased, or is a corporation which has terminated its existence, the period of limitation for assessment against such person shall be the period that would be in effect had death or termination of existence not occurred.

(f) *Suspension of running of period of limitations.* The running of the period of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in section 6212 (relating to income, estate, and gift taxes), be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(g) *Address for notice of liability.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, any notice of liability enforceable under this section required to be mailed to such person, shall, if mailed to the person subject to the liability at his last known address, be sufficient for purposes of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(h) *Definition of transferee.* As used in this section, the term "transferee" includes donee, heir, legatee, devisee, and distributee, and with respect to estate taxes, also includes any person who, under section 6324(a)(2), is personally liable for any part of such tax.

(i) *Extension of time.* For extensions of time by reason of armed service in a combat zone, see section 7508.

§ 301.6901–1 Procedure in the case of transferred assets.

(a) *Method of collection*—(1) *Income, estate, and gift taxes.* The amount for which a transferee of property of—

(i) A taxpayer, in the case of a tax imposed by subtitle A of the Code (relating to income taxes),

(ii) A decedent, in the case of the estate tax imposed by chapter 11 of the Code, or

(iii) A donor, in the case of the gift tax imposed by chapter 12 of the Code, is liable, at law or

in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended (31 U.S.C. 192), in respect of the payment of such taxes, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee or fiduciary and paid and collected in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax with respect to which such liability is incurred, except as hereinafter provided.

(2) *Other taxes.* The liability, at law or in equity, of a transferee of property of any person liable in respect of any other tax, in any case where the liability of the transferee arises on the liquidation of a corporation or partnership, or a corporate reorganization within the meaning of section 368(a), shall be assessed against such transferee and paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax with respect to which such liability is incurred, except as hereinafter provided.

(3) *Applicable provisons.* The provisions of the Code made applicable by section 6901(a) to the liability of a transferee or fiduciary referred to in subparagraphs (1) and (2) of this paragraph include the provisions relating to:

(i) Delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency;

(ii) The authorization of distraint and proceedings in court for collection;

(iii) The prohibition of claims and suits for refund; and

(iv) In any instance in which the liability of a transferee or fiduciary is one referred to in subparagraph (1) of this paragraph, the filing of a petition with the Tax Court of the United States and the filing of a petition for review of the Tax Court's decision.

For detailed provisions relating to assessments, collections, and refunds, see chapters 63, 64, and 65 of the Code, respectively.

(b) *Definition of transferee.* As used in this section, the term "transferee" includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in section 368, and all other classes of distributees. Such term also includes, with respect to the gift tax, a donee (without regard to the solvency of the donor) and, with respect to the estate tax, any person who, under section 6324(a)(2), is personally liable for any part of such tax.

(c) *Period of limitation on assessment.*

The period of limitation for assessment of the liability of a transferee or of a fiduciary is as follows:

(1) *Initial transferee.* In the case of the liability of an initial transferee, one year after the expiration of the period of limitation for assessment against the taxpayer in the case of a tax imposed by subtitle A (relating to income taxes), the executor in the case of the estate tax imposed by chapter 11, or the donor in the case of the gift tax imposed by chapter 12, each of which for purposes of this section is referred to as the "taxpayer" (see subchapter A, chapter 66, of the Code).

(2) *Transferee of transferee.* In the case of the liability of a transferee of a transferee, 1 year after the expiration of the period of limitation for assessment against the preceding transferee, or 3 years after the expiration of the period of limitation for assessment against the taxpayer, whichever of such periods first expires.

(3) *Court proceeding against taxpayer or last preceding transferee.* If, before the expiration of the period specified in subparagraph (1) or subparagraph (2) of this paragraph (whichever is applicable), a court proceeding against the taxpayer or last preceding transferee for the collection of the tax or liability in respect thereof, respectively, has been begun within the period of limitation for the commencement of such proceeding, then within one year after the return of execution in such proceeding.

(4) *Fiduciary.* In the case of the liability of a fiduciary, not later than 1 year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

(d) *Extension by agreement—*(1) *Extension of time for assessment.* The time prescribed by section 6901 for the assessment of the liability of a transferee or fiduciary may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the transferee or fiduciary and the district director or an assistant regional commissioner. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(2) *Extension of times for credit or refund.* (i) For the purposes of determining the period of limitation on credit or refund to the transferee or fiduciary of overpayments made by such transferee or fiduciary or overpayments made by the taxpayer to which such transferee or fiduciary may be legally entitled to credit or refund, an agreement and any extension thereof referred to in subparagraph (1) of this paragraph shall be deemed an agreement and extension thereof for purposes of section 6511(c) (relating to limitations on credit or refund in case of extension of time by agreement).

(ii) For the purpose of determining the limit specified in section 6511(c)(2) on the amount of the credit or refund, if the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee or fiduciary arises, the periods specified in section 6511(b)(2) shall be increased by the period from the date of such expiration to the date the agreement is executed. The application of this subdivision may be illustrated by the following example:

EXAMPLE. Assume that Corporation A files its income tax return on March 15, 1955, for the calendar year 1954, showing a liability of $100,000 which is paid with the return. The period within which an assessment may be made against Corporation A expires on March 15, 1958. Corporation B is a transferee of Corporation A. An agreement is executed on October 9, 1958, extending, beyond its normal expiration date of March 15, 1959, the period within which an assessment may be made against Corporation B. Under section 6511(c)(2) and section 6511(b)(2)(A) the portion of an overpayment, paid before the execution of an agreement extending the period for assessment, may not be credited or refunded unless paid within three years prior to the date on which the agreement is executed. However, as applied to Corporation B such 3-year period is increased under section 6901(d)(2) to include the period from March 15, 1958, to October 9, 1958, the date on which the agreement was executed.

(e) *Period of assessment against taxpayer.* For the purpose of determining the period of limitation for assessment against a transferee or a fiduciary, if the taxpayer is deceased, or, in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

(f) *Suspension of running of period of limitations.* In the cases of the income, estate, and gift taxes, if a notice of liability of a transferee or the liability of a fiduciary has been mailed to such transferee or to such fiduciary under the provisions of section 6212, then the running of the statute of limitations shall be suspended for the period during which assessment is prohibited in respect of liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

§ 301.6902 Statutory provisions; provisions of special application to transferees.

SEC. 6902. *Provisions of special application to transferees—*(a) *Burden of proof.* In proceedings before the Tax Court the burden of proof shall be upon the Secretary or his delegate to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

(b) *Evidence.* Upon application to the Tax Court, a transferee of property of a taxpayer shall be entitled, under rules prescribed by the Tax Court, to a preliminary examination of books, papers, documents, correspondence, and other evidence of the taxpayer or a preceding transferee of the taxpayer's property, if the transferee making the application is a petitioner before the Tax Court for the redetermination of his liability in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer. Upon such application, the Tax Court may require by subpoena, ordered by the Tax Court or any division thereof and signed by a judge, the production of all such books, papers, documents, correspondence, and other evidence within the United States the production of which, in the opinion of the Tax Court or division thereof, is necessary to enable the transferee to ascertain the liability of the taxpayer or preceding transferee and will not result in undue hardship to the taxpayer or preceding transferee. Such examination shall be had at such time and place as may be designated in the subpoena.

§ 301.6902–1 Burden of proof.

In proceedings before the Tax Court the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

§ 301.6903 Statutory provisions; notice of fiduciary relationship.

SEC. 6903. *Notice of fiduciary relationship—*(a) *Rights and obligations of fiduciary.* Upon notice to the Secretary or his delegate that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of such other person in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of such other person), until notice is given that the fiduciary capacity has terminated.

(b) *Manner of notice.* Notice under this section shall be given in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.6903–1 Notice of fiduciary relationship.

(a) *Rights and obligations of fiduciary.* Every person acting for another person in a fiduciary capacity shall give notice thereof to the district director in writing. As soon as such notice is filed with the district director such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the taxpayer with respect to the taxes imposed by the Code. If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in section 6901, such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is ordinarily not collectible from the personal estate of the fiduciary but is collectible from the estate of the taxpayer or from the estate of the transferee or other person subject to the liability specified in section 6901.

(b) *Manner of notice.* The notice shall be signed by the fiduciary, and shall be filed with the district director for the district where the return of the person for whom the fiduciary is acting is required to be filed. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and, if so, the type of tax, the year

or years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary under section 3467 of the Revised Statutes, as amended (31 U.S.C. 192) in respect of the payment of any tax from the estate of the taxpayer. Satisfactory evidence of the authority of the fiduciary to act for any other person in a fiduciary capacity must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the district director with whom the notice of fiduciary relationship was filed written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary. Any written notice disclosing a fiduciary relationship which has been filed with the Commissioner under the Internal Revenue Code of 1939 or any prior revenue law shall be considered as sufficient notice within the meaning of section 6903. Any satisfactory evidence of the authority of the fiduciary to act for another person already filed with the Commissioner or district director need not be resubmitted.

(c) *Where notice is not filed.* If the notice of the fiduciary capacity described in paragraph (b) of this section is not filed with the district director before the sending of notice of a deficiency by registered mail or certified mail to the last known address of the taxpayer (see section 6212), or the last known address of the transferee or other person subject to liability (see section 6901(g)), no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the taxpayer, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the Code, even though such taxpayer, transferee, or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. Under such circumstances, if no petition is filed with the Tax Court of the United States within 90 days after the mailing of the notice (or within 150 days after mailing in the case of such a notice addressed to a person outside the States of the Union and the District of Columbia) to the taxpayer, transferee, or other person, the tax, or liability under section 6901, will be assessed immediately upon the expiration of such 90-day or 150-day period, and demand for payment will be made. See paragraph (a) of § 301.6213–1 with respect to the expiration of such 90-day or 150-day period.

(d) *Definition of fiduciary.* The term "fiduciary" is defined in section 7701(a)(6) to mean a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(e) *Applicability of other provisions.* This section, relating to the provisions of section 6903, shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the Code.

§ 301.6904 Statutory provisions; prohibition of injunctions.

SEC. 6904. *Prohibition of injunctions.* For prohibition of suits to restrain enforcement of liability of transferee, or fiduciary, see section 7421(b).

Licensing and Registration

LICENSING

§ 301.7001 Statutory provisions; collection of foreign items.

SEC. 7001. *Collection of foreign items*—(a) *License.* All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Secretary or his delegate and shall be subject to such regulations enabling the Government to obtain the information required under subtitle A (relating to income taxes) as the Secretary or his delegate shall prescribe.

(b) *Penalty for failure to obtain license.* For penalty for failure to obtain the license provided for in this section, see section 7231.

§ 301.7001–1 License to collect foreign items.

(a) *In general.* Any bank or agent undertaking as a matter of business or for profit the collection of foreign items must obtain a license from the district director for the district in which is located its principal place of business within the United States. For definitions of the terms "foreign item" and "collection", see paragraph (b) of this section.

(b) *Definitions*—(1) *Foreign item.* The term "foreign item" as used in this section, means any item of interest upon the bonds of a foreign country or of a nonresident foreign corporation not having a fiscal or paying agent in the United States (including Puerto Rico as if a part of the United States), or any item of dividends upon the stock of such corporation.

(2) *Collection.* The term "collection", as used in this section, includes the following:

(i) The payment by the licensee of the foreign item in cash;

(ii) The crediting by the licensee of the account of the person presenting the foreign item;

(iii) The tentative crediting by the licensee of the account of the person presenting the foreign item until the amount of the foreign item is received by the licensee from abroad; and

(iv) The receipt of foreign items by the licensee for the purpose of transmitting them abroad for deposits.

(c) *Application for license.* Application for the license required by paragraph (a) of this section shall be made in writing and shall contain the following information:

(1) The name and present business of the person, partnership (including names of all partners), or corporation applying for the license;

(2) The address of the applicant's principal place of business in the United States and of any branch offices in the United States;

(3) The date on which the applicant intends to commence the collection of foreign items; and

(4) An estimate of the aggregate amount of annual collections of foreign items (in dollars).

The application shall be signed by the applicant (a partner, in the case of a partnership, or an officer, in the case of a corporation).

(d) *Issuance of license.* The license will be issued by the district director in letter form without cost to the licensee.

(e) *Previous license holders.* Any person who has been issued a license under the corresponding provision of the Internal Revenue Code of 1939, or any prior revenue law, is not required to renew such license under this section.

(f) *Returns of information as to foreign items.* For provisions relating to the filing of returns as to foreign items, see section 6041(b) and § 1.6041–4 of this chapter (Income Tax Regulations).

REGISTRATION

§ 301.7011 Statutory provisions; registration—persons paying a special tax.

SEC. 7011. *Registration—persons paying a special tax*—(a) *Requirement.* Every person engaged in any trade or business on which a special tax is imposed by law shall register with the Secretary or his delegate his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

(b) *Registration in case of death or change of location.* Any person exempted under the provisions of section 4905 from the payment of a special tax, shall register with the Secretary or his delegate in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.7011–1 Registration of persons paying a special tax.

(a) *Persons required to register.* Every person engaged in a trade or business in respect of which a special tax is imposed by one of the following sections of the Code is required to register with the district director for the district in which such trade or business is located:

(1) Section 4461 (relating to special tax on persons who maintain for use or permit the use of coin-operated amusement or gaming devices);

(2) Section 4471 (relating to special tax on persons who operate a bowling alley, billiard room, or poolroom);

(3) Section 4821 (relating to special tax on manufacturers, wholesale dealers, and retail dealers of adulterated butter and manufacturers of process or renovated butter);

(4) Section 4841 (relating to special tax on manufacturers, wholesale dealers, and retail dealers of filled cheese);

(5) Section 5081 (relating to special tax on rectifiers of distilled spirits or wines);

(6) Section 5091 (relating to special tax on brewers);

(7) Section 5101 (relating to special tax on manufacturers of stills);

(8) Section 5111 (relating to special tax on wholesale dealers in liquors and wholesale dealers in beer); or

(9) Section 5121 (relating to special tax on retail dealers in liquors and retail dealers in beer).

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 and Part 197 of this chapter (Regulations on Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products). For cross references to provisions requiring registration of persons engaged in a trade or business in repsect of which a special tax is imposed by other sections of the Code, see § 301.7012.

(b) *Procedure for registration.* The registration required of a person by reason of his being engaged in a trade or business in respect of which one of the special taxes listed in paragraph (a) (1) to (9), inclusive, of this section is imposed shall be accomplished by executing and filing, in accordance with the instructions relating thereto, Special Tax Return Form 11 or Special Tax Return Form 11–B, whichever is applicable. Special Tax Return Form 11–B is used to report the special tax imposed by a section listed in paragraph (a) (1) or (2) of this section, and Special Tax Return Form 11 is used to report the special tax imposed by a section listed in paragraph (a), (3), (4), (5), (6), (7), (8), or (9) of this section.

(c) *Registration in case of change of ownership or location.* Any change of ownership or location of a trade or business in respect of which a special tax is imposed by a section listed in paragraph (a) (1), (2), (3), or (4), of this section must be registered with the Internal Revenue Service if, pursuant to section 4905 (relating to liability for special tax in case of death or change of location), such trade or business may be continued without the payment of any additional special tax. For requirements and procedures with respect to such registration, see section 4905 and the regulations thereunder in Part 45 of this chapter (Miscellaneous Stamp Tax Regulations).

§ 301.7012 Statutory provisions; cross references.

SEC. 7012. *Cross references*—(a) *Narcotic drugs.* For provisions relating to registration in relation to narcotic drugs, see section 4722.

(b) *Marihuana.* For provisions relating to registration in relation to marihuana, see section 4753.

(c) *Firearms.* For provisions relating to registration in connection with firearms, see sections 5802, 5841, and 5854.

(d) For provisions relating to registration in relation to the manufacture of playing cards, see section 4455.

(e) For provisions relating to registration in relation to the manufacture of white phosphorus matches, see section 4804(d).

(f) For special rules with respect to registration by persons engaged in receiving wagers, see section 4412.

(g) For provisions relating to registration in relation to the production or importation of gasoline, see section 4101.

(h) For provisions relating to registration in relation to the manufacture or production of lubricating oils, see section 4101.

(i) *Penalty.* (1) For penalty for failure to register, see section 7272.

(2) For other penalties for failure to register with respect to wagering, see section 7262.

[Sec. 7012 as amended by sec. 4(b)(7), Tax Rate Extension Act 1958 (72 Stat. 260)]

Bonds

§ 301.7101 Statutory provisions; form of bonds.

SEC. 7101. *Form of bonds.* Whenever, pursuant to the provisions of this title (other than sections 7485 and 6803(a)(1), or rules or regulations prescribed under authority of this title, a person is required to furnish a bond or security—

(1) *General rule.* Such bond or security shall be in such form and with such surety or sureties as may be prescribed by regulations issued by the Secretary or his delegate.

(2) *U.S. bonds and notes in lieu of surety bonds.* The person required to furnish such bond or security may, in lieu thereof, deposit bonds or notes of the United States as provided in 6 U.S.C. 15.

§ 301.7101–1 Form of bond and surety required.

(a) *In general.* Any person required to furnish a bond under the provisions of the Code (other than section 6803(a)(1), relating to bonds required of certain postmasters, and section 7485, relating to bonds to stay assessment and collection of a deficiency pending review of a Tax Court decision), or under any rules or regulations prescribed under the Code, shall (except as provided in paragraph (d) of this section) execute such bond—

(1) On the appropriate form prescribed by the Internal Revenue Service (which may be obtained from the district director), and

(2) With satisfactory surety.

For provisions as to what will be considered "satisfactory surety", see paragraph (b) of this section. The bonds referred to in this paragraph shall be drawn in favor of the United States.

(b) *Satisfactory surety*—(1) *Approved surety company or bonds or notes of the United States.* For purposes of paragraph (a) of this section, a bond shall be considered executed with satisfactory surety if:

(i) It is executed by a surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds; or

(ii) It is secured by bonds or notes of the United States as provided in 6 U.S.C. 15 (see 31 CFR Part 225).

(2) *Other surety acceptable in discretion of district director.* Unless otherwise expressly provided in the Code, or the regulations thereunder, a bond may, in the discretion of the district director, be considered executed with satisfactory surety if, in lieu of being executed or secured as provided in subparagraph (1) of this paragraph, it is:

(i) Executed by a corporate surety (other than a surety company) provided such corporate surety establishes that it is within its corporate powers to act as surety for another corporation or an individual;

(ii) Executed by two or more individual sureties, provided such individual sureties meet the conditions contained in subparagraph (3) of this paragraph;

(iii) Secured by a mortgage on real or personal property;

(iv) Secured by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order;

(v) Secured by corporate bonds or stocks, or by bonds issued by a State or political subdivision thereof, of recognized stability; or

(vi) Secured by any other acceptable collateral. Collateral shall be deposited with the district director or, in his discretion, with a responsible financial institution acting as escrow agent.

(3) *Conditions to be met by individual sureties.* If a bond is executed by two or more individual sureties, the following conditions must be met by each such individual surety:

(i) He must reside within the State in which the principal place of business or legal residence of the primary obligor is located;

(ii) He must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;

(iii) All real property which he offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;

(iv) He must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect without first securing the permission of the district director; and

(v) He must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of his security, executed on the appropriate form furnished by the district director.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

(4) *Adequacy of surety.* No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(c) *Bonds required by Internal Revenue Code of 1939.* This section shall also apply in the case of bonds required under the Internal Revenue Code of 1939 (other than sections 1423(b) and 1145) or under the regulations under such Code.

(d) *Bonds required under subtitle E and chapter 75 of the Internal Revenue Code of 1954.* Bonds required under subtitle E and chapter 75, subtitle F, of the Internal Revenue Code of 1954 (or

under the corresponding provisions of the Internal Revenue Code of 1939) shall be in such form and with such surety or sureties as are prescribed in the regulations in Subchapter E of this chapter (Alcohol, Tobacco, and Other Excise Taxes).

§ 301.7102 Statutory provisions; single bond in lieu of multiple bonds.

SEC. 7102. *Single bond in lieu of multiple bonds.* In any case in which two or more bonds are required or authorized, the Secretary or his delegate may provide for the acceptance of a single bond complying with the requirements for which the several bonds are required or authorized.

§ 301.7102–1 Single bond in lieu of multiple bonds.

(a) *In general.* Except as provided in paragraph (b) of this section, a person who is required, or authorized, under the Code (other than sections 6803(a)(1) and 7485), or under any rules or regulations under the Code, to execute two or more bonds may, in the discretion of the district director, furnish a single bond in lieu of such two or more bonds but only if such single bond meets all the conditions and requirements prescribed for each of the separate bonds which it replaces. This section shall also apply in the case of bonds required or authorized under the Internal Revenue Code of 1939 (other than sections 1423 (b) and 1145) or under the regulations under such Code.

(b) *Bonds required under subtitle E and chapter 75 of the Internal Revenue Code of 1954.* In the case of bonds required under subtitle E and chapter 75, subtitle F, of the Internal Revenue Code of 1954 (or under the corresponding provisions of the Internal Revenue Code of 1939), a single bond will not be accepted in lieu of two or more bonds except as provided in the regulations in subchapter E of this chapter (Alcohol, Tobacco, and Other Excise Taxes).

§ 301.7103 Statutory provisions; cross references—other provisions for bonds.

SEC. 7103. *Cross references—other provisions for bonds*—(a) *Extensions of time.* (1) For bond where time to pay tax or deficiency has been extended, see section 6165.

(2) For bond to stay collection of a jeopardy assessment, see section 6863.

(3) For bond to stay assessment and collection prior to review of a Tax Court decision, see section 7485.

(4) For furnishing of bond where taxable year is closed by the Secretary or his delegate, see section 6851(e).

(5) For bond in case of an election to postpone payment of estate tax where the value of a reversionary or remainder interest is included in the gross estate, see section 6165.

(b) *Release of lien or seized property.* (1) For the release of the lien provided for in section 6325 by furnishing the Secretary or his delegate a bond, see section 6325(a)(2).

(2) For bond to obtain release of perishable goods which have been seized under forfeiture proceeding, see section 7324(3).

(3) For bond to release perishable goods under levy, see section 6336.

(4) For bond executed by claimant of seized goods valued at $1,000 or less, see section 7325(3).

(c) *Miscellaneous.* (1) For bond as a condition precedent to the allowance of the credit for accrued foreign taxes, see section 905(c).

(2) For bonds relating to alcohol and tobacco taxes, see generally subtitle E.

(d) *Bonds required with respect to certain products.* (1) For bond in case of articles taxable under subchapter B of chapter 37 processed for exportation without payment of the tax provided therein, see section 4513(c).

(2) For bond in case of oleomargarine removed from the place of manufacture for exportation to a foreign country, see section 4593(b).

(3) For requirement of bonds with respect to certain industries see—

(A) Section 4596 relating to a manufacturer of oleomargarine;

(B) Section 4814(c) relating to a manufacturer of process or renovated butter or adulterated butter;

(C) Section 4833(c) relating to a manufacturer of filled cheese;

(D) Section 4713(b) relating to a manufacturer of opium suitable for smoking purposes;

(E) Section 4804(c) relating to a manufacturer of white phosphorus matches;

(F) Section 4101 relating to a producer or importer of gasoline or a manufacturer or producer of lubricating oils subject to tax under chapter 32.

(e) *Personnel bonds.* (1) For bonds of internal revenue personnel to insure faithful performance of duties, see section 7803(c).

(2) For jurisdiction of U.S. district courts, concurrently with the courts of the several States, in an action on the official bond of any internal revenue officer or employee, see section 7402(d).

(3) For bonds of postmasters to whom stamps have been furnished under section 6802(1), see section 6803(a)(1).

(4) For bonds in cases coming within the provisions of section 6802 (2) or (3), relating to stamps furnished a designated depositary of the United States or State agent, see section 6803(b)(1).

Closing Agreements and Compromises

§ 301.7121 Statutory provisions; closing agreements.

SEC. 7121. *Closing agreements*—(a) *Authorization.* The Secretary or his delegate is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) *Finality.* If such agreement is approved by the Secretary or his delegate (within such time as may be stated in such agreement, or later agreed to) such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

§ 301.7121–1 Closing agreements.

(a) *In general.* The Commissioner may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement.

(b) *Scope of closing agreement*—(1) *In general.* A closing agreement may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

(2) *Taxable periods ended prior to date of closing agreement.* Closing agreements with respect to taxable periods ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to one or more separate items affecting the tax liability of the taxpayer, as, for example, the amount of gross income, deduction for losses, depreciation, depletion, the year in which an item of income is to be included in gross income, the year in which an item of loss is to be deducted, or the value of property on a specific date. A closing agreement may also be entered into for the purpose of allowing a deficiency dividend deduction under section 547. In addition, a closing agreement constitutes a determination as defined by section 1313.

(3) *Taxable periods ending subsequent to date of closing agreement.* Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

(4) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. A owns 500 shares of stock in the XYZ Corporation which he purchased prior to March 1, 1913. A is considering selling 200 shares of such stock but is uncertain as to the basis of the stock for the purpose of computing gain. Either prior or subsequent to the sale, a closing agreement may be entered into determining the market value of such stock as of March 1, 1913, which represents the basis for determining gain if it exceeds the adjusted basis otherwise determined as of such date. Not only may the closing agreement determine the basis for computing gain on the sale of the 200 shares of stock, but such an agreement may also determine the basis (unless or until the law is changed to require the use of some other factor to determine basis) of the remaining 300 shares of stock upon which gain will be computed in a subsequent sale.

(c) *Finality.* A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination,

assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement shall so recite.

(d) *Procedure with respect to closing agreements*—(1) *Submission of request.* A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is docketed in the Tax Court of the United States. All closing agreements shall be executed on forms prescribed by the Internal Revenue Service. The procedure with respect to requests for closing agreements shall be under such rules as may be prescribed from time to time by the Commissioner in accordance with the regulations under this section.

(2) *Collection, credit, or refund.* Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

§ 301.7122 Statutory provisions; compromises.

SEC. 7122. *Compromises*—(a) *Authorization.* The Secretary or his delegate may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) *Record.* Whenever a compromise is made by the Secretary or his delegate in any case, there shall be placed on file in the office of the Secretary or his delegate the opinion of the General Counsel for the Department of the Treasury or his delegate, with his reasons therefor, with a statement of:

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

Notwithstanding the foregoing provisions of this subsection, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $500.

§ 301.7122–1 Compromises.

(a) *In general.* Except with respect to certain criminal liabilities arising under the internal revenue laws relating to narcotics, smoking opium, and marihuana, the Commissioner may compromise any civil or criminal liability arising under the internal revenue laws prior to reference of a case involving such liability to the Department of Justice for prosecution or defense. Any such liability may be compromised only upon one or both of the following two grounds:

(1) Doubt as to liability; or

(2) Doubt as to collectibility.

No such liability will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect the amounts owing with respect to such liability.

(b) *Scope of compromise agreement.* A compromise agreement may relate to a civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision of the Code, or a related statute, and then only if such violation was not deliberately committed with an intent to defraud.

(c) *Effect of compromise agreement.* A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the Government shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of (1) falsification or concealment of assets by the taxpayer, or (2) mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside. However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does acceptance of an offer in compromise of a criminal liability remit a civil liability.

(d) *Procedure with respect to offers in compromise*—(1) *Submission of offers.* Offers in compromise shall be submitted on forms prescribed by the Internal Revenue Service which may be obtained from district directors of internal revenue, and should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(2) *Stay of collection.* The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interests of the United States shall not be jeopardized thereby.

(3) *Acceptance.* An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the United States.

(4) *Withdrawal or rejection.* An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. In the event an offer is rejected, the proponent shall be promptly notified in writing. Frivolous offers or offers submitted for the purpose of delaying the collection of tax liabilities shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer, including all installments paid, shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted.

(e) *Record.* Except as otherwise provided in this paragraph, if an offer in compromise is accepted, there shall be placed on file the opinion of the Chief Counsel for the Internal Revenue Service with respect to such compromise, with his reasons therefor, and including a statement of—

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

However, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $500.

(f) *Requirement with respect to statute of limitations.* No offer in compromise shall be accepted unless the taxpayer waives the running of the statutory period of limitations on both or either assessment or collection of the tax liability involved for the period during which the offer is pending, or the period during which any installment remains unpaid, and for one year thereafter.

(g) *Inspection with respect to accepted offers in compromise.* For provisions relating to the inspection of returns and accepted offers in compromise, see section 6103(a) and the regulations thereunder contained in this part.

§ 301.7123 Statutory provisions; cross references.

SEC. 7123. *Cross references*—(a) *Criminal penalties.* For criminal penalties for concealment of property, false statement, or falsifying and destroying records, in connection with any closing agreement, compromise, or offer of compromise, see section 7206.

(b) *Compromises after judgment.* For compromises after judgment, see R.S. 3469 (31 U.S.C. 194).

Crimes, Other Offenses, and Forfeitures

CRIMES

GENERAL PROVISIONS

§ 301.7201 Statutory provisions; attempt to evade or defeat tax.

SEC. 7201. *Attempt to evade or defeat tax.* Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

§ 301.7202 Statutory provisions; willful failure to collect or pay over tax.

SEC. 7202. *Willful failure to collect or pay over tax.* Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

§ 301.7203 Statutory provisions; willful failure to file return, supply information, or pay tax.

SEC. 7203. *Willful failure to file return, supply information, or pay tax.* Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

§ 301.7204 Statutory provisions; fraudulent statement or failure to make statement to employees.

SEC. 7204. *Fraudulent statement or failure to make statement to employees.* In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

§ 301.7205 Statutory provisions; fraudulent withholding exemption certificate or failure to supply information.

SEC. 7205. *Fraudulent withholding exemption certificate or failure to supply information.* Any individual required to supply information to his employer under section 3402(f) who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any penalty otherwise provided, upon conviction thereof, be fined not more than $500, or imprisoned not more than 1 year, or both.

§ 301.7206 Statutory provisions; fraud and false statements.

SEC. 7206. *Fraud and false statements.* Any person who—

(1) *Declaration under penalties of perjury.* Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) *Aid or assistance.* Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) *Fraudulent bonds, permits, and entries.* Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) *Removal or concealment with intent to defraud.* Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) *Compromises and closing agreements.* In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(A) *Concealment of property.* Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) *Withholding, falsifying, and destroying records.* Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution.

§ 301.7207 Statutory provisions; fraudulent returns, statements, or other documents.

SEC. 7207. *Fraudulent returns, statements, or other documents.* Any person who willfully delivers or discloses to the Secretary or his delegate any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047 (b) or (c) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

[Sec. 7207, as amended by sec. 7(m)(3), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 831)]

§ 301.7207–1 Fraudulent returns, statement, or other documents.

Any person who willfully delivers or discloses to any officer or employee of the Internal Revenue Service any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047 (b) or (c) to furnish information to any officer or employee of the Internal Revenue Service or any other person who willfully furnishes to such officer or employee of the Internal Revenue Service or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 301.7208 Statutory provisions; offenses relating to stamps.

SEC. 7208. *Offenses relating to stamps.* Any person who—

(1) *Counterfeiting.* With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) *Mutilation or removal.* Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

(3) *Use of mutilated, insufficient, or counterfeited stamps.* Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title,

(A) Any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or

(B) Any adhesive stamp or the impression of any stamp die, plate, or other article of insufficient value; or

(C) Any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) *Reuse of stamps*—(A) *Preparation for reuse.* Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(B) *Trafficking.* Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) *Possession.* Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

(5) *Emptied stamped packages.* Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

§ 301.7209 Statutory provisions; unauthorized use or sale of stamps.

SEC. 7209. *Unauthorized use or sale of stamps.* Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary or his delegate under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

§ 301.7209–1 Unauthorized use or sale of stamps.

(a) Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in the Code or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Commissioner under the Code for the collection or payment of any tax imposed by the Code, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

(b) For use or resale of unused documentary stamps, see paragraph (c) of § 43.6802–1 of this chapter (Documentary Stamp Tax Regulations).

§ 301.7210 Statutory provisions; failure to obey summons.

SEC. 7210. *Failure to obey summons.* Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(f)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

[Sec. 7210 as amended by sec. 4(h), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(d)(3), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.7211 Statutory provisions; false statements to purchasers or lessees relating to tax.

SEC. 7211. *False statements to purchasers or lessees relating to tax.* Whoever in connection with the sale or lease, or offering for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral—

(1) Intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or

(2) Ascribing a particular part of such price to a tax imposed under the authority of the United States,

knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 1 year, or both.

§ 301.7212 Statutory provisions; attempts to interfere with administration of internal revenue laws.

SEC. 7212. *Attempts to interfere with administration of internal revenue laws*—(a) *Corrupt or forcible interference.* Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

(b) *Forcible rescue of seized property.* Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than $500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years.

§ 301.7213 Statutory provisions; unauthorized disclosure of information.

SEC. 7213. *Unauthorized disclosure of information*—(a) *Income returns*—(1) *Federal employees and other persons.* It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

(2) *State employees.* Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in section 6103(b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party), or who makes known to any person in any manner whatever not provided by law, any information acquired by him through an inspection permitted him or another under section 6103(b), or who permits any income return or copy thereof or any book containing any abstract or particulars thereof, or any other information, acquired by him through an inspection permitted him or another under section 6103(b), to be seen or examined by any person except as provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(3) *Shareholders.* Any shareholder who pursuant to the provisions of section 6103(c) is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and, upon conviction thereof shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(b) *Disclosure of operations of manufacturer or producer.* Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) *Offenses relating to reproduction of documents.* Any person who uses any film or photoimpression, or reproduction therefrom, or who discloses any information contained in any such film, photoimpression, or reproduction, in violation of any provision of the regulations prescribed pursuant to section 7513(b), shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(d) *Disclosures by certain delegates of Secretary.* All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(e) *Cross references*—(1) *Returns of Federal unemployment tax.* For special provisions applicable to returns of tax under chapter 23 (relating to Federal Unemployment Tax), see section 6106.

(2) *Penalties for disclosure of confidential information.* For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

[Sec. 7213 as amended by sec. 90(c), Technical Amendments Act 1958 (72 Stat. 1666); sec. 103(s), Social Security Amendments 1960 (74 Stat. 940)]

§ 301.7214 Statutory provisions; offenses by officers and employees of the United States.

SEC. 7214. *Offenses by officers and employees of the United States*—(a) *Unlawful acts of revenue officers or agents.* Any officer or employee of the United States acting in connection with any revenue law of the United States—

(1) Who is guilty of any extortion or willful oppression under color of law; or

(2) Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

(3) Who with intent to defeat the application of any provision of this title fails to

perform any of the duties of his office or employment; or

(4) Who conspires or colludes with any other person to defraud the United States; or

(5) Who knowingly makes opportunity for any person to defraud the United States; or

(6) Who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) Who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or

(8) Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary or his delegate; or

(9) Who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do;

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

(b) *Interest of internal revenue officer or employee in tobacco or liquor production.* Any internal revenue officer or employee interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigarettes, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and each such officer or employee so interested in any such manufacture or production, rectification, or redistillation or production of fermented liquors shall be fined not more than $5,000.

(c) *Cross reference.* For penalty on collecting or disbursing officers trading in public funds or debts or property, see 18 U.S.C. 1901.

[Sec. 7214 as amended by sec. 204(5), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7214–1 Offenses by officers and employees of the United States.

Any officer or employee of the United States acting in connection with any revenue law of the United States required to make a written report under the provisions of section 7214(a)(8) shall submit such report to the Commissioner, or to a regional commissioner or district director.

§ 301.7215 Statutory provisions; offenses with respect to collected taxes.

SEC. 7215. *Offenses with respect to collected taxes*—(a) *Penalty.* Any person who fails to comply with any provision of section 7512(b) shall, in addition to any other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year, or both, together with the costs of prosecution.

(b) *Exceptions.* This section shall not apply—

(1) To any person, if such person shows that there was reasonable doubt as to (A) whether the law required collection of tax, or (B) who was required by law to collect tax, and

(2) To any person, if such person shows that the failure to comply with the provisions of section 7512(b) was due to circumstances beyond his control.

For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) shall not be considered to be circumstances beyond the control of a person.

[Sec. 7215 as added by sec. 2, Act of Feb. 11, 1958 (Pub. Law 85–321, 72 Stat. 6)]

PENALTIES APPLICABLE TO CERTAIN TAXES

§ 301.7231 Statutory provisions; failure to obtain license for collection of foreign items.

SEC. 7231. *Failure to obtain license for collection of foreign items.* Any person required by section 7001 (relating to collection of certain foreign items) to obtain a license who knowingly undertakes to collect the payments described in section 7001 without having obtained a license therefor, or without complying with regulations prescribed under section 7001, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

§ 301.7231–1 Failure to obtain license for collection of foreign items.

For provisions relating to the obtaining of a license for the collection of foreign items, see section 7001 and § 301.7001–1.

§ 301.7232 Statutory provisions; failure to register or give bond, or false statement by manufacturer or producer of gasoline or lubricating oil.

SEC. 7232. *Failure to register or give bond, or false statement by manufacturer or producer of gasoline or lubricating oil.* Every person who fails to register or give bond as required by section 4101, or who in connection with any purchase of gasoline or lubricating oil falsely represents himself to be registered and bonded as provided by section 4101, or who willfully makes any false statement in an application for registration under section 4101, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

§ 301.7232–1 Failure to register or give bond, or false statement by manufacturer or producer of gasoline or lubricating oil.

For provisions relating to registration and bonding of persons subject to tax on the sale of gasoline or lubricating oil, see section 4101 and § 48.4101–1 of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.7233 Statutory provisions; failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.

SEC. 7233. *Failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.* Any person—

(1) *Nonpayment or evasion of tax.* Liable to the payment of any tax imposed by subchapter D of chapter 39, who fails to pay, or evades, or attempts to evade the payment of such tax; and

(2) *Other violations.* Who otherwise violates any provision of subchapter D of chapter 39, or any rule or regulation made in pursuance thereof;

shall, upon conviction thereof, be fined not less than $100 nor more than $20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than 60 days nor more than 3 years, in the discretion of the court.

§ 301.7234 Statutory provisions; violation of laws relating to oleomargarine or adulterated butter operations.

SEC. 7234. *Violation of laws relating to oleomargarine or adulterated butter operations*—(a) *False branding, selling, or packing, in violation of law.* Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden, tinplate, or paper packages, as described in section 4594 (a) and (b), or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law shall be fined for each offense not more than $1,000, and be imprisoned not more than 2 years.

(b) *Removal or defacement of stamps, marks, or brands.* Any person who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine or adulterated butter, taxed as provided by subchapter F of chapter 38, or subchapter C of chapter 39, respectively, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than $100 nor more than $2,000, and by imprisonment for not less than 30 days nor more than 6 months.

(c) *Failure of wholesale dealers to keep or permit inspection of books, or to render returns.* Any person who willfully violates any of the provisions of section 4597(a) shall for each such offense be fined not less than $50 and not exceeding $500, and imprisoned not less than 30 days nor more than 6 months.

(d) *Imported oleomargarine or adulterated butter*—(1) *Failure of customs officer to comply with law.* Every officer or employee of the Treasury Department having duties under section 4591 who permits any imported oleomargarine or adulterated butter to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 4591 relating thereto, shall be fined not less than $1,000 nor more than $5,000, and imprisoned not less than 6 months nor more than 3 years.

(2) *Empty packages*—(A) *Failure to destroy stamps.* Any person who willfully neglects or refuses to destroy utterly the stamps on any empty package which contained oleomargarine or adulterated butter, or filled cheese shall for each such offense be fined not exceeding $50, and imprisoned not less than 10 days nor more than 6 months; and

(B) *Trafficking.* Any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleomargarine or adulterated butter, any such stamped package shall for each such offense be fined not exceeding $100, and be imprisoned not more than 1 year.

(3) *Sale when improperly packed or stamped.* Every person who sells or offers for sale any imported oleomargarine or adulterated butter, or oleomargarine or adulterated butter purporting or claimed to have been imported, not put up in packages and stamped as provided by subchapter F of chapter 38 or subchapter C of chapter 39,

shall be fined not less than $500 nor more than $5,000, and be imprisoned not less than 6 months nor more than 2 years.

(4) *Fraud by importer.* Whenever any person importing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine imported by him, or any part thereof, he shall be fined not less than $500 nor more than $5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

§ 301.7235 Statutory provisions; violation of laws relating to adulterated butter and process or renovated butter.

SEC. 7235. *Violation of laws relating to adulterated butter and process or renovated butter*—(a) *Adulterated butter—False branding, sale, packing, or stamping in violation of law.* Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden, tin-plate, or paper packages as described in section 4815(a), or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than $1,000, and be imprisoned not more than 2 years.

(b) *Failure of wholesale dealers to keep or permit inspection of books, or to render returns.* Any person who willfully violates any of the provisions of section 4815(b) shall for each such offense be fined not less than $50 and not exceeding $500, and imprisoned not less than 30 days nor more than 6 months.

(c) *Failure to comply with provisions relating to the manufacture, storage, and marking of process or renovated butter.* Any person, firm, or corporation violating any of the provisions of section 4817 shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment, in the discretion of the court.

(d) *Dealers in adulterated butter.* Every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $50 nor more than $500 for each offense.

(e) *Fraud by manufacturer.* Whenever any person manufacturing adulterated butter defrauds, or attempts to defraud, the United States of the tax on the adulterated butter manufactured by him, or any part thereof, he shall be fined not less than $500 nor more than $5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

§ 301.7236 Statutory provisions; violation of laws relating to filled cheese.

SEC. 7236. *Violation of laws relating to filled cheese—False branding, sale, packing, or stamping in violation of law.* Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as provided for and described in section 4834(b), or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than $50 and not more than $500, or be imprisoned not less than 30 days nor more than 1 year.

§ 301.7237 Statutory provisions; violation of laws relating to narcotic drugs and to marihuana.

SEC. 7237. *Violation of laws relating to narcotic drugs and to marihuana*—(a) *Where no specific penalty is otherwise provided.* Whoever commits an offense, or conspires to commit an offense, described in part I or part II of subchapter A of chapter 39 for which no specific penalty is otherwise provided, shall be imprisoned not less than 2 or more than 10 years and, in addition, may be fined not more than $20,000. For a second offense, the offender shall be imprisoned not less than 5 or more than 20 years and, in addition, may be fined not more than $20,000. For a third or subsequent offense, the offender shall be imprisoned not less than 10 or more than 40 years and, in addition, may be fined not more than $20,000.

(b) *Sale or other transfer without written order.* Whoever commits an offense, or conspires to commit an offense, described in section 4705(a) or section 4742(a) shall be imprisoned not less than 5 or more than 20 years and, in addition, may be fined not more than $20,000. For a second or subsequent offense, the offender shall be imprisoned not less than 10 or more than 40 years and, in addition, may be fined not more than $20,000. If the offender attained the age of 18 before the offense and—

(1) The offense consisted of the sale, barter, exchange, giving away, or transfer of any narcotic drug or marihuana to a person who had not attained the age of 18 at the time of such offense, or

(2) The offense consisted of a conspiracy to commit an offense described in paragraph (1),

the offender shall be imprisoned not less than 10 or more than 40 years and, in addition, may be fined not more than $20,000.

(c) *Conviction of second or subsequent offenses*—(1) *Prior offenses counted.* For purposes of subsections (a), (b), and (d) of this section, subsections (c) and (h) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), and the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a), an offender shall be considered a second or subsequent offender, as the case may be, if he previously has been convicted of any offense the penalty for which was provided in subsection (a) or (b) of this section or in—

(A) Subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act (21 U.S.C., sec. 174);

(B) The Act of July 11, 1941 (21 U.S.C. sec. 184a);

(C) Section 9 of the Act of December 17, 1914 (38 Stat. 789);

(D) Section 1 of the Act of May 26, 1922 (42 Stat. 596);

(E) Section 12 of the Marihuana Tax Act of 1937 (50 Stat. 556); or

(F) Section 2557(b)(1) or 2596 of the Internal Revenue Code of 1939.

For purposes of determining prior offenses under the preceding sentence, a reference to any subsection, section, or Act providing a penalty for an offense shall be considered as a reference to such subsection, section, or Act as in effect (as originally enacted or as amended, as the case may be) with respect to the offense for which the offender previously has been convicted.

(2) *Procedure.* After conviction (but before pronouncement of sentence) of any offense the penalty for which is provided in subsection (a) or (b) of this section, subsection (c) or (h) of section 2 of the Narcotic Drugs Import and Export Act, as amended, or such Act of July 11, 1941, as amended, the court shall be advised by the U.S. attorney whether the conviction is the offender's first or a subsequent offense. If it is not a first offense, the U.S. attorney shall file an information setting forth the prior convictions. The offender shall have the oportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in subsection (a) or (b) of this section, subsection (c) or (h) of such section 2, or such Act of July 11, 1941, as amended, as the case may be.

(d) *No suspension of sentence; no probation; etc.*—Upon conviction—

(1) Of any offense the penalty for which is provided in subsection (b) of this section, subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended, or such Act of July 11, 1941, as amended, or

(2) Of any offense the penalty for which is provided in subsection (a) of this section, if it is the offender's second or subsequent offense,

the imposition or execution of sentence shall not be suspended, probation shall not be granted, section 4202 of title 18 of the United States Code shall not apply, and the Act of July 15, 1932 (47 Stat. 696; D.C. Code 24–201 and following), as amended, shall not apply.

(e) *Unlawful disclosure of information on returns and order forms.* Any person who shall disclose the information contained in the statements or returns required under section 4732(b) or 4754(a), in the duplicate order forms required under section 4705(e), or in the order forms or copies thereof referred to in section 4742(d), except—

(1) As expressly provided in section 4773,

(2) For the purpose of enforcing any law of the United States relating to narcotic drugs or marihuana, or

(3) For the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs or marihuana,

shall be fined not more than $2,000 or imprisoned not more than 5 years or both.

[Sec. 7237 as amended by Act of Jan. 20, 1955 (Pub. Law 1, 84th Cong., 69 Stat. 3); sec. 103, Narcotic Control Act 1956 (70 Stat. 568)]

§ 301.7238 Statutory provisions; violation of laws relating to opium for smoking.

SEC. 7238. *Violation of laws relating to opium for smoking.* A penalty of not less than $10,000 or imprisonment for not less than 5 years, or both, in the discretion of the court, shall be imposed for each and every violation of subpart B of part I of subchapter A of chapter 39 (relating to opium for smoking) by any person or persons.

§ 301.7239 Statutory provisions; violations of laws relating to white phosphorus matches.

SEC. 7239. *Violations of laws relating to white phosphorus matches*—(a) *Selling unstamped matches.* Any manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute, white phosphorus matches without there being affixed thereto an adhesive stamp, denoting the tax required by subchapter B of chapter 39 effectually canceled as provided by section 4804(a)(2), shall, for each offense, be guilty of a felony and, upon con-

viction thereof, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both.

(b) *Use of insufficient stamps.* Every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both.

§ 301.7240 Statutory provisions; officials investing or speculating in sugar.

SEC. 7240. *Officials investing or speculating in sugar.* Any person, while acting in any official capacity in the administration of subchapter A of chapter 37, relating to manufactured sugar, who invests or speculates in sugar or liquid sugar, contracts relating thereto, or the stock or membership interests of any association or corporation engaged in the production or manufacture of sugar or liquid sugar, shall be dismissed from office or discharged from employment and shall be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than 2 years, or both.

OTHER OFFENSES

§ 301.7261 Statutory provisions; representation that retailers' excise tax is excluded from price of article.

SEC. 7261. *Representation that retailers' excise tax is excluded from price of article.* Whoever, in connection with the sale or lease, or offer for sale or lease, of any article taxable under chapter 31, makes any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price of the article does not include the tax imposed by chapter 31, shall on conviction thereof be fined not more than $1,000.

§ 301.7262 Statutory provisions; violation of occupational tax laws relating to wagering—failure to pay special tax.

SEC. 7262. *Violation of occupational tax laws relating to wagering—failure to pay special tax.* Any person who does any act which makes him liable for special tax under subchapter B of chapter 35 without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.

§ 301.7263 Statutory provisions; penalties relating to cotton futures.

SEC. 7263. *Penalties relating to cotton futures*—(a) *Withholding information.* Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary of Agriculture or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under section 4862(b), or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than $500.

(b) *Civil penalties.* In addition to the criminal penalties provided by section 7233, there shall be imposed, on account of each violation of subchapter D of chapter 39, relating to cotton futures, a penalty of $2,000, to be recovered in a civil action founded on subchapter D of chapter 39 in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of subchapter D of chapter 39 is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this subsection.

§ 301.7264 Statutory provisions; offenses relating to renovated or adulterated butter.

SEC. 7264. *Offenses relating to renovated or adulterated butter.* Every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $1,000 nor more than $5,000.

§ 301.7265 Statutory provisions; other offenses relating to oleomargarine or adulterated butter operations.

SEC. 7265. *Other offenses relating to oleomargarine or adulterated butter operations*—(a) *Omission or removal of label.* (1) Every manufacturer of oleomargarine who neglects to affix the label described in section 4594(c) to any package containing oleomargarine made by him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined $50 for each package in respect to which such offense is committed.

(2) Every manufacturer of adulterated butter who neglects to affix the label required under section 4814(a)(1) to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined $50 for each package in respect to which such offense is committed.

(b) *Purchasing when not properly branded or stamped.* Every person who knowingly purchases or receives for sale any oleomargarine or adulterated butter which has not been branded or stamped according to law shall be liable to a penalty of $50 for each such offense.

(c) *Other offenses.* If any manufacturer of oleomargarine or adulterated butter, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything prohibited by subchapter F of chapter 38 or subchapter C of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the things required or prohibited, he shall pay a penalty of $1,000.

§ 301.7266 Statutory provisions; offenses relating to filled cheese.

SEC. 7266. *Offenses relating to filled cheese*—(a) *Failure to pay special tax.* Every person, firm, or corporation—

(1) *Manufacturers.* Who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $400 nor more than $3,000; and

(2) *Wholesale dealers.* Who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $250 nor more than $1000; and

(3) *Retail dealers.* Who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than $40 nor more than $500 for each and every offense.

(b) *Other offenses.* Any manufacturer of filled cheese who fails to comply with the provisions of section 4833 (b) and (c), or with the regulations therein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 nor more than $1,000.

(c) *Failure of wholesale and retail dealers to display signs.* Any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of section 4834 (a) shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than $50 and not more than $200.

(d) *Omission or removal of label.* Every manufacturer of filled cheese who neglects to affix the label provided for in section 4833 (a)(2) to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined $50 for each package in respect to which such offense is committed.

(e) *Purchasing when special tax not paid.* Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 4841 shall be liable, for each offense, to a penalty of $100.

(f) *Purchasing when not stamped, branded, or marked according to law.* Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of $50 for each such offense.

§ 301.7267 Statutory provisions; offenses relating to white phosphorus matches.

SEC. 7267. *Offenses relating to white phosphorus matches*—(a) *Exportation of matches.* Any person guilty of violation of section 4805(b) shall be fined not less than $1,000 and not more than $5,000.

(b) *Offenses not specifically covered.* If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall be fined $1,000 for each offense.

(c) *Omission of label from packages.* Every manufacturer of white phosphorus matches who neglects to affix the label required by section 4804(a)(4) to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such original package, shall be fined not more than $50 for each package in respect of which such offense is committed.

(d) *Omission of factory number from packages.* Every manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804(b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be fined not more than $50 for each package in respect of which such offense is committed.

§ 301.7268 Statutory provisions; possession with intent to sell in fraud of law or to evade tax.

SEC. 7268. *Possession with intent to sell in fraud of law or to evade tax.* Every person

who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of $500 or not less than double the amount of taxes fraudulently attempted to be evaded.

§ 301.7269 Statutory provisions; failure to produce records.

SEC. 7269. *Failure to produce records.* Whoever fails to comply with any duty imposed upon him by section 6018, 6036 (in the case of an executor), or 6075(a), or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Secretary or his delegate who desires to examine the same in the performance of his duties under chapter 11 (relating to estate taxes), shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States.

§ 301.7269–1 Failure to produce records.

Whoever fails to comply with any duty imposed upon him by section 6018, 6036 (in the case of an executor), or 6075(a), or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request of any officer or employee of the Internal Revenue Service who desires to examine the same in the performance of his duties under chapter 11 of the Code (relating to estate taxes) shall be liable to a penalty of not exceeding $500, to be recovered with costs of suit, in a civil action in the name of the United States.

§ 301.7270 Statutory provisions; insurance policies.

SEC. 7270. *Insurance policies.* Any person who fails to comply with the requirements of section 4374 (relating to the affixing of stamps on insurance policies, etc.), with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.

§ 301.7271 Statutory provisions; penalties for offenses relating to stamps.

SEC. 7271. *Penalties for offenses relating to stamps.* Any person who with respect to any tax payable by stamps—

(1) *Failure to attach or cancel stamps, etc.* Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or

(2) *Manufacture or offer for sale.* Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid; or

(3) *Instruments.* Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

(4) *Disposal and receipt of stamped packages.* In the case of any container which is stamped, branded, or marked (whether or not under authority of law) in such manner as to show that the provisions of the internal revenue laws with respect to the contents or intended contents thereof have been complied with, and which is empty or contains any contents other than contents therein when the container was lawfully stamped, branded, or marked—

(A) Transfers or receives (whether by sale, gift, or otherwise) such container knowing it to be empty or to contain such other contents; or

(B) Stamps, brands, or marks such container, or otherwise produces such a stamped, branded, or marked container, knowing it to be empty or to contain such other contents;

shall be liable for each such offense to a penalty of $50.

§ 301.7272 Statutory provisions; penalty for failure to register.

SEC. 7272. *Penalty for failure to register.*—(a) *In general.* Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary or his delegate as required by this title or by regulations issued thereunder shall be liable to a penalty of $50.

(b) *Cross references.* For provisions relating to persons required by this title to register, see sections 4101, 4412, 4455, 4722, 4753, 4804(d), and 7011.

[SEC. 7272 as amended by sec. 4(b)(8), Tax Rate Extension Act of 1958 (72 Stat. 260); sec. 204 (6), (7), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7272–1 Penalty for failure to register.

(a) Any person who fails to register with the district director as required by the Code or by regulations issued thereunder shall be liable to a penalty of $50 except that on and after September 3, 1958, this section shall not apply to persons required to register under subtitle E of the Code, or persons engaging in a trade or business on which a special tax is imposed by such subtitle.

(b) For provisions relating to registration under sections 4101, 4412, 4455, 4722, 4753, and 4804(d), see the regulations relating to the particular tax. For regulations under section 7011, see § 301.7011–1.

§ 301.7273 Statutory provisions; penalties for offenses relating to special taxes.

SEC. 7273. *Penalties for offenses relating to special taxes.*—(a) *General rule.* Any person who shall fail to place and keep stamps denoting the payment of the special tax as provided in section 6806 (a) or (b) (whichever is applicable) shall be liable to a penalty equal to the special tax for which his business rendered him liable (unless such failure is shown to be due to reasonable cause); but in no case shall said penalty be less than $10. Where the failure to comply with the provisions of section 6806 (a) or (b) shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed. Nothing in this subsection shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof.

(b) *Failure to post or exhibit special wagering tax stamp.* Any person who, through negligence, fails to comply with section 6806(c) relating to the posting or exhibiting of the special wagering tax stamp, shall be liable to a penalty of $50. Any person who, through willful neglect or refusal, fails to comply with section 6806(c) shall be liable to a penalty of $100.

§ 301.7274 Statutory provisions; penalty for offenses relating to white phosphorus matches.

SEC. 7274. *Penalty for offenses relating to white phosphorus matches.* Any manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804(b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be liable to a penalty of $50 for each package in respect of which such offense is committed.

§ 301.7275 Statutory provisions; failure to print correct price on tickets.

SEC. 7275. *Failure to print correct price on tickets.* For penalty applicable to certain offenses relating to admissions taxes, see section 4234(b).

FORFEITURES

PROPERTY SUBJECT TO FORFEITURE

§ 301.7301 Statutory provisions; property subject to tax.

SEC. 7301. *Property subject to tax.*—(a) *Taxable articles.* Any property on which, or for or in respect whereof, any tax is imposed by this title which shall be found in the possession or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of such tax, or which is removed, deposited, or concealed, with intent to defraud the United States of such tax or any part thereof, may be seized, and shall be forfeited to the United States.

(b) *Raw materials.* All property found in the possession of any person intending to manufacture the same into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax, may also be seized, and shall be forfeited to the United States.

(c) *Equipment.* All property whatsoever, in the place or building, or any yard or enclosure, where the property described in subsection (a) or (b) is found, or which is intended to be used in the making of property described in subsection (a), with intent to defraud the United States of tax or any part thereof, on the property described in subsection (a) may also be seized, and shall be forfeited to the United States.

(d) *Packages.* All property used as a container for, or which shall have contained, property described in subsection (a) or (b) may also be seized, and shall be forfeited to the United States.

(e) *Conveyances.* Any property (including aircraft, vehicles, vessels, or draft animals) used to transport or for the deposit or concealment of property described in subsection (a) or (b), or any property used to transport or for the deposit or concealment of property which is intended to be used in the making or packaging of property described in subsection (a), may also be seized, and shall be forfeited to the United States.

[SEC. 7301 as amended by sec. 204(8), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7302 Statutory provisions; property used in violation of internal revenue laws.

SEC. 7302. *Property used in violation of internal revenue laws.* It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

§ 301.7303 Statutory provisions; other property subject to forfeiture.

SEC. 7303. *Other property subject to forfeiture.* There may be seized and forfeited to the United States the following:

(1) *Counterfeit stamps.* Every stamp involved in the offense described in section 7208 (relating to counterfeit, reused, cancelled, etc., stamps), and the vellum, parchment, document, paper, package, or article upon which such stamp was placed or impressed in connection with such offense.

(2) [Repealed]

(3) *Offenses by manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter.* All oleomargarine or adulterated butter owned by any manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter, or in which he has any interest as owner, if he shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or if he shall do anything prohibited by subchapter F of chapter 38, or subchapter C of chapter 39.

(4) *Purchase or receipt of filled cheese or adulterated butter.* All articles of filled cheese or adulterated butter (or the full value thereof) knowingly purchased or received by any person from any manufacturer or importer who has not paid the special tax provided in section 4821 or 4841.

(5) *Packages of oleomargarine or filled cheese.* All packages of oleomargarine or filled cheese subject to the tax under subchapter F of chapter 38, or part II of subchapter C of chapter 39, whichever is applicable, that shall be found without the stamps or marks provided for in the applicable subchapter or part thereof.

(6) *White phosphorus matches.* (A) All packages of white phosphorus matches subject to tax under subchapter B of chapter 39 and found without the stamps required by subchapter B of chapter 39.

(B) All the white phosphorus matches owned by any manufacturer of white phosphorus matches, or any importer or exporter of matches, or in which he has any interest as owner if he shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of subchapter B of chapter 39 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited.

(7) *False stamping of packages.* Any container involved in the offense described in section 7271 (relating to disposal of stamped packages), and of the contents of such container.

(8) *Fraudulent bonds, permits, and entries.* All property to which any false or fraudulent instrument involved in the offense described in section 7207 relates.

[Sec. 7303 as amended by sec. 1(c), Act of Sept. 2, 1958 (Pub. Law 85-881, 72 Stat. 1704)]

§ 301.7304 Statutory provisions; penalty for fraudulently claiming drawback.

SEC. 7304. *Penalty for fraudulently claiming drawback.* Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of $500, at the election of the Secretary or his delegate.

§ 301.7304–1 Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of $500, at the election of the district director.

PROVISIONS COMMON TO FORFEITURES

§ 301.7321 Statutory provisions; authority to seize property subject to forfeiture.

SEC. 7321. *Authority to seize property subject to forfeiture.* Any property subject to forfeiture to the United States under any provision of this title may be seized by the Secretary or his delegate.

§ 301.7321–1 Seizure of property.

Any property subject to forfeiture to the United States under any provision of the Code may be seized by the district director or assistant regional commissioner (alcohol and tobacco tax). Upon seizure of property by the district director he shall notify the assistant regional commissioner (alcohol and tobacco tax) for the region wherein the district is located who will take charge of the property and arrange for its disposal or retention under the provisions of law and regulations applicable thereto.

§ 301.7322 Statutory provisions; delivery of seized personal property to U.S. marshal.

SEC. 7322. *Delivery of seized personal property to U.S. marshal.* Any forfeitable property which may be seized under the provisions of this title may, at the option of the Secretary or his delegate, be delivered to the U.S. marshal of the district, and remain in the care and custody and under the control of such marshal, pending disposal thereof as provided by law.

§ 301.7322–1 Delivery of seized property to U.S. marshal.

Any forfeitable property which may be seized under the provisions of the Code may, at the option of the assistant regional commissioner (alcohol and tobacco tax), be delivered to the U.S. marshal of the judicial district wherein the property was seized, and remain in the care and custody and under the control of such marshal, pending the disposal thereof as provided by law.

§ 301.7323 Statutory provisions; judicial action to enforce forfeiture.

SEC. 7323. *Judicial action to enforce forfeiture.*—(a) *Nature and venue.* The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the U.S. District Court for the district where such seizure is made.

(b) *Service of process when property has been returned under bond.* In case bond as provided in section 7324(3) shall have been executed and the property returned before seizure thereof by virtue of process in the proceedings in rem authorized in subsection (a) of this section, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid.

(c) *Cost of seizure taxable.* The cost of seizure made before process issues shall be taxable by the court.

§ 301.7324 Statutory provisions; special disposition of perishable goods.

SEC. 7324. *Special disposition of perishable goods.* When any property which is seized under the provisions of section 7301 or section 7302 is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense—

(1) *Application for examination.* The owner thereof, or the U.S. marshal of the district, may apply to the Secretary or his delegate to examine it; and

(2) *Appaisal.* If, in the opinion of the Secretary or his delegate, it shall be necessary that such property should be sold to prevent such waste or expense, the Secretary or his delegate shall appraise the same; and thereupon

(3) *Return to owner under bond.* The owner shall have such property returned to him upon giving bond in an amount equal to such appraised value to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the Secretary or his delegate, the U.S. marshal, or otherwise, as may be ordered and directed by the court, which bond shall be filed by the Secretary or his delegate with the U.S. attorney for the district in which the proceedings in rem authorized in section 7323 may be commenced.

(4) *Sale in absence of bond.*—(A) *Order to sell.* If such owner shall neglect or refuse to give such bond, the Secretary or his delegate shall issue to any Treasury officer or employee or to the U.S. marshal an order to sell the same.

(B) *Manner of sale.* Such Treasury officer or employee or the marshal shall as soon as practicable make public sale of such property in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(C) *Disposition of proceeds.* The proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to

the court to abide its final order, decree, or judgment.

(5) *Form of bond and sureties.* For provisions relating to form and sureties on bonds, see section 7101.

[Sec. 7324 as amended by sec. 204(9), Excise Tax Technical Changes Act 1958 (72 Stat. 1429); sec. 78, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.7324–1 Special disposition of perishable goods.

For regulations relating to the disposal of perishable goods, see § 172.30 of this chapter (Disposition of Seized Personal Property).

§ 301.7325 Statutory provisions; personal property valued at $2,500 or less.

SEC. 7325. *Personal property valued at $2,500 or less.* In all cases of seizure of any goods, wares, or merchandise as being subject to forfeiture under any provison of this title which, in the opinion of the Secretary or his delegate, are of the appraised value of $2,500 or less, the Secretary or his delegate shall, except in cases otherwise provided, proceed as follows:

(1) *List and appraisement.* The Secretary or his delegate shall cause a list containing a particular description of the goods, wares, or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by the Secretary or his delegate who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisement shall be properly attested by the Secretary or his delegate and such appraisers. Each appraiser shall be allowed for his services such compensation as the Secretary or his delegate shall by regulations prescribe, to be paid in the manner similar to that provided for other necessary charges incurred in collecting internal revenue.

(2) *Notice of seizure.* If such goods are found by such appraisers to be of the value of $2,500 or less, the Secretary or his delegate shall publish a notice for 3 weeks, in some newspaper of the district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within 30 days from the date of the first publication of such notice.

(3) *Execution of bond by claimant.* Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the Secretary or his delegate a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of $250, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the Secretary or his delegate, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States attorney for the district, and such attorney shall proceed thereon in the ordinary manner prescribed by law.

(4) *Sale in absence of bond.* If no claim is interposed and no bond is given within the time above specified, the Secretary or his delegate shall give reasonable notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall, unless otherwise provided by law, sell the articles so seized at public auction, or upon competitive bids, in accordance with such regulations as may be prescribed by the Secretary or his delegate.

[Sec. 7325 as amended by sec. 204 (10), (12), Excise Tax Technical Changes Act 1958 (72 Stat. 1429); sec. 78, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.7325–1 Personal property valued at $2,500 or less.

For regulations relating to the forfeiture of personal property valued at $2,500 or less, see Part 172 of this chapter (Disposition of Seized Personal Property).

§ 301.7326 Statutory provisions; disposal of forfeited or abandoned property in special cases.

SEC. 7326. *Disposal of forfeited or abandoned property in special cases.*—(a) *Coin-operated gaming devices.* Any coin-operated gaming device as defined in section 4462(a)(2) upon which a tax is imposed by section 4461 and which has been forfeited under any provision of this title shall be destroyed, or otherwise disposed of, in such manner as may be prescribed by the Secretary or his delegate.

(b) *Narcotic drugs.* For provisions relating to disposal of forfeited narcotic drugs, see sections 4714, 4733, and 4745(d).

(c) *Firearms.* For provisions relating to disposal of forfeited firearms, see section 5862(b).

[Sec. 7326 as amended by sec. 204(13), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7326–1 Disposal of forfeited or anbandoned property in special cases.

(a) *Coin-operated gaming devices.* For regulations relating to the disposal of coin-operated gaming devices, see § 172.65 of this chapter (Disposition of Seized Personal Property).

(b) *Narcotics.* For regulations relating to the disposal of forfeited narcotic drugs, see 21 CFR 302.56. For the disposal of forfeited marihuana, see 26 CFR (1939) 152.99 and 152.100 (Regulations under the Marihuana Tax Act of 1937, as amended).

(c) *Firearms.* For regulations relating to the disposal of forfeited firearms, see § 177.102 of this chapter (Interstate Traffic in Firearms and Ammunition), and § 179.191 of this chapter (Machine Guns and Certain Other Firearms).

§ 301.7327 Statutory provisions; customs laws applicable.

SEC. 7327. *Customs laws applicable.* The provisions of law applicable to the remission or mitigation by the Secretary or his delegate of forfeitures under the customs laws shall apply to forfeitures incurred or alleged to have been incurred under the internal revenue laws.

§ 301.7327–1 Customs laws applicable.

For regulations relating to the remission or mitigation of forfeitures, see Part 172 of this chapter (Disposition of Seized Personal Property).

§ 301.7328 Statutory provisions; confiscation of matches exported.

SEC. 7328. *Confiscation of matches exported.* Any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may be prescribed by the Secretary or his delegate.

§ 301.7328–1 Confiscation of matches exported.

Any white phosphorus matches exported or attempted to be exported shall be seized by the district director and destroyed by the assistant regional commissioner (alcohol and tobacco tax) in such manner as he may deem appropriate.

§ 301.7329 Statutory provisions; cross references.

SEC. 7329. *Cross references.*

(1) For the issuance of certificates of probable cause relieving officers making seizures of responsibility for damages, see 28 U.S.C. 2465.

(2) For provisions relating to forfeitures generally in connection with alcohol taxes, see chapter 51.

(3) For provisions relating to forfeitures generally in connection with tobacco taxes, see chapter 52.

(4) For provisions relating to forfeitures generally in connection with taxes on certain firearms, see chapter 53.

MISCELLANEOUS PENALTY AND FORFEITURE PROVISIONS

§ 301.7341 Statutory provisions; penalty for sales to evade tax.

SEC. 7341. *Penalty for sales to evade tax.*—(a) *Nonenforceability of contract.* Whenever any person who is liable to pay any tax imposed by this title upon, for, or in respect of, any property sells or causes or allows the same to be sold before such tax is paid, with intent to avoid such tax, or in fraud of the internal revenue laws, any debt contracted in such sale, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court.

(b) *Forfeiture of sum paid on contract.* If such property has been paid for, in whole or in part, the sum so paid shall be deemed forfeited.

(c) *Moiety.* Any person who shall sue for the sum so paid (in an action of debt) shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States.

§ 301.7342 Statutory provisions; penalty for refusal to permit entry or examination.

SEC. 7342. *Penalty for refusal to permit entry or examination.* Any owner of any building or place, or person having the agency or superintendence of the same, who refuses to admit any officer or employee of the Treasury Department acting under the authority of section 7606 (relating to entry of premises for examination of taxable articles) or refuses to permit him to examine such article or articles, shall, for every such refusal, forfeit $500.

§ 301.7343 Statutory provisions; definition of term "person".

SEC. 7343. *Definition of term "person".* The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.7344 Statutory provisions; extended application of penalties relating to officers of the Treasury Department.

SEC. 7344. *Extended application of penalties relating to officers of the Treasury Department.* All provisions of law imposing

fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury, or under any agency or office thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or employees in connection with such law, or are persons having the custody or disposition of any public money.

Judicial Proceedings

CIVIL ACTIONS BY THE UNITED STATES

§ 301.7401 Statutory provisions; authorization.

SEC. 7401. *Authorization.* No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

§ 301.7401–1 Authorization.

(a) *In general.* No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner (or the Director, Alcohol and Tobacco Tax Division, with respect to the provisions of subtitle E of the Code), or the Chief Counsel for the Internal Revenue Service or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced. With respect to forfeitures, the assistant regional commissioner or supervisor in charge (alcohol and tobacco tax) may also authorize or sanction the proceedings.

(b) *Property held by banks.* The Commissioner shall not authorize or sanction any civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, from any deposits held in a foreign office of a bank engaged in the banking business in the United States or a possession of the United States unless the Commissioner believes—

(1) That the taxpayer is within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(2) That the taxpayer is not within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the Code.

For purposes of this paragraph, the term "possession of the United States" includes Guam, the Midway Islands, the Panama Canal Zone, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Wake Island.

§ 301.7402 Statutory provisions; jurisdiction of district courts.

SEC. 7402. *Jurisdiction of district courts.*—(a) *To issue orders, processes, and judgments.* The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) *To enforce summons.* If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) *For damages to U.S. officers or employees.* Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

(d) *Action on bonds.* The United States district courts, concurrently with the courts of the several States, shall have jurisdiction of any action brought on the official bond of any internal revenue officer or employee required to give bond under regulations promulgated by authority of section 7803.

(e) *General jurisdiction.* For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

§ 301.7403 Statutory provisions; action to enforce lien or to subject property to payment of tax.

SEC. 7403. *Action to enforce lien or to subject property to payment of tax.*—(a) *Filing.* In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

(b) *Parties.* All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(c) *Adjudication and decree.* The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

(d) *Receivership.* In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary or his delegate during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

§ 301.7403–1 Action to enforce lien or to subject property to payment of tax.

In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Commissioner (or the Director, Alcohol and Tobacco Tax Division, with respect to the provisions of subtitle E of the Code) or the Chief Counsel for the Internal Revenue Service or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under the Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

§ 301.7404 Statutory provisions; authority to bring civil action for estate taxes.

SEC. 7404. *Authority to bring civil action for estate taxes.* If the estate tax imposed by chapter 11 is not paid on or before the due date thereof, the Secretary or his delegate shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court of the United States having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This section insofar as it applies to the collection of a deficiency shall be subject to the provisions of sections 6213 and 6601.

§ 301.7404–1 Authority to bring civil action for estate taxes.

(a) If the estate tax imposed by chapter 11 of the Code is not paid on or before the last date prescribed for payment, the district director shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court.

(b) The remedy by action provided in section 7404 is not exclusive. The district director may proceed to collect the tax by levy, as provided in section 6331, on any or all property or rights to property of the estate, or collection may be enforced by an appropriate action

against the executor, certain transferees, trustees, and beneficiaries for their personal liability. See § 20.2002–1 of this chapter (Estate Tax Regulations).

§ 301.7405 Statutory provisions; action for recovery of erroneous refunds.

SEC. 7405. *Action for recovery of erroneous refunds*—(a) *Refunds after limitation period.* Any portion of a tax imposed by this title, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.

(b) *Refunds otherwise erroneous.* Any portion of a tax imposed by this title which has been erroneously refunded (if such refund would not be considered as erroneous under section 6514) may be recovered by civil action brought in the name of the United States.

(c) *Interest.* For provision relating to interest on erroneous refunds, see section 6602.

(d) *Periods of limitation.* For periods of limitations on actions under this section, see section 6532(b).

§ 301.7406 Statutory provisions; disposition of judgments and moneys recovered.

SEC. 7406. *Disposition of judgments and moneys recovered.* All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the Secretary or his delegate as collections of internal revenue taxes.

§ 301.7406–1 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the district director as collections of internal revenue taxes.

§ 301.7407 Statutory provisions; cross references.

SEC. 7407. *Cross references.* (1) For provisions for collecting taxes in general, see chapter 64.

(2) For venue in a civil action for the collection of any tax, see section 1396 of Title 28 of the United States Code.

(3) For venue of a proceeding for the recovery of any fine, penalty, or forfeiture, see section 1395 of Title 28 of the United States Code.

PROCEEDINGS BY TAXPAYERS

§ 301.7421 Statutory provisions; prohibition of suits to restrain assessment or collection.

SEC. 7421. *Prohibition of suits to restrain assessment or collection*—(a) *Tax.* Except as provided in sections 6212 (a) and (c), and 6213(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

(b) *Liability of transferee or fiduciary.* No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) The amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) The amount of the liability of a fiduciary under section 3467 of the Revised Statutes (31 U.S.C. 192) in respect of any such tax.

§ 301.7422 Statutory provisions; civil actions for refund.

SEC. 7422. *Civil actions for refund*—(a) *No suit prior to filing claim for refund.* No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

(b) *Protest or duress.* Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) *Suits against collection officer a bar.* A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits instituted after June 15, 1942, in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court where the petition to the Tax Court was filed after such date.

(d) *Credit treated as payment.* The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

(e) *Stay of proceedings.* If the Secretary or his delegate prior to the hearing of a suit brought by a taxpayer in a district court or the Court of Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer's suit, the proceedings in taxpayer's suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the Court of Claims, as the case may be, shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of enactment of this title, is commenced, instituted, or pending in a district court or the Court of Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

(f) *Cross references.* (1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).

(2) For duty of U.S. attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of U.S. district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

[Sec. 7422 as amended by sec. 78 Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.7423 Statutory provisions; repayments to officers or employees.

SEC. 7423. *Repayments to officers or employees.* The Secretary or his delegate, subject to regulations prescribed by the Secretary or his delegate is authorized to repay—

(1) *Collections recovered.* To any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) *Damages and costs.* All damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of anything done in the due performance of his official duty under this title.

Sec. 2006 [Title 28, United States Code]. *Execution against revenue officer.* Execution shall not issue against a collector [district director] or other revenue officer on a final judgment in any proceeding against him for any of his acts or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that:

(1) Probable cause existed; or

(2) The officer acted under the directions of the Secretary of the Treasury or other proper Government officer.

When such certificate has been issued, the amount of the judgment shall be paid out of the proper appropriation by the Treasury.

[28 U.S.C. 2006, enacted into positive law by Act of June 25, 1948 (Pub. Law 773, 80th Cong., 62 Stat. 960)]

§ 301.7423–1 Repayments to officers or employees.

The Commissioner is authorized to repay to any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit, and all damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of anything done in the official performance of his duties under the Code.

§ 301.7424 Statutory provisions; civil action to clear title to property.

SEC. 7424. *Civil action to clear title to property*—(a) *Obtaining leave to file*—(1) *Request for institution of proceedings by United States.* Any person having a lien upon or any interest in the property referred to in section 7403, notice of which has been duly filed of record in the jurisdiction in which the property is located, prior to the filing of notice of the lien of the United States as provided in section 6323, or any person purchasing the property at a sale to satisfy such prior lien or interest, may make written request to the Secretary or his delegate to authorize the filing of a civil action as provided in section 7403.

(2) *Petition to court.* If the Secretary or his delegate fails to authorize the filing of such civil action within 6 months after receipt of such written request, such person or purchaser may, after giving notice to the Secretary or his delegate, file a petition in the district court of the United States for the district in which the property is located, praying leave to file a civil action for a final determination of all claims to or liens upon the property in question.

(3) *Court order.* After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such civil action, in which the United States and all persons having liens upon or claiming any interest in the property shall be made parties.

(b) *Adjudication.* Upon the filing of such civil action, district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of civil actions filed under section 7403. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(c) *Costs.* All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action.

§ 301.7424–1 Civil action to clear title to property.

(a) Any person having a lien upon or any interest in the property referred to in section 7403, notice of which has been duly filed of record in the jurisdiction in which the property is located, prior to the filing of the notice of the lien of the United States as provided in section 6323, or any person purchasing the property at a sale to satisfy such prior lien or interest, may make a written request to the Commissioner to authorize the filing of a civil action as provided in section 7403.

(b) If the Commissioner fails to authorize the filing of such civil action within 6 months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the property is located, praying leave to file a civil action for a final determination of all claims to or liens upon the property in question.

§ 301.7425 Statutory provisions; cross references.

SEC. 7425. *Cross references.* (1) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U.S.C. 35).

(2) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57(j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U.S.C. 93).

(3) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876–877; 11 U.S.C. 107).

(4) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added June 22, 1938 (52 Stat. 938; 11 U.S.C. 1080).

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see R.S. 3466 (31 U.S.C. 191).

(7) For interest on judgements for overpayments, see section 2411(a) of Title 28 of the United States Code.

(8) For review of a Tax Court decision, see section 7482.

(9) For statute prohibiting suits to replevy property taken under revenue laws, see section 2463 of Title 28 of the United States Code.

THE TAX COURT

ORGANIZATION AND JURISDICTION

§ 301.7441 Statutory provisions; status.

SEC. 7441. *Status.* The Board of Tax Appeals shall be continued as an independent agency in the Executive Branch of the Government, and shall be known as the Tax Court of the United States. The members thereof shall be known as the chief judge and the judges of the Tax Court.

§ 301.7442 Statutory provisions; jurisdiction.

SEC. 7442. *Jurisdiction.* The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10–87), or by laws enacted subsequent to February 26, 1926.

§ 301.7443 Statutory provisions; membership.

SEC. 7443. *Membership*—(a) *Number.* The Tax Court shall be composed of 16 members.

(b) *Appointment.* Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(c) *Salary.* Each judge shall receive salary at the rate of $22,500 per annum, to be paid in monthly installments.

(d) *Expenses for travel and subsistence.* Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the U.S. Customs Court.

(e) *Term of office.* The terms of office of all judges of the Tax Court shall expire 12 years after the expiration of the terms for which their predecessors were appointed; but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor.

(f) *Removal from office.* Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

(g) *Disbarment of removed judges.* A judge of the Tax Court removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Tax Court.

[Sec. 7443(c) as amended by sec. 1(h), Act of Mar. 2, 1955 (Pub. Law 9, 84th Cong., 69 Stat. 10)]

§ 301.7444 Statutory provisions; organization.

SEC. 7444. *Organization*—(a) *Seal.* The Tax Court shall have a seal which shall be judicially noticed.

(b) *Designation of chief judge.* The Tax Court shall at least biennially designate a judge to act as chief judge.

(c) *Divisions.* The chief judge may from time to time divide the Tax Court into divisions of one or more judges, assign the judges of the Tax Court thereto, and in case of a division of more than one judge, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a judge assigned thereto to serve thereon, is composed of less than the number of judges designated for the division, the chief judge may assign other judges to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of judges thereto.

(d) *Quorum.* A majority of the judges of the Tax Court or of any division thereof shall constitute a quorum for the transaction of the business of the Tax Court or of the division, respectively. A vacancy in the Tax Court or in any division thereof shall not impair the powers nor affect the duties of the Tax Court or division nor of the remaining judges of the Tax Court or division, respectively.

§ 301.7445 Statutory provisions; offices.

SEC. 7445. *Offices.* The principal office of the Tax Court shall be in the District of Columbia, but the Tax Court or any of its divisions may sit at any place within the United States.

§ 301.7446 Statutory provisions; times and places of sessions.

SEC. 7446. *Times and places of sessions.* The times and places of the sessions of the Tax Court and of its divisions shall be prescribed by the chief judge with a view to securing reasonable opportunity to taxpayers to appear before the Tax Court or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable.

§ 301.7447 Statutory provisions; retirement.

SEC. 7447. *Retirement*—(a) *Definitions.* For purposes of this section—

(1) The term "Tax Court" means the Tax Court of the United States.

(2) The term "Civil Service Commission" means the U.S. Civil Service Commission.

(3) The term "judge" means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).

(4) The term "Civil Service Retirement Act" means the Civil Service Retirement Act of May 29, 1930, as amended.

(5) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge or as a member of the board.

(b) *Retirement.* (1) Any judge who has served as judge for 18 years or more may retire at any time.

(2) Any judge who has served as judge for 10 years or more and has attained the age of 70 shall retire not later than the close of the third month beginning after whichever of the following months is the latest:

(A) The month in which he attained age 70;

(B) The month in which he completed 10 years of service as judge; or

(C) August 1953.

Section 2(a) of the Civil Service Retirement Act (relating to automatic separation from the Service) shall not apply in respect of judges.

(c) *Recalling of retired judges.* Any individual who is receiving retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or

periods specified by the chief judge; except that in the case of any such individual—

(1) The aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

(2) He shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for purposes of section 7443(a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(d) *Retired pay.* Any individual who after August 7, 1953—

(1) Ceases to be a judge by reason of paragraph (2) of subsection (b), or ceases to be a judge after having served as judge for 18 years or more; and

(2) Elects under subsection (e) to receive retired pay under this subsection,

shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge as the number of years he has served as judge bears to 24; except that the rate of such retired pay shall be not less than one-half of the rate of such salary and not more than the rate of such salary. Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more.

(e) *Election to receive retired pay.* Any judge may elect to receive retired pay under subsection (d). Such an election—

(1) May be made only while an individual is a judge (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, it may be made at any time before the day after the day on which his successor takes office);

(2) Once made, shall be irrevocable;

(3) In the case of any judge other than the chief judge, shall be made by filing notice thereof in writing with the chief judge; and

(4) In the case of the chief judge, shall be made by filing notice thereof in writing with the Civil Service Commission.

The chief judge shall transmit to the Civil Service Commission a copy of each notice filed with him under this subsection.

(f) *Individuals receiving retired pay to be available for recall.* Any individual who has elected to receive retired pay under subsection (d) who thereafter—

(1) Accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

(2) Performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation or in the field of the renegotiation of Federal contracts for his client, his employer, or any of his employer's clients,

shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the first day on which he accepts such office or employment or engages in any activity described in paragraph (2). Any individual who has elected to receive retired pay under subsection (d) who thereafter during any calendar year fails to perform judicial duties required of him by subsection (c) shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the first day on which he so fails to perform such duties.

(g) *Coordination with Civil Service retirement.*—(1) *General rule.* Except as otherwise provided in this subsection, the provisions of the Civil Service Retirement Act (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such Act applies) as if this section had not been enacted.

(2) *Effect of electing retired pay.* In the case of any individual who has filed an election to receive retired pay under subsection (d) and who has not filed a waiver under paragraph (3) of this subsection—

(A) He shall not be entitled to any annuity under section 1, 2, 3A, 6, or 7 of the Civil Service Retirement Act for any period beginning on or after the day on which he files such election;

(B) No amount shall be returned to him under section 7(a) of such Act;

(C) Subsections (b) and (c) of section 4 of such Act, and subsection (c) of section 12 of such Act, shall apply in respect of such individual as if he were retiring or had retired under section 1 of such Act on the date on which his retired pay under subsection (d) of this section began to accrue; except that—

(i) The amount of any annuity payable to a survivor of such individual under subsection (b) or (c) of such section 4 or under subsection (c) of such section 12 shall be based on a life annuity for such individual computed as provided in subsection (a) of such section 4, and

(ii) If such individual makes the election provided by subsection (b) or (c) of such section 4, his retired pay under subsection (d) of this section shall be reduced by the amount by which a life annuity computed as provided in subsection (a) of such section 4 would be reduced;

(D) In computing the aggregate amount of the annuity paid for purposes of section 12(g) of such Act, any retired pay which has accrued under subsection (d) of this section (including any such retired pay forfeited under subsection (f)) shall be included as if it were an annuity payable to him under such Act; and

(E) No deduction for purposes of the civil service retirement and disability fund shall be made from the retired pay payable to him under subsection (d) of this section, or from any other salary, pay, or compensation payable to him, for any period after the date on which such retired pay began to accrue.

(3) *Waiver of civil service benefits.* (A) Any individual who has elected to receive retired pay under subsection (d) of this section may (at any time thereafter during the period prescribed by subsection (e)(1)) waive all benefits under the Civil Service Retirement Act. Such a waiver—

(i) Once made, shall be irrevocable, and

(ii) Shall be made in the same manner as is provided for an election by such individual under subsection (e). The chief judge shall transmit to the Civil Service Commission a copy of each notice of waiver filed with him under this paragraph.

(B) In the case of any individual who has made a waiver under this paragraph—

(i) No annuity shall be payable to any person under the Civil Service Retirement Act with respect to any service performed by such individual (whether performed before or after such waiver is filed and whether performed as judge or otherwise);

(ii) No deduction shall be made from any salary, pay, or compensation of such individual for purposes of the civil service retirement and disability fund for any period beginning after the day on which such waiver is filed;

(iii) Except as provided in clause (iv), no refund shall be made under the Civil Service Retirement Act of any amount credited to the account of such individual or of any interest on any amounts so credited;

(iv) Additional sums voluntarily deposited by such individual under the second paragraph of section 10 of the Civil Service Retirement Act shall be promptly refunded, together with interest on such additional sums at 3 percent per annum (compounded on December 31 of each year) to the day of such filing; and

(v) Subsections (e) and (g) of section 12 of the Civil Service Retirement Act shall not apply.

(4) *Employees' compensation.* The fourth and sixth paragraphs of section 6 of the Civil Service Retirement Act shall apply in respect of retired pay accruing under subsection (d) of this section as if such retired pay were an annuity payable under such act.

§ 301.7448 Statutory provisions; annuities to widows and dependent children of judges.

SEC. 7448. *Annuities to widows and dependent children of judges.*—(a) *Definitions.* For purposes of this section—

(1) The term "Tax Court" means the Tax Court of the United States.

(2) The term "judge" means the chief judge or a judge of the Tax Court, including any individual receiving retired pay (or compensation in lieu of retired pay) under section 7447 or under section 1106 of the Internal Revenue Code of 1939 whether or not performing judicial duties pursuant to section 7447(c) or pursuant to section 1106(d) of the Internal Revenue Code of 1939.

(3) The term "chief judge" means the chief judge of the Tax Court.

(4) The term "judge's salary" means the salary of a judge received under section 7443(c), retired pay received under section 7447(d), and compensation (in lieu of retired pay) received under section 7447(c).

(5) The term "survivors annuity fund" means the Tax Court judges survivors annuity fund established by this section.

(6) The term "widow" means a surviving wife of an individual, who either (A) shall have been married to such individual for at least 2 years immediately preceding his death or (B) is the mother of issue by such marriage, and who has not remarried.

(7) The term "dependent child" means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of 18 years or who because of physical or mental disability is incapable of self-support.

(b) *Election.* Any judge may by written election filed with the chief judge within 6 months after the date on which he takes office after appointment or any reappointment, or within 6 months after the date upon which he first becomes eligible for retirement under section 7447(b), or within 6 months after the enactment of this section, bring himself within the purview of this section, except that, in the case of such an election by the chief judge, the election shall be filed as prescribed by the Tax Court subject to the preceding requirements as to the time of filing.

(c) *Salary deductions.* There shall be deducted and withheld from the salary of each judge electing under subsection (b) a sum equal to 3 percent of such judge's salary. The amounts so deducted and withheld from such judge's salary shall, in accordance with such procedure as may be prescribed by the Comptroller General of the United States, be deposited in the Treasury of the United States to the credit of a fund to be known as the "Tax Court judges survivors annuity fund" and said fund is appropriated for the payment of annuities, refunds, and allowances as provided by this section. Each judge electing under subsection (b) shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this section.

(d) *Deposits in survivors annuity fund.* Each judge electing under subsection (b) shall deposit, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the survivors annuity fund, a sum equal to 3 percent of his judge's salary and of his basic salary, pay, or compensation for service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, and for any other civilian service within the purview of section 3 of the Civil Service Retirement Act (5 U.S.C. 2253). Each such judge may elect to make such deposits in installments during the continuance of his service as a judge in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless such widow shall elect to eliminate such service entirely from credit under subsection (n), except that no deposit shall be required from a judge for any year with respect to which deductions from his salary were actually made under the Civil Service Retirement Act and no deposit shall be required for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

(e) *Investment of survivors annuity fund.* The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, such portions of the survivors annuity fund as in his judgment may not be immediately required for the payment of the annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of said fund for the purpose of paying annuities and of carrying out the provisions of subsections (g), (h), and (j).

(f) *Crediting of deposits.* The amount deposited by or deducted and withheld from the salary of each judge electing to bring himself within the purview of this section for credit to the survivors annuity fund shall be credited to an individual account of such judge.

(g) *Termination of service.* If the service of any judge electing under subsection (b) terminates other than pursuant to the provisions of section 7447 or other than pursuant to section 1106 of the Internal Revenue Code of 1939, the amount credited to his individual account, together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him. For the purpose of this section, the service of any judge electing under subsection (b) who is not reappointed following expiration of his term, but who, at the time of such expiration, is eligible for and elects to receive retired pay under section 7447 shall be deemed to have terminated pursuant to said section.

(h) *Entitlement to annuity.* In case any judge electing under subsection (b) shall die while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c) or the deposits required by subsection (d) have actually been made or the salary deductions required by the Civil Service Retirement Act have actually been made—

(1) If such judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the judge or following the widow's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m); or

(2) If such judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed $900 per year divided by the number of such children or $360 per year whichever is lesser; or

(3) If such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed $480 per year.

The annuity payable to a widow under this subsection shall be terminable upon such widow's death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of 18 years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a widow of a judge leaving a dependent child or children of the judge surviving her, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependant child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

(i) *Determination of dependency and disability.* Questions of dependency and disability arising under this section shall be determined by the chief judge subject to review only by the Tax Court, the decision of which shall be final and conclusive. The chief judge may order or direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this section, and may suspend or deny any such annuity for failure to submit to any examination so ordered or directed.

(j) *Payments in certain cases.* (1) In any case in which—

(A) A judge electing under subsection (b) shall die while in office (whether in regular active service or retired from such service under section 7447), before having rendered 5 years of civilian service computed as prescribed in subsection (n), or after having rendered 5 years of such civilian service but without a survivor or survivors entitled to annuity benefits provided by subsection (h), or

(B) The right of all persons entitled to annuity under subsection (h) based on the service of such judge shall terminate before a valid claim therefor shall have been established,

the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

(i) To the beneficiary or beneficiaries whom the judge may have designated by a writing filed prior to his death with the chief judge, except that in the case of the chief judge such designation shall be by a writing filed by him, prior to his death, as prescribed by the Tax Court;

(ii) If there be no such beneficiary, to the widow of such judge;

(iii) If none of the above, to the child or children of such judge and the descendants of any deceased children by representation;

(iv) If none of the above, to the parents of such judge or the survivor of them;

(v) If none of the above, to the duly appointed executor or administrator of the estate of such judge; and

(vi) If none of the above, to such other next of kin of such judge as may be determined by the chief judge to be entitled under the laws of the domicile of such judge at the time of his death.

Determination as to the widow, child, or parent of a judge for the purposes of this paragraph shall be made by the chief judge without regard to the definitions in subsections (a) (6) and (7).

(2) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (1).

(3) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) To the duly appointed executor or administrator of the estate of such person;

(B) If there is no such executor or administrator payment may be made, after the expiration of 30 days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled

thereto, and such payment shall be a bar to recovery by any other individual.

(k) *Payments to persons under legal disability.* Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(l) *Method of payment of annuities.* Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(m) *Computation of annuities.* The annuity of the widow of a judge electing under subsection (b) shall be an amount equal to the sum of (1) 1¼ percent of the average annual salary received by such judge for judicial service and any other prior allowable service during the last 5 years of such service prior to his death, or prior to his receiving retired pay under section 7447(d), whichever first occurs, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States and his years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 1(c) of the Civil Service Retirement Act (5 U.S.C. 2251(c)), and (2) three-fourths of 1 percent of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed 37½ percent of such average annual salary and shall be further reduced in accordance with subsection (d), if applicable.

(n) *Includible service.* Subject to the provisions of subsection (d), the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a member of the U.S. Board of Tax Appeals and as a judge of the Tax Court, his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 3 of the Civil Service Retirement Act (5 U.S.C. 2253).

(o) *Simultaneous entitlement.* Nothing contained in this section shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this section and any annuity to which she would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of her annuity under this section shall not be credited.

(p) *Estimates of expenditures.* The chief judge shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The chief judge shall cause periodic examinations of the survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the chief judge to the Tax Court.

(q) *Transitional provision.* In the case of a judge who dies within 6 months after the date of enactment of this section after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), but without having made an election as provided in subsection (b), an annuity shall be paid to his widow and surviving dependents as is provided in this section, as if such judge had elected on the day of his death to bring himself within the purview of this section but had not made the deposit provided for by subsection (d). An annuity shall be payable under this section computed upon the basis of the actual length of service as a judge and other allowable service of the judge and subject to the reduction required by subsection (d) even though no deposit has been made, as required by subsection (h) with respect to any of such service.

(r) *Waiver of civil service benefits.* Any judge electing under subsection (b) shall, at the time of such election, waive all benefits under the Civil Service Retirement Act. Such a waiver shall be made in the same manner and shall have the same force and effect as a waiver filed under section 7447(g)(3).

(s) *Authorization of appropriation.* Funds necessary to carry out the provisions of this section may be appropriated out of any money in the Treasury not otherwise appropriated.

[Sec. 7448 as added by sec. 1, Act of Oct. 4, 1961 (Pub. Law 87-370, 75 Stat. 796)]

PROCEDURE

§ 301.7451 Statutory provisions; fee for filing petition.

SEC. 7451. *Fee for filing petition.* The Tax Court is authorized to impose a fee in an amount not in excess of $10 to be fixed by the Tax Court for the filing of any petition for the redetermination of a deficiency.

§ 301.7452 Statutory provisions; representation of parties.

SEC. 7452. *Representation of parties.* The Secretary or his delegate shall be represented by the Chief Counsel for the Internal Revenue Service or his delegate in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the rules of practice prescribed by the Court. No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling.

[Sec. 7452 as amended by sec. 2(a), Act of Sept. 22, 1959 (Pub. Law 86-368, 73 Stat. 648)]

§ 301.7452–1 Representation of parties.

The Commissioner shall be represented by the Chief Counsel for the Internal Revenue Service in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the rules of practice prescribed by the Court.

§ 301.7453 Statutory provisions; rules of practice, procedure, and evidence.

SEC. 7453. *Rules of practice, procedure, and evidence.* The proceedings of the Tax Court and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the U.S. District Court of the District of Columbia.

§ 301.7454 Statutory provisions; burden of proof in fraud and transferee cases.

SEC. 7454. *Burden of proof in fraud and transferee cases*—(a) *Fraud.* In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary or his delegate.

(b) *Cross reference.* For provisions relating to burden of proof as to transferee liability, see section 6902(a).

§ 301.7454–1 Burden of proof in fraud and transferee cases.

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Commissioner.

§ 301.7455 Statutory provisions; service of process.

SEC. 7455. *Service of process.* The mailing by certified mail or registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Tax Court shall be held sufficient service of such pleading, decision, order, notice, or process.

[Sec. 7455 as amended by sec. 89(b), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.7456 Statutory provisions; administration of oaths and procurement of testimony.

SEC. 7456. *Administration of oaths and procurement of testimony*—(a) *In general.* For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge (or by the clerk of the Tax Court or by any other employee of the Tax Court when acting as deputy clerk)—

(1) The attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or

(2) The taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

(b) *Production of records in the case of foreign corporations, foreign trusts or estates and nonresident alien individuals.* The Tax Court or any division thereof, upon motion and notice by the Secretary or his delegate, and upon good cause shown therefor, shall order any foreign corporation, foreign trust or estate, or nonresident alien individual,

who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions, that the petitioner is unable to produce, to make available to the Secretary or his delegate, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any division thereof, may deem relevant to the proceedings and which are in the possession, custody or control of the petitioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control. If the petitioner fails or refuses to comply with any of the provisions of such order, after reasonable time for compliance has been afforded to him, the Tax Court or any division thereof, upon motion, shall make an order striking out pleadings or parts thereof, or dismissing the proceeding or any part thereof, or rendering a judgment by default against the petitioner. For the purpose of this subsection, the term "foreign trust or estate" includes an estate or trust, any fiduciary of which is a foreign corporation or nonresident alien individual; and the term "control" is not limited to legal control.

(c) *Commissioners.* The chief judge may from time to time by written order designate an attorney from the legal staff of the Tax Court to act as a commissioner in a particular case. The commissioner so designated shall proceed under such rules and regulations as may be promulgated by the Tax Court. The commissioner shall receive the same travel and subsistence allowances now or hereafter provided by law for commissioners of the U.S. Court of Claims.

§ 301.7456–1 Administration of oaths and procurement of testimony; production of records of foreign corporations, foreign trusts or estates and nonresident alien individuals.

Upon motion and notice by the Commissioner and upon good cause shown therefor, the Tax Court or any division thereof shall order any foreign corporation, foreign trust or estate, or nonresident alien individual, who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions that the petitioner is unable to produce, to make available to the Commissioner, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any of its divisions may deem relevant to the proceedings and which are in the possession, custody or control of the petitioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control.

§ 301.7457 Statutory provisions; witness fees.

SEC. 7457. *Witness fees*—(a) *Amount.* Any witness summoned or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States.

(b) *Payment.* Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) *Witnesses for Secretary or his delegate.* In the case of witnesses for the Secretary or his delegate, such payments shall be made by the Secretary or his delegate out of any moneys appropriated for the collection of internal revenue taxes, and may be made in advance.

(2) *Other witnesses.* In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken.

§ 301.7457–1 Witness fees.

Any witness summoned for the Commissioner or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States. Such fees and mileage and the expense of taking any such deposition shall be paid by the Commissioner out of any moneys appropriated for the collection of internal revenue taxes, and may be paid in advance.

§ 301.7458 Statutory provisions; hearings.

SEC. 7458. *Hearings.* Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Secretary or his delegate. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Secretary nor his delegate shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument, shall be stenographically reported. The Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies.

§ 301.7458–1 Hearings.

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Commissioner. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge.

§ 301.7459 Statutory provisions; reports and decisions.

SEC. 7459. *Reports and decisions*—(a) *Requirement.* A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.

(b) *Inclusion of findings of fact or opinions in report.* It shall be the duty of the Tax Court and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Tax Court shall report in writing all its findings of fact, opinions, and memorandum opinions.

(c) *Date of decision.* A decision of the Tax Court (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax Court. If the Tax Court dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Secretary or his delegate, or if the Tax Court dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry.

(d) *Effect of decision dismissing petition.* If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary or his delegate. An order specifying such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

(e) *Effect of decision that tax is barred by limitation.* If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Tax Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

(f) *Findings of fact as evidence.* The findings of the Board of Tax Appeals made in connection with any decision prior to February 26, 1926, shall, notwithstanding the enactment of the Revenue Act of 1926 (44 Stat. 9), continue to be prima facie evidence of the facts therein stated.

(g) *Penalty.* For penalty for taxpayer instituting proceedings before Tax Court merely for delay, see section 6673.

§ 301.7460 Statutory provisions; provisions of special application to divisions.

SEC. 7460. *Provisions of special application to divisions*—(a) *Hearings, determinations, and reports.* A division shall hear, and make a determination upon, any proceeding instituted before the Tax Court and any motion in connection therewith, assigned to such division by the chief judge, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

(b) *Effect of action by a division.* The report of the division shall become the report of the Tax Court within 30 days after such report by the division, unless within such period the chief judge has directed that such report shall be reviewed by the Tax Court. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Tax Court except in accordance with such rules as the Tax Court may prescribe. The report of a division shall not be a part of the record in any case in which the chief judge directs that such report shall be reviewed by the Tax Court.

§ 301.7461 Statutory provisions; publicity of proceedings.

SEC. 7461. *Publicity of proceedings.* All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Secretary or his delegate, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable.

§ 301.7461–1 Publicity of proceedings.

All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Commissioner, permit the withdrawal by the party entitled thereto of the originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any of its divisions; or the Tax Court may, on its own action, make such other disposition thereof as it deems advisable.

§ 301.7462 Statutory provisions; publication of reports.

SEC. 7462. *Publication of reports.* The Tax Court shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Tax Court therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents.

§ 301.7463 Statutory provisions; provisions of special application to transferees.

SEC. 7463. *Provisions of special application to transferees.* (1) For rules of burden of proof in transferee proceedings, see section 6902(a).

(2) For authority of Tax Court to prescribe rules by which a transferee of property of a taxpayer shall be entitled to examine books, records and other evidence, see section 6902(b).

MISCELLANEOUS PROVISIONS

§ 301.7471 Statutory provisions; employees.

SEC. 7471. *Employees*—(a) *Appointment and compensation.* The Tax Court is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1949 (63 Stat. 954; 5 U.S.C. chapter 21), as amended, to fix the compensation of, such employees as may be necessary efficiently to execute the functions vested in the Tax Court.

(b) *Expenses for travel and subsistence.* The employees of the Tax Court shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in the Travel Expense Act of 1949 (63 Stat. 166; 5 U.S.C. chapter 16).

(c) *Commissioners.* For travel and subsistence allowances of commissioners of the Tax Court, see section 7456(c).

§ 301.7472 Statutory provisions; expenditures.

SEC. 7472. *Expenditures.* The Tax Court is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Tax Court. All expenditures of the Tax Court shall be allowed and paid, out of any moneys appropriated for purposes of the Tax Court, upon presentation of itemized vouchers therefor signed by the certifying officer designated by the chief judge.

§ 301.7473 Statutory provisions; disposition of fees.

SEC. 7473. *Disposition of fees.* All fees received by the Tax Court shall be covered into the Treasury as miscellaneous receipts.

§ 301.7474 Statutory provisions; fee for transcript of record.

SEC. 7474. *Fee for transcript of record.* The Tax Court is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof.

COURT REVIEW OF TAX COURT DECISIONS

§ 301.7481 Statutory provisions; date when Tax Court decision becomes final.

SEC. 7481. *Date when Tax Court decision becomes final.* The decision of the Tax Court shall become final—

(1) *Timely petition for review not filed.* Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) *Decision affirmed or petition for review dismissed*—(A) *Petition for certiorari not filed on time.* Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the U.S. Court of Appeals and no petition for certiorari has been duly filed; or

(B) *Petition for certiorari denied.* Upon the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the U.S. Court of Appeals; or

(C) *After mandate of Supreme Court.* Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Tax Court be affirmed or the petition for review dismissed.

(3) *Decision modified or reversed*—(A) *Upon mandate of Supreme Court.* If the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or his delegate or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(B) *Upon mandate of the Court of Appeals.* If the decision of the Tax Court is modified or reversed by the U.S. Court of Appeals, and if—

(i) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) The petition for certiorari has been denied, or

(iii) The decision of the U.S. Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the U.S. Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Secretary or his delegate or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(4) *Rehearing.* If the Supreme Court orders a rehearing; or if the case is remanded by the U.S. Court of Appeals to the Tax Court for a rehearing, and if—

(A) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) The petition for certiorari has been denied, or

(C) The decision of the U.S. Court of Appeals has been affirmed by the Supreme Court,

then the decision of the Tax Court rendered upon such rehearing shall become final in the same manner as though no prior decision of the Tax Court has been rendered.

(5) *Definition of "mandate".* As used in this section, the term "mandate", in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate.

§ 301.7481–1 Date when Tax Court decision becomes final; decision modified or reversed.

(a) *Upon mandate of Supreme Court.* Under section 7481(3)(A) of the Code, if the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(b) *Upon mandate of the Court of Appeals.* Under section 7481(3)(B) of the Code, if the decision of the Tax Court is modified or reversed by the U.S. Court of Appeals, and if—

(i) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) The petition for certiorari has been denied, or

(iii) The decision of the U.S. Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the U.S. Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

§ 301.7482 Statutory provisions; courts of review.

SEC. 7482. *Courts of review*—(a) *Jurisdiction.* The U.S. Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section

1254 of Title 28 of the United States Code.

(b) *Venue*—(1) *In general.* Except as provided in paragraph (2), such decisions may be reviewed by the U.S. Court of Appeals for the circuit in which is located the office to which was made the return of the tax in respect of which the liability arises, or, if no return was made, then by the U.S. Court of Appeals for the District of Columbia.

(2) *By agreement.* Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any U.S. Court of Appeals which may be designated by the Secretary or his delegate and the taxpayer by stipulation in writing.

(c) *Powers*—(1) *To affirm, modify, or reverse.* Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

(2) *To make rules.* Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2074 of Title 28 of the United States Code. Until such rules become effective the rules adopted under authority of section 1141(c)(2) of the Internal Revenue Code of 1939 shall remain in effect.

(3) *To require additional security.* Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

(4) *To impose damages.* The U.S. Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the petition was filed merely for delay.

§ 301.7482–1 Courts of review; venue.

Under section 7482(b)(2) of the Code, decisions of the Tax Court may be reviewed by any U.S. Court of Appeals which may be designated by the Commissioner and the taxpayer by stipulation in writing.

§ 301.7483 Statutory provisions; petition for review.

SEC. 7483. *Petition for review.* The decision of the Tax Court may be reviewed by a U.S. Court of Appeals as provided in section 7482 if a petition for such review is filed by either the Secretary (or his delegate) or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered.

§ 301.7483–1 Petition for review.

The decision of the Tax Court may be reviewed by a U.S. Court of Appeals as provided in section 7482 of the Code if a petition for such review is filed by either the Commissioner or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered.

§ 301.7484 Statutory provisions; change of incumbent in office.

SEC. 7484. *Change of incumbent in office.* When the incumbent of the office of Secretary or his delegate changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.

§ 301.7484–1 Change of incumbent in office.

When the incumbent of the office of Commissioner changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.

§ 301.7485 Statutory provisions; bond to stay assessment and collection.

SEC. 7485. *Bond to stay assessment and collection*—(a) *Upon petition for review.* Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 7483 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Tax Court unless a petition for review in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer—

(1) On or before the time his petition for review is filed has filed with the Tax Court a bond in a sum fixed by the Tax Court not exceeding double the amount of the portion of the deficiency in respect of which the petition for review is filed, and with surety approved by the Tax Court, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or

(2) Has filed a jeopardy bond under the income or estate tax laws.

If, as a result of a waiver of the restrictions on the assessment and collection of a deficiency, any part of the amount determined by the Tax Court is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(b) *Cross references.* (1) For requirement of additional security notwithstanding this section, see section 7482(c)(3).

(2) For deposit of U.S. bonds or notes in lieu of sureties, see 6 U.S.C. 15.

§ 301.7486 Statutory provisions; refund, credit, or abatement of amounts disallowed.

SEC. 7486. *Refund, credit, or abatement of amounts disallowed.* In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Tax Court is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated.

§ 301.7487 Statutory provisions; cross reference.

SEC. 7487. *Cross reference.* For authority of the Tax Court to fix fees for transcripts of records, see section 7474.

MISCELLANEOUS PROVISIONS

§ 301.7491 Statutory provisions; burden of proof of exemptions in case of marihuana offenses.

SEC. 7491. *Burden of proof of exemptions in case of marihuana offenses.* It shall not be necessary to negative any exemptions set forth in part II of subchapter A of chapter 39, relating to marihuana, in any complaint, information, indictment, or other writ or proceeding laid or brought with respect to part II of subchapter A of chapter 39 and the burden of proof of any such exemption shall be upon the defendant. In the absence of the production of evidence by the defendant that he has complied with the provisions of section 4753 relating to registration, or that he has complied with the provisions of section 4742 relating to order forms, he shall be presumed not to have complied with such provisions of such section, as the case may be.

§ 301.7492 Statutory provisions; enforceability of cotton futures contracts.

SEC. 7492. *Enforceability of cotton futures contracts.* No contract of sale of cotton for future delivery mentioned in section 4851(a), which does not conform to the requirements of section 4853 and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

§ 301.7493 Statutory provisions; immunity of witnesses in cases relating to cotton futures.

SEC. 7493. *Immunity of witnesses in cases relating to cotton futures.* No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 (relating to cotton futures) shall withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39, or of any regulation made pursuant to such chapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.

Miscellaneous Provisions

§ 301.7501 Statutory provisions; liability for taxes withheld or collected.

SEC. 7501. *Liability for taxes withheld or collected*—(a) *General rule.* Whenever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

(b) *Penalties.* For penalties applicable to violations of this section, see sections 6672 and 7202.

§ 301.7502 Statutory provisions; timely mailing treated as timely filing.

SEC. 7502. *Timely mailing treated as timely filing*—(a) *General rule.* If any claim, statement, or other document (other than a return or other document required under authority of chapter 61), required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by U.S. mail to the agency, officer, or office with which such claim, statement, or other document is required to be filed, the date of the U.S. postmark stamped on the cover in which such claim, statement, or other document is mailed shall be deemed to be the date of delivery. This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of the claim, statement, or other document, determined with regard to any extension granted for such filing, and only if the claim, statement, or other document was, within the prescribed time, deposited in the mail in the United States in an envelope or other appropriate

wrapper, postage prepaid, properly addressed to the agency, office, or officer with which the claim, statement, or other document is required to be filed.

(b) *Stamp machine.* This section shall apply in the case of postmarks not made by the U.S. Post Office only if and to the extent provided by regulations prescribed by the Secretary or his delegate.

(c) *Registered and certified mail*—(1) *Registered mail.* If any such claim, statement, or other document is sent by U.S. registered mail, such registration shall be prima facie evidence that the claim, statement, or other document was delivered to the agency, office, or officer to which addressed, and the date of registration shall be deemed the postmark date.

(2) *Certified mail.* The Secretary or his delegate is authorized to provide by regulations the extent to which the provisions of paragraph (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.

(d) *Exception.* This section shall not apply with respect to the filing of a document in any court other than the Tax Court.

[Sec. 7502 as amended by sec. 89(a), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.7502–1 Timely mailing treated as timely filing.

(a) *General rule.* Section 7502 provides that, if the requirements of such section are met, a document shall be deemed to be filed on the date of the postmark stamped on the cover in which such document was mailed. Thus, if the cover containing such document bears a timely postmark, the document will be considered filed timely although it is received after the last date, or the last day of the period, prescribed for filing such document. Section 7502 does not apply to the payment of any tax. Section 7502 is applicable only to those documents which come within the definition of such term provided by paragraph (b) of this section and only if the document is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (d) of this section.

(b) *Document defined.* (1) The term "document," as used in this section, means any claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws, except as provided in the following subdivisions of this subparagraph:

(i) The term does not include any return required under authority of any internal revenue law or any other document required under authority of chapter 61 of the Code. Thus, for example, such term does not include the income tax returns required by section 6012, the declarations of estimated income tax by individuals and corporations required by sections 6015 and 6016, and the estate tax and gift tax returns required by sections 6018 and 6019. Nor does the term include any return required under authority of subtitle E of the Code, relating to alcohol, tobacco, and certain other excise taxes.

(ii) The term does not include any document filed in any court other than the Tax Court, but the term does include any document filed with the Tax Court, including a petition for redetermination of a deficiency and a petition for review of a decision of the Tax Court.

(iii) The term does not include any document which is required to be filed with a bank or other depositary pursuant to section 6302(c).

(2) A return may contain, or have attached to it, a statement which sets forth an election under the internal revenue laws. In such a case, section 7502 is applicable to the statement if the conditions of such section are met, although it does not apply to the return. Moreover, in the case of certain taxes, a return may constitute a claim for refund or credit. In such a case, section 7502 is applicable to the claim for refund or credit if the conditions of such section are met, irrespective of whether the claim is also a return.

(c) *Mailing requirements.* (1) Section 7502 is not applicable unless the document is mailed in accordance with the following requirements:

(i) The document must be contained in an envelope or other appropriate wrapper, properly addressed to the agency, officer, or office with which the document is required to be filed.

(ii) The document must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Post Office. The domestic mail service of the U.S. Post Office, as defined by the postal regulations, includes mail transmitted within, among, and between the United States, its Territories and possessions, and Army-Air Force (APO) and Navy (FPO) post offices (see 39 CFR 2.1). Section 7502 does not apply to any document which is deposited with the mail service of any other country.

(iii) (*a*) If the postmark on the envelope or wrapper is made by the U.S. Post Office, such postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document, the document will be considered not to be filed timely, regardless of when the document is deposited in the mail. Accordingly, the sender who relies upon the applicability of section 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document, but see subparagraph (2) of this paragraph with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope or wrapper is not legible, the person who is required to file the document has the burden of proving the time when the postmark was made. Furthermore, in case the cover containing a document bearing a timely postmark made by the U.S. Post Office is received after the time when a document postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(*b*) If the postmark on the envelope or wrapper is made other than by the U.S. Post Office, (*1*) the postmark so made must bear a date on or before the last date, or the last day of the period, prescribed for filing the document, and (*2*) the document must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document contained in an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Post Office on the last date, or the last day of the period, prescribed for filing the document. However, in case the document is received after the time when a document so mailed and so postmarked by the U.S. Post Office would ordinarily be received, such document will be treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received, if the person who is required to file the document establishes (*i*) that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the U.S. Post Office on or before the last date, or the last day of the period, prescribed for filing the document, (*ii*) that the delay in receiving the document was due to a delay in the transmission of the mail, and (*iii*) the cause of such delay. If the envelope has a postmark made by the U.S. Post Office in addition to the postmark not so made, the postmark which was not made by the U.S. Post Office shall be disregarded, and whether the envelope was mailed in accordance with this subdivision shall be determined solely by applying the rule of (*a*) of this subdivision.

(2) If the document is sent by U.S. registered mail, the date of registration of the document shall be treated as the postmark date. If the document is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom such document is presented, the date of the U.S. postmark on such receipt shall be treated as the postmark date of the document. Accordingly, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

(3) As used in this section, the term "the last date, or the last day of the period, prescribed for filing the document" includes any extension of time granted for such filing. When the last date, or the last day of the period, prescribed for filing the document falls on a Saturday, Sunday, or legal holiday, section 7503 is also applicable, so that, in applying the rules of this paragraph, the next succeeding day which is not a Saturday, Sunday, or legal holiday shall be treated as the last date, or the last day of the period, prescribed for filing the document.

(d) *Delivery.* (1) Section 7502 is not applicable unless the document is delivered by U.S. mail to the agency, officer, or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer, or office shall constitute prima facie evidence that the document was delivered to such agency, officer, or office.

(2) Section 7502 is applicable only when the document is delivered after the last date, or the last day of the period, prescribed for filing the document. However, section 7502 is also applicable when a claim for credit or refund is delivered after the last day of the period specified in section 322(b)(2) of the Internal Revenue Code of 1939 or in any other corresponding provision of law relating to the limit on the amount of credit or refund that is allowable. For example, taxpayer A was required to file his income tax return for 1953 on or before March 15, 1954, but he secured an extension until June 15, 1954, to file such return. His return was filed on June 15, 1954, but no tax was paid at such time because the tax liability disclosed by the return had been completely satisfied by the income tax that had been withheld on his wages and by the payments of estimated tax. On March 14, 1957, A mailed in accordance with the requirements of this section a claim for refund of a portion of his 1953 tax. The envelope containing the claim was postmarked on such day, but it was not delivered to the district director's office until March 18, 1957. Under section 322(b)(1) of the Internal Revenue Code of 1939, A's claim for refund is timely if filed within three years from June 15, 1954. However, as a result of the limitation of section 322(b)(2) of the 1939 Code, if his claim is not filed within three years after March 15, 1954, the date on which he is deemed under section 322(e) of the 1939 Code to have paid his 1953 tax, he is not entitled to any refund. Thus, since A's claim for refund was mailed in accordance with the requirements of this section and was delivered after the last day of the period specified in such section 322(b)(2), section 7502 is applicable, and the claim is deemed to have been filed on March 14, 1957.

(e) *Applicability*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, section 7502 and this section are applicable with respect to any document which is mailed and delivered in accordance with the requirements of this section and which is mailed in an envelope having a postmark bearing a date after August 16, 1954, irrespective of whether the postmark is made by the U.S. Post Office, and irrespective of whether the tax to which the document pertains is imposed by the Code or a prior internal revenue law.

(2) *Exception.* The provisions of section 7502 and this section which specifically apply to certified mail are applicable only if the mailing occurs on or after January 15, 1960.

§ 301.7503 Statutory provisions; time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.

SEC. 7503. *Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.* When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; the term "legal holiday" means a legal holiday in the District of Columbia; and in the case of any return, statement, or other document required to be filed, or any other act required under authority of the internal revenue laws to be performed, at any office of the Secretary or his delegate, or at any other office of the United States or any agency thereof, located outside the District of Columbia but within an internal revenue district, the term "legal holiday" also means a Statewide legal holiday in the State where such office is located.

§ 301.7503–1 Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.

(a) *In general.* Section 7503 provides that when the last day prescribed under authority of any internal revenue law for the performance of any act falls on a Saturday, Sunday, or legal holiday, such act shall be considered performed timely if performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, any authorized extension of time shall be included in determining the last day for performance of any act. Section 7503 is applicable only in case an act is required under authority of any internal revenue law to be performed on or before a prescribed date or within a prescribed period. For example, if the 2-year period allowed by section 6532(a)(1) to bring a suit for refund of any internal revenue tax expires on Thursday, November 22, 1956 (Thanksgiving Day), the suit will be timely if filed on Friday, November 23, 1956, in the Court of Claims, or in a district court. Section 7503 applies to acts to be performed by the taxpayer (such as, the filing of any return of, and the payment of, any income, estate, or gift tax; the filing of a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by such Court; the filing of a claim for credit or refund of any tax) and acts to be performed by the Commissioner, a district director, or the director of a regional service center (such as, the giving of any notice with respect to, or making any demand for the payment of, any tax; the assessment or collection of any tax).

(b) *Legal holidays.* (1) For the purpose of section 7503, the term "legal holiday" includes the legal holidays in the District of Columbia. Such legal holidays are—

(i) January 1, New Year's Day (D.C. Code, Title 28, sec. 616),

(ii) January 20, when such day is Inauguration Day (D.C. Code, Title 28, sec. 616),

(iii) February 22, Washington's Birthday (D.C. Code, Title 28, sec. 616),

(iv) May 30, Memorial Day (D.C. Code, Title 28, sec. 616),

(v) July 4, Independence Day (D.C. Code, Title 28, sec. 616),

(vi) First Monday in September, Labor Day (5 U.S.C. 87),

(vii) November 11, Veterans' Day (5 U.S.C. 87a, as amended),

(viii) Fourth Thursday in November, Thanksgiving Day (5 U.S.C. 87b), and

(ix) December 25, Christmas Day (D.C. Code, Title 28, sec. 616).

When a legal holiday in the District of Columbia falls on a Sunday, the next day is a legal holiday in the District of Columbia (see D.C. Code, Title 28, sec. 616).

(2) In the case of any return, statement, or other document required to be filed, or any other act required under the authority of the internal revenue laws to be performed, at any office of the Internal Revenue Service, or any other office or agency of the United States, located outside the District of Columbia, but within an internal revenue district, the term "legal holiday" includes, in addition to the legal holidays enumerated in subparagraph (1) of this paragraph, any Statewide legal holiday of the State where the act is required to be performed. If the act is performed in accordance with law at an office of the Internal Revenue Service or any other office or agency of the United States located in a Territory or possession of the United States, the term "legal holiday" includes, in addition to the legal holidays described in subparagraph (1) of this paragraph, any legal holiday which is recognized throughout the Territory or possession in which the office is located.

(c) *Applicability.* Section 7503 and this section are applicable in any case when the last day prescribed under authority of any internal revenue law for the performance of any act falls on a Saturday, Sunday, or legal holiday, which occurs after August 16, 1954, irrespective of whether the tax in connection with which the act is required to be performed is imposed by this title or a prior internal revenue law.

§ 301.7504 Statutory provisions; fractional parts of a dollar.

SEC. 7504. *Fractional parts of a dollar.* The Secretary or his delegate may by regulations provide that in the allowance of any amount as a credit or refund, or in the collection of any amount as a deficiency or underpayment, of any tax imposed by this title, a fractional part of a dollar shall be disregarded, unless it amounts to 50 cents or more, in which case it shall be increased to 1 dollar.

§ 301.7505 Statutory provisions; sale of personal property purchased by the United States.

SEC. 7505. *Sale of personal property purchased by the United States*—(a) *Sale.* Any personal property purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold

under levy) may be sold by the Secretary or his delegate in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(b) *Accounting.* In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections, and there shall be rendered a distinct account of all charges incurred in such sales.

§ 301.7505–1 Sale of personal property purchased by the United States.

(a) *Sale*—(1) *In general.* Any personal property (except bonds, notes, checks, and other securities) purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy) or the corresponding provisions of prior law may be sold by the district director who purchased such property for the United States. U.S. Savings Bonds shall not be sold by the district director but shall be transferred to the Division of Loans and Currency, Treasury Department, for redemption. Other bonds, notes, checks, and other securities shall be disposed of in accordance with instructions issued by the Commissioner.

(2) *Time, place, manner, and terms of sale.* The time, place, manner, and terms of sale of personal property purchased for the United States shall be as follows:

(i) *Time, notice, and place of sale.* The property may be sold at any time after it has been purchased by the United States. A public notice of sale shall be posted at the post office nearest the place of sale and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the district director may use such other methods of advertising as he believes will result in obtaining the highest price for the property. The place of sale shall be within the internal revenue district where the property was originally purchased for the United States. However, if the district director believes that a substantially higher price may be obtained, the sale may be held outside his district.

(ii) *Rejection of bids and adjournment of sale.* The internal revenue officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the internal revenue officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, he may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must again be given in accordance with subdivision (i) of this subparagraph.

(iii) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed $200.

(3) *Agreement to bid.* The district director may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the district director may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than $200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(4) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the district director in the public notice of sale—

(i) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(ii) If the aggregate price of all property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

(5) *Method of sale.* The property may be sold either—

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(6) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the district director upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope his name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the internal revenue officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The internal revenue officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the internal revenue officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the internal revenue officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(7) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the internal revenue officer conducting the sale may forthwith proceed again to sell the property in the manner provided in subparagraph (5) of this paragraph. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(8) *Delivery and removal of personal property.* The risk of loss is on the purchaser of the property upon acceptance of his bid. Possession of any property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for the property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after acceptance of the bid shall be borne by the purchaser.

(9) *Certificate of sale.* The internal revenue officer conducting the sale shall issue a certificate of sale to the purchaser upon payment in full of the purchase price.

(b) *Accounting.* In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections, and there shall be rendered by the district director a distinct account of all charges incurred in such sale. For additional accounting rules, see section 7809 and the instructions thereunder.

§ 301.7506 Statutory provisions; administration of real estate acquired by the United States.

SEC. 7506. *Administration of real estate acquired by the United States*—(a) *Person charged with.* The Secretary or his delegate shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, and of all trusts created for the use of the United States in payment of such debts due them.

(b) *Sale.* The Secretary or his delegate, may, at public sale, and upon not less than 20 days' notice, sell and dispose of any real estate owned or held by the United States as aforesaid.

(c) *Lease.* Until such sale, the Secretary or his delegate may lease such real estate owned as aforesaid on such terms and for such period as the Secretary or his delegate shall deem proper.

(d) *Release to debtor.* In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of 1 percent per month, to the United States, within 2 years from the date of the acquisition of such real estate, it shall be lawful for the Secretary or his delegate to release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

§ 301.7506–1 Administration of real estate acquired by the United States.

(a) *Persons charged with.* The district director for the internal revenue district in which the property is situated shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage, or other security for the payment of such debts, or which has been or shall be purchased for the United States under section 6335(e) or under a corresponding provision of prior law, and of all trusts created for the use of the United States in payment of such debts due the United States.

(b) *Sale.* The district director for the internal revenue district in which the property is situated may sell any real estate owned or held by the United States as aforesaid, subject to the following rules—

(1) *Property purchased at sale under levy.* If the property was acquired as a result of being declared purchased for the United States at a sale under section 6335, relating to sale of seized property, the property shall not be sold until after the expiration of 1 year after such sale under levy.

(2) *Notice of sale.* A notice of sale shall be published in some newspaper published or generally circulated within the county where the property is situated, or a notice shall be posted at the post office nearest the place where the property is situated and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the district director may use other methods of advertising and of giving notice of sale if he believes such methods will enhance the possibility of obtaining a higher price for the property.

(3) *Time and place of sale.* The time of the sale shall be not less than 20 days from the date of giving public notice of sale under subparagraph (2) of this paragraph. The place of sale shall be within the county where the property is situated. However, if the district director believes a substantially better price may be obtained, he may hold the sale outside such county.

(4) *Rejection of bids and adjournment of sale.* The internal revenue officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the internal revenue officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, he may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must be given again in accordance with subparagraph (2) of this paragraph.

(5) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed $200.

(6) *Agreement to bid.* The district director may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the district director may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than $200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(7) *Terms.* The property shall be offered for sale upon whichever of the following terms is fixed by the district director in the public notice of sale:

(i) Payments in full upon acceptance of the highest bid, or

(ii) If the price of the property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance within a specified period, not to exceed one month from the date of the sale.

(8) *Method of sale.* The property may be sold either—

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(9) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph, shall be applicable at public sales under sealed bids:

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the district director upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope his name and address and the time and place of sale as announced in the public notice of sale. A bid shall not be considered unless it is received by the internal revenue officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The internal revenue officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the internal revenue officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property that has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the internal revenue officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids.

A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(10) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the internal revenue officer conducting the sale may forthwith proceed again to sell the property in the manner provided in subparagraph (8) of this paragraph. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(11) *Deed.* Upon payment in full of the purchase price, the district director shall execute a quitclaim deed to the purchaser.

(c) *Lease.* Until real estate is sold, the district director for the internal revenue district in which the property is situated may, in accordance with instructions issued by the Commissioner, lease such property.

(d) *Release to debtor.* In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon (at the rate of 1 percent per month), to the United States within 2 years from the date of the acquisition of such real estate, the district director for the internal revenue district in which the property is located may release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives. If property is declared purchased by the United States under section 6335, then, for the purpose of this paragraph, the date of such declaration shall be deemed to be the date of acquisition of such real estate.

(e) *Accounting.* The district director for the internal revenue district in which the property is situated shall, in accordance with section 7809 and the instructions thereunder, account for the proceeds of all sales or leases of the property and all expenses connected with the maintenance, sale, or lease of the property.

(f) *Authority of Commissioner.* Notwithstanding the other paragraphs of this section, the Commissioner may, when he deems it advisable, take charge of and assume responsibility for any real estate to which this section is applicable. In such case, the Commissioner will notify in writing the district director for the internal revenue district in which the property is situated. In any case where a single parcel of real estate is situated in more than one internal revenue district, the Commissioner may designate in writing a district director who shall have charge of and be responsible for the entire property.

§ 301.7507 Statutory provisions; exemption of insolvent banks from tax.

SEC. 7507. *Exemption of insolvent banks from tax*—(a) *Assets in general.* Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Secretary or his delegate, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

(b) *Segregated assets; earnings.* Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank or trust company, such individual or corporate trustee or such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necessary for the full payment thereof. The term "agent", as used in this subsection, shall be deemed to include a corporation acting as a liquidating agent.

(c) *Refund; reassessment; statutes of limitation.* (1) Any such tax collected shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes.

(2) Any tax, the assessment, collection, or payment of which is barred under subsection (a), or any such tax which has been abated or remitted after May 28, 1938, shall be assessed or reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid.

(3) Any tax, the assessment, collection, or payment of which is barred under subsection (b), or any such tax which has been refunded after May 28, 1938, shall be assessed or reassessed after full payment of such claims of depositors to the extent of the remaining assets segregated or transferred as described in subsection (b).

(4) The running of the statute of limitations on the making of assessment and collection shall be suspended during, and for 90 days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax may be reassessed as provided in paragraphs (2) and (3) of this subsection and collected, during the time within which, had there been no abatement, collection might have been made.

(d) *Exception of employment taxes.* This section shall not apply to any tax imposed by chapter 21 or chapter 23.

§ 301.7507–1 Banks and trust companies covered.

(a) Section 7507 applies to any national bank, or bank or trust company organized under State law, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, and which has—

(1) Ceased to do business by reason of insolvency or bankruptcy, or

(2) Been released or discharged from its liability to its depositors for any part of their deposit claims, and the depositors have accepted in lieu thereof a lien upon its subsequent earnings or claims against its assets either (i) segregated and held by it for benefit of the depositors or (ii) transferred to an individual or corporate trustee or agent who liquidates, holds or operates the assets for the benefit of the depositors.

(b) As used in this section and §§ 301.7507–2 to 301.7507–11, inclusive:

(1) The term "bank", unless otherwise indicated by the context, means any national bank, or bank or trust company organized under State law, within the scope of section 7507.

(2) The terms "statute of limitations" and "limitations" mean all applicable provisions of law (including section 7507) which impose, change, or affect the limitations, conditions, or requirements relative to the allowance of refunds and abatements or the assessment or collection of tax, as the case may be.

(3) The term "segregated assets" includes transferred or trusteed assets, or assets set aside or earmarked, to all or a portion of which, or the proceeds of which, the depositors are absolutely or conditionally entitled.

§ 301.7507–2 Scope of section generally.

(a) *Purpose.* Section 7507 is intended to assist depositors of a bank which had ceased to do business by reason of insolvency to recover their deposits, by prohibiting collection of taxes of the bank which would diminish the assets necessary for payment of its depositors and also assist depositors of banks which are in financial difficulties but which, in certain conditions, continue in business.

(b) *Requisites of application.* In order that section 7507 shall operate in a case where the bank continues business it is necessary that the depositors shall agree to accept, in lieu of all or a part of their deposit claims as such, claims against segregated assets, or a lien upon subsequent earnings of the bank, or both. When such an agreement exists, no tax diminishing such assets or earnings, or both, otherwise available and necessary for payment of depositors, may be collected therefrom. If, under such an agreement, the depositors have the right also to look to the unsegregated assets of the bank for recovery, in whole or in part, the unsegregated assets are likewise, until they exceed the amount of the depositors' claims chargeable thereto, unavailable for tax collection. Any tax of such a bank, or part of any tax, which

is once uncollectible under section 7507, cannot thereafter be collected except from any residue of segregated assets remaining after claims of depositors against such assets have been paid.

(c) *Interest.* For the purposes of section 7507, depositors' claims include bona fide interest, either on the deposits as such, or on the claims accepted in lieu of deposits as such.

(d) *Limitations on immunity.* Section 7507 is not primarily intended for the relief of banks as such. It does not prevent tax collection, from assets not necessary, or not available, for payment of depositors, from a bank within section 7507(a), at any time within the statute of limitations. In other words, the immunity of such a bank is not complete, but ceases whenever, within the statutory period for collection, it becomes possible to make collection without diminishing assets necessary for payment of depositors. In the case of a bank within section 7507(b), any immunity to which the bank is entitled is absolute except as to segregated assets. Any tax coming within such immunity may never be collected. With respect to segregated assets, such a bank is subject to the same rule as a bank within section 7507(a), that is to say, after claims of depositors against segregated assets have been paid, any surplus is subject, within the statute of limitations, to collection of any tax, due at any time, the collection of which was suspended by the section. The section is not for the relief of creditors other than depositors, although it may incidentally operate for their benefit. See § 301.7507–4 and paragraph (b) of § 301.7507–9.

§ 301.7507–3 Segregated or transferred assets.

(a) *In general.* In a case involving segregated or transferred assets, it is not necessary, for application of section 7507, that the assets shall technically constitute a trust fund. It is sufficient that segregated assets be definitely separated from other assets of the bank and that transferred assets be definitely separated both from other assets of the bank and from other assets held or owned by the trustee or agent to whom assets of the bank have been transferred; that the bank be wholly or partially released from liability for repayment of deposits as such; and that the depositors have claims against the separated assets. Any excess of separated assets over the amount necessary for payment of such depositors will be available for tax collection after full payment of depositors' claims under the agreement against such assets. But see paragraph (a) of § 301.7507–9.

(b) *Corporate transferees.* Where the segregated assets are transferred to a separate corporate trustee or corporate agent, the assets and earnings therefrom are within the protection of the section, until full payment of depositors' claims against such assets and earnings, no matter by whom the stock of such corporation is held, and no matter whether the assets be liquidated or operated or held for benefit of the depositors.

§ 301.7507–4 Unsegregated assets.

(a) *Depositors' claims against assets.* (1) Claims of depositors, to the extent that they are to be satisfied out of segregated assets, will not be considered in determining the availability of unsegregated assets for tax collection. If depositors have agreed to accept payment out of segregated assets only, collection of tax from unsegregated assets will not diminish the assets available and necessary for payment of the depositors' claims. Thus, it may be possible to collect taxes from the unsegregated assets of a bank although the segregated assets are immune under the section.

(2) If the unsegregated assets of the bank are subject to any portion of the depositors' claims, such unsegregated assets will be within the immunity of the section only to the extent necessary to satisfy the claims to which such assets are subject. Taxes will still be collectible from the unsegregated assets to the extent of the amount by which the total value of such assets exceeds the liability to depositors to be satisfied therefrom. Therefore, if, for example, in the case of a bank having a tax liability, not previously immune under the section, of $50,000, the deposit claims against the bank are in the amount of $75,000, and the assets available for satisfaction of deposit claims amount to $100,000, the $50,000 tax is collectible to the extent of the $25,000 excess of assets over deposit claims. Collection is not to be postponed until the full amount of the tax is collectible.

(b) *Depositors' claims against earnings.* Even though under a bona fide agreement a bank has been released from depositors' claims as to unsegregated assets, if all or a portion of its earnings are subject to depositors' claims, all assets the earnings from which, in whole or part, are charged with the payment of depositors' claims, will be immune from tax collection. But see paragraph (a) of § 301.7507–5.

§ 301.7507–5 Earnings.

(a) *Availability for tax collection.* Earnings of a bank within section 7507(b), whether from segregated or unsegregated assets, which are necessary for, applicable to, and actually used for, payment of depositors' claims under an agreement, are within the immunity of the section. If only a portion or percentage of income from segregated or unsegregated assets is available and necessary for payment of depositors' claims, the remaining income is available for tax collection. Earnings of the bank's first fiscal year ending after the making of the agreement not applicable to payment of depositors will be assumed to be applicable for collection of any tax due prior or subsequent to execution of the agreement. Earnings of subsequent fiscal periods from unsegregated assets not applicable to depositors' claims will be assumed to be applicable to payment of taxes as to which immunity under the section has not previously attached. Earnings from segregated assets are available for collection of tax, whether previously uncollectible under the section or not, after depositors' claims against such assets have been paid in full. See paragraph (a) of § 301.7507–3 and paragraph (a) of § 301.7507–9.

(b) *Tax computation.* The fact that earnings of a given year may be wholly or partly unavailable under section 7507 for collection of taxes does not exempt the income for that year, or any part thereof, from tax liability. The section affects collectibility only, and is not concerned with taxability. Accordingly, the taxpayer's income tax return shall correctly compute the tax liability, even though in the opinion of the taxpayer it is immune from tax collection under the section. The tax shall be determined with respect to the entire gross income and not merely with respect to the portion of the earnings out of which tax may be collected. As to establishment of immunity from tax collection see § 301.7507–7.

Example. (1) An agreement, executed in the year 1954 between a bank and its depositors, provides (i) that certain assets are to be segregated for the benefit of the depositors who have waived (as claims against unsegregated assets of the bank) a percentage of the deposits; (ii) that 40 percent of the bank's net earnings, for years beginning with 1954, from unsegregated assets, shall be paid to the depositors until the portion of their claims waived with respect to unsegregated assets of the bank has been paid; and (iii) that the unsegregated assets shall not be subject to depositors' claims. The net income of the bank for the calendar year 1954 is $10,000, $4,000 produced by the segregated, and $6,000 produced by the unsegregated assets. Such amount shall be considered the net earnings for the purpose of section 7507 in computing the portion of the earnings to be paid to depositors. The bank has an outstanding tax liability for prior years of $7,000. The income tax liability of the bank for 1954 is 30 percent of $10,000, or $3,000, making a total outstanding tax liability of $10,000. The portion of the earnings of the bank for 1954 remaining after provision for depositors is $3,600 ($6,000 less 40 percent thereof, or $2,400). It will be assumed that of the total outstanding tax liability of $10,000, $3,600 may be assessed and collected, leaving $6,400 to be collected from any excess of the segregated assets after claims of depositors against such segregated assets have been paid in full. No part of the $6,400 immune from collection from 1954 earnings may be collected thereafter from unsegregated assets of the bank or earnings therefrom, so that except for any possible surplus of the segregated assets the $6,400 is uncollectible.

(2) In the year 1955, the earnings are again $10,000, $4,000 from segregated and $6,000 from unsegregated assets, as in 1954. However, the return filed shows income of $5,000 and a tax liability of $1,500. An investigation shows the true income to be $10,000, on which the tax is $3,000. The full $3,000 will be assumed to be collectible. The $600 difference between $3,600 (the excess of earnings from unsegregated assets over the amount going to the depositors), and the $3,000 tax for 1955, is not available for collection of the tax for prior years, which became immune as described above, but may be available for collection of tax for subsequent years.

(c) No significance attaches to the selection of the years 1954 and 1955 in the example set forth in paragraph (b) of this section. The rules indicated by the example are equally applicable to

subsequent or prior years not excluded by limitations.

§ 301.7507–6 **Abatement and refund.**

(a) An assessment or collection, no matter when made, if contrary to section 7507, is subject to abatement or refund within the applicable statutory period of limitations.

(b) Collection from a bank within section 7507(b) which diminishes assets necessary for payment of depositors, if made prior to agreement with depositors, is not contrary to the section, and affords no ground for refund.

(c) Any abatement or refund is subject to existing statutory periods of limitation, which periods are not suspended or extended by section 7507. In order to secure a refund of any taxes paid for any taxable year during the period of immunity the bank must file claim therefor.

§ 301.7507–7 **Establishment of immunity.**

(a) The mere allegation of insolvency, or that depositors have claims against segregated or other assets or earnings, will not of itself secure immunity from tax collection. It must be affirmatively established to the satisfaction of the district director that collection of tax will be contrary to section 7507. See also § 301.7507–8.

(b) Any claim, by a bank, of immunity under section 7507(b), shall be supported by a statement, under oath or affirmation, which shall show: (1) The total of depositors' claims outstanding, and (2) separately and in detail, the amount of each of the following, and the amount of depositors' claims properly chargeable against each: (i) Segregated or transferred assets; (ii) unsegregated assets; (iii) estimated future average annual earnings and profits; (iv) amount collectible from shareholders; and (v) any other resources available for payment of depositors' claims. The detail shall show the full amount of depositors' claims chargeable against each of the items in subdivisions (i) to (v), inclusive, of this subparagraph even though part or all of the amount chargeable against a particular item is also chargeable against some other item or items. There shall also be filed a copy of any agreement between the bank and its depositors, and any other agreement or document bearing on the claim of immunity. The statement shall show the basis, as "book," "market," etc., of valuation of the assets.

§ 301.7507–8 **Procedure during immunity.**

(a) *Statements to be filed.* As long as complete or partial immunity is claimed, a bank within section 7507(b) shall file with each income tax return a statement as required by § 301.7507–7, in duplicate, and shall also file such additional statements as the district director may require. Whether or not additional statements shall be required, and the frequency thereof, will depend on the circumstances, including the financial status and apparent prospects of the bank, and the time which is available for assessment and collection. If a copy of an agreement or document has once been filed, a copy of the same agreement or document need not again be filed with a subsequent statement, if it is shown by the subsequent statement, when and where and with what return the copy was filed. In case of amendment a copy of the amendment must be filed with the return for the taxable year in which the amendment is made.

(b) *Failure to file.* Failure of a bank to file any required statement will be treated as indicating that the bank is not entitled to immunity.

§ 301.7507–9 **Termination of immunity.**

(a) *In general.* (1) In the case of a bank within section 7507(a), immunity will end whenever, and to the extent that, taxes may be assessed and collected, within the applicable limitation periods as extended by section 7507, without diminishing the assets available and necessary for payment of depositors. Immunity of a bank within section 7507 (b) is terminated, as to segregated assets, whenever claims of depositors against such assets have been paid in full. See § 301.7507–3. As to segregated assets, the termination of immunity is complete, and any balance remaining after payment of depositors is available, within statutory limitations, for collection of tax due at any time. However, taxes of the bank will be collectible from segregated assets only to the extent that the bank has a legal or equitable interest therein. Assets as to which there has been a complete conveyance for benefit of depositors, and the bank has bona fide been divested of all legal and equitable interest, are not available for collection of the bank's tax liability.

(2) As to unsegregated assets of a bank within section 7507(b), immunity terminates only as to taxes thereafter becoming due. When taxes are once immune from collection, the immunity as to unsegregated assets is absolute. But see paragraph (a) of § 301.7507–4.

(b) *General creditors.* While the immunity from tax collection is for protection of depositors, and not for benefit of general creditors, in some cases the immunity will not end until the assets are sufficient to cover indebtedness of creditors generally. This situation will exist where under applicable law the claims of general creditors are on a parity with those of depositors, so that to pay depositors in full it is necessary to pay all creditors in full.

(c) *Shareholder liability.* In determining the sufficiency of the assets to satisfy the depositors' claims, shareholders' liability to the extent collectible shall be treated as available assets. See § 301.7507–7.

(d) *Deposit insurance.* Deposit insurance payable to depositors shall not be treated as an asset of the bank and shall be disregarded in determining the sufficiency of the assets to meet the claims of depositors.

(e) *Notice by bank.* A bank within section 7507(b), upon termination of immunity with respect to (1) earnings, (2) segregated or transferred assets, or (3) unsegregated assets, shall immediately notify the district director for the internal revenue district in which the taxpayer's returns were filed of such termination of immunity. See paragraph (b) of § 301.7507–8.

(f) *Payment by bank.* As immunity terminates with respect to any assets, it will be the duty of the bank, without notice from the district director, to make payment of taxes collectible from such assets.

§ 301.7507–10 **Collection of tax after termination of immunity.**

If, in the case of a bank within section 7507(b), segregated assets (including earnings therefrom), in excess of those necessary for payment of outstanding deposits become available, such excess of segregated assets shall be applied toward satisfaction of accumulated outstanding taxes previously immune under the section, and not barred by the statute of limitations. But see § 301.7507–3. Where sufficient segregated or unsegregated assets are available, statutory interest shall be collected with the tax. When unsegregated assets or earnings therefrom previously immune become available for tax collection, they will be available only for collection of taxes (including interest and other additions) becoming due after immunity ceases. See the example in paragraph (b) of § 301.7507–5.

§ 301.7507–11 **Exception of employment taxes.**

The immunity granted by section 7507 does not apply to taxes imposed by chapter 21 or chapter 23 of the Code.

§ 301.7508 **Statutory provisions; time for performing certain acts postponed by reason of war.**

SEC. 7508. *Time for performing certain acts postponed by reason of war.*—(a) *Time to be disregarded.* In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for purposes of section 112, at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section, or hospitalized outside the States of the Union and the District of Columbia as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the States of the Union and the District of Columbia attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) Filing any return of income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(B) Payment of any income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof or of any other liability to the United States in respect thereof;

(C) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(D) Allowance of a credit or refund of any tax;

(E) Filing a claim for credit or refund of any tax;

(F) Bringing suit upon any such claim for credit or refund;

(G) Assessment of any tax;

(H) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(I) Collection, by the Secretary or his delegate, by levy or otherwise, of the amount of any liability in respect of any tax,

(J) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and

(K) Any other act required or permitted under the internal revenue laws specified in regulations prescribed under this section by the Secretary or his delegate;

(2) The amount of any credit or refund (including interest).

(b) *Exceptions*—(1) *Tax in jeopardy; bankruptcy and receiverships; and transferred assets.* Notwithstanding the provisions of subsection (a), any action or proceeding authorized by section 6851 (regardless of the taxable year for which the tax arose), chapter 70, or 71, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the Secretary or his delegate determines that collection of the amount of any assessment would be jeopardized by delay, the provisions of subsection (a) shall not operate to stay collection of such amount by levy or otherise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this paragraph the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (a). In any case to which this paragraph relates, if the Secretary or his delegate is required to give any notice to or make any demand upon any person, such requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of such person last known to the Secretary or his delegate is in an area for which U.S. post offices under instructions of the Postmaster General are not, by reason of the combatant activities, accepting mail for delivery at the time the notice or demand is signed. In such case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(2) *Action taken before ascertainment of right to benefits.* The assessment or collection of any internal revenue tax or of any liability to the United States in respect of any internal revenue tax, or any action or proceeding by or on behalf of the United States in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

§ 301.7509 Statutory provisions; expenditures incurred by the Post Office Department.

SEC. 7509. *Expenditures incurred by the Post Office Department.* The Postmaster General or his delegate shall at least once a month transfer to the Treasury of the United States, together with the receipts required to be deposited under section 6803(a), a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties, if any, imposed upon such Department with respect to chapter 21, relating to the tax under the Federal Insurance Contributions Act, and the Secretary or his delegate shall be authorized and directed to advance from time to time to the credit of the Post Office Department, from appropriations made for the collection of the taxes imposed by chapter 21, such sums as may be required for such additional expenditures incurred by the Post Office Department.

§ 301.7510 Statutory provisions; exemption from tax of domestic goods purchased for the United States.

SEC. 7510. *Exemption from tax of domestic goods purchased for the United States.* The privilege existing by provision of law on December 1, 1873, or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary or his delegate may prescribe, to all articles of domestic production which are subject to tax by the provisions of this title.

§ 301.7510–1 Exemption from tax of domestic goods purchased for the United States.

For any regulations under section 7510, see the applicable regulations with respect to the various taxes.

§ 301.7512 Statutory provisions; separate accounting for certain collected taxes, etc.

SEC. 7512. *Separate accounting for certain collected taxes, etc.*—(a) *General rule.* Whenever any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33—

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over such tax, or (B) fails to make deposits, payments, or returns of such tax, and

(2) Is notified, by notice delivered in hand to such person, of any such failure,

then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee, shall, for purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(b) *Requirements.* Any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit such amount in a separate account in a bank (as defined in section 581), and shall keep the amount of such taxes in such account until payment over to the United States. Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee.

(c) *Relief from further compliance with subsection* (b). Whenever the Secretary or his delegate is satisfied, with respect to any notification made under subsection (a), that all requirements of law and regulations with respect to the taxes imposed by subtitle C or chapter 33, as the case may be, will henceforth be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation.

[Sec. 7512 as added by sec. 1, Act of Feb. 11, 1958 (Pub. Law 85–321, 72 Stat. 5)]

§ 301.7512–1 Separate accounting for certain collected taxes.

(a) *Scope.* The provisions of section 7512 and this section apply to—

(1) The following taxes imposed by subtitle C of the Code in respect of wages or compensation paid after February 11, 1958, for pay periods beginning after such date:

(i) The employee tax imposed by section 3101 of chapter 21 (Federal Insurance Contributions Act),

(ii) The employee tax imposed by section 3201 of chapter 22 (Railroad Retirement Tax Act), and

(iii) The income tax required to be withheld on wages by section 3402 of chapter 24 (Collection of Income Tax at Source on Wages); and

(2) The following taxes imposed by chapter 33 of the Code in respect of taxable payments made, except as otherwise specifically provided in this subparagraph, after February 11, 1958:

(i) The taxes imposed by section 4231 (1), (2), and (3) on amounts paid for admissions, and the tax imposed by section 4231(6) on amounts paid for admission, refreshment, service, or merchandise, at any roof garden, cabaret, or other similar place, to the extent that such tax on amounts paid on or after January 1, 1959, is required to be collected by the proprietor of the roof garden, cabaret, or similar place from a concessionaire in such establishment,

(ii) The taxes imposed by section 4241 on amounts paid as club dues,

(iii) The taxes imposed by section 4251 on amounts paid for communications services or facilities,

(iv) The tax imposed by section 4261 on amounts paid for transportation of persons and the tax imposed by section 4271 on amounts paid before August 1, 1958, for the transportation of property, and

(v) The tax imposed by section 4286 on amounts collected for the use of safe deposit boxes.

(b) *Requirement.* If the district director determines that any person required to collect, account for, and pay over any tax described in paragraph (a) of this section has, at the time and in the manner prescribed by law or regulations, failed to collect, truthfully account for, or pay over any such tax, or make deposits, payments, or returns of any such tax, such person, if notified to do so by the district director in accordance with section 7512 and paragraph (d) of this section, shall—

(1) Collect, at the times and in the manner provided by the law and the regulations in respect of the various taxes described in paragraph (a) of this section, all of the taxes described in such paragraph which become collectible by him after receipt of such notice;

(2) Deposit the taxes so collected, not later than the end of the second banking day after collection, with a bank, as defined in section 581, in a separate ac-

count established in accordance with paragraph (c) of this section; and

(3) Keep in such account the taxes so deposited until payment thereof is made to the United States as required by the law and the regulations in respect of such taxes.

The separate accounting requirements contained in subparagraphs (1), (2), and (3) of this paragraph are applicable, in the case of the taxes described in paragraph (a)(1) of this section, to taxes with respect to wages or compensation paid after receipt of the notice from the district director, irrespective of whether such wages or compensation was earned prior to or after receipt of the notice; and, in the case of the taxes described in paragraph (a)(2) of this section, to taxes with respect to taxable payments made after receipt of the notice from the district director, irrespective of whether the transactions with respect to which such payments were made occurred prior to or after receipt of the notice.

(c) *Trust fund account.* The separate bank account referred to in paragraph (b) of this section shall be established under the designation, "(Name of person required to establish account), Trustee, Special Fund in Trust for U.S. under sec. 7512, I.R.C.". The taxes deposited in such account shall constitute a fund in trust for the United States payable only to the Internal Revenue Service on demand by the trustee.

(d) *Notice.* Notice to any person requiring his compliance with the provisions of section 7512(b) and this section shall be in writing and shall be delivered in hand to such person by an internal revenue officer or employee. In the case of a trade or business carried on other than as a sole proprietorship, such as a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee shall be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(e) *Cancellation of notice.* The district director may relieve a person to whom notice requiring separate accounting has been given pursuant to section 7512 and this section from further compliance with such separate accounting requirements whenever he is satisfied that such person will comply with all requirements of the Code and the regulations applicable, in respect of the taxes to which the notice relates, in the case of persons not required to comply with the provisions of section 7512(b). Notice of cancellation of the requirement for separate accounting shall be made in writing and shall take effect at such time as is specified in the notice of cancellation.

(f) *Penalties.* For criminal penalty for failure to comply with any provision of section 7512, see section 7215. For criminal penalties for failure to file return, supply information, or pay tax, for failure to collect or pay over tax, and for attempt to evade or defeat tax, see sections 7203, 7202, and 7201, respectively.

§ 301.7513 Statutory provisions; reproduction of returns and other documents.

SEC. 7513. *Reproduction of returns and other documents*—(a) *In general.* The Secretary or his delegate is authorized to have any Federal agency or any person process films or other photoimpressions of any return, document, or other matter, and make reproductions from films or photoimpressions of any return, document, or other matter.

(b) *Regulations.* The Secretary or his delegate shall prescribe regulations which shall provide such safeguards as in the opinion of the Secretary or his delegate are necessary or appropriate to protect the film, photoimpressions, and reproductions made therefrom, against any unauthorized use, and to protect the information contained therein against any unauthorized disclosure.

(c) *Use of reproductions.* Any reproduction of any return, document, or other matter made in accordance with this section shall have the same legal status as the original; and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding, as if it were the original, whether or not the original is in existence.

(d) *Penalty.* For penalty for violation of regulations for safeguarding against unauthorized use of any film or photoimpression, or reproduction made therefrom, and against unauthorized disclosure of information contained therein, see section 7213.

[Sec. 7513 as added by sec. 90(a), Technical Amendments Act 1958 (72 Stat. 1666)]

§ 301.7513–1 Reproduction of returns and other documents.

(a) *In general.* The Commissioner, district directors, and other authorized officers and employees of the Internal Revenue Service may contract with any Federal agency or any person to have such agency or person process films and other photoimpressions of any return, statement, document, or of any card, record, or other matter, and make reproductions from such films and photoimpressions.

(b) *Safeguards*—(1) *By private contractor.* Any person entering into a contract with the Internal Revenue Service for the performance of any of the services described in paragraph (a) of this section shall agree to comply, and to assume responsibility for compliance by his employees, with the following requirements:

(i) The films or photoimpressions, and reproductions made therefrom, shall be used only for the purpose of carrying out the provisions of the contract, and information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract;

(ii) All the services shall be performed under the supervision of the person with whom the contract is made or his responsible employees;

(iii) All material received for processing and all processed and reproduced material shall be kept in a locked and fireproof compartment in a secure place when not being worked upon;

(iv) All spoilage of reproductions made from the film or photoimpressions supplied to the contractor shall be destroyed, and a statement under the penalties of perjury shall be submitted to the Internal Revenue Service that such destruction has been accomplished; and

(v) All film, photoimpressions, and reproductions made therefrom, shall be transmitted to the Internal Revenue Service by personal delivery, first-class mail, parcel post, or express.

(2) *By Federal agency.* Any Federal agency entering into a contract with the Internal Revenue Service for the performance of any services described in paragraph (a) of this section, shall treat as confidential all material processed or reproduced pursuant to such contract.

(3) *Inspection.* The Internal Revenue Service shall have the right to send its officers and employees into the offices and plants of Federal agencies and other contractors for inspection of the facilities and operations provided for the performance of any work contracted or to be contracted for under this section.

(4) *Criminal sanctions.* For penalty provisions relating to the unauthorized use and disclosure of information in violation of the provisions of this section, see section 7213(c).

(c) *Legal status of reproductions.* Section 7513 provides that any reproduction made in accordance with such section of any return, document, or other matter shall have the same legal status as the original and requires that any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding, as if it were the original, whether or not the original is in existence.

§ 301.7514 Statutory provisions; authority to prescribe or modify seals.

SEC. 7514. *Authority to prescribe or modify seals.* The Secretary or his delegate is authorized to prescribe or modify seals of office for the district directors of internal revenue and other officers or employees of the Treasury Department to whom any of the functions of the Secretary shall have been or may be delegated. Each seal so prescribed shall contain such device as the Secretary or his delegate may select. Each seal shall remain in the custody of any officer or employee whom the Secretary or his delegate may designate, and, in accordance with the regulations approved by the Secretary or his delegate, may be affixed in lieu of the seal of the Treasury Department to any certificate or attestation (except for material to be published in the FEDERAL REGISTER) that may be required of such officer or employee. Judicial notice shall be taken of any seal prescribed in accordance with this authority, a facsimile of which has been published in the FEDERAL REGISTER together with the regulations prescribing such seal and the affixation thereof.

[Sec. 7514 as added by sec. 91, Technical Amendments Act 1958 (72 Stat. 1667)]

§ 301.7514–1 Seals of office.

(a) *Establishment of seals*—(1) *Commissioner of Internal Revenue.* There is hereby established in and for the office of the Commissioner of Internal Revenue an official seal. The seal is described as follows, and illustrated below: A circle within which shall appear that

part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "Office of" and in the lower part the words "Commissioner of Internal Revenue."



(2) *District directors of internal revenue.* (i) There is hereby established an official seal in and for each of the offices of district director of internal revenue listed in subdivision (ii) of this subparagraph. The seal is described as follows, and one such seal is illustrated below: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "District Director of Internal Revenue" and in the lower part the location of the office for which the seal is established.



(ii) The offices of district director of internal revenue for which seals are established in subdivision (i) of this subparagraph are as follows:

District Director of Internal Revenue, Birmingham, Ala.
District Director of Internal Revenue, Anchorage, Alaska.
District Director of Internal Revenue, Phoenix, Ariz.
District Director of Internal Revenue, Little Rock, Ark.
District Director of Internal Revenue, Los Angeles, Calif.
District Director of Internal Revenue, San Francisco, Calif.
District Director of Internal Revenue, Denver, Colo.
District Director of Internal Revenue, Hartford, Conn.
District Director of Internal Revenue, Wilmington, Del.
District Director of Internal Revenue, Jacksonville, Fla.
District Director of Internal Revenue, Atlanta, Ga.
District Director of Internal Revenue, Honolulu, Hawaii.
District Director of Internal Revenue, Boise, Idaho.
District Director of Internal Revenue, Chicago, Ill.
District Director of Internal Revenue, Springfield, Ill.
District Director of Internal Revenue, Indianapolis, Ind.
District Director of Internal Revenue, Des Moines, Iowa.
District Director of Internal Revenue, Wichita, Kans.
District Director of Internal Revenue, Louisville, Ky.
District Director of Internal Revenue, New Orleans, La.
District Director of Internal Revenue, Augusta, Maine.
District Director of Internal Revenue, Baltimore, Md.
District Director of Internal Revenue, Boston, Mass.
District Director of Internal Revenue, Detroit, Mich.
District Director of Internal Revenue, St. Paul, Minn.
District Director of Internal Revenue, Jackson, Miss.
District Director of Internal Revenue, St. Louis, Mo.
District Director of Internal Revenue, Helena, Mont.
District Director of Internal Revenue, Omaha, Nebr.
District Director of Internal Revenue, Reno, Nev.
District Director of Internal Revenue, Portsmouth, N.H.
District Director of Internal Revenue, Newark, N.J.
District Director of Internal Revenue, Albuquerque, N. Mex.
District Director of Internal Revenue, Albany, N.Y.
District Director of Internal Revenue, Brooklyn, N.Y.
District Director of Internal Revenue, Buffalo, N.Y.
District Director of Internal Revenue, Manhattan, New York, N.Y.
District Director of Internal Revenue, Greensboro, N.C.
District Director of Internal Revenue, Fargo, N. Dak.
District Director of Internal Revenue, Cincinnati, Ohio.
District Director of Internal Revenue, Cleveland, Ohio.
District Director of Internal Revenue, Oklahoma City, Okla.
District Director of Internal Revenue, Portland, Oreg.
District Director of Internal Revenue, Philadelphia, Pa.
District Director of Internal Revenue, Pittsburgh, Pa.
District Director of Internal Revenue, Providence, R.I.
District Director of Internal Revenue, Columbia, S.C.
District Director of Internal Revenue, Aberdeen, S. Dak.
District Director of Internal Revenue, Nashville, Tenn.
District Director of Internal Revenue, Austin, Tex.
District Director of Internal Revenue, Dallas, Tex.
District Director of Internal Revenue, Salt Lake City, Utah.
District Director of Internal Revenue, Richmond, Va.
District Director of Internal Revenue, Burlington, Vt.
District Director of Internal Revenue, Seattle, Wash.
District Director of Internal Revenue, Parkersburg, W. Va.
District Director of Internal Revenue, Milwaukee, Wis.
District Director of Internal Revenue, Cheyenne, Wyo.

(3) *Director of International Operations.* There is hereby established in and for the office of the Director of International Operations an official seal. The seal is described as follows, and illustrated below: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "Director of International Operations" and in the lower part "Washington, D.C., Internal Revenue Service."



(4) *Regional commissioners of internal revenue.* (i) There is hereby established an official seal in and for each of the offices of regional commissioner of internal revenue listed in subdivision (ii) of this subparagraph. The seal is described as follows, and one such seal is illustrated below: A circle within which



shall appear that part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "Regional Commissioner of Internal Revenue" and in the lower part the title of the region for which the seal is established.

(ii) The offices of the regional commissioner of internal revenue for which seals are established in subdivision (i) of this subparagraph are as follows:

Regional Commissioner of Internal Revenue, Central Region.
Regional Commissioner of Internal Revenue, Mid-Atlantic Region.
Regional Commissioner of Internal Revenue, Midwest Region.
Regional Commissioner of Internal Revenue, North-Atlantic Region.
Regional Commissioner of Internal Revenue, Southeast Region.
Regional Commissioner of Internal Revenue, Southwest Region.
Regional Commissioner of Internal Revenue, Western Region.

(5) *Directors of internal revenue service centers.* (i) There is hereby established an official seal in and for each of the offices of director of internal revenue service center listed in subdivision (ii) of this subparagraph. The seal is described as follows, and one such seal is illustrated below: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "Director, Internal Revenue Service Center" and in the lower part the name of the region and the name of the principal city in or near which the service center is located.



(ii) The offices of director of internal revenue service center for which seals are established in subdivision (i) of this subparagraph are as follows:

Director, Internal Revenue Service Center, Central Region, Cincinnati, Ohio.
Director, Internal Revenue Service Center, Mid-Atlantic Region, Philadelphia, Pa.
Director, Internal Revenue Service Center, Midwest Region, Kansas City, Mo.
Director, Internal Revenue Service Center, North-Atlantic Region, Lawrence, Mass.
Director, Internal Revenue Service Center, Southeast Region, Chamblee, Ga.
Director, Internal Revenue Service Center, Southwest Region, Austin, Tex.
Director, Internal Revenue Service Center, Western Region, Ogden, Utah.

(b) *Custody of seal.* Each seal established by this section shall be in the custody of the officer for whose office such seal is established.

(c) *Use of official seal.* Each seal of office established by this section may be affixed in lieu of the seal of the Treasury Department to any certificate or attestation required to be made by the officer for whose office such seal is established in authentication of originals and copies of books, records, papers, writings, and documents of the Internal Revenue Service in the custody of such officer, for all purposes, including the purposes of 28 U.S.C. 1733(b), Rule 44 of the Federal Rules of Civil Procedure, and Rule 27 of the Federal Rules of Criminal Procedure, except that—

(1) No such seal shall be affixed to material to be published in the FEDERAL REGISTER, and

(2) The seal of the office of a district director of internal revenue or the Director of International Operations shall not be affixed to the certification of copies of books, records, papers, writings, or documents in his custody in any case in which, pursuant to Executive order, Treasury decision, or Part 601 of this chapter (Statement of Procedural Rules), such copies may be furnished to applicants only by the Commissioner.

(d) *Judicial notice.* In accordance with the provisions of section 7514, judicial notice shall be taken of the seals established under this section.

§ 301.7515 Statutory provisions; special statistical studies and compilations and other services on request.

SEC. 7515. *Special statistical studies and compilations and other services on request.* The Secretary or his delegate is authorized within his discretion, upon written request, to make special statistical studies and compilations involving data from any returns, declarations, statements, or other documents required by this title or by regulations or from any records established or maintained in connection with the administration and enforcement of this title, to engage in any such special study or compilation jointly with the party or parties requesting it, and to furnish transcripts of any such special study or compilation, upon the payment, by the party or parties making the request, of the cost of the work or services performed for such party or parties.

[Sec. 7515 as added by sec. 3(a), Act of Oct. 23, 1962 (Pub. Law 87-870, 76 Stat. 1160)]

§ 301.7515–1 Special statistical studies and compilations on request.

The Commissioner is authorized within his discretion, upon written request of any person and payment by such person of the cost of the work to be performed, to make special statistical studies and compilations involving data from returns, declarations, statements, or other documents required by the Code or regulations or from records established or maintained in connection with the administration and enforcement of the Code; to engage in any such special study or compilation jointly with the party or parties requesting it; and to furnish transcripts of any such study or compilation. The requests for services should be addressed to the Commissioner of Internal Revenue, Attention: PR, Washington, D.C. 20224. The requests should describe fully the nature of the study or compilation desired, giving detailed specifications for all tables to be prepared, and should include a general statement regarding the use to be made of the data requested.

§ 301.7516 Statutory provisions; supplying training and training aids on request.

SEC. 7516. *Supplying training and training aids on request.* The Secretary or his delegate is authorized within his discretion, upon written request, to admit employees and officials of any State, the Commonwealth of Puerto Rico, any possession of the United States, any political subdivision or instrumentality of any of the foregoing, the District of Columbia, or any foreign government to training courses conducted by the Internal Revenue Service, and to supply them with texts and other training aids. The Secretary or his delegate may require payment from the party or parties making the request of a reasonable fee not to exceed the cost of the training and training aids supplied pursuant to such request.

[Sec. 7516 as added by sec. 3(a), Act of Oct. 23, 1962 (Pub. Law 87-870, 76 Stat. 1160)]

§ 301.7516–1 Training and training aids on request.

The Commissioner is authorized, within his discretion, upon written request, to admit employees and officials of any State, the Commonwealth of Puerto Rico, any possession of the United States, any political subdivision or instrumentality of any of the foregoing, the District of Columbia, or any foreign government to training courses conducted by the Internal Revenue Service, and to supply them with texts and other training aids. Requests for such training or training aids should be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224, Attention: A:T, except that requests involving officials or visitors of foreign governments should be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224, Attention: C:FA. The Commissioner may require payment from the party or parties making the request of a reasonable fee not to exceed the cost of the training and training aids supplied pursuant to such request.

Discovery of Liability and Enforcement of Title

EXAMINATION AND INSPECTION

§ 301.7601 Statutory provisions; canvass of districts for taxable persons and objects.

SEC. 7601. *Canvass of districts for taxable persons and objects*—(a) *General rule.* The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax,

and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

(b) *Penalties.* For penalties applicable to forcible obstruction or hindrance of Treasury officers or employees in the performance of their duties, see section 7212.

§ 301.7601–1 Canvass of districts for taxable persons and objects.

Each district director shall, to the extent he deems it practicable, cause officers or employees under his supervision and control to proceed, from time to time, through his district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owing or having the care and management of any objects with respect to which any tax is imposed. Each assistant regional commissioner (alcohol and tobacco tax) shall, to the extent he deems it practicable, cause officers or employees under his supervision and control to make similar inquiries in respect of taxes imposed under subtitle E of the Code.

§ 301.7602 Statutory provisions; examination of books and witnesses.

SEC. 7602. *Examination of books and witnesses.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

§ 301.7602–1 Examination of books and witnesses.

(a) *In general.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, any authorized officer or employee of the Internal Revenue Service may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

(b) *Summons.* For the purposes described in paragraph (a) of this section the officers and employees of the Internal Revenue Service designated in paragraph (c) of this section are authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper, to appear before a designated officer or employee of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. The officers and employees designated in paragraph (c) of this section may designate any other employee of the Internal Revenue Service as the individual before whom a person summoned pursuant to section 6420(e)(2), 6421(f)(2), or 7602 shall appear. Any such other employee, when so designated in a summons, is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons. The authority to issue a summons may not be redelegated.

(c) *Persons who may issue summons.* The following officers and employees of the Internal Revenue Service are authorized to issue a summons pursuant to sections 6420(e)(2), 6421(f)(2), and 7602—

(1) Regional commissioners and district directors.

(2) Inspection: Assistant Commissioner; director and assistant directors, Internal Security Division; regional inspectors; and all internal security inspectors.

(3) Alcohol and Tobacco Tax: Assistant regional commissioners.

(4) Intelligence: Director; assistant director; assistant regional commissioners; executive assistants to assistant regional commissioner; chiefs, Review and Conference Staff; reviewer-conferees; chiefs and assistant chiefs of divisions, branches and sections; group supervisors; and special agents of the national, regional and district officers.

(5) International Operations: Director; assistant director; chiefs of divisions, branches, and groups; special agents; internal revenue agents; estate tax examiners; revenue service representatives; and assistant revenue service representatives.

(6) Collection: Chiefs and assistant chiefs of divisions; chiefs and assistant chiefs of the Delinquent Accounts and Returns Branches; group supervisors; and revenue officers.

(7) Audit: Chiefs of divisions and branches; group supervisors; internal revenue agents; and estate tax examiners.

§ 301.7603 Statutory provisions; service of summons.

SEC. 7603. *Service of Summons.* A summons issued under section 6420(e)(2), 6421(f)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

[Sec. 7603 as amended by sec. 4(1), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(d)(4), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.7603–1 Service of summons.

(a) *In general.* A summons issued under section 6420(e)(2), 6421(f)(2), or 7602 shall be served by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode. The cerificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) *Persons who may serve summons.* The following officers and employees of the Internal Revenue Service are authorized to serve a summons issued under section 6420(e)(2), 6421(f)(2), or 7602—

(1) The officers and employees designated in paragraph (c) of § 301.7602–1, and

(2) Alcohol and Tobacco Tax: Chiefs; aides to chiefs; supervisors in charge; assistant supervisors in charge; investigators; special investigators; and inspectors.

The authority to serve a summons may be redelegated only by the Assistant Commissioner (Inspection), regional commissioners, assistant regional commissioners (alcohol and tobacco tax), district directors, and the Director of International Operations to officers and employees under their jurisdiction.

§ 301.7604 Statutory provisions; enforcement of summons.

SEC. 7604. *Enforcement of summons.*—(a) *Jurisdiction of district court.* If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the U.S. district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) *Enforcement.* Whenever any person summoned under section 6420(e)(2), 6421(f)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary or his delegate may apply to the judge of the district court or to a U.S. commissioner for the district within which the person so summoned

resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the U.S. commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) *Cross references*—(1) *Authority to issue orders, processes, and judgments.* For authority of district courts generally to enforce the provisions of this title, see section 7402.

(2) *Penalties.* For penalties applicable to violation of section 6420(e)(2), 6421(f)(2), or 7602, see section 7210.

[Sec. 7604 as amended by sec. 4(i), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(d)(4), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.7604–1 Enforcement of summons.

(a) *In general.* Whenever any person summoned under section 6420(e)(2), 6421(f)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, application may be made to the judge of the district court or to a U.S. commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt.

(b) *Persons who may apply for an attachment.* The officers and employees of the Internal Revenue Service designated in paragraph (b) of § 301.7603–1 are authorized to apply for an attachment as provided in paragraph (a) of this section. The authority to apply for an attachment for the enforcement of a summons may not be redelegated.

§ 301.7605 Statutory provisions; time and place of examination.

SEC. 7605. *Time and place of examination*—(a) *Time and place.* The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(f)(2), or 7602 shall be such time and place as may be fixed by the Secretary or his delegate and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2) or 6421(f)(2), the date fixed for appearance before the Secretary or his delegate shall not be less than 10 days from the date of the summons.

(b) *Restrictions on examination of taxpayer.* No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary or his delegate, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

[Sec. 7605 as amended by sec. 4(i), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(d)(4), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.7605–1 Time and place of examination.

(a) *Time and place.* The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(f)(2), or 7602 shall be such time and place as may be fixed by an officer or employee of the Internal Revenue Service and as are reasonable under the circumstances. In the case of a summons under authority of section 7602(2) and § 301.7602–1, or under the corresponding authority of section 6420(e)(2) or 6421(f)(2), the date fixed for appearance before an officer or employee of the Service, shall not be less than 10 days from the date of the summons.

(b) *Restrictions on examination of taxpayer.* No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless an authorized internal revenue officer, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

§ 301.7606 Statutory provisions; entry of premises for examination of taxable objects.

SEC. 7606. *Entry of premises for examination of taxable objects*—(a) *Entry during day.* The Secretary or his delegate may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.

(b) *Entry at night.* When such premises are open at night, the Secretary or his delegate may enter them while so open, in the performance of his official duties.

(c) *Penalties.* For penalty for refusal to permit entry or examination, see section 7342.

§ 301.7606–1 Entry of premises for examination of taxable objects.

Any officer or employee of the Internal Revenue Service may, in the performance of his duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose. For additional provisions relating to entry of premises in connection with the administration of alcohol taxes, see sections 5146, 5203, and 5275.

§ 301.7607 Statutory provisions; additional authority for Bureau of Narcotics and Bureau of Customs.

SEC. 7607. *Additional authority for Bureau of Narcotics and Bureau of Customs.* The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents, of the Bureau of Narcotics of the Department of the Treasury, and officers of the customs (as defined in section 401(*l*) of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1401(*l*), may—

(1) Carry firearms, execute and serve search warrants and arrest warrants, and serve subpenas and summonses issued under the authority of the United States, and

(2) Make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

[Sec. 7607 as added by sec. 104(a), Narcotic Control Act 1956 (70 Stat. 570)]

§ 301.7608 Statutory provisions; authority of internal revenue enforcement officers.

SEC. 7608. *Authority of internal revenue enforcement officers.* Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary or his delegate charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary or his delegate is responsible, may—

(1) Carry firearms;

(2) Execute and serve search warrants and arrest warrants, and serve subpenas and summonses issued under authority of the United States;

(3) In respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4) In respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

[Sec. 7608 as added by sec. 204(14), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7608–1 Authority of internal revenue enforcement officers.

Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Commissioner, Assistant Commissioner (Operations), Director, Alcohol and Tobacco Tax Division, regional commissioner, or assistant regional commissioner (alcohol and tobacco tax) charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E of the Code or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which such officers are responsible, may perform the functions provided in section 7608.

§ 301.7609 Statutory provisions; cross references.

SEC. 7609. *Cross references*—(a) *Inspection of books, papers, records, or other data.* For inspection of books, papers, records, or other data in the case of—

(1) Wholesale dealers in oleomargarine, see section 4597.

(2) Wholesale dealers in process or renovated butter or adulterated butter, see section 4815(b).

(3) Opium, opiates, and coca leaves, see section 4702(a), 4705, 4721, 4773.

(4) Marihuana, see sections 4742, 4753(b), and 4773.

(5) Wagering, see section 4423.

(6) Alcohol, tobacco, and firearms taxes, see subtitle E.

(b) *Search warrants.* For provisions relating to—

(1) Searches and seizures, see Rule 41 of the Federal Rules of Criminal Procedure.

(2) Issuance of search warrants with respect to subtitle E, see section 5557.

(3) Search warrants with respect to property used in violation of the internal revenue laws, see section 7302.

[Sec. 7607 as renumbered by sec. 104(a), Narcotic Control Act 1956 (70 Stat. 570); and as renumbered and amended by sec. 204(14), (15), Excise Tax Technical Changes Act 1958 (72 Stat. 1429, 1430)]

GENERAL POWERS AND DUTIES

§ 301.7621 Statutory provisions; internal revenue districts.

SEC. 7621. *Internal revenue districts*—(a) *Establishment and alteration.* The President shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.

(b) *Boundaries.* For the purpose mentioned in subsection (a), the President may subdivide any State, Territory, or the District of Columbia, or may unite into one district two or more States or a Territory and one or more States.

[Sec. 7621 as amended by sec. 22(e), Alaska Omnibus Act (73 Stat. 146)]

§ 301.7621–1 Internal revenue districts.

For delegation to the Secretary of authority to prescribe internal revenue districts for the purpose of administering the internal revenue laws, see Executive Order No. 10289, dated September 17, 1951 (16 F.R. 9499), as made applicable to the Code by Executive Order No. 10574, dated November 5, 1954 (19 F.R. 7249).

§ 301.7622 Statutory provisions; authority to administer oaths and certify.

SEC. 7622. *Authority to administer oaths and certify*—(a) *Internal revenue personnel.* Every officer or employee of the Treasury Department designated by the Secretary or his delegate for that purpose is authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations made thereunder.

(b) *Others.* Any oath or affirmation required or authorized under any internal revenue law or under any regulations made thereunder may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

§ 301.7622–1 Authority to administer oaths and certify.

The officers and employees of the Internal Revenue Service designated in paragraph (b) of § 301.7603–1 and the directors of the regional service centers are authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations issued thereunder, except that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive. The authority to administer oaths and to certify may be redelegated only by the Assistant Commissioner (Inspection), regional commissioners, assistant regional commissioners (alcohol and tobacco tax), assistant regional commissioners (intelligence), district directors, directors of regional service centers, and the Director of International Operations, to officers and employees under their jurisdiction.

§ 301.7623 Statutory provisions; expenses of detection and punishment of frauds.

SEC. 7623. *Expenses of detection and punishment of frauds.* The Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.

§ 301.7623–1 Rewards for information relating to violations of internal revenue laws.

(a) *In general.* A district director may approve such reward as he deems suitable for information that leads to the detection and punishment of any person guilty of violating any internal revenue law, or conniving at the same. The rewards provided for by section 7623 are limited in their aggregate to the sum appropriated therefor and shall be paid only in cases not otherwise provided for by law.

(b) *Eligibility to file claim for reward*—(1) *In general.* Any person, other than certain present or former federal employees (see subparagraph (2) of this paragraph), who submits, in the manner set forth in paragraph (d) of this section, information relating to the violation of an internal revenue law is eligible to file a claim for reward under section 7623.

(2) *Federal employees.* No person who was an officer or employee of the Department of the Treasury at the time he came into possession of information relating to violations of the internal revenue laws, or at the time he divulged such information, shall be eligible for reward under section 7623 and this section. Any other federal employee, or former federal employee, is eligible to file a claim for reward if the information submitted came to his knowledge other than in the course of his official duties.

(3) *Deceased informants.* A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to his death, the informant was eligible to file a claim for such reward under section 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to such a claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim for reward.

(c) *Amount and payment of reward.* All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, shall be taken into account by a district director in determining whether a reward shall be paid, and, if so, the amount thereof. The amount of a reward shall represent what the district director deems to be adequate compensation in the particular case, normally not to exceed 10 percent of the additional taxes, penalties, and fines which are recovered as a result of the information. No reward, however, shall be paid with respect to any additional interest that may be collected. Payment of a reward will be made as promptly as the circumstances of the case permit, but generally not until the taxes, penalties, or fines involved have been collected. However, the informant may waive any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, in which case the claim may be immediately processed. No person is authorized under these regulations to make any offer, or promise, or otherwise to bind a district director with respect to the payment of any reward or the amount thereof.

(d) *Submission of information.* Persons desiring to claim rewards under the provisions of section 7623 and this section may submit information relating to violations of the internal revenue laws, in person, to the Office of the Director of the Intelligence Division, Washington 25, D.C., or to the office of a district director, preferably to a representative of the Intelligence Division thereof. Such information may also be submitted in writing to the Commissioner of Internal Revenue, Attention: Director, Intelligence Division, Washington 25, D.C., or to any district director, Attention: Chief, Intelligence Division. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) *Anonymity.* No unauthorized person shall be advised of the identity of an informant.

(f) *Filing claim for reward.* An informant who intends to claim a reward under section 7623 should notify the person to whom he submits his information of such intention, and must file a formal claim, signed with his true name, as soon after submission of the information as practicable. If other than the informant's true name was used in furnishing the information, the claimant must include with his claim satisfactory proof of his identity as that of the informant. Claim for reward under the provisions of section 7623 shall be made on Form 211, which may be obtained from the offices of the district directors, or from the Commissioner of Internal Revenue, Washington 25, D.C. A claim for reward should be transmitted to the district director, Attention: Informant's Claim Examiner, or to the Commissioner of Internal Revenue, Attention: Director, Intelligence Division, Washington 25, D.C.

(g) *Claims involving Alcohol and Tobacco Tax Division.* Rewards for information leading to the detection and punishment of persons guilty of violating the internal revenue laws administered

by the Alcohol and Tobacco Tax Division shall be handled consistently with the provisions of this section, except that—

(1) Assistant regional commissioners (alcohol and tobacco tax), under the direction and supervision of the regional commissioners, shall perform all functions delegated to district directors by these regulations, and

(2) The Director, Alcohol and Tobacco Tax Division, Washington 25, D.C., shall perform all functions delegated to the Director, Intelligence Division, Washington 25, D.C., by these regulations.

SUPERVISION OF OPERATIONS OF CERTAIN MANUFACTURERS

§ 301.7641 Statutory provisions; supervision of operations of certain manufacturers.

SEC. 7641. *Supervision of operations of certain manufacturers.* Every manufacturer of filled cheese, oleomargarine, opium suitable for smoking purposes, process or renovated butter or adulterated butter, or white phosphorous matches shall conduct his business under such surveillance of officers or employees of the Treasury Department as the Secretary or his delegate may by regulations require.

§ 301.7641–1 Supervision of operations of certain manufacturers.

For regulations under section 7641, except the provisions thereof relating to the manufacture of opium suitable for smoking purposes, see Subparts E, F, G, and H of Part 45 of this chapter (Miscellaneous Stamp Tax Regulations). For regulations relating to the manufacture of opium suitable for smoking purposes, see 26 CFR (1939) 150 (Narcotics Regulations 3, 3 F.R. 1402) as made applicable to section 7641 by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167).

POSSESSIONS

§ 301.7651 Statutory provisions; administration and collection of taxes in possessions.

SEC. 7651. *Administration and collection of taxes in possessions.* Except as otherwise provided in this subchapter and in sections 4705(b), 4735, and 4762 (relating to taxes on narcotic drugs and marihuana), and except as otherwise provided in section 28(a) of the Revised Organic Act of the Virgin Islands and section 30 of the Organic Act of Guam (relating to the covering of the proceeds of certain taxes into the treasuries of the Virgin Islands and Guam, respectively)—

(1) *Applicability of administrative provisions.* All provisions of the laws of the United States applicable to the assessment and collection of any tax imposed by this title or of any other liability arising under this title (including penalties) shall, in respect of such tax or liability, extend to and be applicable in any possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(2) *Tax imposed in possession.* In the case of any tax which is imposed by this title in any possession of the United States—

(A) *Internal revenue collections.* Such tax shall be collected under the direction of the Secretary or his delegate, and shall be paid into the Treasury of the United States as internal revenue collections; and

(B) *Applicable laws.* All provisions of the laws of the United States applicable to the administration, collection, and enforcement of such tax (including penalties) shall, in respect of such tax, extend to and be applicable in such possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(3) *Other laws relating to possessions.* This section shall apply notwithstanding any other provision of law relating to any possession of the United States.

(4) *Canal Zone.* For purposes of this section, the term "possession of the United States" includes the Canal Zone.

(5) *Virgin Islands*—(A) For purposes of this section, the reference in section 28(a) of the Revised Organic Act of the Virgin Islands to "any tax specified in section 3811 of the Internal Revenue Code" shall be deemed to refer to any tax imposed by chapter 2 or by chapter 21.

(B) For purposes of this title, section 28 (a) of the Revised Organic Act of the Virgin Islands shall be effective as if such section had been enacted subsequent to the enactment of this title.

§ 301.7652 Statutory provisions; shipments to the United States.

SEC. 7652. *Shipments to the United States*—(a) *Puerto Rico*—(1) *Rate of tax.* Except as provided in section 5314, articles of merchandise of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale shall be subject to a tax equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture.

(2) *Payment of tax.* The Secretary or his delegate shall by regulations prescribe the mode and time for payment and collection of the tax described in paragraph (1), including any discretionary method described in section 6302 (b) and (c). Such regulations shall authorize the payment of such tax before shipment from Puerto Rico, and the provisions of section 7651(2)(B) shall be applicable to the payment and collection of such tax in Puerto Rico.

(3) *Deposit of internal revenue collections.* All taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States, or consumed in the island, shall be covered into the treasury of Puerto Rico.

(b) *Virgin Islands*—(1) *Taxes imposed in the United States.* Except as provided in section 5314, there shall be imposed in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal revenue tax imposed in the United States upon like articles of domestic manufacture.

(2) *Exemption from tax imposed in the Virgin Islands.* Such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of such islands.

(3) *Disposition of internal revenue collections.* Beginning with the fiscal year ending June 30, 1954, and annually thereafter, the Secretary or his delegate shall determine the amount of all taxes imposed by, and collected during the fiscal year under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. The amount so determined less 1 percent and less the estimated amount of refunds or credits shall be subject to disposition as follows:

(A) There shall be transferred and paid over to the government of the Virgin Islands from the amounts so determined a sum equal to the total amount of the revenue collected by the government of the Virgin Islands during the fiscal year, as certified by the Government Comptroller of the Virgin Islands. The moneys so transferred and paid over shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine: *Provided*, That the approval of the President or his designated representative shall be obtained before such moneys may be obligated or expended.

(B) There shall also be transferred and paid over to the government of the Virgin Islands during each of the fiscal years ending June 30, 1955, and June 30, 1956, the sum of $1 million or the balance of the internal revenue collections available under this paragraph (3) after payments are made under subparagraph (A), whichever amount is greater. The moneys so transferred and paid over shall be deposited in the separate fund established by subparagraph (A), but shall be obligated or expended for emergency purposes and essential public projects only, with the prior approval of the President or his designated representative.

(C) Any amounts remaining shall be deposited in the Treasury of the United States as miscellaneous receipts.

If at the end of any fiscal year the total of the Federal contribution made under subparagraph (A) at the beginning of that fiscal year has not been obligated or expended for an approved purpose, the balance shall continue available for expenditure during any succeeding fiscal year, but only for approved emergency relief purposes and essential public projects as provided in subparagraph (B). The aggregate amount of moneys available for expenditure for emergency relief purposes and essential public projects only, including payments under subparagraph (B), shall not exceed the sum of $5 million at the end of any fiscal year. Any unobligated or unexpended balance of the Federal contribution remaining at the end of a fiscal year which would cause the moneys available for emergency relief purposes and essential public projects only to exceed the sum of $5 million shall thereupon be transferred and paid over to the Treasury of the United States as miscellaneous receipts.

[Sec. 7652 as amended by sec. 204 (17), (18), Excise Tax Technical Changes Act 1958 (72 Stat. 1430)]

§ 301.7652–1 Shipments to the United States.

For regulations under section 7652, see Part 179 of this chapter, relating to machine guns and certain other firearms; Part 250 of this chapter, relating to liquors and articles from Puerto Rico and the Virgin Islands; Part 280 of this chapter, relating to dealers in tobacco materials; Part 285 of this chapter, relating to cigarette papers and tubes; and Part 296 of this chapter, relating to tobacco products.

§ 301.7653 Statutory provisions; shipments from the United States.

SEC. 7653. *Shipments from the United States*—(a) *Tax imposed*—(1) *Puerto Rico.* All articles of merchandise of U.S. manufacture coming into Puerto Rico shall be entered at the port of entry upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Puerto Rico upon the like articles of Puerto Rican manufacture.

(2) *Virgin Islands.* There shall be imposed in the Virgin Islands upon articles imported from the United States a tax equal to the internal revenue tax imposed in such islands upon like articles there manufactured.

(b) *Exemption from tax imposed in the United States.* Articles, goods, wares, or merchandise going into Puerto Rico, the Virgin Islands, Guam, and American Samoa from the United States shall be exempted from the payment of any tax imposed by the internal revenue laws of the United States.

(c) *Drawback of tax paid in the United States.* All provisions of law for the allowance of drawback of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(d) *Cross reference.* For the disposition of the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in Guam and transported into the United States or its possessions, or consumed in Guam, see the Act of August 1, 1950 (c. 512, 64 Stat. 392, section 30; 48 U.S.C. 1421h).

[Sec. 7653 as amended by sec. 22(f), Alaska Omnibus Act (73 Stat. 146); sec. 18(h), Hawaii Omnibus Act (74 Stat. 416)]

§ 301.7653–1 Shipments from the United States.

For regulations under section 7653, see Part 179 of this chapter, relating to machine guns and certain other firearms; Part 196 of this chapter, relating to stills; Part 252 of this chapter, relating to exportation of liquors; Part 285 of this chapter, relating to cigarette papers and tubes; and Part 290 of this chapter, relating to the withdrawal of tobacco materials, tobacco products, and cigarette papers and tubes.

§ 301.7654 Statutory provisions; payment to Guam and American Samoa of proceeds of tax on coconut and palm oil.

SEC. 7654. *Payment to Guam and American Samoa of proceeds of tax on coconut and palm oil.* All taxes collected under subchapter B of chapter 37 with respect to coconut oil wholly of the production of Guam or American Samoa, or produced from materials wholly of the growth or production of Guam or American Samoa, shall be held as separate funds and paid to the treasury of Guam or American Samoa, respectively. No part of the money from such funds shall be used, directly or indirectly, to pay a subsidy to the producers or processors of copra, coconut oil, or allied products, except that this sentence shall not be construed as prohibiting the use of such money, in accordance with regulations prescribed by the Secretary or his delegate, for the acquisition or construction of facilities for the better curing of copra or for bona fide loans to copra producers of Guam or American Samoa.

§ 301.7655 Statutory provisions; cross references.

SEC. 7655. *Cross references*—(a) *Imposition of tax in possessions.* For provisions imposing tax in possessions, see—

(1) Chapter 2, relating to self-employment tax;

(2) Chapter 21, relating to the tax under the Federal Insurance Contributions Act;

(3) Parts I and III of subchapter A of chapter 39, relating to taxes in respect of narcotic drugs;

(4) Parts II and III of subchapter A of chapter 39, relating to taxes in respect of marihuana;

(5) Subchapter A of chapter 37, relating to tax on sugar.

(b) *Other provisions.* For other provisions relating to possessions of the United States, see—

(1) Section 933, relating to income tax on residents of Puerto Rico;

(2) Section 6418(b), relating to exportation of sugar to Puerto Rico.

[Sec. 7655 as amended by sec. 204(19), Excise Tax Technical Changes Act 1958 (72 Stat. 1430)]

Definitions

§ 301.7701 Statutory provisions; definitions.

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) *Person.* The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) *Partnership and partner.* The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) *Domestic.* The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or any State or Territory.

(5) *Foreign.* The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) *Fiduciary.* The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) *Stock.* The term "stock" includes shares in an association, joint-stock company, or insurance company.

(8) *Shareholder.* The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) *United States.* The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) *State.* The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) *Secretary.* The term "Secretary" means the Secretary of the Treasury.

(12) *Delegate.*—(A) *In general.* The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(B) *Performance of certain functions in Guam or American Samoa.* The term "delegate", in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 2 and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue.

(14) *Taxpayer.* The term "taxpayer" means any person subject to any internal revenue tax.

(15) *Military or naval forces and Armed Forces of the United States.* The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) *Withholding agent.* The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, 1451, or 1461.

(17) *Husband and wife.* As used in sections 71, 152(b)(4), 215, and 682, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband".

(18) *International organization.* The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f).

(19) *Domestic building and loan association.* The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) Which either (i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or (ii) is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B) Substantially all of the business of which consists of acquiring the savings of the public and investing in loans described in subparagraph (C);

(C) At least 90 percent of the amount of the total assets of which (as of the close of the taxable year) consists of (i) cash, (ii) obligations of the United States or of a State or political subdivision thereof, stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, and certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations, (iii) loans secured by an interest in real property and loans made for the improvement of real property, (iv) loans secured by a deposit or share of a member, (v) property acquired through the liquidation of defaulted loans described in clause (iii), and (vi) property used by the association in the conduct of the business described in subparagraph (B);

(D) Of the assets of which taken into account under subparagraph (C) as assets constituting the 90 percent of total assets—

(i) At least 80 percent of the amount of such assets consists of assets described in

clauses (i), (ii), (iv), and (vi) of such subparagraph and of loans secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, or property acquired through the liquidation of defaulted loans described in this clause; and

(ii) At least 60 percent of the amount of such assets consists of assets described in clauses (i), (ii), (iv), and (vi) of such subparagraph and of loans secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property containing 4 or fewer family units or real property used primarily for church purposes, loans made for the improvement of residential real property containing 4 or fewer family units or real property used primarily for church purposes, or property acquired through the liquidation of defaulted loans described in this clause;

(E) Not more than 18 percent of the amount of the total assets of which (as of the close of the taxable year) consists of assets other than those described in clause (i) of subparagraph (D), and not more than 36 percent of the amount of the total assets of which (as of the close of the taxable year) consists of assets other than those described in clause (ii) of subparagraph (D); and

(F) Except for property described in subparagraph (C), not more than 3 percent of the assets of which consists of stock of any corporation.

The term "domestic building and loan association" also includes any association which, for the taxable year, would satisfy the requirements of the first sentence of this paragraph if "41 percent" were substituted for "36 percent" in subparagraph (E). Except in the case of the taxpayer's first taxable year beginning after the date of the enactment of the Revenue Act of 1962, the second sentence of this paragraph shall not apply to an association for the taxable year unless such association (i) was a domestic building and loan association within the meaning of the first sentence of this paragraph for the first taxable year preceding the taxable year, or (ii) was a domestic building and loan association solely by reason of the second sentence of this paragraph for the first taxable year preceding the taxable year (but not for the second preceding taxable year). At the election of the taxpayer, the percentages specified in this paragraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary or his delegate.

(20) *Employee.* For the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, for the purpose of applying the provisions of section 101(b) with respect to employees' death benefits, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(21) *Levy.* The term "levy" includes the power of distraint and seizure by any means.

(22) *Attorney General.* The term "Attorney General" means the Attorney General of the United States.

(23) *Taxable year.* The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary or his delegate, the period for which such return is made.

(24) *Fiscal year.* The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

(25) *Paid or incurred, paid or accrued.* The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) *Trade or business.* The term "trade or business" includes the performance of the functions of a public office.

(27) *Tax Court.* The term "Tax Court" means the Tax Court of the United States.

(28) *Other terms.* Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) *Internal Revenue Code.* The term "Internal Revenue Code of 1954" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(30 (31) [Reserved]

(32) *Cooperative bank.* The term "cooperative bank" means an institution without capital stock organized and operated for mutual purposes and without profit, which—

(A) Either—

(i) Is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or

(ii) Is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B) Meets the requirements of subparagraphs (B), (C), (D), (E), and (F) of paragraph (19) of this subsection (relating to definition of domestic building and loan association) determined with the application of the second, third, and fourth sentences of paragraph (19).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution. In the case of an institution which, for the taxable year, is a cooperative bank within the meaning of the first sentence of this paragraph by reason of the application of the second and third sentences of paragraph (19) of this subsection, the deduction otherwise allowable under section 166(c) for a reasonable addition to the reserve for bad debts shall, under regulations prescribed by the Secretary or his delegate, be reduced in a manner consistent with the reductions provided by the table contained in section 593(b)(5).

(b) *Includes and including.* The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) *Commonwealth of Puerto Rico.* Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(d) *Cross references*—(1) *Other definitions.* For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.
(2) Plural as including singular, section 1.
(3) Masculine as including feminine, section 1.
(4) Officer, section 1.
(5) Oath as including affirmation, section 1.
(6) County as including parish, section 2.
(7) Vessel as including all means of water transportation, section 3.
(8) Vehicle as including all means of land transportation, section 4.
(9) Company or association as including successors and assigns, section 5.

(2) *Effect of cross references.* For effect of cross references in this title, see section 7806(a).

[Sec. 7701, as amended by sec. 22 (g), (h), Alaska Omnibus Act (73 Stat. 146, 147); sec. 18 (i), (j), Hawaii Omnibus Act (74 Stat. 416); sec. 103(t), Social Security Amendments 1960 (74 Stat. 941); sec. 6(c), Rev. Act 1962 (76 Stat. 982); sec. 5, Act of Oct. 23, 1962 (Pub. Law 87-870, 76 Stat. 1161)]

§ 301.7701–1 Classification of organizations for tax purposes.

(a) *Person.* The term "person" includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group. Such term also includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(b) *Standards.* The Internal Revenue Code prescribes certain categories, or classes, into which various organizations fall for purposes of taxation. These categories, or classes, include associations (which are taxable as corporations), partnerships, and trusts. The tests, or standards, which are to be applied in determining the classification in which an organization belongs (whether it is an association, a partnership, a trust, or other taxable entity) are determined under the Internal Revenue Code. Sections 301.7701–2 to 301.7701–4 set forth these tests, or standards, which are to be applied in determining whether an organization is (1) an association (see § 301.7701–2), (2) a partnership (see § 301.7701–3), or (3) a trust (see § 301.7701–4).

(c) *Effect of local law.* As indicated in paragraph (b) of this section, the classes into which organizations are to be placed for purposes of taxation are determined under the Internal Revenue Code. Thus, a particular organization might be classified as a trust under the law of one State and a corporation under the law of another State. However, for purposes of the Internal Revenue Code, this organization would be uniformly classed as a trust, an association (and, therefore, taxable as a corporation), or some other entity, depending upon its nature under the classification standards of the Internal Revenue Code. Similarly, the term "partnership" is not limited to the common-law meaning of partnership, but is broader in its scope and includes groups not commonly called part-

nerships. See § 1.761–1 of this chapter (Income Tax Regulations) and § 301.7701–3. The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, and an insurance company. Although it is the Internal Revenue Code rather than local law which establishes the tests or standards which will be applied in determining the classification in which an organization belongs, local law governs in determining whether the legal relationships which have been established in the formation of an organization are such that the standards are met. Thus, it is local law which must be applied in determining such matters as the legal relationships of the members of the organization among themselves and with the public at large, and the interests of the members of the organization in its assets. Nevertheless, the labels applied by local law to organizations, which may now or hereafter be authorized by local law, are in and of themselves of no importance in the classification of such organizations for the purposes of taxation under the Internal Revenue Code. Thus, a professional service organization, formed under the law of a State authorizing the formation by one or more persons of a so-called professional service corporation, would not be classified for purposes of taxation as a "corporation" merely because the organization was so labeled under local law. See Morrissey et al. v. Commissioner, 296 U.S. 344 (1935). The classification in which a professional service organization belongs is determined under the tests and standards set forth in §§ 301.7701–2, 301.7701–3, and 301.7701–4.

§ 301.7701–2 Associations, including organizations labeled "corporations."

(a) *Characteristics of corporations.* (1) The term "association" refers to an organization whose characteristics require it to be classified for purposes of taxation as a corporation rather than as another type of organization such as a partnership or a trust. There are a number of major characteristics ordinarily found in a pure corporation which, taken together, distinguish it from other organizations. These are: (i) Associates, (ii) an objective to carry on business and divided the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability for corporate debts limited to corporate property, and (vi) free transferability of interests. Whether a particular organization is to be classified as an association must be determined by taking into account the presence or absence of each of these corporate characteristics. The presence or absence of these characteristics will depend upon the facts in each individual case. In addition to the major characteristics set forth in this subparagraph, other factors may be found in some cases which may be significant in classifying an organization as an association, a partnership, or a trust. An organization will be treated as an association if the corporate characteristics are such that the organization more nearly resembles a corporation than a partnership or trust. See Morrissey et al. v. Commissioner (1935) 296 U.S. 344.

(2) Since associates and an objective to carry on business for joint profit are essential characteristics of all organizations engaged in business for profit (other than the so-called one-man corporation and the sole proprietorship), the absence of either of these essential characteristics will cause an arrangement among co-owners of property for the development of such property for the separate profit of each not to be classified as an association. Some of the major characteristics of a corporation are common to trusts and corporations, and others are common to partnerships and corporations. Characteristics common to trusts and corporations are not material in attempting to distinguish between a trust and an association, and characteristics common to partnerships and corporations are not material in attempting to distinguish between an association and a partnership. For example, since centralization of management, continuity of life, free tranferability of interests, and limited liability are generally common to trusts and corporations, the determination of whether a trust which has such characteristics is to be treated for tax purposes as a trust or as an association depends on whether there are associates and an objective to carry on business and divide the gains therefrom. On the other hand, since associates and an objective to carry on business and divide the gains therefrom are generally common to both corporations and partnerships, the determination of whether an organization which has such characteristics is to be treated for tax purposes as a partnership or as an association depends on whether there exists centralization of management, continuity of life, free tranferability of interests, and limited liability.

(3) An unincorporated organization shall not be classified as an association unless such organization has more corporate characteristics than noncorporate characteristics. In determining whether an organization has more corporate characteriscics than noncorporate characteristics, all characteristics common to both types of organizations shall not be considered. For example, if a limited partnership has centralized management and free transferability of interests but lacks continuity of life and limited liability, and if the limited partnership has no other characteristics which are significant in determining its classification, such limited partnership is not classified as an association. Although the limited partnership also has associates and an objective to carry on business and divide the gains therefrom, these characteristics are not considered because they are common to both corporations and partnerships.

(4) The rules of this section and §§ 301.7701–3 and 301.7701–4 are applicable only to taxable years beginning after December 31, 1960. However, for any taxable year beginning after December 31, 1960, but before October 1, 1961, any amendment of the agreement establishing the organization will, in the case of an organization in existence on November 17, 1960, be treated for purposes of determining the classification of the organization as being in effect as of the beginning of such taxable year (i) if the amendment of the agreement is made before October 1, 1961, and (ii) if the amendment results in the classification of the organization under the rules of this section and §§ 301.7701–1, 301.7701–3, and 301.7701–4 in the same manner as the organization was classified for tax purposes on November 17, 1960.

(5) The rules of paragraph (h) of this section are applicable only to taxable years beginning after December 31, 1960. However, in the case of an organization formed as a partnership association, a business trust, an ordinary business corporation, or a professional service organization formed under a local law or regulatory rule specifically authorizing the formation of such organizations, the rules of paragraph (h) of this section shall not apply to any taxable year ending on or before December 31, 1964, if such organization made its return for any such taxable year, filed at or prior to the time (including extensions thereof) that the return for such taxable year was required to be filed, as if its income were subject to the tax imposed by section 11 of the Code (relating to tax imposed on corporations).

(b) *Continuity of life.* (1) An organization has continuity of life if the death, insanity, bankruptcy, retirement, resignation, or expulsion of any member will not cause a dissolution of the organization. On the other hand, if the death, insanity, bankruptcy, retirement, resignation, or expulsion of any member will cause a dissolution of the organization, continuity of life does not exist. If the retirement, death, or insanity of a general partner of a limited partnership causes a dissolution of the partnership, unless the remaining general partners agree to continue the partnership or unless all remaining members agree to continue the partnership, continuity of life does not exist. See Glensder Textile Company (1942) 46 B.T.A. 176 (A., C.B. 1942–1, 8).

(2) For purposes of this paragraph, dissolution of an organization means an alteration of the identity of an organization by reason of a change in the relationship between its members as determined under local law. For example, since the resignation of a partner from a general partnership destroys the mutual agency which exists between such partner and his copartners and thereby alters the personal relation between the partners which constitutes the identity of the partnership itself, the resignation of a partner dissolves the partnership. A corporation, however, has a continuing identity which is detached from the relationship between its stockholders. The death, insanity, or bankruptcy of a shareholder or the sale

of a shareholder's interest has no effect upon the identity of the corporation and, therefore, does not work a dissolution of the organization. An agreement by which an organization is established may provide that the business will be continued by the remaining members in the event of the death or withdrawal of any member, but such agreement does not establish continuity of life if under local law the death or withdrawal of any member causes a dissolution of the organization. Thus, there may be a dissolution of the organization and no continuity of life although the business is continued by the remaining members.

(3) An agreement establishing an organization may provide that the organization is to continue for a stated period or until the completion of a stated undertaking or such agreement may provide for the termination of the organization at will or otherwise. In determining whether any member has the power of dissolution, it will be necessary to examine the agreement and to ascertain the effect of such agreement under local law. For example, if the agreement expressly provides that the organization can be terminated by the will of any member, it is clear that the organization lacks continuity of life. However, if the agreement provides that the organization is to continue for a stated period or until the completion of a stated transaction, the organization has continuity of life if the effect of the agreement is that no member has the power to dissolve the organization in contravention of the agreement. Nevertheless, if, notwithstanding such agreement, any member has the power under local law to dissolve the organization, the organization lacks continuity of life. Accordingly, a general partnership subject to a statute corresponding to the Uniform Partnership Act and a limited partnership subject to a statute corresponding to the Uniform Limited Partnership Act both lack continuity of life.

(c) *Centralization of management.* (1) An organization has centralized management if any person (or any group of persons which does not include all the members) has continuing exclusive authority to make the management decisions necessary to the conduct of the business for which the organization was formed. Thus, the persons who are vested with such management authority resemble in powers and functions the directors of a statutory corporation. The effective operation of a business organization composed of many members generally depends upon the centralization in the hands of a few of exclusive authority to make management decisions for the organization, and therefore, centralized management is more likely to be found in such an organization than in a smaller organization.

(2) The persons who have such authority may, or may not, be members of the organization and may hold office as a result of a selection by the members from time to time, or may be self-perpetuating in office. See Morrissey et al. v. Commissioner (1935) 296 U.S. 344. Centralized management can be accomplished by election to office, by proxy appointment, or by any other means which has the effect of concentrating in a management group continuing exclusive authority to make management decisions.

(3) Centralized management means a concentration of continuing exclusive authority to make independent business decisions on behalf of the organization which do not require ratification by members of such organization. Thus, there is not centralized management when the centralized authority is merely to perform ministerial acts as an agent at the direction of a principal.

(4) There is no centralization of continuing exclusive authority to make management decisions, unless the managers have sole authority to make such decisions. For example, in the case of a corporation or a trust, the concentration of management powers in a board of directors or trustees effectively prevents a stockholder or a trust beneficiary, simply because he is a stockholder or beneficiary, from binding the corporation or the trust by his acts. However, because of the mutual agency relationship between members of a general partnership subject to a statute corresponding to the Uniform Partnership Act, such a general partnership cannot achieve effective concentration of management powers and, therefore, centralized management. Usually, the act of any partner within the scope of the partnership business binds all the partners; and even if the partners agree among themselves that the powers of management shall be exclusively in a selected few, this agreement will be ineffective as against an outsider who had no notice of it. In addition, limited partnerships subject to a statute corresponding to the Uniform Limited Partnership Act, generally do not have centralized management, but centralized management ordinarily does exist in such a limited partnership if substantially all the interests in the partnership are owned by the limited partners.

(d) *Limited liability.* (1) An organization has the corporate characteristic of limited liability if under local law there is no member who is personally liable for the debts of or claims against the organization. Personal liability means that a creditor of an organization may seek personal satisfaction from a member of the organization to the extent that the assets of such organization are insufficient to satisfy the creditor's claim. A member of the organization who is personally liable for the obligations of the organization may make an agreement under which another person, whether or not a member of the organization, assumes such liability or agrees to indemnify such member for any such liability. However, if under local law the member remains liable to such creditors notwithstanding such agreement, there exists personal liability with respect to such member. In the case of a general partnership subject to a statute corresponding to the Uniform Partnership Act, personal liability exists with respect to each general partner. Similarly, in the case of a limited partnership subject to a statute corresponding to the Uniform Limited Partnership Act, personal liability exists with respect to each general partner, except as provided in subparagraph (2) of this paragraph.

(2) In the case of an organization formed as a limited partnership, personal liability does not exist, for purposes of this paragraph, with respect to a general partner when he has no substantial assets (other than his interest in the partnership) which could be reached by a creditor of the organization and when he is merely a "dummy" acting as the agent of the limited partners. Notwithstanding the formation of the organization as a limited partnership, when the limited partners act as the principals of such general partner, personal liability will exist with respect to such limited partners. Also, if a corporation is a general partner, personal liability exists with respect to such general partner when the corporation has substantial assets (other than its interest in the partnership) which could be reached by a creditor of the limited partnership. A general partner may contribute his services, but no capital, to the organization, but if such general partner has substantial assets (other than his interest in the partnership), there exists personal liability. Furthermore, if the organization is engaged in financial transactions which involve large sums of money, and if the general partners have substantial assets (other than their interests in the partnership), there exists personal liability although the assets of such general partners would be insufficient to satisfy any substantial portion of the obligations of the organization. In addition, although the general partner has no substantial assets (other than his interest in the partnership), personal liability exists with respect to such general partner when he is not merely a "dummy" acting as the agent of the limited partners.

(e) *Free transferability of interests.* (1) An organization has the corporate characteristic of free transferability of interests if each of its members or those members owning substantially all of the interests in the organization have the power, without the consent of other members, to substitute for themselves in the same organization a person who is not a member of the organization. In order for this power of substitution to exist in the corporate sense, the member must be able, without the consent of other members, to confer upon his substitute all the attributes of his interest in the organization. Thus, the characteristic of free transferability of interests does not exist in a case in which each member can, without the consent of other members, assign only his right to share in profits but cannot so assign his rights to participate in the management of the organization. Furthermore, although the agreement provides for the transfer of a member's interest, there is no power of substitution and no free transferability of interest if under local

law a transfer of a member's interest results in the dissolution of the old organization and the formation of a new organization.

(2) If each member of an organization can transfer his interest to a person who is not a member of the organization only after having offered such interest to the other members at its fair market value, it will be recognized that a modified form of free transferability of interests exists. In determining the classification of an organization, the presence of this modified corporate characteristic will be accorded less significance than if such characteristic were present in an unmodified form.

(f) *Cross reference.* See paragraph (b) of § 301.7701–3 for the application to limited partnerships of the rules relating to corporate characteristics.

(g) *Examples.* The application of the rules described in this section may be illustrated by the following examples:

Example (1). [*Deleted*]

Example (2). A group of seven doctors forms a clinic for the purpose of furnishing, for profit, medical and surgical services to the public. They each transfer assets to the clinic, and their agreement provides that except upon complete liquidation of the organization on the vote of three-fourths of its members, no member has any individual interest in its assets. Their agreement also provides that neither the death, insanity, bankruptcy, retirement, resignation, nor expulsion of a member shall cause the dissolution of the organization. However, under the applicable local law, a member who withdraws does have the power to dissolve the organization. While the agreement provides that the management of the clinic is to be vested exclusively in an executive committee of four members elected by all the members, this provision is ineffective as against outsiders who had no notice of it; and, therefore, the act of any member within the scope of the organization's business binds the organization insofar as such outsiders are concerned. While the agreement declares that each individual doctor alone is liable for acts of malpractice, members of the clinic are, nevertheless, personally liable for all debts of the clinic including claims based on malpractice. No member has the right, without the consent of all the other members, to transfer his interest to a doctor who is not a member of the clinic. The organization has associates and an objective to carry on business and divide the gains therefrom. However, it does not have the corporate characteristics of continuity of life, centralized management, limited liability, and free transferability of interests. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (3). A group of 25 lawyers forms an organization for the purpose of furnishing, for profit, legal services to the public. Their agreement provides that the organization will dissolve upon the death, insanity, bankruptcy, retirement, or expulsion of a member. While their agreement provides that the management of the organization is to be vested exclusively in an executive committee of five members elected by all the members, this provision is ineffective as against outsiders who had no notice of it; and, therefore, the act of any member within the scope of the organization's business binds the organization insofar as such outsiders are concerned. Members of the organization are personally liable for all debts, or claims against, the organization. No member has the right, without the consent of all the other members, to transfer his interest to a lawyer who is not a member of the organization. The organization has associates and an objective to carry on business and divide the gains therefrom. However, the four corporate characteristics of limited liability, centralized management, free transferability of interests, and continuity of life are absent in this case. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (4). A group of 25 persons forms an organization for the purpose of engaging in real estate investment activities. Each member has the power to dissolve the organization at any time. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law, no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, each member is personally liable for the obligations of the organization. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the organization does have the characteristics of centralized management and a modified form of free transferability of interests, it does not have the corporate characteristics of continuity of life and limited liability. Under the circumstances presented, the organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (5). A group of 25 persons forms an organization for the purpose of engaging in real estate investment activities. Under their agreement, the organization is to have a life of 20 years, and under the applicable local law, no member has the power to dissolve the organization prior to the expiration of that period. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law, no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, each member is personally liable for the obligations of the organization. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the organization does not have the corporate characteristic of limited liability, it does have continuity of life, centralized management, and a modified form of free transferability of interests. The organization will be classified as an association for all purposes of the Internal Revenue Code.

Example (6). A group of 25 persons forms an organization for purposes of engaging in real estate investment activities. Each member has the power to dissolve the organization at any time. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law, no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, the liability of each member for the obligations of the organization is limited to paid and subscribed capital. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the organization does not have the characteristic of continuity of life, it does have limited liability, centralized management, and a modified form of free transferability of interests. The organization will be classified as an association for all purposes of the Internal Revenue Code.

Example (7). A group of 25 persons forms an organization for the purpose of investing in securities so as to educate the members in principles and techniques of investment practices and to share the income from such investments. While the agreement states that the organization will operate until terminated by a three-fourths vote of the total membership and will not terminate upon the withdrawal or death of any member, under the applicable local law, a member has the power to dissolve the organization at any time. The business of the organization is carried on by the members at regular monthly meetings and buy or sell action may be taken only when voted by a majority of the organization's membership present. Elected officers perform only ministerial functions such as presiding at meetings and carrying out the directions of the members. Members of the organization are personally liable for all debts of, or claims against, the organization. No member may transfer his membership. The organization has associates and an objective to carry on business and divide the gains therefrom. However, the organization does not have the corporate characteristics of limited liability, free transferability of interests, continuity of life, and centralized management. The organization will be treated as a partnership for all purposes of the Internal Revenue Code.

(h) *Classification of professional service organizations.* (1) (i) A professional service organization is treated as a corporation (or as an association and, therefore, taxable as a corporation) only if it has sufficient corporate characteristics to be classifiable as a corporation under paragraph (a) of this section, rather than as a partnership or proprietorship. For purposes of determining the classification of an organization under these regulations, the term "professional service organization," as used in this paragraph, means an organization formed by one or more persons to engage in a business involving the performance of professional services for profit which under local law, may not be organized and operated in the form of an ordinary business corporation having the usual characteristics of such a corporation. Thus, even if a professional service organization is organized as an ordinary business corporation, this paragraph applies if such corporation is subject to local regulatory rules which deprive such corporation of the usual characteristics of an ordinary business corporation. This paragraph applies irrespective of whether an organization is labeled under local law as a professional service corporation, a professional service association, a trust, or otherwise.

(ii) In determining whether a professional service organization has the major characteristics ordinarily found in a business corporation and whether any other significant factors are to be

taken into account in classifying the organization, the special professional requirements of the profession engaged in by the members of the organization must be taken into consideration. Although such an organization may have associates and is engaged in business for profit, the relationships of the members of such an organization to each other as well as their relationships to employees, to clients, patients, or customers and to the public are inherently different from the relationships characteristic of an ordinary business corporation. In determining the nature of these relationships, consideration must be given to the law under which the organization is formed, the charter, articles of association, bylaws, or other documents relating to the formation of the organization, and all other facts and rules governing or pertaining to such relationships in the usual course of the practice of the profession of the participants.

(2) A professional service organization does not have continuity of life within the meaning of paragraph (b) of this section if the death, insanity, bankruptcy, retirement, resignation, expulsion, professional disqualification, or election to inconsistent public office of any member will (determined without regard to any agreement among the members) cause under local law the dissolution of the organization. A business corporation has a continuing identity as an entity which is not dependent upon a shareholder's active participation in any capacity in the production of the income of the corporation. Furthermore, the interest of a shareholder in an ordinary business corporation includes a right to share in the profits of the corporation, and such right is not legally dependent (determined without regard to any agreement among the shareholders) upon his participation in the production of the corporation's income. However, the interest of a member of a professional service organization generally is inextricably bound to the establishment and continuance of an employment relationship with the organization, and he cannot share in the profits of a professional service organization unless he also shares in the performance of the services rendered by the organization. For purposes of this paragraph, the term "employment relationship" is used to describe such active participation by the member and is not restricted to the common-law meaning of such term. If local law, applicable regulations, or professional ethics do not permit a member of a professional service organization to share in its profits unless an employment relationship exists between him and the organization, and if in such case, he or his estate is required to dispose of his interest in the organization if the employment relationship terminates, the continuing existence of the organization depends upon the willingness of its remaining members, if any, either to agree, by prior arrangement or at the time of such termination, to acquire his interest or to employ his proposed successor. The continued existence of such a professional service organization is similar to that of a partnership formed under the Uniform Partnership Act, whose business continues pursuant to an agreement providing that the business will be continued by the remaining members after the withdrawal or death of a partner (see paragraph (b) of this section), and is essentially different from the continuity of life possessed by an ordinary business corporation. Consequently, such a professional service organization lacks continuity of life.

(3) In applying the rules of paragraph (c) of this section, relating to centralization of management, a professional service organization does not have centralization of management where the managers of a professional service organization under local law are not vested with the continuing exclusive authority to determine any one or more of the following matters: (i) The hiring and firing of professional members of the organization and its professional and lay employees, (ii) the compensation of the members and of such employees, (iii) the conditions of employment—such as working hours, vacation periods, and sick leave, (iv) the persons who will be accepted as clients or patients, (v) who will handle each individual case or matter, (vi) the professional policies and procedures to be followed in handling each individual case, (vii) the fees to be charged by the organization, (viii) the nature of the records to be kept, their use, and their disposition, and (ix) the times and amounts of distributions of the earnings of the organization to its members as such. Moreover, although a measure of central control may exist in a professional service organization, the managers of a professional service organization in which a member retains traditional professional responsibility cannot have the continuing exclusive authority to determine all of the matters described in the preceding sentence. Instead, such measure of central control is no more than that existing in an ordinary large professional partnership which has one or more so-called managing partners and in which a member retains the traditional professional autonomy with respect to professional decisions and the traditional responsibility of a professional person to the client or patient. Such measure of central control is essentially different from the centralization of management existing in an ordinary business corporation. Therefore, centralization of management does not exist in such a professional service organization.

(4) A professional service organization has the corporate characteristic of limited liability within the meaning of paragraph (d) of this section only if the personal liability of its members, in their capacity as members of the organization, is no greater in any aspect than that of shareholder-employees of an ordinary business corporation. If under local law and the rules pertaining to professional practice, a mutual agency relationship, similar to that existing in an ordinary professional partnership, exists between the members of a professional service organization, such organization lacks the corporate characteristic of limited liability.

(5) (i) If the right of a member of a professional service organization to share in its profits is dependent upon the existence of an employment relationship between him and the organization, free transferability of interests within the meaning of paragraph (e) of this section exists only if the member, without the consent of other members, may transfer both the right to share in the profits of the organization and the right to an employment relationship with the organization.

(ii) The corporate characteristic of free transferability of interests exists in a modified form within the meaning of paragraph (e)(2) of this section when a shareholder in an ordinary business corporation can transfer his interest in such corporation only after having offered such interest to the other shareholders at its fair market value. In such a case, the so-called right of first refusal applies only to an interest which is a right to share in the profits, the assets, and the management of the enterprise. However, if the interest of a member of a professional service organization constitutes a right to share in the profits of the organization which is contingent upon and inseparable from the member's continuing employment relationship with the organization, and the transfer of such interest is subject to a right of first refusal, such interest is subject to a power in the other members of the organization to determine not only the individuals whom the organization is to employ, but also who may share with them in the profits of the organization. The possession by other members of the power to determine, in connection with the transfer of such an interest, whom the organization is to employ is so substantial a hindrance upon the free transferability of interests in the organization that such power precludes the existence of a modified form of free transferability of interests. Therefore, if a member of a professional service organization who possesses such an interest may transfer his interest to a qualified person who is not a member of the organization only after having first offered his interest to the other members of the organization at its fair market value, the corporate characteristic of free transferability of interests does not exist.

§ 301.7701–3 Partnerships.

(a) *In general.* The term "partnership" is broader in scope than the common law meaning of partnership and may include groups not commonly called partnerships. Thus, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation or a trust or estate within the meaning of the Internal Revenue Code of 1954. A joint undertaking merely to share expenses is not a part-

nership. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they are not partners. Mere co-ownership of property which is maintained, kept in repair, and rented or leased does not constitute a partnership. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a partnership thereby. Tenants in common, however, may be partners if they actively carry on a trade, business, financial operation, or venture and divide the profits thereof. For example, a partnership exists if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent.

(b) *Limited partnerships*—(1) *In general.* An organization which qualifies as a limited partnership under State law may be classified for purposes of the Internal Revenue Code as an ordinary partnership or as an association. Such a limited partnership will be treated as an association if, applying the principles set forth in § 301.7701–2, the organization more nearly resembles a corporation than an ordinary partnership or other business entity.

(2) *Examples.* The principles of this paragraph may be illustrated by the following examples:

Example (1). Three individuals form an organization which qualifies as a limited partnership under the laws of the State in which the organization was formed. The purpose of the organization is to acquire and operate various pieces of commercial and other investment property for profit. Each of the three individuals who are general partners invests $100,000 in the enterprise. Five million dollars of additional capital is raised through contributions of $100,000 or more by each of 30 limited partners. The three general partners are personally capable of assuming a substantial part of the obligations to be incurred by the organization. While a limited partner may assign his right to receive a share of the profits and a return of his contribution, his assignee does not become a substituted limited partner except with the unanimous consent of the general partners. The life of the organization as stated in the certificate is 20 years, but the death, insanity, or retirement of a general partner prior to the expiration of the 20-year period will dissolve the organization. The general partners have exclusive authority to manage the affairs of the organization but can act only upon the unanimous consent of all of them. The organization has associates and an objective to carry on business and divide the gains therefrom, which characterize both partnerships and corporations. While the organization has the corporate characteristic of centralized management, since substantially all of the interests in the organization are owned by the limited partners, it does not have the characteristics of continuity of life, free transferability of interests, or limited liability. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (2). Three individuals form an organization which qualifies as a limited partnership under the laws of the State in which the organization was formed. The purpose of the organization is to acquire and operate various pieces of commercial and other investment property for profit. The certificate provides that the life of the organization is to be 40 years, unless a general partner dies, becomes insane, or retires during such period. On the occurrence of such death, insanity, or retirement, the remaining general partners may continue the business of the partnership for the balance of the 40-year period under a right so to do stated in the certificate. Each of the three individuals who is a general partner invests $50,000 in the enterprise and has means to satisfy the business obligations of the organization to a substantial extent. Five million dollars of additional capital is raised through the sale of freely transferable interests in amounts of $10,000 or less to limited partners. Nine hundred such interests are sold. The interests of the 900 limited partners are fully transferable, that is, a transferee acquires all the attributes of the transferor's interest in the organization. The general partners have exclusive control over management of the business, their interests are not transferable, and their liability for debts of the organization is not limited to their capital contributions. The organization has associates and an objective to carry on business and divide the gains therefrom. It does not have the corporate characteristics of limited liability and continuity of life. It has centralized management, however, since the three general partners exercise exclusive control over the management of the business, and since substantially all of the interests in the organization are owned by the limited partners. While the interests of the general partners are not transferable, the transferability test of an association is met since substantially all of the interests in the organization are represented by transferable interests. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

(c) *Partnership associations.* The laws of a number of States provide for the formation of organizations commonly known as partnership associations. Such a partnership association will be treated as an association if, applying the principles set forth in § 301.7701–2, the organization more nearly resembles a corporation than the other types of business entities.

(d) *Partner.* The term "partner" means a member of a partnership.

§ 301.7701–4 Trusts.

(a) *Ordinary trusts.* In general, the term "trust" as used in the Internal Revenue Code refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Usually the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. However, the beneficiaries of such a trust may be the persons who create it and it will be recognized as a trust under the Internal Revenue Code if it was created for the purpose of protecting or conserving the trust property for beneficiaries who stand in the same relation to the trust as they would if the trust had been created by others for them. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

(b) *Business trusts.* There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, but which are not classified as trusts for purposes of the Internal Revenue Code because they are not simply arrangements to protect or conserve the property for the beneficiaries. These trusts, which are often known as business or commercial trusts, generally are created by the beneficiaries simply as a device to carry on a profit-making business which normally would have been carried on through business organizations that are classified as corporations or partnerships under the Internal Revenue Code. However, the fact that the corpus of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association or partnership. The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if, applying the principles set forth in §§ 301.7701–2 and 301.7701–3, the organization more nearly resembles an association or a partnership than a trust.

(c) *Certain investment trusts.* An "investment" trust of the type commonly known as a management trust is an association, and a trust of the type commonly known as a fixed investment trust is an association if there is power under the trust agreement to vary the investment of the certificate holders. See Commissioner v. North American Bond Trust (C.C.A. 2d 1941) 122 F. 2d 545, cert. denied 314 U.S. 701. However, if there is no power under the trust agreement to vary the investment of the certificate holders, such fixed investment trust shall be classified as a trust.

(d) *Liquidating trusts.* Certain organizations which are commonly known as liquidating trusts are treated as trusts for purposes of the Internal Revenue Code. An organization will be considered a liquidating trust if it is organized for the primary purpose of liquidating and distributing the assets transferred to it, and if its activities are all reasonably necessary to, and consistent with, the accomplishment of that purpose. A liquidating trust is treated as a trust for purposes of the Internal Revenue Code because it is formed with the objective of liquidating particular assets and not as an organization having as its purpose the carrying on of a profit-making business which normally would be conducted through business organizations classified as corporations or partnerships. However, if the liquidation is unreasonably prolonged or if the liquidation purpose becomes so obscured by business activities that the declared purpose of liquidation can be said to be lost or aban-

doned, the status of the organization will no longer be that of a liquidating trust. Bondholders' protective committees, voting trusts, and other agencies formed to protect the interests of security holders during insolvency, bankruptcy, or corporate reorganization proceedings are analogous to liquidating trusts but if subsequently utilized to further the control or profitable operation of a going business on a permanent continuing basis, they will lose their classification as trusts for purposes of the Internal Revenue Code.

§ 301.7701–5 Domestic, foreign, resident, and nonresident persons.

A domestic corporation is one organized or created in the United States, including only the States (and during the periods when not States, the Territories of Alaska and Hawaii), and the District of Columbia, or under the law of the United States or of any State or Territory. A foreign corporation is one which is not domestic. A domestic corporation is a resident corporation even though it does no business and owns no property in the United States. A foreign corporation engaged in trade or business within the United States is referred to in the regulations in this chapter as a resident foreign corporation, and a foreign corporation not engaged in trade or business within the United States, as a nonresident foreign corporation. A partnership engaged in trade or business within the United States is referred to in the regulations in this chapter as a resident partnership, and a partnership not engaged in trade or business within the United States, as a nonresident partnership. Whether a partnership is to be regarded as resident or nonresident is not determined by the nationality or residence of its members or by the place in which it was created or organized. The term "nonresident alien," as used in the regulations in this chapter, includes a nonresident alien individual and a nonresident alien fiduciary.

§ 301.7701–6 Fiduciary.

"Fiduciary" is a term which applies to persons who occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators. A fiduciary is a person who holds in trust an estate to which another has the beneficial title or in which another has a beneficial interest, or receives and controls income of another, as in the case of receivers. A committee or guardian of the property of an incompetent person is a fiduciary.

§ 301.7701–7 Fiduciary distinguished from agent.

There may be a fiduciary relationship between an agent and a principal, but the word "agent" does not denote a fiduciary. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the Internal Revenue Code. In cases where no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

§ 301.7701–8 Military or naval forces and Armed Forces of the United States.

The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. The terms also include the Coast Guard. The members of such forces include commissioned officers and the personnel below the grade of commissioned officer in such forces.

§ 301.7701–9 Secretary or his delegate.

(a) The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(b) In any case in which a function is vested by the Internal Revenue Code of 1954 or any other statute in the Secretary or his delegate, and Treasury regulations or Treasury decisions approved by the Secretary or his delegate provide that such function may be performed by the Commissioner, assistant commissioner, regional commissioner, assistant regional commissioner, district director, director of a regional service center, or by a designated officer or employee in the office of any such officer, such provision in the regulations or Treasury decision shall constitute a delegation by the Secretary of the authority to perform such function to the designated officer or employee. If such authority is delegated to any officer or employee performing services under the supervision and control of the Commissioner, such provision in the regulations or Treasury decision shall constitute a delegation by the Secretary to the Commissioner of the authority to perform such function and a redelegation thereof by the Commissioner to the designated officer or employee.

(c) An officer or employee, including the Commissioner, authorized by regulations or Treasury decision to perform a function shall have authority to redelegate the performance of such function to any officer or employee performing services under his supervision and control, unless such power to so redelegate is prohibited or restricted by proper order or directive. The Commissioner may also redelegate authority to perform such function to other officers or employees under his supervision and control and, to the extent he deems proper, may authorize further redelegation of such authority.

(d) The Commissioner may prescribe such limitations as he deems proper on the extent to which any officer or employee under his supervision and control shall perform any such function, but, in the case of an officer or employee designated in regulations or Treasury decision as authorized to perform such function, such limitations shall not render invalid any performance by such officer or employee of the function which, except for such limitations, such officer or employee is authorized to perform by such regulations or Treasury decision in effect at the time the function is performed.

§ 301.7701–10 District director.

The term "district director" means the district director of internal revenue for an internal revenue district. The term also includes the Director of International Operations.

§ 301.7701–11 Account number.

For purposes of this chapter, the term "account number" means the identifying number of an individual which is assigned pursuant to section 6011(b) or corresponding provisions of prior law, or pursuant to section 6109, and in which nine digits are separated by hyphens as follows: 000–00–0000. Such term does not include a number with a letter as a suffix which is used to identify an auxiliary beneficiary under the social security program. The terms "account number" and "social security account number" refer to the same number.

§ 301.7701–12 Employer identification number.

For purposes of this chapter, the term "employer identification number" means the identifying number of an individual or other person (whether or not an employer) which is assigned pursuant to section 6011(b) or corresponding provisions of prior law, or pursuant to section 6109, and in which nine digits are separated by a hyphen, as follows: 00–0000000. The terms "employer identification number" and "identification number" (defined in § 31.0–2(a)(11) of this chapter (Employment Tax Regulations)) refer to the same number.

§ 301.7701–13 Domestic building and loan association.

(a) *In general.* For taxable years beginning after October 16, 1962, the term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, a Federal savings and loan association, and any other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law which meets the supervisory test (described in paragraph (b) of this section), the business operations test (described in paragraph (c) of this section), and each of the various assets tests (described in para-

graphs (d), (e), (f), and (h) of this section).

(b) *Supervisory test.* A domestic building and loan association must be either (1) an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724 (a) or (2) subject by law to supervision and examination by State or Federal authority having supervision over such associations. An "insured institution" is one the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

(c) *Business operations test*—(1) *In general.* An association must utilize its assets so that substantially all of its business consists of acquiring the savings of the public and investing in the loans described in subparagraphs (6) through (10) of paragraph (d) of this section. The requirement of this paragraph is referred to in this section as the business operations test. The business of acquiring the savings of the public and investing in the prescribed loans includes ancillary or incidental activities which are directly and primarily related to such acquisition and investment, such as advertising for savings, appraising property on which loans are to be made by the association, and inspecting the progress of construction in connection with construction loans. Even though an association meets the supervisory test in paragraph (b) and all the assets tests described in paragraphs (d) through (h) of this section, it will nevertheless not qualify as a domestic building and loan association if any substantial part of its business consists of activities which are not directly and primarily related to such acquisition and investment, such as brokering mortgage paper, selling insurance, or subdividing real estate. However, an association will meet the business operations test for a taxable year if it meets the requirements of both subparagraphs (2) and (3) of this paragraph, relating respectively to acquiring the savings of the public, and investing in loans.

(2) *Acquiring the savings of the public.* The requirement that substantially all of an association's business (other than investing in loans) must consist of acquiring the savings of the public ordinarily will be considered to be met if savings are acquired in all material respects in conformity with the rules and regulations of the Federal Home Loan Bank Board or substantially equivalent rules of a State law or supervisory authority. In addition, such requirement will be considered to be met if more than 85 percent of the dollar amount of the total deposits and withdrawable shares of the association are held during the taxable year by the general public as opposed to amounts deposited by family or related business groups or persons who are officers or directors of the association. The percentage specified in this subparagraph shall be computed as of the close of the taxable year, or at the option of the taxpayer, on the basis of the average of the amounts of deposits held during the year. Such average shall be determined by computing the percentage specified either as of the close of each month, as of the close of each quarter, or semiannually during the taxable year and by using the yearly average of the monthly, quarterly, or semiannual percentages obtained.

(3) *Investing in loans*—(i) *In general.* The requirement that substantially all of an association's business (other than acquiring the savings of the public) must consist of investing in the loans described in subparagraphs (6) through (10) of paragraph (d) of this section ordinarily will be considered to be met for a taxable year if the association meets both the gross income test described in subdivision (ii) of this subparagraph, and the sales activity test described in subdivision (iii) of this subparagraph. However, if an association does not meet the requirements of both subdivisions (ii) and (iii) of this subparagraph, it will nevertheless meet the investing in loans requirement if it is able to demonstrate that substantially all its business (other than acquiring the savings of the public) consisted of investing in the prescribed loans. Transactions which are necessitated by exceptional circumstances and which are not undertaken as recurring business activities for profit will not be considered a substantial part of an association's business. Thus, for example, an association would meet the investing in loans requirement if it can establish that it failed to meet the gross income test because of receipt of a non-recurring item of income due to exceptional circumstances, or it failed to meet the sales activity test because of sales made to achieve necessary liquidity to meet abnormal withdrawals from savings accounts. For the purposes of this subparagraph, however, the acquisition of loans in anticipation of their sale to other financial institutions does not constitute "investing" in loans, even though such acquisition and sale resulted from an excess of demand for loans over savings capital in the association's area.

(ii) *Gross income test.* The gross income test is met if more than 85 percent of the gross income of an association consists of:

(*a*) Interest or dividends on assets defined in subparagraph (2), (3), or (4) of paragraph (d) of this section,

(*b*) Interest on loans defined in subparagraphs (6) through (10) of paragraph (d) of this section,

(*c*) Income attributable to the portion of property used in the association's business as defined in paragraph (d)(5) of this section,

(*d*) Premiums, discounts, commissions, or fees (including late charges and penalties) on loans defined in subparagraphs (6) through (10) of paragraph (d) of this section which have at some time been held by the association, or for which firm commitments have been issued,

(*e*) Gain or loss on the sale of governmental obligations defined in paragraph (d)(3) of this section, or

(*f*) Income, gain, or loss attributable to foreclosed property (as defined in paragraph (j)(1) of this section), but not including such income, gain, or loss which, pursuant to section 595 and the regulations thereunder, is not included in gross income.

For the purposes of this subparagraph, gross income shall be computed without regard to gains or losses on the sale of the portion of property used in the association's business (described in paragraph (d)(5) of this section), without regard to gains or losses on the rented portion of property used as the principal or branch office of the association (described in such paragraph), and without regard to gains or losses on the sale of participations and loans (other than governmental obligations defined in paragraph (d)(3) of this section). Examples of types of income which would cause an association to fail to meet the gross income test, if in the aggregate they exceed 15 percent of gross income, are the excess of gains over losses on sale of real estate (other than foreclosed property); rental income (other than on foreclosed property and the portion of property used in the association's business); premiums, commissions, and fees (other than commitment fees) on loans which have never been held by the association; and insurance brokerage fees.

(iii) *Sales activity test: in general.* The sales activity test is met for a taxable year if the association meets both the sales of whole loans test described in subdivision (iv) of this subparagraph, and the sales of whole loans and participations test described in subdivision (v) of this subparagraph. For the purposes of this subdivision and subdivisions (iv), (v), and (vi) of this subparagraph:

(*a*) The term "loan" means loan as defined in paragraph (j)(1) of this section, other than foreclosed property defined in such paragraph and governmental obligations defined in paragraph (d)(3) of this section.

(*b*) The amount of a loan shall be determined in accordance with the rules contained in paragraph (l) (1) and (2)(ii) of this section.

(*c*) The term "loans acquired for investment during the taxable year" means the amount of loans outstanding as of the close of the taxable year, reduced (but not below zero) by the amount of loans outstanding as of the beginning of such year, and increased by the lesser of (*1*) the amount of repayments made on loans during the taxable year or (*2*) an amount equal to 20 percent of the amount of loans outstanding as of the beginning of the taxable year. For this purpose, repayments do not include repayments on loans to the extent such loans are refinanced by the association.

(*d*) The term "sales of participations" means sales by an association of interests in loans, which sales meet the requirements of the regulations of the Federal Home Loan Bank Board relating to sales of participations, or which meet substantially equivalent requirements of State law or regulations relating to sales of participations.

(*e*) The term "sales of whole loans" means sales of loans other than sales of participations as defined in subdivision (*d*) of this subdivision, but in determin-

ing the amount of sales of whole loans, the following sales shall be disregarded: Sales of loans made to other financial institutions pursuant to an arrangement whereunder the association simultaneously enters into a bona fide agreement to repurchase such loans within a period of 18 months from the time of sale if such arrangement conforms to the rules and regulations of applicable supervisory authorities; sales made to the Federal Savings and Loan Insurance Corporation or to a corporation defined in paragraph (d)(4) of this section (relating to deposit insurance company securities); and sales made in the course of liquidation of the association pursuant to Federal or State law.

(iv) *Sales of whole loans test.* The sales of whole loans test is met for a taxable year if the amount of sales of whole loans during the taxable year does not exceed the greater of (*a*) 15 percent of the amount of loans acquired for investment during the taxable year, or (*b*) 20 percent of the amount of loans outstanding at the beginning of the taxable year. However, the 20 percent of beginning loans limitation specified in subdivision (*b*) of the previous sentence shall be reduced by the number of percentage points (rounded to the nearest one hundredth of a percentage point) which is equal to the sum of the 2 percentages obtained by dividing, for each of the 2 preceding taxable years, the amount of sales of whole loans during each such taxable year by the amount of loans outstanding at the beginning of such taxable year. For example, if the amounts of sales of whole loans made by a calendar year association in 1965 and 1966 were 3 percent and 4 percent, respectively, of loans outstanding at the beginning of each such year, the amount of sales of whole loans allowed under such subdivision (*b*) for 1967 would be an amount equal to 13 percent (20 percent minus 7 percentage points) of loans outstanding at the beginning of 1967. In computing the reduction to the 20 percent of beginning loans limitation specified in such subdivision (*b*), sales of whole loans made before January 1, 1964, shall not be taken into account.

(v) *Sales of whole loans and participations test.* The sales of whole loans and participations test is met if the sum of the amount of sales of whole loans and the amount of sales of participations during the taxable year does not exceed 100 percent of the amount of loans acquired for investment during the taxable year.

(vi) *Sales activity tests: special rules—(a) Carryover of sales.* The amount specified in subdivision (iv)(*a*) of this subparagraph as the maximum amount of sales of whole loans shall be increased by the amount by which 15 percent of the amount of loans acquired for investment by the association during the 2 preceding taxable years exceeds the amount of sales of whole loans made during such preceding taxable years; and the amount specified in subdivision (v) of this subparagraph as the maximum amount of sales of whole loans and participations shall be increased by the amount by which the amount of loans acquired for investment by the association during the 2 preceding taxable years exceeds the sum of the amount of sales of whole loans and participations made during such preceding taxable years. For example, if 15 percent of the amount of loans acquired for investment in 1965 and 1966 exceeded the amount of sales of whole loans during such years by $250,000, the amount of sales of whole loans permitted in 1967 under subdivision (iv)(*a*) of this subparagraph would be increased by $250,000.

(*b*) *Use of preceding year's base.* If the amount of loans acquired for investment by the association during the preceding taxable year exceeds such amount for the current taxable year, the 15 percent limitation provided in subdivision (iv)(*a*) of this subparagraph and the 100 percent limitation provided in subdivision (v) of this subparagraph shall be based upon such preceding taxable year's amount. However, the maximum amount of sales of whole loans permitted under subdivision (iv)(*a*) and the maximum amount of sales of whole loans and participations permitted under subdivision (v) in any taxable year shall be reduced by the amount of the increase in such sales allowed for the preceding taxable year solely by reason of the application of the provisions of the previous sentence. For example, assuming no carryover of sales under subdivision (*a*) of this subdivision, if the amount of loans acquired for investment by a calendar year association was $1,000,000 in 1965, under subdivision (iv)(*a*) of this subparagraph the association could make sales of whole loans in 1966 of $150,000 (15 percent of $1,000,000) even though the amount of its loans acquired for investment during 1966 was only $800,000. However, the amount of sales of whole loans permitted in 1967 under subdivision (iv)(*a*) of this subparagraph would be reduced to the extent that the amount of the sales of whole loans made by the association during 1966 exceeded $120,000 (15 percent of $800,000).

(vii) *Examples illustrating sales activity test.* The provisions of subdivisions (iii) through (vi) of this subparagraph may be illustrated by the following examples in each of which it is assumed that the association is a calendar year taxpayer which is operated in all material respects in conformity with applicable rules and regulations of Federal or State supervisory authorities.

Example (1). X Association made sales of whole loans in 1964 and 1965 which were 10 percent and 7 percent, respectively, of the amounts of loans outstanding at the beginning of each such year, and which were 25 percent and 17 percent, respectively, of the amounts of loans acquired for investment in each such year. The amount of X's loans outstanding at the beginning of 1966 was $1 million, and the amount of its loans acquired for investment for such year was $300,000. The maximum amount of sales of whole loans which X may make under the percentage of beginning loans limitation for 1966 is $30,000, which is 3 percent (20 percent reduced by the sum of 10 percent and 7 percent) of $1 million. The maximum amount of sales of whole loans permitted under the percentage of loans acquired for investment limitation for 1966 is $45,000 (15 percent of $300,000). X may therefore sell whole loans in an amount up to $45,000 in 1966 and meet the sales of whole loans test. It is assumed that the amount of loans acquired for investment in 1965 did not exceed $300,000, so that the preceding year's base cannot be used to increase the amount of sales permitted in 1966.

Example (2). Assume the same facts as in the previous example, except that the amount of loans acquired for investment in the preceding year (1965) was $320,000. Since such amount is greater than the $300,000 amount of loans acquired for investment in 1966, X may base its 15 percent limitation for 1966 on the $320,000 amount and sell whole loans in an amount up to $48,000 (15 percent of $320,000) and still meet the sales of whole loans test. However, to the extent that the amount of sales of whole loans exceeds $45,000 (15 percent of the $300,000 amount of loans acquired for investment in 1966), the maximum amount of sales computed under the percentage of loans acquired for investment limitation (but not the 20 percent of beginning loans limitation) for 1967 must be reduced.

Example (3). Y Association made no sales of whole loans in 1964 and 1965, and made sales of participations in the 2 years in amounts which, in the aggregate, were $50,000 less than the amounts of loans acquired for investment for such years. At the beginning of 1966 the amount of Y's loans outstanding was $1 million, and the amount of its loans acquired for investment in such year was $100,000. Although the maximum amount of sales of whole loans which Y could make under the sales of whole loans test is $200,000 (20 percent of $1 million), nevertheless, in order to meet the sales of whole loans and participations test, the sum of the amounts of sales of whole loans and sales of participations may not exceed $150,000 (100 percent of the $100,000 amount of loans acquired for investment in 1966 plus a carryover of sales from the previous two years of $50,000). It is assumed that the amount of loans acquired for investment in 1965 did not exceed $100,000, so that the preceding year's base cannot be used to increase the amount of sales permitted in 1966.

(viii) *Reporting requirements.* In the case of income tax returns for taxable years ending after October 31, 1964, there shall be filed with the return a statement showing the amount of gross income for the taxable year in each of the categories described in subdivision (ii) of this subparagraph; and, for the taxable year and the two preceding taxable years, the amount of loans (described in subdivision (iii)(*a*) of this subparagraph) outstanding at the beginning of the year and at the end of the year, the amount of repayments on loans (not including repayments on loans to the extent such loans are refinanced by the association), the amount of sales of whole loans, and the amount of sales of participations.

(4) *Effective date.* The provisions of subparagraphs (1) through (3) of this paragraph are applicable to taxable years ending after October 31, 1964. However, at the option of the taxpayer, for a taxable year beginning before November 1, 1964, and ending after October 31, 1964, the provisions of subparagraphs (1) through (3) of this paragraph (except the 20 percent of beginning loans limitation specified in subdivision (iv)(*b*) of subparagraph (3) of

this paragraph) shall apply only to the part year falling after October 31, 1964, as if such part year constituted a taxable year. In such case, the following rules shall apply:

(i) The amount of the "loans acquired for investment" for such part year shall be equal to the loans acquired for investment during the entire taxable year within which falls such part year, multiplied by a fraction the numerator of which is the number of days in such part year and the denominator of which is the number of days in such entire taxable year.

(ii) The increase in sales of whole loans and participations permitted by subdivision (vi) of subparagraph (3) of this paragraph (relating to carryover of sales and use of preceding year's base) shall be the amount of such increase computed under such subdivision, multiplied by the fraction specified in subdivision (i) of this subparagraph.

If, treating the part year as a taxable year, the association meets all the requirements of this paragraph for such part year it will be considered to have met the business operations test for the entire taxable year, providing it operated in all material respects in conformity with applicable rules and regulations of Federal or State supervisory authorities for the entire taxable year. The 20 percent of beginning loans limitation specified in subdivision (iv) (*b*) of subparagraph (3) of this paragraph shall be applied only on the basis of a taxable year and not the part year. For taxable years beginning after October 16, 1962, and ending before November 1, 1964, an association will be considered to have met the business operations test if it operated in all material respects in conformity with applicable rules and regulations of Federal or State supervisory authorities.

(d) *90 percent of assets test*—(1) *In general.* At least 90 percent of the amount of the total assets of a domestic building and loan association must consist of the assets defined in subparagraphs (2) through (10) of this paragraph. For purposes of this paragraph, it is immaterial whether the association originated the loans defined in subparagraphs (6) through (10) of this paragraph or purchased or otherwise acquired them in whole or in part from another. See paragraph (j) of this section for definition of certain terms used in this paragraph, and paragraph (k) of this section for the determination of amount and character of loans.

(2) *Cash.* The term "cash" means cash on hand, and time or demand deposits with, or withdrawable accounts in, other financial institutions.

(3) *Governmental obligations.* The term "governmental obligations" means obligations of the United States, a State or political subdivision of a State, and stock or obligations of a corporation which is an instrumentality of the United States, a State, or political subdivision of a State.

(4) *Deposit insurance company securities.* The term "deposit insurance company securities" means certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations.

(5) *Property used in the association's business*—(i) *In general.* The term "property used in the association's business" means land, buildings, furniture, fixtures, equipment, leasehold interests, leasehold improvements, and other assets used by the association in the conduct of its business of acquiring the savings of the public and investing in the loans defined in subparagraphs (6) through (10) of this paragraph. Real property held for the purpose of being used primarily as the principal or branch office of the association constitutes property used in the association's business so long as it is reasonably anticipated that such property will be occupied for such use by the association, or that construction work preparatory to such occupancy will be commenced thereon, within 2 years after acquisition of the property. Stock of a wholly owned subsidiary corporation which has as its exclusive activity the ownership and management of property more than 50 percent of the fair rental value of which is used as the principal or branch office of the association constitutes property used in such business. Real property held by an association for investment or sale, even for the purpose of obtaining mortgage loans thereon, does not constitute property used in the association's business.

(ii) *Property rented to others.* Except as provided in the second sentence of subdivision (i) of this subparagraph, property or a portion thereof rented by the association to others does not constitute property used in the association's business. However, if the fair rental value of the rented portion of a single piece of real property (including appurtenant parcels) used as the principal or branch office of the association constitutes less than 50 percent of the fair rental value of such piece of property, or if such property has an adjusted basis of not more than $150,000, the entire property shall be considered used in such business. If such rented portion constitutes 50 percent or more of the fair rental value of such piece of property, and such property has an adjusted basis of more than $150,000, an allocation of its adjusted basis is required. The portion of the total adjusted basis of such piece of property which is deemed to be property used in the association's business shall be equal to an amount which bears the same ratio to such total adjusted basis as the amount of the fair rental value of the portion used as the principal or branch office of the association bears to the total fair rental value of such property. In the case of all property other than real property used or to be used as the principal or branch office of the association, if the fair rental value of the rented portion thereof constitutes less than 15 percent of the fair rental value of such property, the entire property shall be considered used in the association's business. If such rented portion constitutes 15 percent or more of the fair rental value of such property, an allocation of its adjusted basis (in the same manner as required for real property used as the principal or branch office) is required.

(6) *Passbook loan.* The term "passbook loan" means a loan to the extent secured by a deposit, withdrawable share, or savings account in the association, or share of a member of the association, with respect to which a distribution is allowable as a deduction under section 591.

(7) *Home loan.* The term "home loan" means a loan secured by an interest in—

(i) Improved residential real property consisting of a structure or structures containing, in the aggregate, no more than 4 family units,

(ii) An individually owned family unit in a multiple-unit structure, the owner of which unit owns an undivided interest in the underlying real estate and the common elements of such structure (so-called condominium type),

or a construction loan or improvement loan for such property. A construction loan made for the purpose of financing more than one structure (so-called tract financing) constitutes a home loan, providing no individual structure contains more than 4 family units and it is contemplated that, as soon as possible after completion of construction, the structures will become property described in subdivision (i) of this subparagraph. A construction loan secured by a structure containing more than 4 family units constitutes a home loan only if the structure has been committed to a plan of individual apartment ownership described in subdivision (ii) of this subparagraph and such plan is held out and advertised as such. A loan secured by a cooperative apartment building containing more than 4 family units does not constitute a home loan.

(8) *Church loan.* The term "church loan" means a loan secured by an interest in real property which is used primarily for church purposes, or a construction loan or improvement loan for such property. For the purposes of this subparagraph, the term "church purposes" means the ministration of sacerdotal functions, the conduct of religious worship and closely associated activities designed primarily to provide fellowship among members of the congregation, or the instruction of religion. Thus, a parish hall would normally qualify as property used primarily for church purposes, whereas a building used primarily to furnish education, other than the instruction of religion, would not.

(9) *Multifamily loan.* The term "multifamily loan" means a loan, other than one defined in subparagraph (7) of this paragraph (relating to a home loan), secured by an interest in improved residential real property or a construction loan or improvement loan for such property.

(10) *Nonresidential real property loan.* The term "nonresidential real property

loan" means a loan, other than one defined in subparagraph (7), (8), or (9) of this paragraph (relating respectively to a home loan, church loan, and multifamily loan) secured by an interest in real property, or a construction loan or improvement loan for such property.

(e) *18 percent of assets test.* Not more than 18 percent of the amount of the total assets of a domestic building and loan association may consist of assets other than those defined in subparagraphs (2) through (9) of paragraph (d) of this section. Thus, the sum of the amounts of the nonresidential real property loans and the assets other than those defined in paragraph (d) of this section may not exceed 18 percent of total assets.

(f) *36 or 41 percent of assets test*—(1) *36 percent test.* Unless subparagraph (2) of this paragraph applies, not more than 36 percent of the amount of the total assets of a domestic building and loan association may consist of assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section. Thus, unless subparagraph (2) of this paragraph applies, the sum of the amounts of multifamily loans, nonresidential real property loans, and assets other than those defined in paragraph (d) of this section may not exceed 36 percent of total assets.

(2) *41 percent test.* If this subparagraph applies, not more than 41 percent of the amount of the total assets of a domestic building and loan association may consist of assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section. Thus, if this subparagraph applies, the sum of the amounts of multifamily loans, nonresidential real property loans, and assets other than those defined in paragraph (d) of this section may not exceed 41 percent of total assets. See section 593(b)(5) and the regulations thereunder for the effect of application of this subparagraph on the allowable addition to the reserves for bad debts.

(g) *Taxable years for which 41 percent of assets test applies*—(1) *First taxable year.* For an association's first taxable year beginning after October 16, 1962, subparagraph (2) of paragraph (f) applies.

(2) *Second taxable year.* For an association's second taxable year beginning after October 16, 1962, subparagraph (2) of paragraph (f) applies if such association met all the requirements of paragraphs (b) through (e), (h), and either subparagraph (1) or (2) of paragraph (f) for its first taxable year.

(3) *Years other than first and second taxable years.* For any taxable year of an association beginning after October 16, 1962, other than its first and second taxable years beginning after such date, subparagraph (2) of paragraph (f) applies if such association met either—

(i) The requirements of paragraphs (b) through (e), (f)(1), and (h) of this section for the immediately preceding taxable year, or

(ii) The requirements of paragraphs (b) through (e), (f)(2), and (h) of this section for the immediately preceding taxable year, and the requirements of paragraphs (b) through (e), (f)(1), and (h) of this section for the second preceding taxable year.

Thus, in years other than its first and second taxable years beginning after October 16, 1962, an association may apply the 41 percent of assets test for 2 consecutive years, but only if it met the 36 percent test (and all other tests) for the year previous to the 2 consecutive years.

(4) *Examples.* The provisions of paragraph (f) and this paragraph may be illustrated by the following examples in each of which it is assumed that the association at all times meets all the requirements of paragraphs (b) through (e) and (h) of this section and files its returns on a calendar year basis.

Example (1). An association has 41 percent of its assets invested in assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section as of the close of 1963 and 1964. Because 1963 is its first taxable year beginning after October 16, 1962, the 41 percent of assets test applies, and the association therefore qualifies as a domestic building and loan association for 1963. Because 1964 is its second taxable year beginning after such date and the 41 percent of assets test applied for its first taxable year, the 41 percent of assets test applies for 1964 and it therefor qualifies for such year.

Example (2). An association has 36 percent of its assets invested in assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section as of the close of 1964, and 41 percent as of the close of 1965, 1966, and 1967. The association qualifies in 1965 because, as a result of having met the 36 percent of assets test for the immediately preceding taxable year (1964), the 41 percent of assets test applies to 1965. It qualifies in 1966 because as a result of having met the 41 percent of assets test in the immediately preceding taxable year (1965) and the 36 percent of assets test in the second preceding taxable year (1964), the 41 percent of assets test applies to 1966. The association would not qualify in 1967, however, because, although it met the 41 percent of assets test for the immediately preceding taxable year (1966), it did not meet the 36 percent of assets test in the second preceding taxable year (1965), and therefore the 41 percent of assets test does not apply to 1967.

Example (3). An association has more than 41 percent of its assets invested in assets other than those defined in subparagraphs (2) through (8) of paragraph (d) of this section as of the close of 1963, and 41 percent invested in such assets as of the close of 1964. The association does not qualify in either year. It does not qualify in 1963 because it exceeded the 41 percent limitation, and it does not qualify in 1964 because the 41 percent of assets test does not apply to 1964 since the association did not meet either the 41 percent of assets test or the 36 percent of assets test in the prior year (1963).

(h) *3 percent of assets test.* Not more than 3 percent of the amount of the total assets of a domestic building and loan association may consist of stock of any corporation, unless such stock is property which is defined in paragraph (d) of this section. The stock which constitutes property defined in such paragraph (d) is:

(1) Stock representing a withdrawable account in another financial institution;

(2) Stock of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof;

(3) Stock which was security for a loan and which, by reason of having been bid in at foreclosure or otherwise having been reduced to ownership or possession of the association, is a loan within the definition of such term in paragraph (j)(1) of this section; and

(4) Stock of a wholly owned subsidiary corporation which has as its exclusive activity the ownership and management of property more than 50 percent of the fair rental value of which is used as the principal or branch office of the association.

(i) [Reserved]

(j) *Definition of certain terms.* For purposes of this section—

(1) *Loan.* The term "loan" means debt, as the term "debt" is used in section 166 and the regulations thereunder. The term "loan" also includes a redeemable ground rent (as defined in section 1055(c)) which is owned by the taxpayer, and any property (referred to in this section as "foreclosed property") which was security for the payment of any indebtedness and which has been bid in at foreclosure, or otherwise been reduced to ownership or possession of the association by agreement or process of law, whether or not such property was acquired subsequent to December 31, 1962.

(2) *Secured.* A loan will be considered as "secured" only if the loan is on the security of any instrument (such as a mortgage, deed of trust, or land contract) which makes the interest of the debtor in the property described therein specific security for the payment of the loan, provided that such instrument is of such a nature that, in the event of default, the interest of the debtor in such property could be subjected to the satisfaction of the loan with the same priority as a mortgage or deed of trust in the jurisdiction in which the property is situated.

(3) *Interest.* The word "interest" means an interest in real property which, under the law of the jurisdiction in which such property is situated, constitutes either (i) an interest in fee in such property, (ii) a leasehold interest in such property extending or renewable automatically for a period of at least 30 years, or at least 10 years beyond the date scheduled for the final payment on a loan secured by an interest in such property, (iii) a leasehold interest in property described in paragraph (d)(7)(i) of this section (relating to certain home loans) extending for a period of at least 2 years beyond the date scheduled for the final payment on a loan secured by an interest in such property or (iv) a leasehold interest in such property held subject to a redeemable ground rent defined in section 1055(c).

(4) *Real property.* The term "real

property" means any property which, under the law of the jurisdiction in which such property is situated, constitutes real property.

(5) *Improved real property.* The term "improved real property" means—

(i) Land on which is located any building of a permanent nature (such as a house, apartment house, office building, hospital, shopping center, warehouse, garage, or other similar permanent structure), provided that the value of such building is substantial in relation to the value of such land;

(ii) Any building lot or site which, by reason of installations and improvements that have been completed in keeping with applicable governmental requirements and with general practice in the community, is a building lot or site ready for the construction of any building of a permanent nature within the meaning of subdivision (i) of this subparagraph; or

(iii) Real property which, because of its state of improvement, produces sufficient income to maintain such real property and retire the loan in accordance with the terms thereof.

(6) *Construction loan.* The term "construction loan" means a loan, the proceeds of which are to be disbursed to the borrower (either by the association or a third party) as construction work progresses on real property which is security for the loan, which property is, or from the proceeds of such loan will become, improved real property.

(7) *Improvement loan.* The term "improvement loan" means a loan which, by its terms and conditions, requires that the proceeds of the loan be used for altering, repairing, or improving real property. If more than 85 percent of the proceeds of a single loan are to be used for such purposes, the entire loan will qualify. If 85 percent or less of the proceeds of a loan are to be used for such purposes, an allocation of its adjusted basis is required. Examples of loans which constitute improvement loans are loans made for the purpose of painting a house, adding a new room to a house, remodeling the lobby of an apartment building, and purchasing and installing storm windows, storm doors, and awnings. Examples of loans which do not constitute improvement loans are loans made for the purpose of purchasing draperies, and removable appliances, such as refrigerators, ranges, and washing machines. It is not necessary that a loan be secured by the real property which is altered, repaired, or improved.

(8) *Residential real property.* The term "residential real property" means real property which consists of one or more family units. A family unit is a building or portion thereof which contains complete living facilities which are to be used on other than a transient basis by only one family consisting of one or more persons. Thus, an apartment which is to be used on other than a transient basis by one family, which contains complete facilities for living, sleeping, eating, cooking, and sanitation constitutes a family unit. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, sanitariums, rest homes, and parks and courts for mobile homes do not normally constitute residential real property.

(k) *Amount and character of loans—*(1) *Treatment at time of determination—*(i) *In general.* The amount of a loan, as of the time the determination required by subparagraph (3) of this paragraph is made, shall be treated for the purposes of this section as being secured:

(*a*) First by the portion of property, if any, defined in subparagraph (6), (7), or (8) of paragraph (d) of this section to the extent of the loan value thereof;

(*b*) Next by the portion of property, if any, defined in subparagraph (9) of paragraph (d) of this section to the extent of the loan value thereof; and

(*c*) Next by the portion of property, if any, defined in subparagraph (10) of paragraph (d) of this section to the extent of the loan value thereof.

To the extent that the amount of a loan exceeds the amount treated as being secured by property defined in subparagraphs (6) through (10) of paragraph (d) of this section, such loan shall be treated as property not defined in paragraph (d) of this section. If the loan value of any one category of property defined in paragraph (d) of this section exceeds 85 percent of the amount of the loan for which it is security then the entire loan shall be treated as a loan secured by such property.

(ii) *Loans of $40,000 or less.* Notwithstanding the provisions of subdivision (i) of this subparagraph, in the case of loans amounting to $40,000 or less as of the time of a determination, made on the security of property which is a combination of two or more categories or property defined in subparagraph (6) through (10) of paragraph (d) of this section, all such loans for any taxable year may, at the option of the association, be treated for the purposes of this section as being secured by the category of property the loan value of which constitutes the largest percentage of the total loan value of the property except to the extent that the loan is treated as property not defined in paragraph (d) of this section.

(iii) *Home loans of $20,000 or less.* Notwithstanding the provisions of subdivisions (i) and (ii) of this subparagraph, if a loan amounting to $20,000 or less as of the time of a determination, is secured partly by property of a category described in subparagraph (7) of paragraph (d) of this section (relating to a home loan), the amount of the loan shall, for the purposes of this section, be treated as a loan described in such subparagraph except to the extent that the loan is treated as property not defined in paragraph (d) of this section.

(2) *Treatment subsequent to time of determination.* The amount of a loan outstanding as of any time subsequent to the time of a determination shall be treated, for the purposes of this section, as being secured by each of the categories of property in the same ratio that the amount which was treated as being secured by each category bore to the total amount of the loan at the time as of which the determination was last made with respect to such loan.

(3) *Time of determination—*(i) *In general.* The determination of the amount of a loan which is treated as being secured by each of the categories of property shall be made:

(*a*) As of the time a loan is made;

(*b*) As of the time a loan is increased;

(*c*) As of the time any portion of the property which was security for the loan is released; and

(*d*) As of any time required by applicable Federal or State regulatory authorities for reappraisal or reanalysis of such loans.

(ii) *Special rule.* In the case of loans outstanding with respect to which no event described in subdivision (i) of this subparagraph has occurred in a taxable year beginning on or after October 17, 1962, the determination of the amounts of such loans which are treated as being secured by each of the categories of property may be made, at the option of the association, as of the close of the first taxable year beginning on or after such date, providing the determinations with respect to all such loans are made as of such date.

(4) *Loan value.* The loan value of property which is security for a loan is the maximum amount at the time as of which the determination is made which the association is permitted to lend on such property under the rules and regulations of applicable Federal and State regulatory authorities. Such loan value shall not exceed the fair market value of such property at such time as determined under such rules and regulations. However, in the case of loans made incidentally with and as a part of a bona fide salvage operation, the loan value of the security property shall be considered to be the face amount of the loan where the loan can be shown by the association to have been made for the primary purpose of recovering the investment of the association, and where such salvage operation is in conformity with rules and regulations of applicable Federal or State regulatory authorities.

(5) *Examples.* The following examples, in each of which it is assumed that X Savings and Loan Association files its return on a calendar year basis, illustrate the application of the rules in this paragraph:

Example (1). On July 1, 1963, X makes a single loan of $1 million to M Corporation which loan is secured by real property which is a combination of homes, apartments, and stores. As of the time the loan is made X determines that the loan values of the categories of property are as follows:

Category of property:	*Loan value*
Home	$400,000
Multifamily	420,000
Nonresidential real property	240,000
Total	1,060,000

As of the time the loan is made, therefore, the $1,000,000 loan is treated under subparagraph (1)(i) of this paragraph as being secured as follows:

Category of loan	Amount of loan	Percentage of total
Home loan	$400,000	40
Multifamily loan	420,000	42
Nonresidential real property loan	180,000	18
Total	1,000,000	100

Assuming that the $1 million loan to M was reduced to $900,000 as of the close of 1963, that there were no increases in the amount of the loan and no releases of property which was security for the loan, and that there was no regulatory requirement to reappraise or reanalyze the loan, such loan will be considered under subparagraph (2) of this paragraph to be secured, as of the close of 1963, as follows:

Category	Percentage as of last determination July 1, 1963	Amount as of Dec. 31, 1963
Home	40	$360,000 (40%×$900,000)
Multifamily	42	378,000 (42%×$900,000)
Nonresidential real property	18	162,000 (18%×$900,000)
Total	100	900,000

Example (2). X makes a loan of $40,000 secured by a building which contains a store on the first floor and four family units on the upper floors. The loan value of the part of the building used as a store is $21,000 and the loan value of the residential portion is $23,000. The loan will be treated under subdivision (i) of subparagraph (1) of this paragraph as a loan secured by residential real property containing four or fewer family units to the extent of $23,000, and by nonresidential property to the extent of $17,000, as of the time the loan is made. However, if X exercises the option to treat all loans of $40,000 or less in accordance with subdivision (ii) of subparagraph (1) of this paragraph, this loan would be treated as a home loan to the extent of the full $40,000 because the loan value of the residential portion is larger than the loan value of the nonresidential part.

(l) *Computation of percentages*—(1) *In general.* The percentages specified in paragraphs (d) through (h) of this section shall, except as provided in subparagraph (3) of this paragraph, be computed by comparing the amount of the assets described in each paragraph as of the close of the taxable year with the total amount of assets as of the close of the taxable year. The amount of the assets in any category and the total amount of assets shall be determined with reference to their adjusted basis under § 1.1011–1, or by such other method as is in accordance with sound accounting principles, provided such method is used in valuing all the assets in a taxable year.

(2) *Treatment of certain assets and reserves.* For purposes of this paragraph:

(i) Reserves for bad debts established pursuant to section 593, or corresponding provisions of prior law, and the regulations thereunder shall not constitute a reduction of total assets, but shall be treated as a surplus or net worth item.

(ii) The adjusted basis of a "loan in process" does not include the unadvanced portion of such loan.

(iii) Advances made by the association for taxes, insurance, etc., on loans shall be treated as being in the same category as the loan with respect to which the advances are made (irrespective of whether the advances are secured by the property securing the loan).

(iv) Interest receivable included in gross income shall be treated as being in the same category as the loan or asset with respect to which it is earned.

(v) The unamortized portion of premiums paid on mortgage loans acquired by the association shall be considered part of the acquisition cost of such loans.

(vi) Prepaid Federal Savings and Loan Insurance Corporation premiums shall be treated as being governmental obligations defined in paragraph (d)(3) of this section.

(vii) Accounts receivable (other than accrued interest receivable), and prepaid expenses and deferred charges other than those referred to in subdivision (v) or (vi) of this subparagraph, shall be disregarded both as separate categories and in the computation of total assets.

(viii) Foreclosed property (is defined in paragraph (j)(1) of this section) shall be treated as having the same character as the loan for which it was given as security.

(3) *Alternative method.* At the option of the taxpayer, the percentages specified in paragraphs (d) through (h) of this section may be computed on the basis of the average assets outstanding during the taxable year. Such average shall be determined by making the computation provided in subparagraph (1) of this paragraph either as of the close of each month, as of the close of each quarter, or semiannually during the taxable year and by using the yearly average of the monthly, quarterly, or semiannual percentages obtained for each category. The method selected must be applied uniformly for the taxable year to all categories of assets, but the method may be changed from year to year.

(4) *Acquisition of certain assets.* For the purpose of the annual computation of percentages under subparagraph (1) of this paragraph—

(i) Assets which, within a 60-day period beginning in one taxable year of the taxpayer and ending in the next year, are acquired directly or indirectly through borrowing and then repaid or disposed of within such period, shall be considered assets other than those defined in paragraph (d) of this section, unless both the acquisition and disposition are established to the satisfaction of the district director to have been for bona fide purposes; and

(ii) The amount of cash shall not include amounts received directly or indirectly from another financial institution (other than a Federal Home Loan Bank or a similar institution organized under State law) to the extent of the amount of cash which an association has on deposit or holds as a withdrawable account in such other financial institution.

(5) *Reporting requirements.* In the case of income tax returns for taxable years ending after October 31, 1964, there shall be filed with the return a statement showing the amount of assets as of the close of the taxable year in each of the categories defined in paragraph (d), and in the category described in paragraph (h) of this section, and a brief description and amount of all other assets. If the alternative method of computing percentages under subparagraph (3) of this paragraph is selected, such statement shall show such information as of the end of each month, each quarter, or semiannually and the manner of calculating the averages. With respect to taxable years beginning after October 16, 1962, and ending before November 1, 1964, taxpayers shall maintain adequate records to establish to the satisfaction of the district director that it meets the various assets tests specified in this section.

(6) *Example.* The principles of this paragraph may be illustrated by the following example in which a description of the assets, the subparagraph of paragraph (d) in which the assets are defined, the amount of the assets, and the percentage of the total assets included in the calculation are set forth.

Z Savings and Loan Association Assets as of December 31, 1964

Item	Described in paragraph (d), subparagraph	Amount	Percentage
1. Cash	(2)	$1,000,000	1
2. Governmental obligations [1]	(3)	8,000,000	8
3. Deposit insurance company securities	(4)	1,000,000	1
Loans outstanding: [2]			
4. Home	(7)	50,000,000	50
5. Church	(8)	1,000,000	1
6. Multifamily	(9)	20,000,000	20
7. Nonresidential real property	(10)	5,000,000	5
8. Passbook	(6)	1,000,000	1
9. Other		2,000,000	2
Fixed assets (less depreciation reserves):			
10. Used in the association's business	(5)	1,000,000	1
11. Rented to others		500,000	.5
12. Land held for investment		500,000	.5
13. Total assets included for purposes of this paragraph		100,000,000	100.0%
14. Accounts receivable		100,000	(disregarded)
15. Prepaid expenses (other than prepaid FSLIC premiums)		1,000,000	(disregarded)
16. Deferred charges		1,000,000	(disregarded)
17. Total assets		102,100,000	

[1] Prepaid FSLIC premiums treated as governmental obligations.
[2] Not including unadvanced portion of loans in process, but including interest receivable and advances with respect to loans.

The computation of the percentages of assets in the various categories for the purpose of determining whether the percentage of assets tests in the paragraphs in this section are met as of the close of the year are as follows:

Test and paragraph	Items considered	Percentage
90 percent test (d)	$\frac{\text{the sum of items 1 through 8 and 10}}{\text{item 13 (total included assets)}}$	=97 percent
18 percent test (e)	$\frac{\text{the sum of items 7, 9, 11, and 12}}{\text{item 13 (total included assets)}}$	=8 percent
36 percent test (f)	$\frac{\text{the sum of items 6, 7, 9, 11, and 12}}{\text{item 13 (total included assets)}}$	=28 percent
3 percent test (h)	$\frac{0}{\text{item 13 (total included assets)}}$	=0 percent

At the option of the association, the computations listed above could have been made as of the close of each month, each quarter, or semiannually, and averaged for the entire year.

(m) *Taxable years beginning before October 17, 1962.* For taxable years beginning before October 17, 1962, the term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association substantially all the business of which is confined to making loans to members.

§ 301.7701–14 Cooperative bank.

For taxable years beginning after October 16, 1962, the term "cooperative bank" means an institution without capital stock organized and operated for mutual purposes without profit which meets the supervisory test, the business operations test, and the various assets tests specified in paragraphs (d) through (h) of § 301.7701–13, employing the rules and definitions of paragraphs (j) through (l) of that section. In applying paragraphs (b) through (l) of such section any references to an "association" or to a "domestic building and loan association" shall be deemed to be a reference to a cooperative bank.

§ 301.7701–15 Other terms.

Any terms which are defined in section 7701 and which are not defined in §§ 301.7701–1 to 301.7701–14, inclusive, shall, when used in this chapter, have the meanings assigned to them in section 7701.

General Rules

APPLICATION OF INTERNAL REVENUE LAWS

§ 301.7801 Statutory provisions; authority of the Department of the Treasury.

SEC. 7801. *Authority of the Department of the Treasury*—(a) *Powers and duties of Secretary.* Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

(b) *Office of General Counsel for the Department*—(1) *General Counsel.* There shall be in the Department of the Treasury the office of General Counsel for the Department of the Treasury. The General Counsel shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall be the chief law officer of the Department and shall perform such duties as may be prescribed by the Secretary.

(2) *Assistant General Counsels.* The President is authorized to appoint, by and with the advice and consent of the Senate, an Assistant General Counsel who shall be the Chief Counsel for the Internal Revenue Service and shall receive basic compensation at the annual rate of $19,000. The Chief Counsel shall be the chief law officer for the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary. The Secretary may appoint, without regard to the provisions of the civil service laws, and fix the duties of not to exceed five other Assistant General Counsels.

(3) *Attorneys.* The Secretary may appoint and fix the duties of such other attorneys as he may deem necessary.

(c) *Functions of Department of Justice unaffected.* Nothing in this section shall be considered to affect the duties, powers, or functions imposed upon, or vested in, the Department of Justice, or any officer thereof, by law existing on May 10, 1934.

[Sec. 7801 as amended by Act of Sept. 22, 1959 (Pub. Law 86–368, 73 Stat. 647)]

§ 301.7802 Statutory provisions; Commissioner of Internal Revenue.

SEC. 7802. *Commissioner of Internal Revenue.* There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary.

§ 301.7803 Statutory provisions; other personnel.

SEC. 7803. *Other personnel*—(a) *Appointment and supervision.* The Secretary or his delegate is authorized to employ such number of persons as the Secretary or his delegate deems proper for the administration and enforcement of the internal revenue laws, and the Secretary or his delegate shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

(b) *Posts of duty of employees in field service or traveling*—(1) *Designation of post of duty.* The Secretary or his delegate shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

(2) *Detail of personnel from field service.* The Secretary or his delegate may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Secretary or his delegate may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

(c) *Bonds of employees.* Whenever the Secretary or his delegate deems it proper, he may require any such officer or employee to furnish such bond, or he may purchase such blanket or schedule bonds, as the Secretary or his delegate deems appropriate. The premium of any such bond or bonds may, in the discretion of the Secretary or his delegate, be paid from the appropriation for expenses of the Internal Revenue Service.

(d) *Delinquent internal revenue officers and employees.* If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary or his delegate shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

[Sec. 7803(c) was superseded by Act of Aug. 9, 1955 (Pub. Law 323, 84th Cong., 69 Stat. 618) effective as of Jan. 1, 1956]

§ 301.7803–1 Surety bonds covering personnel of the Internal Revenue Service.

For regulations relating to the procurement of surety bonds covering designated personnel of the Internal Revenue Service after January 1, 1956, see 31 CFR Part 226.

§ 301.7804 Statutory provisions; effect of reorganization plans.

SEC. 7804. *Effect of reorganization plans*—(a) *Application.* The provisions of Reorganization Plan Numbered 26 of 1950 and Reorganization Plan Numbered 1 of 1952 shall be applicable to all functions vested by this title, or by any act amending this title (except as otherwise expressly provided in such amending act), in any officer, employee, or agency, of the Department of the Treasury.

(b) *Preservation of existing rights and remedies.* Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary or his delegate, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

§ 301.7805 Statutory provisions; rules and regulations.

SEC. 7805. *Rules and regulations*—(a) *Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 301.7805–1 Rules and regulations.

(a) *Issuance.* The Commissioner, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity.* The Commissioner, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the internal revenue laws shall be applied without retroactive effect. The Commissioner may prescribe the extent, if any, to which any ruling relating to the internal revenue laws, issued by or pursuant to authorization from him, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Commissioner, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 301.7806 Statutory provisions; construction of title.

SEC. 7806. *Construction of title*—(a) *Cross references.* The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) *Arrangement and classification.* No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

§ 301.7807 Statutory provisions; rules in effect upon enactment of this title.

SEC. 7807. *Rules in effect upon enactment of this title*—(a) *Interim provision for administration of title.* Until regulations are promulgated under any provision of this title which depends for its application upon the promulgation of regulations (or which is to be applied in such manner as may be prescribed by regulations) all instructions, rules or regulations which are in effect immediately prior to the enactment of this title shall, to the extent such instructions, rules, or regulations could be prescribed as regulations under authority of such provision, be applied as if promulgated as regulations under such provision.

(b) *Provisions of this title corresponding to prior internal revenue laws*—(1) *Reference to law applicable to prior period.* Any provision of this title which refers to the application of any portion of this title to a prior period (or which depends upon the application to a prior period of any portion of this title) shall, when appropriate and consistent with the purpose of such provision, be deemed to refer to (or depend upon the application of) the corresponding provision of the Internal Revenue Code of 1939 or of such other internal revenue laws as were applicable to the prior period.

(2) *Election or other acts.* If an election or other act under the provisions of the Internal Revenue Code of 1939 would, if this title had not been enacted, be given effect for a period subsequent to the date of enactment of this title, and if corresponding provisions are contained in this title, such election or other act shall be given effect under the corresponding provisions of this title.

§ 301.7808 Statutory provisions; depositaries for collections.

SEC. 7808. *Depositaries for collections.* The Secretary or his delegate is authorized to designate one or more depositaries in each State for the deposit and safekeeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depositary to the proper officer or employee of the Treasury Department for the money deposited by him shall be a sufficient voucher for such Treasury officer or employee in the settlement of his accounts.

§ 301.7809 Statutory provisions; deposit of collections.

SEC. 7809. *Deposit of collections*—(a) *General rule.* Except as provided in subsections (b) and (c) and in sections 4735, 4762, 7651, 7652, and 7654, the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary or his delegate as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer of the United States, designated depository, or proper officer of a deposit bank, shall be transmitted to the Secretary or his delegate.

(b) *Deposit funds.* In accordance with instructions of the Secretary or his delegate, there shall be deposited with the Treasurer of the United States in a deposit fund account—

(1) *Sums offered in compromise.* Sums offered in compromise under the provisions of section 7122;

(2) *Sums offered for purchase of real estate.* Sums offered for the purchase of real estate under the provisions of section 7506; and

(3) *Surplus proceeds in sales under levy.* Surplus proceeds in any sale under levy, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the levy and sale.

Upon the acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn from such deposit fund account and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Secretary or his delegate shall refund to the maker of such offer the amount thereof.

(c) *Deposit of certain receipts.* Moneys received in payment for—

(1) Work or services performed pursuant to section 7515 (relating to special statistical studies and compilations and other services on request);

(2) Work or services performed (including materials supplied) pursuant to section 7516 (relating to the supplying of training and training aids on request); and

(3) Other work or services performed for a State or a department or agency of the Federal Government (subject to all provisions of law and regulations governing disclosure of information) in supplying copies of, or data from, returns, statements, or other documents filed under authority of this title or records maintained in connection with the administration and enforcement of this title, shall be deposited in a separate account which may be used to reimburse appropriations which bore all or part of the costs of such work or services, or to refund excess sums when necessary.

[SEC. 7809 as amended by sec. 3(b), Act of Oct. 23, 1962 (Pub. Law 87—870, 76 Stat. 1161)]

EFFECTIVE DATE AND RELATED PROVISIONS

§ 301.7851 Statutory provisions; applicability of revenue laws.

SEC. 7851. *Applicability of revenue laws*—(a) *General rules.* Except as otherwise provided in any section of this title—

(1) *Subtitle A.* (A) Chapters 1, 2, 4, and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the date of enactment of this title, and with respect to such taxable years, chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed.

(B) Chapters 3 and 5 of this title shall apply with respect to payments and transfers occurring after December 31, 1954, and as to such payments and transfers sections 143 and 144 and chapter 7 of the Internal Revenue Code of 1939 are hereby repealed.

(C) Any provision of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953), or in terms of taxable years ending after a specific date (occurring after December 31, 1953), shall apply to taxable years ending after such specific date. Each such provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed to be included in the Internal Revenue Code of 1939, but shall be applicable only to taxable years ending after such specific date. The provisions of the Internal Revenue Code of 1939 superseded by provisions of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953), shall be deemed to be included in subtitle A of this title, but shall be applicable only to the period prior to the taking effect of the corresponding provision of subtitle A.

(D) Effective with respect to taxable years ending after March 31, 1954, and subject to tax under chapter 1 of the Internal Revenue Code of 1939—

(i) Sections 13(b)(3), 26(b)(2)(c), 26(b)(1)(C) (including the comma and the word "and" immediately preceding such section), 26(i)(3), 108(k), 207(a)(1)(C), 207(a)(3)(C), and the last sentence of section 362(b)(3) of such Code are hereby repealed; and

(ii) Sections 13(b)(2), 26(b)(2)(B), 26(h)(1)(B), 26(i)(2), 207(a)(1)(B), 207(a)(3)(B), 421(a)(1)(B), and the second sentence of section 362(b)(3) of such Code are hereby amended by striking out "and before April 1, 1954" (and any accompanying punctuation) wherever appearing therein.

(2) *Subtitle B.* (A) Chapter 11 of this title shall apply with respect to estates of decedents dying after the date of enactment of this title, and with respect to such estates chapter 3 of the Internal Revenue Code of 1939 is hereby repealed.

(B) Chapter 12 of this title shall apply with respect to the calendar year 1955 and all calendar years thereafter, and with respect to such years chapter 4 of the Internal Revenue Code of 1939 is hereby repealed.

(3) *Subtitle C.* Subtitle C of this title shall apply only with respect to remuneration paid after December 31, 1954, except that chapter 22 of such subtitle shall apply only with respect to remuneration paid after December 31, 1954, which is for services performed after such date. Chapter 9 of the Internal Revenue Code of 1939 is hereby repealed with respect to remuneration paid after December 31, 1954, except that subchapter B of such chapter (and subchapter E of such chapter to the extent it relates to subchapter B) shall remain in force and effect with respect to remuneration paid after December 31, 1954, for services performed on or before such date.

(4) *Subtitle D.* Subtitle D of this title shall take effect on January 1, 1955. Subtitles B and C of the Internal Revenue Code of 1939 (except chapters 7, 9, 15, 26, and 28, subchapter B of chapter 25, and parts VII and VIII of subchapter A of chapter 27 of such code) are hereby repealed effective January 1, 1955. Provisions having the same effect as section 6416(b)(2)(H), and so much of section 4082(c) as refers to special motor fuels, shall be considered to be included in the Internal Revenue Code of 1939 effective as of May 1, 1954. Section 2450(a) of the Internal Revenue Code of 1939 (as amended by the Excise Tax Reduction Act of 1954) applies to the period beginning on April 1, 1954, and ending on December 31, 1954.

(5) *Subtitle E.* Subtitle E shall take effect on January 1, 1955, except that the provisions in section 5411 permitting the use of a brewery under regulations prescribed by the Secretary or his delegate for the purpose of producing and bottling soft drinks, section 5554, and chapter 53 shall take effect on the day after the date of enactment of this title. Subchapter B of chapter 25, and part VIII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective on the day after the date of enactment of this title. Chapters 15 and 26, and part VII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective January 1, 1955.

(6) *Subtitle F*—(A) *General rule.* The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. The provisions of subtitle F shall apply with respect to any tax imposed by the Internal Revenue Code of 1939 only to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B) *Assessment, collection, and refunds.* Notwithstanding the provisions of subparagraph (A), and notwithstanding any contrary provision of subchapter A of chapter 63 (relating to assessment), chapter 64 (relating to collection), or chapter 65 (relating to abatements, credits, and refunds) of this title, the provisions of part II of subchapter A of chapter 28 and chapters 35, 36, and 37 (except section 3777) of subtitle D of the Internal Revenue Code of 1939 shall remain in effect until January 1, 1955, and shall also be applicable to the taxes imposed by this title. On and after January 1, 1955, the provisions of subchapter A of chapter 63, chapter 64, and chapter 65 (except section 6405) of this title shall be applicable to all internal revenue taxes (whether imposed by this title or by the Internal Revenue Code of 1939), notwithstanding any contrary provision of part II of subchapter A of chapter 28, or of chapter 35, 36, or 37, of the Internal Revenue Code of 1939. The provisions of section 6405 (relating to reports of refunds and credits) shall be applicable with respect to refunds or credts allowed after the date of enactment of this title, and section 3777 of the Internal Revenue Code of 1939 is hereby repealed with respect to such refunds and credits.

(C) *Taxes imposed under the 1939 code.* After the date of enactment of this title, the following provisions of subtitle F shall apply to the taxes imposed by the Internal Revenue Code of 1939, notwithstanding any contrary provisions of such code:

(i) Chapter 73, relating to bonds.

(ii) Chapter 74, relating to closing agreements and compromises.

(iii) Chapter 75, relating to crimes and other offenses, but only insofar as it relates to offenses committed after the date of enactment of this title, and in the case of such offenses, section 6531, relating to periods of limitation on criminal prosecution, shall be applicable. The penalties (other than penalties which may be assessed) provided by the Internal Revenue Code of 1939 shall not apply to offenses committed after the date of enactment of this title, to which chapter 75 of this title is applicable.

(iv) Chapter 76, relating to judicial proceedings.

(v) Chapter 77, relating to miscellaneous provisions, except that section 7502 shall apply only if the mailing occurs after the date of enactment of this title, and section 7503 shall apply only if the last date referred to therein occurs after the date of enactment of this title.

(vi) Chapter 78, relating to discovery of liability and enforcement of title.

(vii) Chapter 79, relating to definitions.

(viii) Chapter 80, relating to application of internal revenue laws, effective date, and related provisions.

(D) *Chapter 28 and subtitle D of 1939 code.* Except as otherwise provided in subparagraphs (B) and (C), the provisions of chapter 28 and of subtitle D of the Internal Revenue Code of 1939 shall remain in effect with respect to taxes imposed by the Internal Revenue Code of 1939.

(7) *Other provisions.* If the effective date of any provision of the Internal Revenue Code of 1954 is not otherwise provided in this section or in any other section of this title, such provisions shall take effect on the day after the date of enactment of this title. If the repeal of any provision of the Internal Revenue Code of 1939 is not otherwise provided by this section or by any other section of this title, such provision is hereby repealed effective on the day after the date of enactment of this title.

(b) *Effect of repeal of Internal Revenue Code of 1939*—(1) *Existing rights and liabilities.* The repeal of any provision of the Internal Revenue Code of 1939 shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal; but all rights and liabilities under such code shall continue, and may be enforced in the same manner, as if such repeal had not been made.

(2) *Existing offices.* The repeal of any provision of the Internal Revenue Code of 1939 shall not abolish, terminate, or otherwise change—

(A) Any internal revenue district,

(B) Any office, position, board, or committee, or

(C) The appointment or employment of any officer or employee,

existing immediately preceding the enactment of this title, the continuance of which is not manifestly inconsistent with any provision of this title, but the same shall continue unless and until changed by lawful authority.

(3) *Existing delegations of authority.* Any delegation of authority made pursuant to the provisions of Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952, including any redelegation of authority made pursuant to any such delegation of authority, and in effect under the Internal Revenue Code of 1939 immediately preceding the enactment of this title shall, notwithstanding the repeal of such code, remain in effect for purposes of this title, unless distinctly inconsistent or manifestly incompatible with the provisions of this title. The preceding sentence shall not be construed as limiting in any manner the power to amend, modify, or revoke any such delegation or redelegation of authority.

(c) *Crimes and forfeitures.* All offenses committed, and all penalties or forfeitures incurred, under any provision of law hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted.

(d) *Periods of limitation.* All periods of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been enacted.

(e) *Reference to other provisions.* For the purpose of applying the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 to any period, any reference in either such code or another provision of the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 which is not then applicable to such period shall be deemed a reference to the corresponding provision of the other code which is then applicable to such period.

§ 301.7852 Statutory provisions; other applicable rules.

SEC. 7852. *Other applicable rules*—(a) *Separability clause.* If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) *Reference in other laws to Internal Revenue Code of 1939.* Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

(c) *Items not to be twice included in income or deducted therefrom.* Except as otherwise distinctly expressed or manifestly intended, the same item (whether of income, deduction, credit, or otherwise) shall not be taken into account both in computing a tax under subtitle A of this title and a tax under chapter 1 or 2 of the Internal Revenue Code of 1939.

(d) *Treaty obligations.* No provision of this title shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of enactment of this title.

MISCELLANEOUS PROVISIONS

§ 301.9000–1 Procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for disclosure of internal revenue records or information.

(a) *Authority.* The provisions of this section are prescribed under the authority of 5 U.S.C. 301; section 2 of Reorganization Plan No. 26 of 1950, 64 Stat. 1280; 18 U.S.C. 1905; section 2(g) of the Federal Alcohol Administration Act (27 U.S.C. 202(c)); and sections 5274, 6103, 6104, 6106, 6107, 7213, 7237(e), 7803, and 7805 of the Internal Revenue Code of 1954.

(b) *Definitions.* When used in this section—

(1) *Internal revenue records or information.* The term "internal revenue records or information" means any records (including copies thereof) or information, made or obtained by, furnished to, or coming to the knowledge of, any officer or employee of the Internal Revenue Service while acting in his official capacity, or because of his official status, with respect to the administration of the internal revenue laws or any other laws administered by or concerning the Internal Revenue Service.

(2) *Internal revenue officer and employee.* The term "internal revenue officer and employee" means all officers and employees of the United States, engaged in the administration and enforcement of the internal revenue laws or any other laws administered by the Internal Revenue Service, appointed or employed by, or subject to the directions, instructions or orders of, the Secretary of the Treasury or his delegate.

(3) *Demand.* The term "demand" means any subpoena, notice of deposition either upon oral examination or written interrogatory, or other order, of any court, administrative agency, or other authority.

(c) *Disclosure of internal revenue records or information prohibited without prior approval of the Commissioner.* The disclosure, including the production, of internal revenue records or information to any person outside the Treasury Department or to any court, administrative agency, or other authority, in response to any request or demand for the disclosure of such records or information shall be made only with the prior approval of the Commissioner. However, nothing in this section shall restrict the disclosure of internal revenue records or information which the Commissioner has determined is authorized under any provision of statute, Executive order, or regulations, or for which a procedure has been established by the Commissioner. For example, this section does not restrict the inspection of returns and approved applications for tax exemption inspection of which is governed by sections 6103 and 6104 of the Code and the Executive orders and regulations issued thereunder, nor does it restrict the disclosure of internal revenue records or information which is requested by U.S. attorneys or attorneys of the Department of Justice for use in cases which arise under the internal revenue laws or related statutes and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(d) *Delegation to Commissioner of authority to determine disclosure and establish procedures; procedure in the event of a request or demand for disclosure*—(1) *Delegation to Commissioner.* The Commissioner is hereby authorized to determine whether or not officers and employees of the Internal Revenue Service will be permitted to disclose internal revenue records or information in response to:

(i) A request by any court, administrative agency, or other authority, or by any person, for the disclosure of such records or information, or

(ii) A demand for the disclosure of such records or information.

The Commissioner is also authorized to establish such procedures as he may deem necessary with respect to the disclosure of internal revenue records or information by internal revenue officers and employees. Any determination by the Commissioner as to whether internal revenue records or information will be disclosed, or any procedure established by him in connection therewith, will be made in accordance with applicable statutes, Executive orders, and regulations, and such instructions as may be issued by the Secretary or his delegate. Notwithstanding the preceding provisions of this subparagraph, the Commissioner shall, where either he or the Secretary deems it appropriate, refer the opposing of a request or demand for disclosure of internal revenue records or information to the Secretary.

(2) *Procedure in the event of a request or demand for internal revenue records or information*—(i) *Request procedure.* Any officer or employee of the Internal Revenue Service who receives a request for internal revenue records or information, the disposition of which is not covered by a procedure established by the Commissioner, shall promptly communicate the contents of the request to the Commissioner through the appropriate supervisor for the district or region in which he serves. Such officer or employee shall await instructions from the Commissioner concerning the response to the request. For the procedure to be followed in the event a person making a request seeks to obtain a court order or other demand requiring the production of internal revenue records or information, see subdivision (ii) of this subparagraph.

(ii) *Demand procedure.* Any officer or employee of the Internal Revenue Service who is served with a demand for internal revenue records or information, the disposition of which is not covered by a procedure established by the Commissioner, shall promptly, and without awaiting appearance before the court, administrative agency, or other authority, communicate the contents of the demand to the Commissioner through the appropriate supervisor for the district or region in which he serves. Such officer or employee shall await instructions from the Commissioner concerning the response to the demand. If it is determined by the Commissioner that the demand should be opposed, the U.S. attorney, his assistant, or other appropriate legal representative shall be requested to respectfully inform the court, administrative agency, or other authority that the Commissioner has instructed the officer or employee to refuse to disclose the internal revenue records or information sought. If instructions have not been received from the Commissioner at the time when the officer or employee is required to appear before the court, administrative agency, or other authority in response to the demand, the U.S. attorney, his assistant, or other appropriate legal representative shall be requested to appear with the officer or employee upon whom the demand has been served and request additional time in which to receive such instructions. In the event the court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the records or information pursuant to the instructions of the Commissioner, or declines to defer a ruling until instructions from the Commissioner have been received, the officer or employee upon whom the demand has been served shall, pursuant to this section, respectfully decline to disclose the internal revenue records or information sought.

(e) *Record of seizure and sale of real estate.* Record 21, "Record of seizure and sale of real estate", is open for public inspection in offices of district directors of internal revenue and copies are furnished upon application.

(f) *State liquor cases or State firearms cases.* Assistant regional commissioners (alcohol and tobacco tax) may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize investigators and other employees under their supervision to attend trials and administrative hearings in liquor cases or firearms cases in which the State is a party, produce records and testify as to facts coming to their knowledge in their official capacities: *Provided*, That information will not be divulged contrary to section 7213 of the Code by such production or testimony.

(g) *Penalties.* Any officer or employee of the Internal Revenue Service who disobeys the provisions of this section will be subject to dismissal and may incur criminal liability.

(h) *Effective date.* The provisions of this section are applicable to any request or demand for internal revenue records or information received by any officer or employee of the Internal Revenue Service after June 15, 1967.

[F.R. Doc. 67-12865; Filed, Nov. 2, 1967; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

PART 984—WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

Control Percentages for 1967–68 Marketing Year

Notice was published in the October 18, 1967, issue of the FEDERAL REGISTER (32 F.R. 14395) regarding a proposal to establish control percentages applicable to walnuts grown in California, Oregon, and Washington for the marketing year which began August 1, 1967. The percentages are based on the unanimous recommendations of the Walnut Control Board and other available information in accordance with the applicable provisions of the marketing agreement, as amended, and Order No. 984, as amended (7 CFR Part 984), regulating the handling of walnuts grown in California, Oregon, and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded interested persons opportunity to submit written data, views, or arguments with respect to the proposal. None were submitted within the prescribed time.

After consideration of all relevant matter presented, including those in the notice, the information and recommendations submitted by the Board, and other available information, it is found that to establish marketable and surplus percentages as hereinafter set forth will tend to effectuate the declared policy of the act.

Therefore, the marketable and surplus percentages for walnuts handled during the 1967–68 marketing year are established as follows:

§ 984.215 Marketable and surplus percentages for walnuts during the 1967–68 marketing year.

The marketable and surplus percentages during the marketing year beginning August 1, 1967, shall be as follows:

	District 1	District 2
Marketable	93	96.5
Surplus	7	3.5

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said amended marketing agreement and this part require that marketable and surplus percentages designated for a particular marketing year shall be applicable to all walnuts handled during such year; and (2) the current marketing year began on August 1, 1967, and the percentages established herein will automatically apply to all such walnuts beginning with such date.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 31, 1967.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 67-13015; Filed, Nov. 2, 1967; 8:49 a.m.]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order 120]

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEX., MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Lubbock-Plainview, Texas, marketing area (7 CFR Part 1120), it is hereby found and determined that:

(a) The provision in § 1120.14(a)(2) of the order which reads: "Not more than 15 days' production during any month of", relating to producer milk diversion limitations no longer tends to effectuate the declared policy of the Act for the months of November and December 1967.

(b) Thirty days notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) This suspension order is necessary to provide for the efficient and orderly disposition of the reserve supply of milk for the market. Ample supplies to furnish the Class I needs of the market are available at pool plants located in Lubbock. Under the present order provision it is necessary to receive milk from the farms of more distant producers at pool plants for purposes of qualifying it as producer milk although it is not needed at such plants but must be transferred to nonpool plants for use in manufactured dairy products.

(4) Suspension is necessary to permit the association representing a majority of producers on the market to divert milk directly from the farms of producers to nonpool plants without having to incur the unnecessary costs of transporting the milk to pool plants to retain producer milk status. Suspension will enable the cooperative to divert milk of the same producers during the period instead of having to alternate deliveries of milk from a large number of producers to pool plants to keep within the 15-day diversion limitation of the order.

(5) Interested parties were afforded opportunity to file written data, views, or arguments concerning this suspension (32 F.R. 14773). Views were filed in support of the suspension. None were filed in opposition.

Therefore, good cause exists for making this order effective November 1, 1967.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the period November 1, 1967, through December 31, 1967.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: November 1, 1967.

Signed at Washington, D.C., on October 31, 1967.

RODNEY E. LEONARD,
Deputy Assistant Secretary.

[F.R. Doc. 67-13012; Filed, Nov. 2, 1967; 8:49 a.m.]

[Milk Order 126]

PART 1126—MILK IN NORTH TEXAS MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the North Texas marketing area (7 CFR Part 1126), it is hereby found and determined that:

(a) The provision in § 1126.41(b)(2)(i) of the order which reads: "during the months of March through August", relating to the classification of milk disposed of to commercial bakeries or food product manufacturing plants no longer tends to effectuate the declared policy of the Act of November 1967 through February 1968.

(b) Thirty days notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) This suspension order is necessary for November 1967 through February 1968 to permit milk moved to bakeries, soup companies or other food product manufacturing plants where it is used for manufacturing product uses to be classified as Class II. The present provision providing for Class I classification of such movements except for March through August of any year was incorporated in the order at a time when the North Texas market had a much closer relationship of producer receipts to Class I sales during the months of September through February. The provision discouraged the use of milk in commercial food establishments if alternative fluid milk outlets were available. Class I classification for milk disposed of to commercial food establishments is not

needed to assure an adequate supply for fluid uses in the market.

(4) Suspension is necessary so that a local soup manufacturing plant and a candy manufacturing plant may continue to be used as outlets for the efficient and economical disposal of milk excess to the fluid needs of the market. The producer association which represents more than two-thirds of the producers states that it will be unable to dispose of milk to these facilities during November 1967 through February 1968 unless suspension to permit Class II classification is provided. Plants regulated under other nearby milk orders are permitted by the provisions of such other orders to dispose of milk to the aforementioned commercial food establishments as Class II milk while North Texas handlers are precluded from doing so unless suspension action is taken for this period.

(5) Interested parties were afforded opportunity to file written data, views, or arguments concerning this suspension (32 F.R. 14774). Views were filed in support of the suspension. None were filed in opposition.

Therefore, good cause exists for making this order effective November 1, 1967.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the period of November 1, 1967, through February 29, 1968.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: November 1, 1967.

Signed at Washington, D.C., on October 31, 1967.

RODNEY E. LEONARD,
Deputy Assistant Secretary.

[F.R. Doc. 67-13013; Filed, Nov. 2, 1967; 8:49 a.m.]

[Milk Order 132]

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Texas Panhandle marketing area (7 CFR Part 1132), it is hereby found and determined that:

(a) The provision in § 1132.7(b)(2) of the order which reads: "on not more than 15 days", relating to limitations on diversion of producer milk no longer tends to effectuate the declared policy of the Act for the months of November and December 1967.

(b) Thirty days notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) This provision was suspended for September and October 1967. A cooperative association which represents more than two-thirds of the producers in the market has requested continued suspension of the diversion provision limitation for an additional two months. This suspension order is necessary because recent amendments to the Texas Health Code require that milk produced outside the State of Texas for consumption within the State meet Grade A milk health standards at least equal to those met by Grade A milk produced in Texas. Texas State Health Department inspection of farms located outside Texas was expected to be completed by the end of October.

(4) It is now apparent that inspection by Texas health authorities of farms of producers located outside Texas cannot be completed by the end of October. This suspension order is necessary because producer milk regularly received at Texas Panhandle pool plants must be diverted to nonpool plants on more than the number of days permitted by present order diversion provisions during November and December 1967. Extension of the suspension will provide for the continued pooling and pricing of such milk as producer milk until inspection is accomplished which is now expected to be in December.

(5) Interested parties were afforded opportunity to file written data, views, or arguments concerning this suspension (32 F.R. 14774). Views were filed in support of suspension. None were filed in opposition.

Therefore, good cause exists for making this order effective November 1, 1967.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the period of November 1, 1967, through December 31, 1967.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: November 1, 1967.

Signed at Washington, D.C., on October 31, 1967.

RODNEY E. LEONARD,
Deputy Assistant Secretary.

[F.R. Doc. 67-13014; Filed, Nov. 2, 1967; 8:49 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. S]

PART 219—BANK SERVICE ARRANGEMENTS

Credit Card Service Organization

§ 219.104 Bank Credit Card Service Organization and the Bank Service Corporation Act.

(a) The Board of Governors recently considered whether the so-called Bank Service Corporation Act (12 U.S.C. 1861 ff) and the Board's Regulation S, "Bank Service Arrangements" (12 CFR Part 219), are applicable where a bank credit card plan of a State member bank and other banks uses the facilities of a nonprofit no-stock service organization.

(b) The functions of the service organization include the following: (1) Performs cardholder accounting for participating banks; (2) develops information concerning each credit card and holder, including such holder's current balance owing to the card issuing bank and the amount of such balance that is delinquent; (3) assists in procedures relating to the presentation and settlement of drafts and credit memoranda; (4) develops procedures relating to credit card security control; (5) upon telephonic request, advises merchants and participating banks respecting credit authorizations above certain specified limits; and (6) compiles lists of participating merchants.

(c) The Board expressed the view that, because the service organization has no stock and the State member bank does not otherwise "invest" therein by "the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment" (section 1(d) of the Act), the service organization is not a "bank service corporation" within the meaning of section 1(c) of the Act.

(d) However, the Board concluded that the functions described above do constitute "bank services" as defined in section 1(b) of the Act. Under the Act, such term "means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank."

(e) Section 5 of the Act provides that no federally-insured bank may have any such bank services performed for it unless assurances satisfactory to the appropriate supervisory agency "are furnished to such agency by both the bank and the party performing such services that the performance thereof will be subject to regulation and examination by such agency to the same extent as if such services were being performed by the bank itself on its own premises."

(f) Accordingly, the State member bank and the service organization are required to furnish assurances to the Board in accordance with the provisions of Regulation S, which implements section 5 of the Act.

(Interprets or applies 12 U.S.C. 1861, 1865)

Dated at Washington, D.C., this 27th day of October 1967.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 67-12984; Filed, Nov. 2, 1967; 8:46 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 67-EA-114, Amdt. 39-504]

PART 39—AIRWORTHINESS DIRECTIVES

Sikorsky Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation regulations so as to require an inspection and when necessary, replacement of the azimuth control assembly on Sikorsky Type S-55 helicopters.

There have been instances of fatigue failure of a rod end fitting in the control system. It has been determined that certain propulsion system gear frequencies impose bending loads on the subject control rod assembly. A new rod assembly has been designed to alleviate this deficiency. Since this condition is likely to exist or develop in other helicopters of the same type, an airworthiness directive is being issued which will require an inspection and replacement of the assembly.

Since a situation exists that requires immediate adoption of this amendment, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89, 31 F.R. 13697, § 39.13 of Part 39 of the Federal Aviation regulations is amended by adding the following new airworthiness directive.

SIKORSKY. Applies to Type S-55 Helicopters equipped with Wright R-1300 engines (Restricted and Normal Category).

Compliance required as indicated.

To prevent fatigue failure of the azimuth control rod assembly, P/N S1440-2105-1, accomplish the following:

(a) Remove from service all control rod assemblies, P/N S1440-2105-1, with 725 or more hours' time in service on the effective date of this AD within the next 25 hours' time in service.

(b) Remove from service all other control rod assemblies P/N S1440-2105-1, before the accumulation of 750 hours' time in service.

(c) Within the next 15 hours' time in service after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 50 hours' time in service from the last inspection, inspect the control rod assembly in accordance with paragraph B of Sikorsky Service Bulletin No. 55B40-5, dated October 18, 1967, or later revisions approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Eastern Region. Equivalent inspections may be approved by an FAA maintenance inspector.

This amendment is effective November 3, 1967.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Jamaica, N.Y., on October 27, 1967.

MARTIN J. WHITE,
Acting Director, Eastern Region.

[F.R. Doc. 67-13003; Filed, Nov. 2, 1967; 8:48 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 67-255]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Coastwise Transportation; Polish People's Republic

On the basis of information obtained and furnished by the Department of State, it is found that the Government of the Polish People's Republic extends to vessels of the United States in ports of the Polish People's Republic privileges reciprocal to those provided for in § 4.93 (a) of the Customs Regulations. Therefore, vessels of the Polish People's Republic are permitted to transport coastwise empty cargo vans, lift vans, and shipping tanks under the conditions specified in the applicable proviso to 46 U.S.C. 883.

Accordingly, § 4.93(b) of the Customs Regulations is amended by the insertion of "Polish People's Republic" in appropriate alphabetical order in the list of countries in that section.

(80 Stat. 379, R.S. 251, sec. 624, 46 Stat. 759, sec. 27, 41 Stat. 999, as amended; 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. 883)

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: October 26, 1967.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 67-13020; Filed, Nov. 2, 1967; 8:49 a.m.]

[T.D. 67-256]

PART 16—LIQUIDATION OF DUTIES

Countervailing Duties; Sugar Content of Certain Articles From Australia

OCTOBER 26, 1967.

The Treasury Department is in receipt of official information that the rates of bounties or grants paid or bestowed by the Australian Government within the meaning of section 303, Tariff Act of 1930 (19 U.S.C. 1303), on the exportation during the month of October 1967, of approved fruit products and other approved products containing sugar amounts to Australian $117 per 2,240 pounds of sugar content.

The net amount of bounties or grants on the above-described commodities which are manufactured or produced in Australia is hereby ascertained, determined, and declared to be Australian $117 per 2,240 pounds of sugar content. Additional duties on the above-described commodities, except those commodities covered by T.D. 55716 (27 F.R. 9595), whether imported directly or indirectly from that country, equal to the net amount of the bounty shown above shall be assessed and collected.

In view of the change in the periods to be covered by countervailing duty orders relating to the sugar content of certain articles from Australia, only the three last Treasury decisions publishing such orders will be listed at any one time in the table in § 16.24(f) of the Customs Regulations.

The table in § 16.24(f) of the Customs Regulations is amended by inserting after the last line under "Australia—Sugar content of certain articles" the number of this Treasury decision in the column headed "Treasury Decision" and the words "New rate" in the column headed "Action." The table in § 16.24(f) is further amended by deleting therefrom under "Australia—Sugar content of certain articles" the number 67-221 in the column headed "Treasury Decision" and the words "New rate" appearing opposite such number in the column headed "Action."

(R.S. 251, secs. 303, 624, 46 Stat. 687, 759; 19 U.S.C. 66, 1303, 1624)

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: October 26, 1967.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 67-13021; Filed, Nov. 2, 1967; 8:49 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER C—DRUGS

PART 166—DEPRESSANT AND STIMULANT DRUGS; DEFINITIONS, PROCEDURAL AND INTERPRETATIVE REGULATIONS

Confirmation of Effective Date of Order Listing Additional Drugs as Drugs Subject to Control

In the matter of listing bufotenine and its salts, DET and its salts, and ibogaine and its salts as depressant or stimulant drugs within the meaning of section 201(v) of the Federal Food, Drug, and Cosmetic Act because of their hallucinogenic effect:

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(v), 511, 701, 52 Stat. 1055, as amended, 79 Stat. 227 et seq.; 21 U.S.C. 321(v), 360a, 371), and under the authority delegated by the Secretary of Health, Education, and Welfare to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the FEDERAL REGISTER

of September 23, 1967 (32 F.R. 13407). Accordingly, the amendments promulgated by that order will become effective November 22, 1967.

(Secs. 201(v), 511, 701, 52 Stat. 1055, as amended, 79 Stat. 227 et seq.; 21 U.S.C. 321(v), 360a, 371)

Dated: October 26, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-12907; Filed, Nov. 2, 1967; 8:47 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 7—SPECIAL REGULATIONS RELATING TO PARKS AND MONUMENTS

Fire Island National Seashore, N.Y.; Vehicular Use

Notice is hereby given that, pursuant to the authority vested in the Secretary of the Interior by section 3 of the Act of August 25, 1916, as amended (39 Stat. 535; 16 U.S.C. 3), and in order to further implement the purposes of the Act of September 11, 1964 (78 Stat. 928; 16 U.S.C. 459e), authorizing the establishment of the Fire Island National Seashore, an amendment to Part 7, Chapter I, Title 36, Code of Federal Regulations is adopted, as hereinafter set forth.

The purpose of the amendment is to permit vehicular use of Seashore lands for recreational activities along the Atlantic Ocean beach, in a manner and to the extent that they will be consistent with preservation of the Seashore. The amendment seeks to strike a balance between hunting, fishing and other recreational activities and conservation of the area's natural features, since both of these objectives are provided for in the act authorizing establishment of the Seashore.

Since this amendment will result in a relaxation of restrictions already in effect and imposes no new or further requirements, and in order to give the public the benefit of its provisions as soon as possible, publication of a notice of proposed rule making and public comment thereon, as well as the usual 30-day waiting period before the effective date of the amendment are deemed unnecessary. Accordingly, the amended regulation will become effective upon publication of this notice in the FEDERAL REGISTER.

Section 7.20 of Chapter I, Title 36 of the Code of Federal Regulations is amended to change the text of § 7.20(a)(3)(v) as follows:

§ 7.20 Fire Island National Seashore.

(a) *Operation of motor vehicles.* * * *

(3) *Authorized and prohibited travel.* * * *

(v) Travel on Seashore lands by all other vehicles between the easterly boundary of Ocean Ridge and the westerly boundary of Smith Point County Park is prohibited, except under prior existing rights of ingress and egress. However, during the period of September 16 through May 14 such vehicles may, for recreational purposes, travel over Seashore lands on the beach along the Atlantic Ocean between Smith Point County Park and Long Cove. No such vehicle may travel farther inland from the ocean than the base of the dunes.

* * * * *

(5 U.S.C. 553; 39 Stat. 535; 16 U.S.C. 3)

LEMUEL A. GARRISON,
Regional Director, Northeast Region, National Park Service.

[F.R. Doc. 67-13089; Filed, Nov. 2, 1967; 8:50 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter II—National Bureau of Standards, Department of Commerce

SUBCHAPTER A—TEST FEE SCHEDULES

PART 204—RADIATION PHYSICS

Radioactivity

Under the provisions of 15 U.S.C. 275 (a) and 277, the test fee schedules of the National Bureau of Standards, Department of Commerce, pertaining to the calibration of gamma-emitting radioactive samples, alpha-emitting radioactive samples and beta-emitting radioactive samples are revised as provided herein. Mercury-197 has been added to the list of samples, and all fees have been revised upwards to assure full recovery of the cost of providing calibration services.

This revision, effective upon publication in the FEDERAL REGISTER, supersedes §§ 204.201, 204.202, and 204.203 of Part 204 of Title 15, Code of Federal Regulations, published in the FEDERAL REGISTER of December 17, 1966, at 31 F.R. 16186.

§ 204.201 Calibration of gamma-emitting radioactive samples.

Calibration of gamma-emitting radioactive samples that conform to the physical, chemical, and activity level specifications for measurement in the National Bureau of Standards $4\pi\gamma$-ionization chamber.

Item	Description	Fee
204.201a	(1) 100-300 micrograms of radium....	$120.00
	(2) Chemically stable solutions of the following radionuclides in the specified activity ranges can be measured:	120.00
	i. 50-100 microcuries of sodium-22, sodium-24, scandium-46, cobalt-60, yttrium-88.	
	ii. 150-300 microcuries of manganese-54, iron-59, zinc-5, strontium-85, niobium-95, iodine-131, cesium-137, tantalum-182, gold-198, mercury-203.	
	iii. 300-600 microcuries of potassium-42, cobalt-57, cerium-139, cerium-141, mercury-197.	
	Solutions should be 5 ml in volume and flame-sealed in glass vials or ampoules of O.D. 16.0±0.5 mm, wall thickness approximately 0.5 mm.	
204.201b	Chemically stable solutions of the following radionuclides in the specified activity ranges can be be measured:	135.00
	i. 10-20 microcuries of sodium-22, sodium-24, scandium-46, cobalt-60, yttrium-88.	
	ii. 30-60 microcuries of manganese-54, iron-59, zinc-65, strontium-85, niobium-95, iodine-131, cesium-137, tantalum-182, gold-198, mercury-203.	
	iii. 60-100 microcuries of potassium-42, cobalt-57, cerium-139, cerium-141, mercury-197.	
	Solutions should be 5 ml in volume and flame-sealed in glass vials or ampoules of O.D. 16.0±0.5 mm, wall thickness approximately 0.5 mm.	
204.201z	Fees have not been fixed for these services. Charges will be made for actual costs incurred. Upon request, estimates will be furnished for specific tasks which should provide a close approximation of actual cost.	

§ 204.202 Calibration of alpha-emission rate of sources.

Calibration of alpha-emitting radioactive samples that conform to the physical and activity level specifications for measurement in the National Bureau of Standards $2\pi\alpha$-proportional counter.

Item	Description	Fee
204.202a	Chemically stable samples that conform to physical and activity level specifications listed below can be measured:	$92.00
	i. Source diameter should not exceed 10 cm.	
	ii. Source thickness should be such that more than 99.5 percent of the emitted alpha particles have an energy greater than 400 keV.	
	iii. Emission rate should not exceed 5×10^5 aps.	
204.202z	Fees have not been fixed for these services. Charges will be made for actual cost incurred. Upon request, estimates will be furnished for specific tasks which should provide a close approximation of actual cost.	

§ 204.203 Calibration of beta-emitting radioactive samples.

Calibration of beta-emitting radioactive samples that conform to the chemical and activity level specifications for measurement in either the National Bureau of Standards $2\pi\beta$-windowless proportional flow counter, or in the National Bureau of Standards $2\pi\beta$-ionization chamber.

Item	Description	Fee
204.203a	Chemically stable solutions of the following radionuclides in the specified activity ranges can be measured in the National Bureau of Standards $2\pi\beta$-windowless proportional flow counter: i. 1-10 microcuries/milliliter of chlorine-36, strontium-yttrium-90. ii. 2-20 microcuries/milliliter of thallium-204. iii. 5-50 microcuries/milliliter of calcium-45, promethium-147. iv. 10-100 microcuries/milliliter of sulfur-35. Solutions should be approximately 5 ml in volume and flame-sealed in glass vials or ampoules.	$305.00
204.203b	Chemically stable solutions of the following radionuclides in the specified activity ranges can be measured in the National Bureau of Standards $2\pi\beta$-ionization chamber: i. 2-20 microcuries/milliliter of phosphorus-32. Solution should be neutral or weak acid with not more than 0.2 mg/ml total solids. ii. 2-20 microcuries/milliliter of strontium-89, strontium-yttrium 90. Solution should be weak HCl (1N or less) with not more than 0.2 mg/ml total solids. Solutions should be approximately 5 ml in volume and flame-sealed in glass vials or ampoules.	155.00
204.203c	Fees have not been fixed for these services. Charges will be made for actual cost incurred. Upon request, estimates will be furnished for specific tasks which should provide a close approximation of actual cost.	

(Sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets or applies sec. 7, 70 Stat. 959; 15 U.S.C. 275a)

A. V. ASTIN,
Director.

[F.R. Doc. 67-12972; Filed, Nov. 2, 1967; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Information To Be Furnished in Connection With Depletion Deductions; Notice of Hearing

The proposed amendment to the regulations under section 611 of the Internal Revenue Code relating to information to be furnished in connection with deductions for depletion of mines, oil and gas wells, and other natural deposits was published in the FEDERAL REGISTER for October 3, 1967 (32 F.R. 13773).

A public hearing on the provisions of this proposed amendment to the regulations will be held on Thursday, November 16, 1967 at 10:00 a.m., e.s.t., and continuing if necessary on November 17, in Room 3313, Internal Revenue Building, Twelfth and Constitution Avenue NW., Washington, D.C.

Persons who plan to attend the hearing are requested to notify the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by November 13, 1967, indicating whom they represent. Telephone (Area Code 202) 964-3935.

[SEAL] JAMES F. DRING,
Director, Legislation and Regulations Division.

[F.R. Doc. 67-13067; Filed, Nov. 2, 1967; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Parts 822, 891, 892]

SUGAR IN CONTINENTAL UNITED STATES

Definition of Farm and Definition and Interpretation of Operator; 1968 and Subsequent Crops

Notice is hereby given that pursuant to the provisions of section 304(b) of the Sugar Act of 1948, as amended, the Secretary is prepared to issue regulations revising the definition of a farm in the continental United States, now included in 7 CFR 822.1, revising the definition of the term "operator" now included in 7 CFR 891.1 and 892.1 as amended in 32 F.R. 7837 and 8413, and to include guides to county committees for determining the operators of farms.

The proposals contained herein reflect several suggestions received from interested persons in response to the proposed notice of rule making published in the FEDERAL REGISTER of February 9, 1967 (32 F.R. 2708).

All persons who desire to submit comments and views regarding the revision of regulations as hereafter proposed, may submit the same in writing and in duplicate to the Director, Farmer Programs Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250 within 30 days after the date of publication of this notice in the FEDERAL REGISTER.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

1. It is proposed that the definition of a farm in the continental United States, set forth in 7 CFR 822.1, be revised to read as follows:

§ 822.1 Determination of a farm; continental United States.

Effective for the 1968 and subsequent crops of sugar beets and sugarcane, a farm within the limits of the continental United States for the purposes of the Sugar Act of 1948, as amended, means all land within a State farmed by the same operator and shall include, in addition, any land in an adjoining State or States farmed by such operator, if any of the equipment or labor used in the operation of the land in one State is also used in the operation of the land in the other State or States.

§§ 891.1, 892.1 [Amended]

2. It is proposed that the definition of the term operator, set forth in §§ 891.1 and 892.1 of Title 7 appearing in 32 F.R. 7837 and 8413 be revised to read as follows:

"Operator" means, effective for the 1968 and subsequent crops, the producer (or producers) who has general control of the sugar beet or sugarcane operations on the farm.

3. It is proposed to amend Parts 891 and 892 of Title 7 (32 F.R. 7837, 8413) by adding the following:

§§ 891.___, 892.___ Guides for determining the operator of a farm.

(a) The county committee shall determine the person (or persons acting together) who is a producer, as defined, of the sugar beet or sugarcane crop and who has general control of the sugar beet or sugarcane operations and, hence, is the operator of all lands on which sugar beet or sugarcane operations are under his general control. To assist the county committee in determining who controls a sugar beet or sugarcane operation, there are set forth as follows certain factors that should be given careful consideration in determining the operator of a farm. In developing information as to who controls a sugar beet or sugarcane operation where a partnership or legal entity such as a corporation is involved, the county committee should consider whether an individual as distinguished from the partnership or legal entity has the general control of the sugar beet or sugarcane operations.

(b) As possible indicia of control of a sugar beet or sugarcane operation, the county committee should ascertain the producer who performs the following functions: (1) Controls the land (by ownership or lease); (2) arranges for financing and is responsible for repayment of any loans or advances; (3) arranges for and pays labor; and (4) manages the sugar beet or sugarcane operations and makes the decisions with respect thereto.

(c) Also, as an indication of control over a sugar beet or sugarcane operation, the county committee should ascertain whether a written record of accounts covering costs and income from such operations are maintained separately from those of any other operation in which the persons involved have an interest.

(d) Generally, the person (or persons acting together) who directs the sugar beet or sugarcane operation and who has the authority to make the final decisions with respect to growing, harvesting, and marketing the crop should be considered as controlling the operation. Often, such person performs the actual farming functions himself. Usually, such person (or persons) also has the majority financial interest in the crop, either by direct ownership or indirectly by stock ownership or otherwise.

(e) The fact that a person has the majority financial interest in the crop of sugar beets or sugarcane does not preclude the county committee from determining that he is not the operator where it can be shown to the satisfaction of the committee that in consideration of pertinent factors another person is a producer of the crop and controls the operations. Also, since the definition of a producer has been construed over a long period of time as not including a creditor whose only interest in a crop results from a lien upon a crop of sugar beets or sugarcane, such a creditor by not being a producer of such crop would not qualify as the operator of the land on which such crop was produced.

(f) In the following situations, it would appear that control of the sugar beet or sugarcane operations would be as indicated:

(1) Where two or more persons have the same ownership interest in a crop of sugar beets or sugarcane growing or grown on one or more tracts of land, and they are the only persons engaged in farming operations on such land, they will, generally, be considered as the operator of all of such land. However, if

one or more of such persons is determined by the county committee as exercising control, he or they shall be considered as the operator.

(2) Where a husband and wife not legally separated by judgment of a court are both engaged in the production of sugar beets or sugarcane and one of them shares in the crop produced on the land of the other, if the county committee determines that the one who shares in the crop of the other also controls the sugar beet or sugarcane operations of the other, the spouse exercising the control would be considered as the operator. If neither spouse shares in the sugarcane or sugar beet crop of the other, or the county committee determines that the indicia of control justify a conclusion that separate operations are involved, each such spouse would be considered as separate operators.

(3) If a minor child and a parent live in the same household and each is engaged in the production of sugar beets or sugarcane, the parent who is a producer of the crop would be considered the operator unless the county committee is satisfied that the minor child controls his sugar beet or sugarcane operations. However, the cosigning of a note by a parent to enable the child to obtain financing shall not of itself be considered as representing control by the parent. Any land farmed by a minor as a Future Farmers of America or 4–H project shall be considered a part of the parent's farm unless the land on which the sugarcane or sugar beets are grown is leased by the minor from someone other than the parent and the parent has no control over the operation.

Signed at Washington, D.C., on October 30, 1967.

H. D. GODFREY,
Administrator, Agricultural stabilization and Conservation Service.

[F.R. Doc. 67-12987; Filed, Nov. 2, 1967; 8:46 a.m.]

Consumer and Marketing Service

[7 CFR Part 906]

ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Approval of Expenses and Fixing of Rate of Assessment for 1967–68 Fiscal Period and Carryover of Unexpended Funds

Consideration is being given to the following proposals submitted by the Texas Valley Citrus Committee, established under the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in Lower Rio Grande Valley in Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(1) That expenses that are reasonable and likely to be incurred by the Texas Valley Citrus Committee, during the period from August 1, 1967, through July 31, 1968, will amount to $170,000;

(2) That there be fixed, at $0.045 per 7/10-bushel carton or equivalent quantity of oranges and grapefruit, the rate of assessment payable by each handler in accordance with § 906.34 of the aforesaid marketing agreement and order; and

(3) That unexpended assessment funds in excess of expenses incurred during the fiscal period ended July 31, 1967, in the amount of $17,341.29, be carried over as a reserve in accordance with § 906.35 of the said marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: October 30, 1967.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 67-12988; Filed, Nov. 2, 1967; 8:46 a.m.]

[7 CFR Part 908]

[Do No. AO-250-A4]

VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Notice of Hearing With Respect to Proposed Amendment to Marketing Agreement and Order

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders, as amended (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Town Hall, Valley Plaza Shopping Center, 2701 Ming Avenue at New Freeway 99, Bakersfield, Calif., at 9:30 a.m., local time, Tuesday, December 5, 1967, and at the Chilton Inn, Highway 80 at Catalina Drive, Yuma, Ariz., at 9:30 a.m., local time, Tuesday, December 12, 1967, with respect to proposed further amendment of the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), hereinafter referred to as the "marketing agreement" and "order," respectively, regulating the handling of Valencia oranges grown in Arizona and designated part of California. The proposed amendments have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and to any appropriate modifications thereof.

The following amendments to the marketing agreement and order have been proposed by Pure Gold, Inc., Post Office Box 40, Redlands, Calif.:

§ 908.30 [Amended]

1. Amend § 908.30(a) by adding the following: "Providing, That at any unassembled meeting held in accordance with § 908.51(c) to recommend to the Secretary an increase in allotment for any week such action shall require at least seven concurring votes."

§ 908.57 [Amended]

2. Amend § 908.57(a) by deleting the first sentence and substituting the following: "A person to whom allotments have been issued under general maturity may lend such allotments to other persons within any prorate district to whom allotment have also been issued: *Provided*, That allotments issued under the short life provision of this subpart may be loaned only to other persons in the same prorate district to whom such allotment have also been issued."

The following amendments to the marketing agreement and order have been proposed by Sunkist Growers, Inc., Box 2706, Terminal Annex, Los Angeles, Calif.:

1. Revise § 908.4, *Production area*, to read as follows:

§ 908.4 Production area.

"Production area" means the State of Arizona and the State of California.

2. Revise § 908.5, *Oranges*, to read as follows:

§ 908.5 Oranges.

"Oranges" means any and all strains of the Valencia variety of oranges grown in the production area and additional types or strains (other than Navels and Mandarins) handled at any time during the period beginning with the first week of allocation ending in May and ending with the last such week ending in October.

§ 908.12 [Amended]

3. Revise § 908.12, *Oranges available for current shipment*, by adding the following proviso at the end thereof: "*Provided*, That oranges available for current shipment shall include varieties determined by the committee to have reached general maturity and shall only include the remaining supplies of any variety of oranges defined in the order other than Valencia oranges beginning with the first week of allocation ending in May."

§ 908.15 [Amended]

4. Revise § 908.15, *General maturity*, by adding the following proviso at the end thereof: "*Provided*, That the committee

need not determine general maturity for all varieties of oranges at the same time."

5. Revise § 908.20, *Establishment and membership*, so that the first sentence shall read:

§ 908.20 Establishment and membership.

There is hereby established a Valencia Orange Administrative Committee consisting of 11 members, for each of whom there shall be one alternate, and for each grower member an additional alternate. * * *

§§ 908.22, 908.23 [Amended]

6. Revise § 908.22, *Nominations*, and § 908.23, *Selection*, to provide for nomination and selection of two alternates for each grower member, instead of one.

§ 908.27 [Amended]

7. Revise § 908.27, *Alternate members*, to insert before the end of the proviso, the following: "; unless another alternate member is so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate the additional alternate shall so act."

§ 908.51 [Amended]

8. Revise § 908.51, *Recommendations for volume regulation*, by adding the following proviso to the end of the first sentence: "*Provided*, That the committee may determine by variety that such variety will not be included as a part of such total quantity, in which event they will not be included as oranges available for current shipment."

By amending paragraph (b) so that the first sentence to the colon will read:

(b) In making its recommendations, the committee shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors:

By adding the following paragraph at the end of the section:

(d) The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 908.51.

9. Revise § 908.53, *Prorate bases*, by redesignating paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and adding a new paragraph to be designated paragraph (f), in substance as follows:

§ 908.53 Prorate bases.

* * * * *

(f) When any person having a prorate base has moved all his oranges or has remaining a quantity smaller than his allotment, he shall be removed from the prorate base or his prorate base shall be reduced so that his allotment based thereon shall not exceed the quantity of oranges remaining under his control; except that he shall receive his allotments on his full prorate base to the extent necessary to pay back loans for which he is obligated in any week that repayment of loans may be due.

* * * * *

§ 908.55 [Amended]

10. Revise § 908.55, *Overshipments*, by substituting for the phrase "equivalent to 10 percent" in the first sentence, "equivalent to 20 percent" and adding at the end of such first sentence the following proviso: "*Provided, however*, That the committee may, with the approval of the Secretary, reduce such 20 percent to a percentage not less than 10 percent."

11. Revise § 908.57, *Allotment loans*, by deleting the first sentence of paragraphs (a) and (b) and substituting the following as set forth below and by adding paragraph (f) as follows:

§ 908.57 Allotment loans.

(a) A person to whom allotments have been issued under general maturity may lend such allotments to other persons within any prorate district to whom allotments have also been issued: *Provided*, That allotments issued under the short life provision of this subpart may be loaned only to other persons in the same district to whom such allotments have been issued. * * *

(b) A person desiring to loan all or part of his allotment shall attempt to do so first within his own district and if he so chooses, may request the committee to act in his behalf. A person desiring to loan to persons outside his own district shall request the committee to arrange the loan on his behalf with the committee first offering the loan to persons within the district who have previously filed requests for such loans; and failing to so arrange may then offer the loan outside of the district in an equitable manner. * * *

* * * * *

(f) The committee may, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 908.57.

§ 908.61 [Amended]

12. Revise § 908.61, *Short life allotments*, by deleting the fourth and fifth sentences and substituting the following: "Such determination and allotment issued pursuant thereto shall permit the handling in total during periods of open movement and under volume regulations of a quantity of short life oranges equal proportionately to the average to be handled by all handlers of oranges within the prorate district. After a handler of short life oranges has received allotment sufficient to permit such total handling, allotment thereafter due such handler of short life oranges shall be allocated to handlers from whom allotment has been withheld."

13. Revise paragraphs (a), (b), and (c) of § 908.66, *Prorate districts*, to read as follows:

§ 908.66 Prorate districts.

* * * * *

(a) District 1 shall include that part of the State of California west of a line drawn due north and south through White Water, Calif., and north of a line drawn due east and west through Gorman, Calif., but excluding San Luis Obispo and Santa Barbara Counties.

(b) District 2 shall include that part of the State of California west of a line drawn due north and south through White Water, Calif., and south of a line drawn due east and west through Gorman, Calif., but including San Luis Obispo and Santa Barbara Counties.

(c) District 3 shall include the State of Arizona and that part of the State of California east of a line drawn due north and south through White Water, Calif.

The Fruit and Vegetable Division, Consumer and Marketing Service, has proposed that consideration be given to making such other changes in the marketing agreement and order as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing may be obtained from the Director, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, or from the Los Angeles Marketing Field Office, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, 1031 South Broadway, Room 1005, Los Angeles, Calif. 90015.

Dated: October 31, 1967.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[F.R. Doc. 67-13017; Filed, Nov. 2, 1967; 8:49 a.m.]

[7 CFR Part 913]

GRAPEFRUIT GROWN IN THE INTERIOR DISTRICT IN FLORIDA

Approval of Expenses and Fixing of Rate of Assessment for 1967–68 Fiscal Period

Consideration is being given to the following proposals submitted by the Interior Grapefruit Marketing Committee, established under the marketing agreement and Order No. 913 (7 CFR Part 913) regulating the handling of grapefruit grown in the Interior District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(a) That the expenses that are reasonable and likely to be incurred by the Interior Grapefruit Marketing Committee, during the fiscal period beginning August 1, 1967, and ending July 31, 1968, will amount to $28,000.

(b) That the rate of assessment for such period, payable by each handler in accordance with § 913.31, be fixed at $0.004 per standard packed box.

(c) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals shall file the same, in quadruplicate, with the

Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: October 31, 1967.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 67-13016; Filed, Nov. 2, 1967; 8:49 a.m.]

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Parts 5, 6, 7]

CONTRACTS COVERING FEDERALLY FINANCED OR ASSISTED CONSTRUCTION AND NONCONSTRUCTION CONTRACTS SUBJECT TO CONTRACT WORK HOURS STANDARDS ACT

Enforcement of Labor Standards Provisions; Rules of Practice

Under authority provided in 5 U.S.C. 301, section 2 of the Copeland Act (48 Stat. 948, as amended; 40 U.S.C. 276c), section 4 of the Service Contract Act of 1965 (79 Stat. 1035, as amended; 41 U.S.C. 353), section 10 of the Portal-to-Portal Act of 1947 (61 Stat. 89, as amended; 29 U.S.C. 259), sections 104 and 105 of the Contract Work Hours Standards Act (76 Stat. 358, 359; 40 U.S.C. 330, 331), and in Reorganization Plan No. 14 of 1950 (64 Stat. 1267), it is proposed to amend 29 CFR Parts 5, 6 and 7 in the manner set forth below.

Interested persons may submit written data, views, or argument concerning the proposed amendments within 30 days of the publication of this document in the FEDERAL REGISTER. Such submissions may be filed with the Administrator of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, 14th Street and Constitution Avenue NW., Washington, D.C. 20210.

1. It is proposed to amend paragraph (a) of § 5.1 to read as follows:

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated in order to coordinate the administration and enforcement of the labor standards provisions of each of the acts listed below, and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon him under Reorganization Plan No. 14 of 1950:

Davis-Bacon Act (40 U.S.C. 276a—276a-7).
Copeland Act (40 U.S.C. 276c).
Contract Work Hours Standards Act (40 U.S.C 327-331).
Any statute enacted after July 1, 1967, which incorporates by reference any provisions of any of the statutes listed above.
Federal Aid Highway Act of 1956 (23 U.S.C. 113).
National Housing Act (12 U.S.C. 1713, 1715a, 1715c, 1715k, 1715(d) (3) and (4), 1715v, 1715w, 1715x, 1743, 1747, 1748b, 1748h-2, 1750g).
Hospital Survey and Construction Act (42 U.S.C. 291h).
Federal Airport Act (49 U.S.C. 1114).
Housing Act of 1949 (42 U.S.C. 1459).
School Survey and Construction Act of 1950 (20 U.S.C. 636).
Defense Housing and Community Facilities and Services Act of 1951 (42 U.S.C. 15921).
United States Housing Act of 1937 (42 U.S.C. 1416).
Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281).
Area Redevelopment Act (42 U.S.C. 2518).
Delaware River Basin Compact (sec. 15.1, 75 Stat. 714).
Health Professions Educational Assistance Act of 1963 (42 U.S.C. 292(c)(4), 283a (c)(5)).
Mental Retardation Facilities Construction Act (42 U.S.C. 295(a)(2)(d), 2662(5), 2675(a)(5)).
Community Mental Health Centers Act (42 U.S.C. 2685(a)(5)).
Higher Educational Facilities Act of 1963 (20 U.S.C. 753).
Vocational Educational Act of 1963 (20 U.S.C. 35f).
Library Services and Construction Act (20 U.S.C. 355(a)(4)).
Urban Mass Transportation Act of 1964 (sec. 10a, 78 Stat. 307).
Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532).
Public Health Service Act (sec. 605(a)(5), 78 Stat. 454).
Housing Act of 1964 (78 Stat. 797).
The Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199).
The Nurse Training Act of 1964 (sec. 2, 78 Stat. 910).
Elementary and Secondary Education Act of 1965 (20 U.S.C. 239).
Federal Water Pollution Control Act (33 U.S.C. 466).
Appalachian Regional Development Act of 1965 (79 Stat. 5, 21, sec. 402).
National Foundation on the Arts and the Humanities Act of 1965 (79 Stat. 845).
The Research and Development in High-Speed Ground Transportation Act of 1965 (Public Law 89-220).
National Technical Institute for the Deaf Act (79 Stat. 125, 126, sec. 5(b)(5)).
National Capital Transportation Act of 1965 (Public Law 89-173).
Alaska Centennial (Public Law 89-375).
Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89-754).
Federal Aid Highway Act of 1966 (Public Law 89-574).
Models Secondary School for the Deaf Act (Public Law 89-694).
Allied Health Professions Personnel Training Act of 1966 (Public Law 89-751).

* * * * *

§ 5.2 [Amended]

2. In § 5.2, it is proposed to amend paragraph (d) by inserting the words "With respect to any contract for which a wage determination is required under any of the statutes identified in § 5.1:" following the paragraph designation, and by redesignating the present text of the paragraph as subparagraph (1).

Paragraphs (e), (f), (g), (h), and (k) of § 5.2 are redesignated as paragraph (d)(2), (d)(3), (d)(4), (d)(5), and (d)(6), respectively.

Paragraphs (i) and (j) of § 5.2 are redesignated as paragraphs (e) and (f) of such section and a new paragraph (g) is added as follows:

(g) The term "Administrator" means the Administrator of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor.

3. In § 5.5, it is proposed to amend subparagraphs (6) and (7) and to add subparagraph (8) to paragraph (a) and to add subparagraphs (5) and (6) to paragraph (c) to read as follows:

§ 5.5 Contract provisions and related matters.

(a) * * *

(6) *Subcontracts.* The contractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (5), (7), and (8), and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(7) *Contract termination; debarment.* A breach of clauses (1) through (6) may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.9.

(8) *Administrative procedure.* The contractor and the Government agree to submit to the procedure provided in 29 CFR Parts 6 and 7 for the administrative determination of any alleged violation of any of the clauses contained in 29 CFR 5.5(a) (1) and (3) through (6), and to the sanctions provided there and in 29 CFR 5.9. The contractor and the Government further agree that any finding of fact in a decision made pursuant to 29 CFR Part 6 or 7 shall be conclusive upon any agency of the United States, and, if supported by substantial evidence, shall be conclusive in any court of the United States.

* * * * *

(c) * * *

(5) *Administrative procedure.* The contractor and the Government agree to submit to the procedure provided in 29 CFR Parts 6 and 7 for the administrative determination of any alleged violation of any of the clauses contained in 29 CFR 5.5(c) (1) and (4) and to the sanctions provided in 29 CFR 5.9. The contractor and the Government further agree that any finding of facts in a decision made pursuant to 29 CFR Part 6 or 7 shall be conclusive upon any agency of the United States, and, if supported by substantial evidence, shall be conclusive in any court of the United States.

(6) As used in subparagraphs (1), (2), and (3), the terms "laborers" and "mechanics" include watchmen and guards, and the term "work" includes any work performed under a contract subject to such act.

* * * * *

4. In 29 CFR 5.6 it is proposed that paragraphs (b), (c), and (d) be amended and new paragraphs (e), (f), and (g) be added, to read as follows:

§ 5.6 Enforcement.

* * * * *

(b) Report of complaints of possible violations: The Federal agency shall report to the District Office, or where there is no District Office, the Regional Office

of the Wage and Hour and Public Contracts Divisions of the U.S. Department of Labor for the District or Region which includes the place of employment in question for investigation any complaint of any violation made to the agency.

(c) Enforcement reports: Where the Federal agency discovers underpayments which total less than $500 and are not willful, and settles the matter on terms whereby there is restitution of all underpayments and future compliance is assured, the Federal agency need not submit its investigative findings and recommendation to the Administrator other than as may be required by paragraph (d) of this section. In any other case, the Federal agency shall furnish a detailed report as soon as practicable to the District Office or, where there is no District Office, the Regional Office of the Wage and Hour and Public Contracts Divisions of the U.S. Department of Labor for the District or Region which includes the place of employment in question. The report should be prepared in accordance with the Department of Labor's investigation and enforcement manual with respect to labor standards provisions applicable to contracts covering federally financed or assisted construction. In cases involving underpayments under the Davis-Bacon Act, the report should meet the reporting requirements contained in Comptroller General's Letter B-3368, dated March 19, 1957.

(d) Semiannual enforcement reports: To assist the Administrator in carrying out the Secretary of Labor's responsibilities under Reorganization Plan No. 14 of 1950, and any other statute which may confer upon the Secretary responsibilities similar to those conferred upon him by such Plan, Federal agencies shall furnish to the Administrator by July 31 and January 31 of each calendar year semiannual reports on compliance with and enforcement of the labor standards provisions of any statute identified in § 5.1, covering the periods January 1 through June 30 and July 1 through December 31, respectively. Such reports shall be prepared in the manner prescribed by the Secretary of Labor or the Administrator.

(e) Withholding of funds: The Federal agency shall withhold, or take such action as may be necessary to cause the suspension of the payment, advance or guaranty of funds to a contractor or subcontractor until sums are withheld in such amount as the Administrator or a regional or district director of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, shall request pursuant to § 5.7(b). The Federal agency shall disburse, or similarly cause or permit disbursement, of such sums only as provided in § 5.7(b).

(f) Additional information: Upon request by the Administrator or his authorized representative, the Agency Head shall transmit such information available to the agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his duties with respect to the labor standards provisions referred to in this part.

(g) Contract termination: Where a contract is terminated by reason of violations of the labor standards, a report shall be submitted to the Administrator and to the Comptroller General, giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of his contract, and the description of the work he is to perform.

5. Section 5.7 is proposed to be amended to read as follows:

§ 5.7 Department of Labor investigations.

(a) The Administrator shall cause to be made such investigations as he may deem necessary to obtain compliance with the labor standards provisions of the statutes identified in § 5.1. Federal agencies, contractors, subcontractors, sponsors, and applicants or owners shall cooperate with the Administrator and with any of his authorized representatives in the inspection of records, in interviews with workers, and in all other aspects of an investigation. The Administrator or his authorized representative may settle the issue of violations of such statutes which do not appear to be willful and where there is satisfactory assurance of future compliance with the labor standards provisions of such statutes and the contracts to which they apply, upon payment by the contractor or subcontractor to the employees affected of all monies withheld from them contrary to the requirements of such statutes or such contracts. A term of such settlement may involve the payment of any liquidated damages likely to be due and unremitted under the provisions of the Contract Work Hours Standards Act. Any authorized representative of the Administrator under this section may, in his discretion, act as a person designated to aid in the enforcement of the overtime standards required by the Contract Work Hours Standards Act, within the meaning of section 104(a) of that Act. A report of an investigation of such representative acting in that capacity shall be transmitted to the proper officers of the United States, of any territory or possession, or of the District of Columbia, as the case may be, as required by section 104(a) of that Act.

(b) Whenever as a result of an investigation conducted by the Administrator or by a Federal agency, the Administrator or a regional or district director of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, believes that a contractor or subcontractor may have violated a labor standards provision of any statute identified in § 5.1, the Administrator or the regional or district director may request the Federal agency to withhold or cause to be withheld as provided in § 5.6(e) such sums as he considers may be necessary to satisfy any liability of such contractor or subcontractor for unpaid wages and liquidated damages incurred by reason of his violation of such a labor standards provision. As soon as it may appear that any sums withheld are in excess of the needs for this purpose, the Administrator or the regional or district director will advise the Federal agency and it shall release the excess to such extent as it would had there been no request for withholding them. If the contractor or subcontractor is found at a hearing pursuant to § 5.10 to have violated a labor standards provision, or without such hearing or finding, upon written authorization from the contractor or subcontractor, the Administrator or the regional or district director shall direct the Federal agency: (1) To pay or cause to be paid (as provided in § 5.6(e)) directly to workers the respective amounts determined to be due them, or to the Treasury of the United States as miscellaneous receipts any sum due to a worker but not paid to him or his next of kin within 3 years because neither can be located; (2) to pay or cause to be paid (as provided in § 5.6(e)) any amount withheld as liquidated damages, according to applicable law; and (3) to pay or cause to be paid (as provided in § 5.6(e)) the remainder, if any, as it would have been paid if it had not been withheld.

6. In § 5.8, it is proposed that paragraph (b) be amended to read as follows:

§ 5.8 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours Standards Act.

* * * * *

(b) The Administrator shall review all the pertinent facts of the case, may conduct such relevant investigations as he deems necessary or appropriate and shall issue a decision affirming or rejecting the recommendation. The decision of the Administrator shall be final.

* * * * *

7. Sections 5.9 and 5.10 are proposed to be amended to read as follows:

§ 5.9 Ineligibility for future contracts.

(a) Whenever, in a decision pursuant to § 5.10, any person or firm is found to have violated any of the labor standards under any of the statutes identified in § 5.1, other than the Davis-Bacon Act, such person or firm, and any other firm, corporation, partnership, or association in which he or any person in his organization responsible for the violation has a substantial interest, shall be ineligible to have any contract with the United States or any of its agencies until 3 years have elapsed from the date of the publication of list containing the names of such persons or firms, unless the Solicitor of Labor, or on review, the Wage Appeals Board, otherwise decides.

(b) Whenever, in a decision pursuant to § 5.10, any person or firm is found to have disregarded his obligations to employees under the Davis-Bacon Act, it shall be recommended to the Comptroller General, unless the Solicitor of Labor, or on review, the Wage Appeals Board, otherwise decides, that such person or firm, and any other firm, corporation, partnership, or association in which he

or any person in his organization responsible for the violation has a substantial interest shall be ineligible to have any contract with the United States or any of its agencies until three years have elapsed from the date of the publication of a list containing the names of such persons or firms.

(c) The Solicitor of Labor may remove from the ineligibility list referred to in paragraph (a) of this section the name of any person or firm when he finds all wages and liquidated damages due to have been paid and when he finds that such person or firm has demonstrated a current responsibility to comply with the labor standards provisions applicable to work subject to any of the statutes identified in § 5.1. The procedure for such relief shall be informal.

(d) The Comptroller General of the United States will distribute to all Federal agencies a list of the names of persons and firms ineligible to receive contracts under this section.

§ 5.10 Administrative proceedings.

Formal administrative proceedings on charges of violations of the labor standards provisions of the statutes identified in § 5.1 or of any contract to which any of them applies may be held pursuant to rules of practice provided in Parts 6 and 7 of this subtitle.

§ 5.11 [Revoked]

8. Section 5.11 is proposed to be revoked and § 5.12 is proposed to be amended to read as follows:

§ 5.12 Rulings or interpretations.

Any question arising in any agency relating to the application or interpretation of the rules contained in this part and in Parts 1 and 3 of this subtitle, or of the labor standards provisions of any of the statutes identified in § 5.1 shall be referred to the Solicitor of Labor for appropriate rulings or interpretation. The rulings or interpretations of the Solicitor shall be authoritative unless and until they are set aside by the Wage Appeals Board in cases that may arise under Part 7 of this subtitle and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings or interpretations should be addressed to the Solicitor of Labor, U.S. Department of Labor, Washington ,D.C. 20210.

9. Section 5.13 is proposed to be amended to read as follows:

§ 5.13 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and from this part.

The Solicitor of Labor, with respect to construction work, and the Administrator, with respect to nonconstruction work, may make variations, tolerances, and exemptions from the requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Solicitor or the Administrator, as the case may be, finds that such action is necessary and proper in the public interest, or to prevent injustice or undue hardship.

10. In 29 CFR 5.14, paragraph (c)(3) is proposed to be deleted and paragraph (a) is proposed to be amended to read as follows:

§ 5.14 Limitations, variations, tolerances, and exemptions under the Contract Work Hours Standards Act.

(a) *General.* Upon his own initiative or at the request of any Federal Agency, the Solicitor of Labor, with respect to construction work, and the Administrator, with respect to nonconstruction work, may provide under section 105 of the Contract Work Hours Standards Act reasonable limitations and allow reasonable variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Solicitor, or the Administrator, as the case may be, finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship or to avoid serious impairment of the conduct of Government business. Any request for such action shall be submitted in writing, and shall set forth the reasons for which the request is made.

* * * * *

(c) *Tolerances.* * * *

(4) [Deleted]

* * * * *

11. In Part 6 of Title 29, Code of Federal Regulations (32 F.R. 6133), the part heading is proposed to be revised to read as follows:

PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN CERTAIN CONTRACTS

12. The authority box in 29 CFR Part 6 is proposed to be revised to read as follows:

AUTHORITY: The provisions of this Part 6 issued under 41 U.S.C. 353; 40 U.S.C. 276c; 40 U.S.C. 330; 5 U.S.C. 301; Reorganization Plan No. 14 of 1950 (64 Stat. 1267).

13. Section 6.1 of Title 29, Code of Federal regulations, is proposed to be revised to read as follows:

§ 6.1 Applicability of rules.

This part provides the rules of practice for administrative proceedings relating to the enforcement of labor standards under the Service Contract Act of 1965 (41 U.S.C. 351), and under all of the statutes identified in § 5.1 of this subtitle.

14. In § 6.2 of Title 29, Code of Federal Regulations, paragraph (c) is proposed revised to read as follows:

§ 6.2 Definitions.

* * * * *

(c) "The Act" means the Service Contract Act of 1965 (41 U.S.C. 351) or any of the statutes identified in § 5.1 of this subtitle.

* * * * *

15. Section 6.10 of Title 29, Code of Federal Regulations, is proposed to be revised to read as follows:

§ 6.10 Decision of the hearing examiner.

(a) *Proposed findings of fact, conclusions, and order.* Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the hearing examiner.* Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or after submission of an agreement containing consent findings and order, the hearing examiner shall make his decision, which shall become the final decision in the administrative process 20 days after service thereof unless exceptions are filed thereto, as provided in § 6.11. The decision of the hearing examiner shall include a statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. If the respondent is found to have violated the Act or his contract, the hearing examiner in his decision shall make a recommendation as to whether the respondent should be relieved from the application of the list of those ineligible for future contracts as provided in the pertinent statute or regulation. If liquidated damages or wages are found due and are unpaid, no recommendation for relief shall be made except on condition that the liquidated damages and wages due are paid. The decision shall also include an appropriate order (excluding such issue of ineligibility). The decision of the hearing examiner shall be based upon a consideration of the whole record, including any administrative admissions made under § 6.6. It shall be supported by reliable, probative, and substantial evidence and be made upon the bases of a preponderance of that evidence.

16. Section 6.11 of Title 29, Code of Federal Regulations, is proposed to be revised to read as follows:

§ 6.11 Exceptions.

Within 20 days after the date of the decision of the hearing examiner, any party aggrieved thereby may file exceptions thereto with supporting reasons. Such party shall transmit his exceptions in writing to the Chief Hearing Examiner, referring to the specific findings of fact, conclusions of law, or order excepted to, the specific pages of transcript relevant to the exceptions, and suggesting corrected findings of fact, conclusions of law, or order.

17. Section 6.12 of Title 29, Code of Federal Regulations, is proposed to be revised to read as follows:

§ 6.12 **Relief from ineligible list.**

(a) *Service Contract Act of 1965.* Application for relief from the ineligible list provision under section 5(a) of the Service Contract Act of 1965 may be filed by the respondent with the Secretary of Labor within 20 days from the date of service of the hearing examiner's decision, Administrator's decision, or Director's decision, as the case may be. Notice of the determination of the Secretary on the application of the ineligible list provision of the act shall be served upon the parties.

(b) *Other statutes.* Application for relief from the ineligibility provisions of § 5.9 (a) or (b) of this subtitle may be filed by the respondent with the Solicitor of Labor within 20 days from the date of the hearing examiner's decision. Notice of the determination of the Solicitor of Labor shall be served on the parties.

18. Section 6.13 of Title 29, Code of Federal Regulations, is proposed to be revised to read as follows:

§ 6.13 **Transmission of record.**

If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Director for review of all exceptions taken in cases which involve only allegations of violations of the safety and health provisions and for review of exceptions which relate to findings concerning violations of the safety and health provisions in cases which involve both allegations of violations of the safety and health provisions and allegations of violations of other provisions. All other exceptions together with the record shall be transmitted to the Administrator or the Solicitor of Labor for review. Those in cases under the Service Contract Act of 1965 and the Contract Work Hours Standards Act in nonconstruction cases shall be transmitted to the Administrator and all others shall be transmitted to the Solicitor of Labor. The record shall include: The pleadings, motions, and requests filed in written form, rulings thereon, the transcript of the testimony and proceeding taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceedings.

19. Section 6.14 of Title 29, Code of Federal Regulations, is proposed to be revised to read as follows:

§ 6.14 **Decisions and order of the Solicitor of Labor, Administrator or Director.**

If exceptions to the decision of the hearing examiner are taken as provided in this part, the Solicitor of Labor, Administrator, or Director, who is to make the review in accordance with § 6.13 shall upon consideration thereof, together with the record references and authorities cited in support thereof, make his decision, which shall affirm, modify, or set aside, in whole or part, the findings, conclusions, and order contained in the decision of the hearing examiner, and shall include a statement of reasons or bases for the actions taken. With respect to the findings of fact, the Solicitor of Labor, Administrator, or Director, as the case may be shall modify or set aside only those findings that are clearly erroneous. Copies of the decision and order shall be served upon the parties. Any such decision and the decision on any application under § 6.12 shall treat any question of relief from the ineligible list under section 5(a) of the Service Contract Act of 1965 to the same extent and subject to the same limitations as provided in § 6.10(b) concerning decisions of the hearing examiner. Decisions of the Solicitor of Labor under this section shall be subject to further review by the Wage Appeals Board pursuant to Part 7 of this subtitle. Decisions of the Solicitor of Labor on applications for relief under § 6.12 from the ineligible list provided in § 5.9 of this subtitle shall observe the limitations provided in § 6.10 (b) and shall be final, except to the extent that it may be reviewed by the Wage Appeals Board pursuant to Part 7 of this subtitle. If no exception is taken and no application is made under § 6.11 or § 6.12, The Solicitor of Labor, Administrator, or Director shall make the necessary decision or recommendation concerning the ineligibility list on an ex parte basis.

20. Part 7 of Title 29 CFR would be amended by revoking 7.10 and amending § 7.1(b), the title to Subpart C, the title and paragraph (a) of § 7.9 and § 7.15(a) to read as follows:

§ 7.1 **Purpose and scope.**

* * * * *

(b) The Board has jurisdiction to review, on appeal, in its discretion, questions of law, fact, and discretion decided by the Solicitor of Labor.

(1) In determining prevailing wages pursuant to Part 1 of this subtitle, and

(2) In resolving issues of liability and ineligibility for contracts coming before him pursuant to Part 6 of this subtitle.

* * * * *

Subpart C—Review of Other Proceedings

§ 7.9 **Review of the debarment and liability proceedings.**

(a) In any proceedings to review decisions of the Solicitor on issues of liability and ineligibility for contracts coming before him pursuant to Part 6 of this subtitle, any party may file with the Wage Appeals Board, within a reasonable time after the decision by the Solicitor, a petition for review.

* * * * *

§ 7.10 **[Revoked]**

§ 7.15 **Public information.**

(a) Subject to the provisions of §§ 1.15 and 5.6(b) of this subtitle all papers and documents made a part of the official record in the proceedings of the Board and decisions of the Board shall be made available for public inspection during usual business hours at the office of the Board in Washington, D.C.

* * * * *

(Reorganization Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 3 CFR 1949–53 Comp., p. 1007)

Signed at Washington, D.C., this 30th day of October 1967.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 67-13019; Filed, Nov. 2, 1967; 8:49 a.m.]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 107]

SMALL BUSINESS INVESTMENT COMPANIES

Definition of Venture Capital

Notice is hereby given that pursuant to authority contained in section 308 of the Small Business Investment Act of 1958, Public Law 85–699, 72 Stat. 694, as amended, it is proposed to amend, as set forth below, Part 107 of Subchapter B, Chapter I, of Title 13 of the Code of Federal Regulations, as revised in 29 F.R. 16946–16961, and amended in 30 F.R. 534, 1187, 2652, 2653, 2654, 3635, 3856, 7597, 7651,8775, 8900, 11960, 13005, 14095, 14850, 14851, 31 F.R. 2815, 4954, 4954–4955, 9720, 10114, 13532, and 32 F.R. 2769, 6620, 7743, and 12842–12844, by amending § 107.12.

The proposed amendment would add a definition of the term Venture Capital to the regulation. In view of the importance of this addition, and its bearing on the eligibility of small business investment companies (SBICs) to sell debentures to Small Business Administration (SBA) under the Small Business Investment Act Amendments of 1967, Public Law 90–104, (Amendments), SBA will conduct a hearing on the proposed definition. The hearing will be held on November 16, 1967, at 10 a.m. in Room 214, Imperial Building, 1441 L Street NW., Washington, D.C. 20416. In addition, written comments and suggestions, in triplicate, are invited.

Comments and suggestions, and notices of intention to testify at the hearing, should be addressed to the Office of the Associate Administrator for Investment, SBA, at the above-given address, not later than November 8, 1967.

Information. The Amendments provide, among other things, that SBA may purchase debentures issued by SBICs in order to encourage the formation and growth of such companies. Debentures may be purchased only to the extent that the necessary funds are not available to the SBIC from private sources on reasonable terms. Also, any outstanding amounts of financial assistance provided to an SBIC by SBA prior to the effective date of the Amendments (Jan. 9, 1968) must be deducted from the maximum

amount of the newly authorized debentures.

The Amendments further provide that the maximum amount of debentures which SBA may purchase from an SBIC which meets the Venture Capital criterion described below will be greater than the maximum amount which it may purchase from an SBIC which does not meet such criterion. Thus, debentures may be purchased from an SBIC which (1) has a combined paid-in capital and paid-in surplus of $1 million or more and (2) has investments or legally binding commitments of 65 percent or more of its total funds available for investment in small business concerns invested or committed in Venture Capital, in an amount not to exceed $2 million plus 300 percent of that portion of the SBIC's paid-in capital and paid-in surplus which exceeds $1 million, with an overall maximum of $10 million. The 65 percent ratio must be maintained during the period in which any debentures attributable to meeting the Venture Capital criterion remain outstanding.

In the case of SBICs which do not meet the 65 percent Venture Capital criterion, debenture purchases by SBA are limited to 200 percent of the combined paid-in capital and paid-in surplus, with a maximum of $7,500,000.

The Amendments define the term Venture Capital to include "such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration (i.e., SBA) determines to be substantially similar to equity financing."

It is proposed to amend the Regulations Governing Small Business Investment Companies as follows:

By adding at the end of § 107.12 *Definitions* a new paragraph to read as follows:

§ 107.12 Definitions.

* * * * *

Venture Capital. For purposes of this part, the following types of financings will be considered Venture Capital.

a. Common stock and preferred stock provided there is no agreement requiring repurchase by the small business concern.

b. Any right to purchase such stock.

c. Loans (including notes and debentures) provided they are unsecured, subordinated and do not require amortization during the first 5 years.

Dated: October 27, 1967.

ROBERT C. MOOT,
Administrator.

[F.R. Doc. 67-12986; Filed, Nov. 2, 1967; 8:46 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Office of the Secretary

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Guidelines for Compliance by Depositary Banks and Issuing and Paying Agents

The regulations of the Department of the Treasury governing deposits of public money, special deposits of public money, and the qualification of issuing and paying agents of U.S. Savings Bonds and Savings Notes (31 CFR Parts 202, 203, 317, 321) were amended on August 25, 1966, and September 5, 1967, respectively, to incorporate the equal employment opportunity provision of Executive Order 11246, 3 CFR 339, 1964–65 Comp., into the contracts entered into by the Department with such depositaries and agents. The amendments were published on August 27, 1966, 31 F.R. 11388, and September 9, 1967, 32 F.R. 12914.

Under Executive Order 11246 the Secretary of Labor is given the responsibility for assuring compliance with the terms of the order and providing the regulations governing compliance and procedure. These regulations appear in 41 CFR Ch. 60. The Labor Department is in the process of revising these regulations. When revised, they will be more clearly applicable to depositary banks and issuing and paying agents.

Notice is hereby given that until the revised regulations of the Department of Labor are issued in final form the following interpretations of the Executive order and the present regulations will be adhered to by the Treasury Department in the exercise of its responsibility as compliance agency for the depositary banks and issuing and paying agents. Under authorization from the Office of Federal Contract Compliance of the Labor Department, the Treasury Department will issue from time to time regulations and interpretations supplemental to those promulgated by the Labor Department.

1. *Affirmative action.* The first provision respecting equal employment opportunity included in depositary contracts and application-agreements for qualification of issuing and paying agents under the Executive order is the agreement not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to race, creed, color or national origin. This provision means that the depositary banks and issuing and paying agents must actively seek to establish equal employment opportunity as a positive guide in hiring, promoting, selecting for training, and other personnel activities.

2. *Notices and facilities.* The depositary bank and issuing and paying agent agree to post in conspicuous places available to employees and applicants for employment notices, furnished by the Treasury Department, of the nondiscrimination provisions of the Executive order. This Department will provide copies of the standard poster prepared by the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission for this purpose. The depositary bank and issuing agent agree not to maintain or provide for employees any segregated facilities at the main office or any branch office.

3. *Solicitations or advertisements.* The depositary bank and issuing and paying agent agree to include in all solicitations or advertisements for employees a statement that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin. The alternative types of action which will satisfy this requirement are set forth in 41 CFR 60–1.60.

4. *Compliance reports.* Depositary banks and issuing and paying agents having 50 or more employees will be required to file compliance reports annually, on or before the 31st day of March on Standard Form 100 (EEO–1) promulgated jointly by the Office of Federal Contract Compliance, the Equal Employment Opportunity Commission, and Plans for Progress, or such form as may hereafter be promulgated in its place. The Treasury Department will provide the appropriate form. The dollar amount of the contract now stated in Standard Form 100 as one of the criteria determining contractors required to file this report is not considered to be applicable to depositary banks and issuing and paying agents.

5. *Subcontracts.* The definition of "subcontract" in 41 CFR 60–1.2(k) restricts the term to "any agreement made or purchase order executed by a prime contractor or a subcontractor where a material part of the supplies or services covered by such agreement or purchase order is being obtained for use in the performance of a contract." Depositary banks and issuing and paying agents will not be considered to be entering into subcontracts within the application of the Executive order except in those instances where the supplies or services are obtained in material part for use in the performance of the contract with the Treasury Department.

6. *Compliance reviews.* The Treasury Department will conduct compliance reviews, in accordance with the procedure in 41 CFR 60–1.20, to determine the extent to which the contract provisions in the Executive order are being observed. The objective will be to resolve compliance problems by conciliation before formal action.

7. *Complaints.* The Treasury Department, through such officers as it may designate, has the responsibility for investigating complaints directed to the Department or to the Office of Federal Contract Compliance. Every effort will be made to resolve complaints by conciliation.

8. *Communications.* Requests for advice and information may be directed to the Equal Employment Opportunity Officer, U.S. Treasury Department, Washington, D.C. 20220.

[SEAL] ROBERT A. WALLACE,
Assistant Secretary, Equal Employment Opportunity Officer.

[F.R. Doc. 67–13022; Filed, Nov. 2, 1967; 8:50 a.m.]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

JOHN W. HIERONYMUS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of October 23, 1967.

Dated: October 23, 1967.

JOHN W. HIERONYMUS.

[F.R. Doc. 67–12985; Filed, Nov. 2, 1967; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

SOUTH DAKOTA

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of South Dakota natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

SOUTH DAKOTA

Beadle.	Douglas.
Clark.	Hanson.
Codington.	Hutchinson.
Davison.	Roberts.
Deuel.	Sanborn.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1968, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 31st day of October 1967.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 67-13018; Filed, Nov. 2, 1967; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

STATE UNIVERSITY OF NEW YORK

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 67-00093-33-46040. Applicant: State University of New York Downstate Medical Center, 450 Clarkson Avenue, Brooklyn, N.Y. 11203. Article: Electron microscope, Model Elmiskop 1A, No. 171000, incorporating series micrograph cassette with airlock, object decontamination device, and superfine focus control for objective lens; closed water-circuit cooling system number 5NY-1C-CR-14; 70mm roll film camera, No. 171023b; vacuum evaporating unit (VBG 500) with equipment for carbon shadowing, No. 172502; and spare parts kit, No. 171005. Manufacturer: Siemens AG, West Germany. Intended use of article: Research and teaching involving the ultrastructural normal and pathologic morphology of tissues in investigation of kidney diseases, liver diseases, intestinal diseases, "small vessel" diseases, neural and neuro-muscular diseases, diseases of the blood and blood forming tissues, malignant diseases (cancer), and microbiologic diseases. Comments: Comments with respect to this application were received from one domestic manufacturer, Radio Corporation of America (RCA), which alleges inter alia that "The RCA Model EMU-4 Electron Microscope is of equivalent scientific value to the instrument for which duty-free entry has been requested for the purposes stated in the application for which the instrument is intended to be used." (Par. (3) RCA comments dated June 29, 1967.) Decision: Application approved for duty-free entry of Elmiskop 1A electron microscope; no instrument or apparatus of equivalent scientific value to this foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Application for duty-free entry of the vacuum evaporating unit model VBG 500 is denied without prejudice to resubmission, for reasons indicated below.

Reasons for approving duty-free entry of Elmiskop 1A electron microscope: (1) This foreign article provides four accelerating voltages, 40, 60, 80 and 100 kilovolts (specifications for Elmiskop 1A electron microscope attached to application), whereas the RCA Model EMU-4 provides only two accelerating voltages, 50 and 100 kilovolts (specifications for RCA Model EMU-4 attached to comments of RCA). The National Bureau of Standards advises (memorandum dated August 3, 1967) that lower accelerating voltages are pertinent to purposes for which the foreign article is intended to be used. In a memorandum dated June 27, 1967, which is added to the record pursuant to § 602.5(b) of the regulations (32 F.R. 2433 et seq.), the Department of Health, Education, and Welfare (HEW) cites references which illustrate that the use of lower accelerating voltages has been under active investigation for several years. (2) The Elmiskop 1A electron microscope provides simple progressions from low to high magnification and from high to low magnification, without need to break the vacuum in the instrument. To achieve progression from low to high magnification in the RCA Model EMU-4 requires a change in pole pieces with an attendant break in the vacuum, which could destroy the specimen. (3) The Elmiskop 1A electron microscope provides focusing a change in pole pieces with an attendant break in the vacuum, which could destroy the specimen. (3) The Elmiskop 1A electron microscope provides focusing steps of 100 Angstroms, whereas the RCA Model EMU-4 provides focusing steps of 300 Angstroms. The differences in fineness of adjustment in focusing are considered pertinent to the purposes for which the Elmiskop 1A electron microscope is intended to be used. (See memorandum from the Department of Health, Education, and Welfare dated Aug. 2, 1967.) For the foregoing reasons, we find that the RCA Model EMU-4 is not of equivalent scientific value to the Model Elmiskop 1A, for the purposes for which this article is intended to be used. The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to this foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States. Reasons for denying duty-free entry of evaporating unit Model VBG 500 without prejudice to resubmission: Vacuum evaporators are used in the preparation of specimens to be examined with electron microscopes and operate independently of the instruments for which specimens are prepared. There are known domestic manufacturers of vacuum evaporators designed for preparing specimens for electron microscopy. We note that the applicant did not include in its application information on the issue of whether any domestic vacuum evaporators were of equivalent scientific value to the Model VBG 500, for the purposes for which it is intended to be used.

The application for duty-free entry of this article is denied without prejudice to resubmission, to afford the applicant an opportunity to remedy this deficiency in the application.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 67-12977; Filed, Nov. 2, 1967; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

HUNT-WESSON FOODS

Canned Diced Peaches Deviating From Identity Standard; Notice of Modification of Temporary Permit for Market Testing

Notice was given in the FEDERAL REGISTER of September 26, 1967 (32 F.R. 13466), that a temporary permit had been issued to Hunt-Wesson Foods, 1645 West Valencia Drive, Fullerton, Calif. 92634. The permit, granted pursuant to § 10.5 (21 CFR 10.5), covered interstate marketing tests of canned diced peaches with added erythorbic acid, an ingredient not provided for by the standard of identity for canned peaches (21 CFR 27.2).

Notice is hereby given that the subject temporary permit has been modified to provide for the added ingredient to be named on the label by the statement "Erythorbic acid added to preserve color."

Other terms and conditions of the permit are not altered by this modification.

Dated: October 30, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-12998; Filed, Nov. 2, 1967; 8:47 a.m.]

SILACO CHEMICAL CO.

Notice of Withdrawal of Petition for Food Additives Slimicides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Silaco Chemical Co., 3821 Montrose Avenue, Chicago, Ill. 60618, has withdrawn its petition (FAP 7H2138), notice of which was published in the FEDERAL REGISTER of January 28, 1967 (32 F.R. 1060), proposing an amendment to § 121.2505 *Slimicides* to provide for the safe use of silver bisthiocyanate as a slimicide in the manufacture of paper and paperboard for food-contact use.

Dated: October 30, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-12999; Filed, Nov. 2, 1967; 8:47 a.m.]

Office of Education

ALLOTMENT RATIOS FOR VOCATIONAL EDUCATION ACT OF 1963

Promulgation

Pursuant to section 3 of the Vocational Education Act of 1963 (77 Stat. 403, 20 U.S.C. 35b), the following allotment ratios for the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, as computed pursuant to said Act on the basis of the average of the per capita incomes for a State and for all the States (exclusive of Puerto Rico, Guam, American Samoa, and the Virgin Islands) for the years 1964, 1965, and 1966, being the three most recent consecutive fiscal years for which satisfactory data are available from the Department of Commerce, are hereby promulgated for the fiscal year ending June 30, 1969.

Alabama	0.6000
Alaska	.4162
Arizona	.5670
Arkansas	.6000
California	.4067
Colorado	.5070
Connecticut	.4000
Delaware	.4000
Florida	.5579
Georgia	.6000
Hawaii	.4718
Idaho	.5805
Illinois	.4047
Indiana	.4857
Iowa	.5112
Kansas	.5173
Kentucky	.6000
Louisiana	.6000
Maine	.5839
Maryland	.4549
Massachusetts	.4430
Michigan	.4518
Minnesota	.5179
Mississippi	.6000
Missouri	.5217
Montana	.5592
Nebraska	.5247
Nevada	.4000
New Hampshire	.5292
New Jersey	.4116
New Mexico	.5957
New York	.4031
North Carolina	.6000
North Dakota	.5989
Ohio	.4856
Oklahoma	.5852
Oregon	.5020
Pennsylvania	.4996
Rhode Island	.4872
South Carolina	.6000
South Dakota	.6000
Tennessee	.6000
Texas	.5724
Utah	.5718
Vermont	.5736
Virginia	.5606
Washington	.4679
West Virginia	.6000
Wisconsin	.5031
Wyoming	.5347
District of Columbia	.4000
American Samoa	.6000
Guam	.6000
Puerto Rico	.6000
Virgin Islands	.6000

Dated: October 27, 1967.

HAROLD HOWE II,
U.S. Commissioner of Education.

[F.R. Doc. 67-12996; Filed, Nov. 2, 1967; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-253]

GENERAL DYNAMICS CORP.

Notice of Issuance of Facility License Amendment

The Atomic Energy Commission has issued Amendment No. 1, effective as of the date of issuance and in the form set forth below, to Facility License No. R-105. The license authorizes General Dynamics Corp. to operate its Accelerator Pulsed Fast Critical Assembly III (APFA-III) nuclear reactor facility located at the Corporation's site on Torrey Pines Mesa in San Diego, Calif.

This amendment authorizes storage of APFA-III fuel pieces in Butler Building No. 10 located at the Corporation's General Atomic Waste Yard Facility.

Within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing, and any person whose interest may be affected by the issuance of this amendment may file a petition for leave to intervene. A request for a hearing and petitions to intervene shall be filed in accordance with the provisions of the Commission's rules of practice, 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, a notice of hearing or an appropriate order will be issued.

For further details with respect to this license amendment, see (1) the application dated September 25, 1967, and (2) the related Safety Evaluation prepared by the Division of Reactor Licensing, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (2) above may be obtained at the Commission's Public Document Room, or upon request addressed to the Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 25th day of October 1967.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing.

[License R-105, Amdt. 1]

FACILITY LICENSE AMENDMENT

The Atomic Energy Commission has found that:

a. The application for license amendment dated September 25, 1967, complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in Title 10, Ch. I, CFR;

b. The issuance of this amendment and the licensee's engaging in the activities authorized thereunder will not be inimical to the common defense and security or to the health and safety of the public; and

c. Prior public notice of proposed issuance of this amendment is not required since the amendment does not involve significant hazard considerations different from those previously evaluated.

Facility License No. R-105, is amended, effective as of the date of issuance, in the following respects:

1. In paragraph "1" after February 22, 1967, add September 25, 1967; and

2. Subparagraph 3.D is revised to read:

D. Storage of the APFA-III fuel shall be limited to the CD Area, to the Fast Spectrum Cell and to Butler Building No. 10.

Date of issuance: October 25, 1967.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing.

[F.R. Doc. 67-12975; Filed, Nov. 2, 1967; 8:45 a.m.]

[Docket Nos. 50-277, 50-278]

PHILADELPHIA ELECTRIC CO.

Notice of Hearing on Application for Provisional Construction Permits

In the matter of Philadelphia Electric Co., (Peach Bottom Atomic Power Station Units No. 2 and 3); Docket Nos. 50-277, 50-278.

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities", and Part 2, "Rules of Practice", notice is hereby given that a hearing will be held at 10 a.m., local time on December 7, 1967 in the Delta-Cardiff Community Memorial Hall, Main Street, Delta, Pa., to consider the application filed under section 104b. of the Act by Philadelphia Electric Co., for provisional construction permits for two boiling water reactors each designated to operate at 3,295 megawatts

(thermal) to be located at Peach Bottom, York County, Pa.

The hearing will be conducted by the Atomic Safety and Licensing Board designated by the Atomic Energy Commission consisting of Dr. Lawrence R. Quarles, Charlottesville, Va.; Dr. David B. Hall, Los Alamos, N. Mex.; and Jack M. Campbell, Esq., Chairman, Santa Fe, N. Mex. Dr. Hugh C. Paxton, Los Alamos, N. Mex., has been designated as a technically qualified alternate.

A prehearing conference will be held by the Board at 10 a.m., local time, on November 21, 1967, in the Delta-Cardiff Community Memorial Hall, Main Street, Delta, Pa., to consider the matters provided for consideration by § 2.752 of 10 CFR Part 2 and section II of Appendix A to 10 CFR Part 2.

The Director of Regulation proposes to make affirmative findings on Item Numbers 1–3 and a negative finding on Item 4 specified below as the basis for the issuance of provisional construction permits to the applicant substantially in the form proposed in Appendices A and B hereto.

1. Whether in accordance with the provisions of 10 CFR 50.35(a)

(a) The applicant has described the proposed design of the facilities, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis reports;

(c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest dates stated in the application for completion of construction of the proposed facilities and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facilities can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

2. Whether the applicant is technically qualified to design and construct the proposed facilities;

3. Whether the applicant is financially qualified to design and construct the proposed facilities; and

4. Whether the issuance of permits for the construction of the facilities will be inimical to the common defense and security or to the health and safety of the public.

In the event that this proceeding is not a contested proceeding, as defined by § 2.4 of the Commission's rules of practice, 10 CFR Part 2, the Board will, without conducting a de novo evaluation of the application, consider the issues of whether the application and the record of the proceeding contain sufficient information, and the review by the Commission's regulatory staff has been adequate, to support the findings proposed to be made and the provisional construction permits proposed to be issued by the Director of Regulation.

In the event that this proceeding becomes a contested proceeding, the Board will consider and initially decide, as the issues in this proceeding, Item Numbers 1 through 4 above as the basis for determining whether the provisional construction permits should be issued to the applicant.

As they become available, the application, the report of the Commission's Advisory Committee on Reactor Safeguards (ACRS) and the Safety Evaluation by the Commission's regulatory staff will be placed in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., where they will be available for inspection by members of the public. Copies of the ACRS report and the regulatory staff's Safety Evaluation may be obtained by request to the Director of the Division of Reactor Licensing, United States Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified, but who does not wish to file a petition for leave to intervene, may request permission to make a limited appearance pursuant to the provisions of § 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, by November 16, 1967.

Any person whose interest may be affected by the proceeding who does not wish to make a limited appearance and who wishes to participate as a party in the proceeding must file a petition for leave to intervene.

Petitions for leave to intervene, pursuant to the provisions of § 2.714 of the Commission's rules of practice, must be received in the Office of the Secretary, U.S. Atomic Energy Commission, Germantown, Md., or the Commission's Public Document Room, 171 H Street NW., Washington, D.C., not later than November 16, 1967, or in the event of a postponement of the prehearing conference, at such time as the Board may specify.

The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action and the contentions of the petitioner. A petition for leave to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to file it on time.

A person permitted to intervene becomes a party to the proceeding, and has all the rights of the applicant and the regulatory staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, pursuant to the provisions of § 2.705 of the Commission's rules of practice, must be filed by the applicant on or before November 16, 1967.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, or may be filed by delivery to the Office of the Secretary, U.S. Atomic Energy Commission, Germantown, Md., or the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545.

Pending further order of the Board, parties are required to file, pursuant to the provisions of § 2.708 of the Commission's rules of practice, an original and 20 conformed copies of each such paper with the Commission.

Dated at Germantown, Md., this 1st day of November 1967.

UNITED STATES ATOMIC ENERGY COMMISSION,
W. B. McCOOL,
Secretary to the Commission.

APPENDIX A

[Peach Bottom Atomic Power Station Unit No. 2]

[Docket No. 50-277]

PROVISIONAL CONSTRUCTION PERMIT

Construction Permit No. .....

1. Pursuant to section 104b. of the Atomic Energy Act of 1954, as amended (the Act), and Title 10, Chapter I; Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities", and pursuant to the order of the Atomic Safety and Licensing Board, the Atomic Energy Commission (the Commission) hereby issues a provisional construction permit to Philadelphia Electric Co. (the applicant) for a utilization facility (the facility), designed to operate at 3,295 megawatts (thermal), described in the application and amendments thereto filed in this matter by the applicant and as more fully described in the evidence received at the public hearing upon that application. The facility, known as Peach Bottom Atomic Power Station Unit No. 2 will be located at the applicant's site in Peach Bottom, York County, Pa.

2. This permit shall be deemed to contain and be subject to the conditions specified in §§ 50.54 and 50.55 of said regulations; is subject to all applicable provisions of the Act, and rules, regulations and orders of the Commission now or hereafter in effect; and is subject to the conditions specified or incorporated below:

A. The earliest date for the completion of the facility is June 1, 1970, and the latest date for completion of the facility is October 1, 1970.

B. The facility shall be constructed and located at the site as described in the application, as amended, at Peach Bottom in York County, Pa.

C. This construction permit authorizes the applicant to construct the facility described in the application and the hearing record in accordance with the principal architectural and engineering criteria set forth therein.

3. This permit is provisional to the extent that a license authorizing operation of the facility will not be issued by the Commission unless (a) the applicant submits to the Commission, by amendment to the application, the complete final safety analysis report, portions of which may be submitted and evaluated from time to time; (b) the Commission finds that the final design provides reasonable assurance that the health and safety of the public will not be endangered by the operation of the facility in accordance with procedures approved by it in connection with the issuance of said license; and (c) the applicant submits proof of financial protection and the execution of an indemnity agreement as required by section 170 of the Act.

For the Atomic Energy Commission.

APPENDIX B

[Peach Bottom Atomic Power Station Unit No. 3]

[Docket No. 50-278]

PROVISIONAL CONSTRUCTION PERMIT

Construction Permit No. -------

1. Pursuant to section 104b. of the Atomic Energy Act of 1954, as amended (the Act), and Title 10, Chapter I, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities", and pursuant to the order of the Atomic Safety and Licensing Board, the Atomic Energy Commission (the Commission) hereby issues a provisional construction permit to Philadelphia Electric Co. (the applicant), for a utilization facility (the facility), designed to operate at 3,295 megawatts (thermal), described in the application and amendments thereto filed in this matter by the applicant and as more fully described in the evidence received at the public hearing upon that application. The facility, known as Peach Bottom Atomic Power Station Unit No. 3 will be located at the applicant's site in Peach Bottom, York County, Pa.

2. This permit shall be deemed to contain and be subject to the conditions specified in §§ 50.54 and 50.55 of said regulations; is subject to all applicable provisions of the Act, and rules, regulations and orders of the Commission now or hereafter in effect; and is subject to the conditions specified or incorporated below:

A. The earliest date for the completion of the facility is June 1, 1972, and the latest date for completion of the facility is October 1, 1972.

B. The facility shall be constructed and located at the site as described in the application, as amended, at Peach Bottom in York County, Pa.

C. This construction permit authorizes the applicant to construct the facility described in the application and the hearing record in accordance with the principal architectural and engineering criteria set forth therein.

3. This permit is provisional to the extent that a license authorizing operation of the facility will not be issued by the Commission unless (a) the applicant submits to the Commission, by amendment to the application, the complete final safety analysis report, portions of which may be submitted and evaluated from time to time; (b) the Commission finds that the final design provides reasonable assurance that the health and safety of the public will not be endangered by the operation of the facility in accordance with procedures approved by it in connection with the issuance of said license; and (c) the applicant submits proof of financial protection and the execution of an indemnity agreement as required by section 170 of the Act.

For the Atomic Energy Commission.

[F.R. Doc. 67-13082; Filed, Nov. 2, 1967; 8:50 a.m.]

CIVIL AERONAUTICS BOARD

[Docket Nos. 19016, 19192; Order E-25903]

AMERICAN AIRLINES, INC.

Order Instituting Investigation and Granting Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 31st day of October 1967.

Application of American Airlines, Inc., Docket No. 19016, for an exemption pursuant to section 416(b) of the Federal Aviation Act of 1958, as amended, Houston-Cleveland Nonstop Investigation, Docket No. 19192.

On September 19, 1967, American Airlines, Inc. (American), filed an application requesting exemption authority, after providing one daily round trip between Houston, Tex., and Pittsburgh, Pa., to operate an additional daily round trip flight on a one-stop basis between Houston and Cleveland via Nashville, Tenn., without serving Pittsburgh.[1] In support of its application, American alleges, inter alia, that this exemption would benefit the public by enabling American to improve its Houston-North services, to provide first single-plane service in the Houston-Cleveland market, and to improve its Houston-Nashville service; that a through-plane service between Houston and Cleveland is needed by both cities; and that this request is limited in extent by reason of the fact that it involves only one daily round trip on a one-stop basis.

The principal civic parties affected by American's proposal all filed answers in support of the application.[2] Answers in opposition to American's application were filed by Delta Air Lines, Inc., Eastern Air Lines, Inc., and Trans World Airlines, Inc. These carriers generally allege that American's application does not meet the requirements of section 416(b) of the Act; that the factual statements made by American need the further analysis which a hearing could best provide; and that the application presents certain issues which are currently being heard in the Gulf States-Midwest Points Service Investigation, Docket 17726. Eastern further alleges that it has filed an application in Docket 19065 which is mutually exclusive with the authority sought herein by American, and thus a hearing on both applications is required.

Upon consideration of the foregoing pleadings we have decided to grant American exemption authority, after the provision of one daily round trip in the Houston-Pittsburgh market, to operate one daily one-stop round trip between Houston and Cleveland via Nashville without serving Pittsburgh, pending the conclusion of an investigation which we are instituting herein to determine whether the public convenience and necessity require the grant of nonstop authority over a new segment between Houston and Cleveland.[3]

Houston and Cleveland are, on the basis of the 1960 U.S. Census, the seventh and eighth largest cities in the United States, with populations of 938,219 and 876,050, respectively. However, these two cities are without any single-plane service to link them. Moreover, as American points out, direct through-plane service is authorized in all of Houston's ten leading long-haul markets (over 1,000 miles) except Cleveland, and vice versa. Despite the fact that the only available service has been both circuitous and via connecting flights, in 1966 over 14,000 O&D passengers were generated in this market, or almost 40 passengers a day. In these circumstances it is logical to assume that, if single-plane service were provided, the traffic would respond significantly. In our view, this amount of traffic when related to the service available warrants the institution of an investigation to determine whether the public convenience and necessity require

[1] Houston is on segment 4 of American's route 4, while Cleveland is on segments 1 and 2. Thus American presently has authority to operate Houston-Cleveland single-plane service via the segment junction point, Nashville. However, condition (16) of its certificate requires all flights serving Houston on segment 4 also to serve Pittsburgh—a requirement which could only be met, given American's route structure, by a flight pattern such as Houston-Nashville-Cleveland-Columbus-Pittsburgh. American, however, contends that such a flight pattern would not be economically feasible, and that an exemption from condition (16) is needed to make possible a feasible Houston-Nashville-Cleveland service.

[2] City of Cleveland, Ohio; Cleveland Chamber of Commerce; city of Houston, Tex.; Houston Chamber of Commerce; and Metropolitan Government of Nashville and Davidson County, Tenn.

[3] Contrary to the contentions of Delta and TWA, there is no material conflict between the services which might result from the Gulf States-Midwest Points Service Investigation, Docket 17726, in the Houston-Cleveland and San Antonio-Cleveland markets and the investigation we are instituting herein. The issues of the Gulf States case will not permit the authorization of nonstop Houston-Cleveland service therein; at best, that case could result in the authorization of one-stop service over St. Louis, by tacking of new Houston-St. Louis with existing St. Louis-Cleveland authority, and the best Houston-Cleveland service any carrier has actually proposed is two-stop. These services, we find, would be so far inferior to the nonstop service we propose to investigate herein that there is no significant problem of overlap or mutual exclusivity. And, while one-stop San Antonio-Cleveland service (via Chicago or Detroit could result from Gulf States, no applicant in that case has in fact proposed any single-plane service in this market.

the authorization of nonstop service over a new segment between Houston and Cleveland.[4]

We shall also grant American's exemption application pending final Board action in the investigation.[5] We find that grant of this limited authority to American will benefit the traveling public and is in the public interest. Our action will permit Houston and Cleveland to receive the benefits, for the interim period, of the single-plane service which American proposes herein.[6] As we indicated above, both these cities are major U.S. traffic points, which, despite the absence of through-plane service to link them, generated over 40 Houston-Cleveland O&D passengers daily during 1966. To deny this exemption application would only serve to inconvenience further these passengers until the investigation is completed.

We also find that our award will not result in any meaningful diversion of revenues from any other carrier. No carrier opposing American's application claims that this authorization would result in traffic diversion from it. Although there are at present over 14,000 passengers in the market, participation in this traffic is divided between a number of carriers, so that no one carrier stands to suffer a diversionary impact which would have any significant consequences for its overall operations. This in turn is underscored by the fact that American is being authorized herein to provide only one daily round trip on a one-stop basis.

The exemption granted herein is temporary, involves no new stations for American, and is limited to one daily one-stop round trip. American already holds certificate authority to provide single-plane Cleveland service; the effect of the exemption will be simply to relieve American of the requirement that its daily Houston-Cleveland flight backhaul to Columbus and then proceed on to Pittsburgh. The condition we are imposing will insure that American does not reduce the level of its Houston-Pittsburgh service; accordingly, to require its proposed Houston-Cleveland flight also to serve Pittsburgh in the manner indicated would be economically wasteful, and is not required to fulfill the purpose for which the certificate restriction was originally imposed. Moreover, this award will permit American increased operational flexibility in serving its Houston markets. Thus, this award will permit American to increase the volume of its Houston-Nashville service as well as to provide first single-plane service between San Antonio and Houston on the one hand and Cleveland on the other. The factors set forth above establish that an exemption to American is in the public interest.

In these circumstances it would be an undue burden on American to deprive it of the revenues, savings, and increased operational flexibility which will inure to it from the services we are authorizing. Accordingly, we find that enforcement of section 401 of the Federal Aviation Act of 1958, as amended, and the terms, conditions, and limitations of American's certificate would be an undue burden on the carrier by reason of the limited extent of and unusual circumstances affecting its operations and is not in the public interest.

Accordingly, it is ordered, That:

1. An investigation designated as the Houston-Cleveland Nonstop Investigation be and it hereby is instituted in Docket 19192, pursuant to sections 204(a) and 401(g) of the Federal Aviation Act of 1958, as amended, to determine whether the public convenience and necessity require the alteration, amendment or modification of any air carrier authorizations so as to authorize nonstop service on a new segment between Houston, Tex., and Cleveland, Ohio;

2. American Airlines, Inc., be and it hereby is exempted from section 401 of the Act and the terms, conditions, and limitations of its certificate of public convenience and necessity for route 4 to the extent necessary to permit it to operate one daily round trip flight on a one-stop basis between Cleveland, Ohio, and Houston, Tex., via Nashville, Tenn., without being required to serve Pittsburgh, Pa., on such flight, subject to the condition that it provide at least one daily round trip between Houston, Tex., and Pittsburgh, Pa.;

3. The authority granted herein shall terminate 60 days after final Board action in the investigation instituted herein;

4. Except to the extent granted herein, the application of American Airlines, Inc., in Docket 19016 be and it hereby is denied;

5. Motions to consolidate, applications, and motions or petitions seeking modification or reconsideration of this order shall be filed no later than 20 days after the service date of this order, and answers to such pleadings shall be filed no later than 10 days thereafter;

6. This proceeding shall be set down for hearing before an examiner of the Board at a time and place hereafter designated; and

7. A copy of this order shall be served upon the city of Cleveland, Ohio; Cleveland Chamber of Commerce; city of Houston, Tex.; Houston Chamber of Commerce; Metropolitan Government of Nashville and Davidson County, Tenn.; Nashville Metropolitan Airport Authority; American Airlines, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; and Trans World Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 67-13002; Filed, Nov. 2, 1967; 8:48 a.m.]

[4] We will provide that any authority granted pursuant to this investigation shall be in the form of a separate segment.

[5] Contrary to Easterns' contention, the authorization to American we are granting herein is not mutually exclusive with Eastern's application for certificate authority in Docket 19065. The fact that American holds temporary one-stop exemption authority in this market will in no way prejudice the outcome of the nonstop investigation. Similarly, the existence of American's temporary exemption authority will not be a decisional factor in the Gulf States case.

[6] No other carrier has requested such exemption authority.

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 17740, 17741; FCC 67M-1824]

BALTIMORE BROADCASTING CO. AND MEADOWS BROADCASTING CO., INC.

Order Canceling Hearing

In re applications of Baltimore Broadcasting Co., Baltimore, Md., Docket No. 17740, File No. BPCT-3810; The Meadows Broadcasting Co., Inc., Baltimore, Md., Docket No. 17741, File No. BPCT-3878; for construction permit for new television broadcast station (Channel 54).

It is ordered, That the prehearing conference scheduled for October 30, 1967, is continued to December 13, 1967 at 10 a.m., and

It is further ordered, That the hearing date of December 13, 1967, heretofore specified is canceled.

Issued: October 27, 1967.

Released: October 30, 1967.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 67-13004; Filed, Nov. 2, 1967; 8:48 a.m.]

[Docket No. 17774; FCC 67M-1835]

CLEARVIEW TV CABLE, INC.

Order Continuing Hearing

In re cease and desist order to be directed against the following CATV operator: Clearview TV Cable, Inc., Enumclaw and Buckley, Wash., Docket No. 17774.

KIRO, Inc., licensee of Station KIRO-TV, Seattle, Wash., filed on October 17, 1967, a petition for leave to intervene in the above-entitled proceeding. This petition was considered at the prehearing conference held on this date, and no objection to granting the petition was made. Good cause for granting the petition was shown.

It is ordered, That the petition for leave to intervene is granted, and KIRO, Inc., licensee of KIRO-TV, Seattle, Wash., is made a party to this proceeding;

It is further ordered, Pursuant to the agreements reached at the prehearing conference, that the evidentiary hearing is continued from Monday, November 6, 1967 to Tuesday, November 7, 1967, be-

ginning at 10 a.m., in the offices of the Commission, Washington, D.C.

Issued: October 27, 1967.

Released: October 30, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13005; Filed, Nov. 2, 1967; 8:48 a.m.]

[Docket Nos. 17648, 17649; FCC 67R-462]

EL CAMINO BROADCASTING CORP. AND SOUTH COAST BROADCASTING CO.

Memorandum Opinion and Order Enlarging Issues

In re applications of El Camino Broadcasting Corp., San Clemente, Calif., Docket No. 17648, File No. BPH-5566; Leon Hyzen, Charles W. Jobbins, and Leon F. Westendorf, doing business as South Coast Broadcasting Co., San Clemente, Calif., Docket No. 17649, File No. BPH-5756; for construction permits.

1. This proceeding involves the above-captioned mutually exclusive applications for FM broadcast stations operating on Channel 300 in San Clemente, Calif. The applications were designated for hearing by an order (Mimeo No. 4796), released August 18, 1967, on a standard comparative issue. Presently before the Review Board is a petition to enlarge issues, filed September 7, 1967 by South Coast Broadcasting Co. (South Coast), for an issue to determine whether, from the proposed transmitter site, El Camino Broadcasting Corp. (El Camino) will provide satisfactory coverage of the principal community to be served.[1]

2. In support of its request, South Coast submits an engineering statement, which, it contends, shows that the city of San Clemente is well below the line-of-sight from El Camino's proposed antenna for the bearings from about 180° to 235° from the transmitter site, and that the area shadowed includes all of the main business district and more than one-half of the area within the San Clemente city limits. The Broadcast Bureau supports the addition of an issue. El Camino, in opposition, contends that no new information is submitted that was not known to the Commission, and that the Commission found it technically qualified to operate an FM station in San Clemente, Calif. It further contends that the petitioner failed to demonstrate the degree of attenuation of El Camino's proposed signal from its site in any direction, and that it has submitted no measurements or any other meaningful engineering data which would demonstrate the signal strength over the principal city to be served. El Camino's engineer, in a statement submitted with the opposition, contends that the expected signal over the city will be 100 dbu, or greater, and that it is reasonable to expect that signals from the proposed El Camino site will not suffer attenuation in excess of 30 db. South Coast replies that it has submitted a profile study of eight radials (in addition to the three radials set forth in El Camino's application) and a line showing the line-of-sight limit of coverage; that the burden of proof regarding the selection of a transmitter site is upon El Camino; that the rules state that, if a shadow problem exists, the applicant may be required to make site tests; and that no reasons are offered, no authorities are quoted, and no calculations are shown to support the opinion expressed by El Camino's engineer as to the expected level of signal attenuation.

3. The petitioner's request for addition of an issue will be granted. By submission of ground profiles of 11 radials over the bearings of 180° to 270°, South Coast has shown the existence of a land barrier over the bearings of 180° to 235° which could attentuate the signal to a level below the required value over the city proper. In view of El Camino's failure to to submit supporting data to substantiate the opinion it expresses as to the expected level of signal attenuation, the Board is unable to resolve this question on the basis of the pleadings.[2] An issue under which the question can be resolved at the hearing will therefore be added.[3]

Accordingly, it is ordered, That the petition of Leon Hyzen, Charles W. Jobbins and Leon F. Westendorf, doing business as South Coast Broadcasting Co. to enlarge issues with respect to the application of El Camino Broadcasting Corp., filed September 7, 1967, is granted; and

It is further ordered, That the issues in this proceeding are enlarged by the addition of the following issue: To determine whether the operation of an FM broadcast station by El Camino Broadcasting Corp. from its proposed transmitter site will provide the required signal over the principal community to be served.

It is further ordered, That the burden of proceeding and burden of proof under the issue added herein will be on El Camino Broadcasting Corp.

Adopted: October 27, 1967

Released: October 31, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13006; Filed, Nov. 2, 1967; 8:48 a.m.]

[1] Also before the Review Board are: (a) Opposition of El Camino, filed Sept. 20, 1967; (b) Broadcast Bureau's comments, filed Sept. 21, 1967; (c) opposition to Bureau's comments, filed Sept. 25, 1967, by El Camino; and (d) reply to opposition, filed Sept. 27, 1967, by South Coast.

[2] Cf BBPS Broadcasting Corp., 5 FCC 2d 969, 8 RR 2d 1235 (1966).

[3] Since the designation order herein contains no reference to the particular question raised in the subject petition, the Board is not precluded from consideration of the merits of the allegations. See Atlantic Broadcasting Co. (WUST), FCC 66-1053, 5 FCC 2d 717.

[4] Board Member Berkemeyer absent.

[Docket Nos. 17594, 17595; FCC 67M-1829]

GOSPEL BROADCASTING COMPANY OF FORT WAYNE, INC., AND FORT WAYNE BROADCASTING CO.

Order Continuing Hearing

In re applications of the Gospel Broadcasting Company of Fort Wayne, Inc., Fort Wayne, Ind., Docket No. 17594, File No. BPH-5561; Clarence C. Moore trading as Fort Wayne Broadcasting Co., Fort Wayne, Ind., Docket No. 17595, File No. BPH-5672; for construction permits.

The Hearing Examiner having under consideration an unopposed oral motion by counsel for Clarence C. Moore, trading as Fort Wayne Broadcasting Co., asking for brief postponements of certain procedural dates, and

It appearing that such postponements are proper under the circumstances:

It is ordered, That:

1. Exchange of exhibits shall occur November 17, 1967,

2. Notification of witnesses for cross-examination shall occur November 27, 1967, and

3. The hearing now scheduled for November 27, 1967 is rescheduled to commence at 10 a.m., December 4, 1967, in the Commission's offices in Washington, D.C.

Issued: October 27, 1967.

Released: October 30, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13007; Filed, Nov. 2, 1967; 8:48 a.m.]

[Docket Nos. 17609, 17610; FCC 67M-1827]

MINSHALL BROADCASTING CO., INC., AND UNIVERSITY CITY TELEVISION CABLE CO., INC.

Order Continuing Prehearing Conference

In re applications of Minshall Broadcasting Co., Inc., Gainesville, Fla., Docket No. 17609, File No. BPCT-3879; University City Television Cable Co., Inc., Gainesville, Fla., Docket No. 17610, File No. BPCT-3939; for construction permit for new television broadcast station.

On the Hearing Examiner's own motion: *It is ordered*, That there will be a prehearing conference in this proceeding on November 9, 1967, 9 a.m., in the Commission's offices, Washington, D.C.

Issued: October 27, 1967.

Released: October 30, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13008; Filed, Nov. 2, 1967; 8:48 a.m.]

[Docket No. 17626; FCC 67M-1830]

NATCHEZ BROADCASTING CO. (WMIS)

Order Continuing Hearing

In re application of Natchez Broadcasting Co. (WMIS), Natchez, Miss., for construction permit, Docket No. 17626, File No. BP-16963.

It is ordered, In accordance with the agreement of all counsel reached during prehearing conference held October 27, 1967, that the following procedural dates are established in the above-entitled proceeding:

Preliminary Exchange of Exhibits, November 27, 1967.

Final Exchange of Exhibits, December 8, 1967.

Notification of Witnesses, December 12, 1967.

Hearing continued from October 31 to December 14, 1967.

Issued: October 27, 1967.

Released: October 30, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13009; Filed, Nov. 2, 1967; 8:48 a.m.]

[Docket No. 17420, 17421; FCC 67M-1836]

MICHAEL S. RICE AND FIRST CAPITOL RADIO, INC.

Order Continuing Hearing

In re applications of Michael S. Rice, St. Charles, Mo., Docket No. 17420, File No. BP-17043; First Capitol Radio, Inc., St. Charles, Mo., Docket No. 17421, File No. BP-17155; for standard broadcast construction permits.

Under consideration is a motion for continuance of hearing; and

It appearing that the two applicants are prosecuting before the Review Board action which may moot this hearing;

And it further appearing that the only other party to the hearing, the Broadcast Bureau, has no objection to grant of the continuance requested:

It is ordered, That the motion for continuance of hearing filed by Michael S. Rice on October 26, 1967, is granted and the hearing now scheduled for October 31, 1967, is continued to January 2, 1968.

Issued: October 27, 1967.

Released: October 30, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13010; Filed, Nov. 2, 1967; 8:48 a.m.]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN BRAZIL

Entry or Withdrawal From Warehouse for Consumption

OCTOBER 27, 1967.

On October 23, 1967, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles, done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, informed the Government of Brazil that it was renewing for an additional 12-month period beginning October 28, 1967, and extending through October 27, 1968, the restraint on imports to the United States of cotton textiles in Category 9, produced or manufactured in Brazil. The level of restraint for this 12-month period is 5 percent greater than the level of restraint applicable to this category for the preceding 12-month period.

There is published below a letter of October 26, 1967, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amounts of cotton textiles in Category 9, produced or manufactured in Brazil, which may be entered or withdrawn from warehouse for consumption in the United States, for the 12-month period beginning October 28, 1967, and extending through October 27, 1968, be limited to the designated level.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

THE SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

WASHINGTON, D.C. 20230,
OCTOBER 26, 1967.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective October 28, 1967, and for the 12-month period extending through October 27, 1968, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textiles in Category 9, produced or manufactured in Brazil, in excess of a 12-month level of restraint of 607,754 square yards.

Entries of cotton textiles in Category 9, produced or manufactured in Brazil, which have been exported to the United States from Brazil prior to October 28, 1967, shall be subject to this directive since the level for the period October 28, 1966, through October 27, 1967, has been exhausted by previous entries.

A detailed description of Category 9 in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on July 7, 1966 (31 F.R. 9310).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Brazil and with respect to imports of cotton textiles and cotton textile products from Brazil have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. II, 1965-66). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

DAVID R. BALDWIN,
Acting Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[F.R. Doc. 67-12989; Filed, Nov. 2, 1967; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 31, 1967.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41157—*Potassium (potash) to points in Idaho, Oregon, and Washington.* Filed by G. H. Mitchell, agent (No. 15), for interested rail carriers. Rates on potassium (potash), in carloads, as described in the application, from Allan Mines, Duvco and Vade, Saskatchewan, Canada, to points in Idaho, Oregon, and Washington.

Grounds for relief—Market competition.

Tariff—Supplement 40 to G. H. Mitchell, agent, tariff ICC 144.

FSA No. 41158—*Cotton and related articles to Gideon, Mo.* Filed by Southwestern Freight Bureau, agent (No. B-9021), for interested rail carriers. Rates on cotton, cotton linters, and cottonseed hull fiber or shavings, in carloads, as described in the application, from points in Kansas, New Mexico, Oklahoma, and Texas, to Gideon, Mo.

Grounds for relief—Market competition.

Tariff—Supplement 83 to Southwestern Freight Bureau, agent, tariff ICC 4576.

FSA No. 41159—*Iron and steel articles from Arroyo, W. Va.* Filed by Southwestern Freight Bureau, agent (No. B-9019), for interested rail carriers. Rates on iron and steel articles, in carloads, as described in the application, from Arroyo, W. Va., to specified points in Louisiana and Texas.

Grounds for relief—Market competition.

Tariff—Supplement 11 to Southwestern Freight Bureau, agent, tariff ICC 4573.

FSA No 41160—*Vermiculite to Wilmington, Del.* Filed by O. W. South, Jr., agent (No. A5064), for interested rail carriers. Rates on vermiculite, in carloads, as described in the application, from Travelers Rest and Kearney, S.C., to Wilmington, Del.

Grounds for relief—Market competition.

Tariff—Supplement 61 to Southern Freight Association, agent, tariff ICC S-623.

FSA No. 41161—*Fish meal from points in Canada to points in southern territory.* Filed by O. W. South, Jr., agent (No. A5063), for interested rail carriers. Rates on fish meal, in carloads, from points in provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Quebec, Canada, to points in Southern Freight Association territory.

Grounds for relief—Market competition, short-line distance formula and grouping.

Tariff—Canadian Freight Association, agent, tariff ICC 287.

By the Commission.

[SEAL] ANDREW ANTHONY, Jr.,
Acting Secretary.

[F.R. Doc. 67-13000; Filed, Nov. 2, 1967; 8:47 a.m.]

[Notice 485]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 31, 1967.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC 67 (49 CFR Part 340) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protest must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 66562 (Sub-No. 2266 TA), filed October 23, 1967. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York, N.Y. 10017. Applicant's representative: John H. Engel, 2413 Broadway, Kansas City, Mo. 64108. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* moving in express service, in interstate or foreign commerce, between Temple and Killeen, Tex., serving no intermediate or off-route points: from Temple over U.S. Highway 190 to Killeen, and return over the same route. Restrictions: The service to be performed shall be limited to that which is auxiliary to or supplemental of express service of the Railway Express Agency, Inc. Shipments transported shall be limited to those moving on through bills of lading or express receipts. NOTE: Applicant requests that the authority for the proposed operation, if granted, be construed as an extension, to be joined, tacked, and combed with REA's existing authority in MC 66562 and subs thereunder, thereby negating the restrictions against tacking or joinder customarily placed upon temporary authority, for 150 days. Supporting shippers: Railway Express Agency, Inc., 219 East 42d Street, New York, N.Y. 10017; Rhonda Rae Shelley, Manager, Copelin's, Killeen, Tex.; Stanley L. Weiss, Killeen, Tex.; Stanley Cohen, The Stag Shop, Killeen, Tex.; B. E. Bradsby, President, Gibsons Discount Stores, Killeen, Tex. Send protests to: District Supervisor Stephen P. Tomany, Interstate Commerce Commission, Bureau of Operations, 346 Broadway, New York, N.Y. 10013.

No. MC 107064 (Sub-No. 60 TA), filed October 23, 1967. Applicant: STEERE TANK LINES, INC., 2808 Fairmont Street, Dallas, Tex. 75201, Post Office Box 2998, Dallas, Tex. 75221. Applicant's representative: Hugh T. Matthews, 630 Fidelity Union Tower, Dallas, Tex. 75201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizers, sulphur and sulphur products;* from points in Castro County, Tex.; to points in Alabama, Arizona, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina, Tennessee, and Texas. NOTE: Does not intend to tack, for 180 days. Supporting shipper: Elcor Chemical Corp., 1300 V & J Tower Building, Midland, Tex. Send protests to: E. K. Willis, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 116710 (Sub-No. 11 TA), filed October 26, 1967. Applicant: MISSISSIPPI CHEMICAL EXPRESS, INC., Post Office Box 1634, Highway 11 South, Hattiesburg, Miss. 39401. Applicant's representative: Hart F. Smith, Hattiesburg, Miss. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sulphur dioxide*, from Baton Rouge, La.; to points in Oklahoma without return movement, for 180 days. Supporting shipper: Stauffer Chemical Co., Baton Rouge, La. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 312-A U.S. Post Office Building, Jackson, Miss. 39201.

No. MC 117815 (Sub-No. 129 TA), filed October 25, 1967. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, Iowa 50317. Applicant's representative: William A. Landau, 1451 East Grand Avenue, Des Moines, Iowa 50306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meat*, from Green Bay, Wis., to Davenport, Iowa, and its commercial zone, for 150 days. Supporting shipper: Giefman Food Stores, Inc., 2728 West Central Park, Davenport, Iowa 52804. Send protests to: Ellis L. Annett, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 227 Federal Office Building, Des Moines, Iowa 50309.

No. MC 119777 (Sub-No. 89 TA), filed October 23, 1967. Applicant: LIGON SPECIALIZED HAULER, INC., Post Office Drawer L, Madisonville, Ky. 42431. Applicant's representative: Louis J. Amato, 1033 State Street, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Forklift trucks, and parts, attachments, and accessories for forklift trucks*, between the plantsite of International Equipment Co., near Sedalia, Graves County, Ky., on the one hand, and, on the other, all points in the United States (except those in Alaska and Hawaii), for 180 days. Supporting shipper: William J. Hoffman, General Traffic Manager, International Equipment Co., Post Office Box 767, Mayfield, Ky. 42066. Send protests to: Wayne L. Merilatt, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 426 Post Office Building, Louisville, Ky. 40202.

No. MC 126835 (Sub-No. 16 TA), filed October 23, 1967. Applicant: EDGAR BISCHOFF, doing business as CASKET DISTRIBUTORS, RR. No. 2, West Harrison, Ind., Post Office Harrison, Ohio 45030. Applicant's representative: Jack B. Josselson, Atlas Bank Building, Cincinnati, Ohio 45202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Caskets, casket displays, and funeral supplies when moving with caskets;* from Cincinnati, Ohio; to Chicago, Ill., Detroit, Mich., Philadelphia, Pa.; and New York, N.Y.; for 180 days. Edwards Manufacturing Co., Casket Division, Fifth and Butler Streets, Cincinnati, Ohio 45202. NOTE: Rates to be filed on statutory notice. Send protests to: Bureau of Operations, Interstate Commerce Commission, 802 Century

Building, 36 South Pennsylvania Street, Indianapolis, Ind. 46204.

No. MC 129205 (Sub-No. 1 TA), filed October 24, 1967. Applicant: COASTAL HAULING, INC., 401 Bay Colony Drive Virginia Beach, Va. 23451. Applicant's representative: A. B. Midgett (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bulk salt* in dump vehicles; from Norfolk, Va.; to Camden, Currituck, Dare, Gates, Pasquotank, Perquimans, Bertile, Hertford, Northampton, Chowan, Hyde, Martin, Tyrrell, Washington, Edgecombe, Halifax, and Warren Counties, N.C.; for 150 days. Supporting shipper: Southern Salt Co., Post Office Box 3417, Norfolk, Va. Send protests to: Robert W. Waldron, District Supervisor, Interstate Commerce Commission, 10–502 Federal Building, Richmond, Va. 23240.

No. MC 129414 (Sub-No. 1 TA), filed October 25, 1967. Applicant: BELL & MOONEY, INC., Post Office Box 925, Gillette, Wyo. 82716. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oil field supplies, namely lost circulation materials and chemicals;* from Gillette and Upton, Wyo.; to points in Carter and Powder River Counties, Mont.; for 180 days. Supporting shippers: Banks Mud Sales, Box 487, Gillette, Wyo. 82716; Milchem, Post Office Box 693, Casper, Wyo. Send protests to: District Supervisor, Paul A. Naughton, Bureau of Operations, Interstate Commerce Commission, D&S Building, 255 North Center Street, Casper, Wyo. 82601.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-13001; Filed, Nov. 2, 1967; 8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RI68-206]

MWJ PRODUCING CO.

Order Providing for Hearing on and Suspension of Proposed Change in Rates

OCTOBER 27, 1967.

MWJ Producing Co. (Operator), agent (MWJ)[1] tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes increased rates and charges, is designated as follows:

[1] Address is: 413 First National Bank Bldg., Midland, Tex. 79701. Attention: R. Ken Williams, president.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI68-206	MWJ Producing Co. (Operator), agent, 413 First National Bank Bldg., Midland, Tex. 79701. Attn: R. Ken Williams, president.	12	6	El Paso Natural Gas Co. (Spraberry Field, Reagan County, Tex.) (R.R. District No. 7-C) (Permian Basin Area).	$122 330	9-29-67	[2] 10-30-67	3-30-68	[3] 17.2295 [4] 10.0	[5] [6] 18.2430 [6] 18.2430	

[2] The stated effective date is the first day after expiration of the statutory notice.
[3] Periodic rate increase.
[4] Pressure base is 14.65 p.s.i.a.
[5] 75 percent of the interest formerly covered by French's FPC Gas Rate Schedule No. 3. Rate effective subject to refund in Docket No. RI60-9.
[6] Renegotiated rate increase.
[7] Pertains to acreage added by Supplement No. 5 (25 percent of the total interest and formerly dedicated to a contract between Sohio and El Paso Natural Gas Co., dated Oct. 3, 1952).

MWJ's proposed rate increases from 10.0 cents and 17.2295 cents to 18.2430 cents per Mcf are for a sale of residue gas derived from casinghead gas to El Paso Natural Gas Co. from the Spraberry Field in the Permian Basin Area of Texas and covered by MWJ's FPC Gas Rate Schedule No. 12.

MWJ was recently authorized to continue the sale of gas from acreage acquired from L. R. French, Jr. At the time the succession was filed, 75 percent of the interest involved in the subject sale of gas was covered under L. R. French, Jr., FPC Gas Rate Schedule No. 3, having an effective rate of 17.2295 cents per Mcf. The remaining 25 percent was covered under another producer's rate schedule having an effective rate of 10.0 cents per Mcf. MWJ now proposes to bring such rates in line with its contractually provided rate of 18.2430 cents per Mcf.

The proposed increased rates exceed the applicable area base rate of 14.50 cents per Mcf prescribed by Opinion Nos. 468 and 468–A. MWJ has not submitted a quality statement to establish the applicable area ceiling rate for the subject sale,[8] but a review of other quality statements for residue gas from the Spraberry Field indicates that the proposed rates exceed the applicable area base rate of 14.50 cents per Mcf, adjusted for quality. Under the circumstances, we conclude that MWJ's proposed rate increases should be suspended for 5 months from October 30, 1967, the date of expiration of the statutory notice.

MWJ proposes a retroactive effective date of February 1, 1967, the date of transfer of the properties involved, or, if suspended, the suspension period be limited to 1 day. Good cause has not been shown for granting MWJ's request for an earlier effective date or for limiting to 1 day the suspension period with respect to such rate filing and MWJ's request is denied.

Except for the stay of the moratorium in Opinion No. 468, MWJ's proposed rate increases would be rejectable because they are in excess of the applicable area ceiling determined in Opinion No. 468. If the moratorium is ultimately upheld upon judicial review, MWJ's rate increases will be rejected ab initio.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 6 to MWJ's FPC Gas Rate Schedule No. 12 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 6 to MWJ's FPC Gas Rate Schedule No. 12.

(B) Pending such hearing and decision thereon, Supplement No. 6 to MWJ's FPC Gas Rate Schedule No. 12 is hereby suspended and the use thereof deferred until March 30, 1968, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8

[8] MWJ has been advised to submit a quality statement but has not done so to date.

and 1.37(f)) on or before December 15, 1967.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 67-12925; Filed, Nov. 2, 1967; 8:45 a.m.]

[Docket No. RI68-207]

MAY PETROLEUM, INC.

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

OCTOBER 27, 1967.

Respondent named herein has filed a proposed change in rate and charge of a currently effective rate schedule for the sale of natural gas under Commission jurisdiction, as set forth in appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR, Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplement to the rate schedule filed by Respondent shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondent shall execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of a copy thereof upon the purchaser under the rate schedule involved. Unless Respondent is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37 (f)) on or before December 15, 1967.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI68-207	May Petroleum, Inc., 1435 Republic National Bank Bldg., Dallas, Tex. 75201.	25	11	Colorado Interstate Gas Co. (Mocane Field, Beaver County, Okla.) (Panhandle Area).	$1,450	10-2-67	[1] 10-31-67	[2] 11-1-67	[3] 17.040 [4] 16.0	[3 5] 18.105 [3 4] 17.0	RI62-449. RI62-449.

[1] The stated effective date is the effective date requested by Respondent.
[2] The suspension period is limited to 1 day.
[3] Periodic rate increase.
[4] Pressure base is 14.65 p.s.i.a.
[5] Includes base rate of 16 cents plus 1.040 cent upward B.t.u. adjustment (1,065 B.t.u. gas) before increase and base rate of 17 cents plus 1.105 cent upward B.t.u. adjustment after increase. Base rate subject to upward and downward B.t.u. adjustment.
[6] For production from acreage located in the South-half of Southeast quarter, Section 3, T5N-R26ECM, rate is subject to downward B.t.u. adjustment only.

May Petroleum, Inc. (May), requests waiver of the statutory notice to permit its proposed rate changes to become effective on October 31, 1967. Good cause exists for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to the extent necessary to permit the suspension period for May's rate filing to be shortened to coincide with the suspension period ordered in the Champlin proceeding in Docket No. RI67-402.

May acquired the acreage herein by assignment from Champlin Petroleum Co. (Champlin) on February 16, 1967, and filed on June 15, 1967, its rate schedule and certificate application in Docket No. CI67-1787. Prior thereto the acreage was covered under Champlin's Rate Schedule No. 65 and related certificate issued in Docket No. G-18065. The effective rate under Champlin's rate schedule at the time of May's filing was 16.0 cents subject to refund in Docket No. RI62-449. However, on May 1, 1967, prior to the filing of May's rate schedule, and after the assignment of the subject acreage to May, Champlin filed a notice of change in rate from 16.0 cents to 17.0 cents plus applicable B.t.u. adjustment which higher rate was suspended until November 1, 1967, in Docket No. RI67-402.

May was issued a conditioned temporary certificate by letter order dated August 25, 1967, in Docket No. CI67-1787 at 16.0 cents subject to the same refunding obligation of Champlin in Docket No. RI62-449. Such letter also advised May that it could file a proposed rate increase to the contractually due 17.0 cents, which would be subject to suspension, but that May could request a shortened suspension period (until November 1, 1967) to coincide with Champlin's suspension proceeding.

May's proposed increased rates and charges exceed the area increased rate ceiling of 11.0 cents per Mcf for the Panhandle Area as announced in the Commission's Statement of General Policy No. 61-1, as amended, and should be suspended. Under the circumstances, however, we conclude that the suspension period for May's proposed rate increases should be shortened until November 1, 1967, for the reasons stated above.

[F.R. Doc. 67-12926; Filed, Nov. 2, 1967; 8:45 a.m.]

[Docket No. CS68-34 etc.]

HOWARD W. FLEET ET AL.

Notice of Applications for Small Producer Certificates [1]

OCTOBER 30, 1967.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of Texas and New Mexico, all as

[1] This notice does not provide for consolidation for hearing of the several matters covered herein, nor should it be so construed.

more fully set forth in the applications which are on file with the Commission and open to public inspection.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 20, 1967.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

Docket No.	Date filed	Name of applicant
CS68-34	10- 5-67	Howard W. Fleet, Post Office Box 729, Ada, Okla. 74820.
CS68-35	10- 5-67	Two States Oil Co., 530 Wilson Bldg., Dallas, Tex. 75201.
CS68-36	10- 9-67	James L. Lamb, Jr. et al., Post Office Box 5365, Midland, Tex. 79701.
CS68-37	10-12-67	Jay Simmons, 2020 Republic National Bank Bldg., Dallas, Tex. 75201.

[F.R. Doc. 67-12978; Filed, Nov. 2, 1967; 8:45 a.m.]

[Docket Nos. RP68-1, RP66-4]

FLORIDA GAS TRANSMISSION CO.

Notice Extending Time for Filing Notices of Intervention and Petitions To Intervene

OCTOBER 26, 1967.

The order issued July 19, 1967, in the above-designated proceedings provided that a public hearing be held on a date fixed by notice from the Presiding Examiner. The order prescribed that Florida Gas Transmission Co. serve its direct testimony and exhibits in Docket No. RP68-1 on or before September 18, 1967; that Commission staff serve its testimony and exhibits in Docket No. RP68-1 on or before December 4, 1967; and that interveners serve their testimony and exhibits in Docket No. RP68-1 on or before December 18, 1967. The order further provided that notices of intervention and petitions to intervene be filed on or before August 11, 1967, and that a prehearing conference before the Presiding Examiner commence on January 9, 1968. By notice issued August 14, 1967, the time for filing notices of intervention and petitions to intervene was extended to September 6, 1967.

By order issued September 1, 1967, the dates for the filing of testimony and exhibits and for the commencement of the prehearing conference were in each instance extended by 30 days.

Notice is hereby given that the time for filing notices of intervention and petitions to intervene in the proceeding in Docket No. RP68-1 is further extended to and including November 16, 1967. The order issued July 19, 1967, provided that any party who had been permitted to intervene in Docket No. RP66-4 may participate in these consolidated proceedings to the extent provided in the order granting them permission to intervene.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12980; Filed, Nov. 2, 1967; 8:45 a.m.]

[Docket No. RI68-15]

FOREE CO. ET AL.

Order Accepting Contract Amendment, and Providing for Hearing on and Suspension of Proposed Change in Rate

JULY 26, 1967.

Foree Co. (Operator) et al. (Foree) [1] tendered for filing on June 26, 1967, a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: (1) Amendment, dated May 23, 1967. (2) Notice of change, filed June 26, 1967.

Purchaser and producing area: Northern Natural Gas Co., West Gate Field, Beaver Co., Oklahoma Panhandle Area.

Effective date: (1) July 27, 1967,[2] (2) July 27, 1967.[2]

Rate schedule designation: (1) Supplement No. 1 to Foree's FPC Gas Rate Schedule No. 1. (2) Supplement No. 2 to Foree's FPC Gas Rate Schedule No. 1.

Amount of annual increase: $321.
Effective rate: 16.38 cents per Mcf.[3 4]
Proposed rate: 17.41 cents per Mcf.[3 5]
Pressure base: 14.65 p.s.i.a.

Foree requests that its proposed rate increase be permitted to become effective as of July 1, 1967. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Foree's rate filing and such request is denied.

Concurrently with the filing of its rate increase, Foree submitted a contract amendment dated May 23, 1967, which provides the basis for its proposed increased rate. The contract amendment has been designated as Supplement No. 1 to Foree's FPC Gas Rate Schedule No. 1. We believe that it would be in the public interest to accept for filing Foree's aforementioned contract amendment to become effective on July 27, 1967, but not the proposed rate contained therein which will be suspended as indicated below.

Foree's proposed increased rate and charge exceeds the area price level for increased rates for the Oklahoma Panhandle Area as announced in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56).

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause has been shown for accepting for filing Foree's proposed contract amendment dated May 23, 1967, designated as Supplement No. 1 to Foree's FPC Gas Rate Schedule No. 1, and for permitting such supplement to become effective on July 27, 1967.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 2 to Foree's FPC Gas Rate Schedule No. 1 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Foree's contract amendment dated May 23, 1967, designated as Supplement No. 1 to Foree's FPC Gas Rate Schedule No. 1, is accepted for filing and permitted to become effective on July 27, 1967.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 2 to Foree's FPC Gas Rate Schedule No. 1.

(C) Pending such hearing and decision thereon, Supplement No. 2 to Foree's FPC Gas Rate Schedule No. 1 is hereby suspended and the use thereof deferred until December 27, 1967, and thereafter until such further time as it is made effective to the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8

[1] Address is: 3700 First National Bank Building, Dallas, Tex. 75202.

[2] The stated effective date is the first day after expiration of the statutory notice.

[3] Base rate subject to upward and downward B.t.u. adjustment.

[4] Includes base rate of 16 cents per Mcf, plus 0.38 cent per Mcf upward B.t.u. adjustment.

[5] Includes base rate of 17 cents per Mcf, plus 0.41 cent per Mcf upward B.t.u. adjustment.

[6] Periodic rate increase.

and 1.37(f)) on or before September 8, 1967.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 67-12979; Filed, Nov. 2, 1967; 8:45 a.m.]

[Docket No. RI68-143, etc.]

GULF OIL CORP. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates; Correction

OCTOBER 26, 1967.

Gulf Oil Corp. et al., Docket Nos. RI68-143, etc.; Tenneco Oil Co., Docket No. RI68-147.

In order providing for hearings on and suspension of proposed changes in rates, issued October 6, 1967, and published in the FEDERAL REGISTER October 13, 1967 (F.R. Doc. 67-12032, 32 F.R. 14256), Docket Nos. RI68-143 et al., Appendix A, page 14256, delete footnote 22 in its entirety and insert the following: "[22] Includes 1.75-cent tax reimbursement. Buyer deducts handling charge of 1.35 cents from rate shown."

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 67-12982; Filed, Nov. 2, 1967; 8:46 a.m.]

[Docket No. E-7229]

IDAHO POWER CO.

Notice of Postponement of Prehearing Conference

OCTOBER 5, 1967.

Upon consideration of the requests filed on October 2, 1967, by Idaho Power Co. and Idaho Public Utilities Commission for postponement of the prehearing conference in the above-designated matter presently scheduled to commence on October 17, 1967, and the letter filed on October 4, 1967, by counsel for Wells Rural Electric Co.;

Notice is hereby given that the prehearing conference will commence at 10 a.m., e.s.t., on November 20, 1967, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 67-12990; Filed, Nov. 2, 1967; 8:46 a.m.]

[Docket No. RI67-311, etc.]

MIDWEST OIL CORP. ET AL.

Order Accepting Contract Agreement, Providing for Hearings on and Suspension of Proposed Changes in Rates; Correction

OCTOBER 26, 1967.

Midwest Oil Corp. et al., Docket Nos. RI67-311, etc.; Shell Oil Co., Docket No. RI67-312.

In order accepting contract agreement, providing for hearings on and suspension of proposed changes in rates, issued March 7, 1967, and published in the FEDERAL REGISTER March 15, 1967 (F.R. Doc. 67-2806, 32 F.R. 4093), Docket Nos. RI67-311 et al., page 4093, in the table for Docket Nos. RI67-311 et al., under column headed "Supplement No." change "6" to read "5" for Docket No. RI67-312, Shell Oil Co.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 67-12983; Filed, Nov. 2, 1967; 8:46 a.m.]

[Docket No. RI68-112 etc.]

MOBIL OIL CORP. ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

SEPTEMBER 13, 1967.

The Respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplements to the rate schedules filed by Respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before November 1, 1967.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI68-112	Mobil Oil Corp. (Operator) et al., Post Office Box 2444, Houston, Tex. 77001, Attn: H. H. Beeson, attorney.	193	3	Sinclair Oil & Gas Co. (Abell Field, Pecos County, Tex.) (RR. District No. 8) (Permian Basin Area).	$31,691	8-14-67	[2] 9-14-67	[3] 9-15-67	6.5	[4] [5] 9.0	
	do	195	2	do	1,080	8-14-67	[2] 9-14-67	[3] 9-15-67	6.5	[4] [5] 9.0	
	do	197	7	do	858	8-14-67	[2] 9-14-67	[3] 9-15-67	[6] 6.5	[4] [5] 9.0	
RI68-113	Mobil Oil Corp.	196	2	do	(7) 274	8-14-67	[2] 9-14-67	[3] 9-15-67	[8] 8.0 6.5	[4] [5] 9.0 [4] [5] 9.0	

[2] The stated effective date is the first day after expiration of the statutory notice.
[3] The suspension period is limited to 1 day.
[4] Unilateral rate increase filed to bring rate in line with minimum rates prescribed in ordering Paragraph (G), Opinion No. 468—unadjusted for quality.
[5] Pressure base is 14.65 p.s.i.a.
[6] Rate pertains to volumes produced at 35 p.s.i.g.
[7] Rate pertains to volumes produced at 350 p.s.i.g.
[8] No volumes produced at 350 p.s.i.g.

Mobil Oil Corp. (Operator) et al., and Mobil Oil Corp. (both referred to herein as Mobil) request that their proposed rate increases be permitted to become effective as of September 1, 1967. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Mobil's rate filings and such requests are denied.

Mobil proposes unilateral rate increases from 6.5 cents and 8 cents [9] to 9 cents per Mcf, amounting to $33,909 annually, for sales of casinghead gas to Sinclair Oil & Gas Co. (Sinclair) [10] in the Permian Basin Area of Texas. The proposed rates are equal to the minimum base rate specified in ordering paragraph (G) of Opinion No. 468, but do not reflect any adjustment for quality deviations. The contract rates for the sales are 6.5 cents and 8 cents per Mcf.

Mobil has submitted unilateral quality statements for the casinghead gas sales showing that the gas is not of pipeline quality in that it has sulphur and high water content and requires compression. However, the quality statements do not reflect the amounts of impurities or the costs involved in bringing the gas to pipeline quality. The buyer, to date, has not filed a statement with respect to the quality of the gas or the amount of quality adjustments.

Since the quality of the gas and the amount of adjustments are unknown, we conclude that Mobil's proposed rate increases should be suspended for one day from September 14, 1967, the date of expiration of the statutory notice, as ordered herein.

[F.R. Doc. 67-12991; Filed, Nov. 2, 1967; 8:46 a.m.]

[Docket No. G-19879 etc.]

ESTATE OF R. MORGAN ET AL.

Order Accepting Offers of Settlement, Requiring Filing of Notice of Change, Requiring Refunds, Severing and Terminating Proceedings

OCTOBER 26, 1967.

Estate of R. Morgan, Docket Nos. G-19879, RI61-3; Associated Oil & Gas Co. and South-Tex Corp., Docket Nos. G-19652, RI60-449.

On August 11, 1967, the Estate of R. Morgan (Morgan) filed an offer of settlement in Docket Nos. G-19879 and RI61-3, in accordance with the provisions of § 1.18(e) of the Commission's rules of practice and procedure, for its sale of natural gas from the Farenthold Field, Nueces and Jim Wells Counties, Texas District No. 4 to South-Tex Corp. (South-Tex),[1] who, in turn, resells the gas to Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Tennessee), at a rate which is in effect subject to refund in Docket Nos. G-19652 and RI60-449. On August 14, 1967, Associated Oil and Gas Co. (Associated) and South-Tex jointly filed a reply and a companion offer of settlement for their related rate proceedings. The details of the offers are as follows:

Respondent	Docket No.	Rate schedule and supplement No.	Effective dates	Rates [4]	
				Suspended	Settlement
Morgan	G-19879	1-4	4- 1-60	13.87589	[2] 13.78069
Morgan	RI61-3	1-5	12-10-60	16.02416	[2] 13.78069
Associated and South-Tex	G-19652	3-5	4- 1-60	14.87589	[3] 14.78069
	RI60-449	[3] 3-6	12- 9-60	17.02416	[3] 14.78069

[4] Cents per Mcf at 14.65 p.s.i.a., inclusive of tax reimbursement.
[2] Reflects 0.21931 cent per Mcf deduction for delivery of nondehydrated gas.
[3] Formerly Associated's FPC Gas Rate Schedule No. 3.

The Respondents have proposed to make refunds of all monies charged and collected, subject to refund, above their settlement rates with applicable interest computed from the date received until refunded. The amount to be refunded by Morgan to Associated and South-Tex computed through September 1, 1967, will be approximately $44,400, exclusive of interest; and such refunds will, in turn, be refunded by Associated and South-Tex to Tennessee. Tennessee is required to flow-through all refund amounts it receives herein, but since some of its jurisdictional customers may not have similar obligations we will require Tennessee to retain these refunds pending further Commission orders with respect to such monies.

Concurrent with its offer of settlement, Morgan filed an executed contract amendment (designated as Supplement No. 6 to its FPC Gas Rate Schedule No. 1) which extends the contract term an additional five years and establishes a life-of-the-contract rate of 13.78069 cents per Mcf except for partial reimbursement of future tax increases, and a notice of change in rate (designated as Supplement No. 7 to its FPC Gas Rate Schedule No. 1) to the aforementioned settlement rate level.

In return for the approval of the joint settlement proposals, South-Tex also agrees to eliminate all future price escalation provisions from its contract except for the tax clause which provides for 75 percent reimbursement of future tax increases, and to extend its present contract term of 2 years an additional 5 years.

Respondents' proposals are consistent with the provisions of the Second and Ninth Amendments to the Commission's statement of general policy No. 61-1 (18 CFR 2.56) and we shall approve the same.

However, we desire to make it clear that acceptance of Respondents' offers of settlement shall not be construed as approval of any future increased rates that may be filed by Respondents under their subject rate schedules in accordance with their reservation of the right to file increased rates to cover possible future tax increases, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Respondents' rates and rate schedules.

The Commission finds: The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in Morgan's offer of settlement filed August 11, 1967, and in Associated and South-Tex's offer of settlement filed August 14, 1967, as conditioned herein, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act, and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed with the Commission by Morgan on August 11, 1967, and by Associated and South-Tex on August 14, 1967, are approved in accordance with the provisions of this order.

(B) Supplement Nos. 6 and 7 to Morgan's FPC Gas Rate Schedule No. 1 are accepted for filing effective as of the date of issuance of this order.

(C) South-Tex shall file, within 30 days from the date of the order, as supplements to its Rate Schedule No. 3, a notice of change in rate providing for the settlement rate of 14.78069 cents per Mcf and an executed contract amendment as provided for in its subject offer. The notice of change and contractual amendments shall be submitted in accordance with Part 154 of the Commission's regulations under the Natural Gas Act.

(D) Morgan shall refund, with applicable interest computed to the date of this order, to South-Tex and Associated the difference between the rates collected subject to refund in Docket Nos. G-19879 and RI61-3 and its settlement rate; and shall report to the Commission, with a copy to Tennessee, within 45 days from the date of this order, the amount of such refund, showing separately the amount of principal and interest, and the basis used for such determination,

[1] By order issued May 24, 1967, in Docket No. CI63-33, South-Tex was authorized to continue this sale as a successor-in-interest to Associated. Associated joined in the subject offer to resolve its interest in these proceedings.

[9] Rate of 8 cents per Mcf pertains only to gas delivered to buyer at 350 p.s.i.g. under Mobil's FPC Gas Rate Schedule No. 197.

[10] Sinclair processes the casinghead gas at its Imperial Plant, Pecos County, Tex., and resells residue gas, under its FPC Gas Rate Schedule No. 317, to Northern Natural Gas Co. at a rate of 14.5 cents per Mcf, which is equal to the applicable area ceiling rate established by Sinclair's quality statement for the resale. Although the 14.5-cent rate is collected subject to refund in Docket No. RI64-219 (consolidated in Permian order to show cause) the proceeding will be terminated in due course since the rate does not exceed the applicable area ceiling.

and 10 days thereafter shall file a release for the same from South-Tex and Associated.

(E) Associated and South-Tex shall refund to Tennessee the amounts received from Morgan under paragraph (D) above and within 20 days of the receipt of such amounts from Morgan shall file a release for the same from Tennessee. Tennessee shall retain the refunded amount pending further order of the Commission.

(F) Upon notification by the Secretary of the Commission that Morgan has complied with the terms and conditions of this order, the surety bonds filed by Morgan in Docket Nos. G–19879 and RI61–3 shall be deemed discharged and these proceedings shall be deemed severed from Docket No. AR64–2 and terminated without further order of this Commission.

(G) Upon notification by the Secretary of the Commission that Associated and South-Tex have complied with the terms and conditions of this order, their agreements and undertakings in Docket Nos. G–19652 and RI60–449 shall be deemed discharged, and these proceedings shall be deemed severed from Docket No. AR64–2 and terminated without further order of this Commission.

(H) The acceptance by the Commission of the offers of settlement in these proceedings is without prejudice to any findings or determinations that may be made in any proceedings now pending, or hereafter instituted by or against Respondents, including area rate or other similar proceedings.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 67–12981; Filed, Nov. 2, 1967; 8:46 a.m.]

[Docket No. CP68–71]

OHIO FUEL GAS CO.

Notice of Application

OCTOBER 31, 1967.

Take notice that on September 6, 1967, Ohio Fuel Gas Co. (Applicant), 99 North Front Street, Columbus, Ohio 43215, filed in Docket No. CP68–71 an application pursuant to subsection (c) of section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to acquire and operate the following facilities from Panhandle Eastern Pipe Line Co. (Panhandle) in Lucas County, Ohio:

(1) Approximately 107 feet of 16-inch pipeline;

(2) Approximately 6,175 feet of 22-inch pipeline; and

(3) All miscellaneous fittings and valves appurtenant thereto and all rights of way, easements, permits, and property rights related to said facilities.

Applicant states that the proposed acquisition will enable it to own and operate all transmission facilities downstream of Panhandle's measuring station where it delivers volumes of natural gas to Applicant and will put Applicant in a better position to render service to its affiliated wholesale customer in the Toledo metropolitan area. Applicant also states that the sale of the facilities described above will eliminate Panhandle's obligation to operate and maintain that portion of its Maumee Lateral which is downstream of its delivery point to Applicant.

Applicant estimates the total cost of the proposed acquisition at approximately $135,000, said cost to be financed from cash on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 20, 1967.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67–12992; Filed, Nov. 2, 1967; 8:47 a.m.]

[Project 2652]

PACIFIC POWER & LIGHT CO.

Notice of Application for License for Constructed Project

OCTOBER 31, 1967.

Public notice is hereby given that application for license has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by Pacific Power & Light Co. (correspondence to: E. Robert de Luccia, Senior Vice President, Pacific Power & Light Co., Public Service Building, Portland, Oreg. 97204) for constructed Project No. 2652, known as Big Fork Hydroelectric Project, located on Swan River in Flathead County, Mont., near Big Fork and Kalispell.

The existing project consists of: (1) A concrete diversion dam approximately 300 feet long and 12 feet high which includes an unregulated ogee spillway 235 feet long (crest elevation at 3,008.5 feet M.S.L.) and a 15–pool fish ladder; (2) a 109-acre-foot reservoir with maximum high water elevation at 3,014.5 feet (M.S.L.); (3) an intake structure which diverts water into a 1-mile long conduit which includes: 1,500 feet of concrete flume, 1,800 feet of asphalt membrane lined canal, and 1,800 feet of wood-stave pipe, 9 feet in diameter, paralleled by 1,860 feet of concrete flume and concrete lined canal; (4) two 72-inch diameter steel penstocks 130 feet long and one 54-inch diameter penstock 160 feet long; (5) an indoor powerhouse containing two generators each rated at 1,700 kw and one generator rated at 750 kw; (6) a switchyard with one 2.4/12.5 kv transformer and six 2.4/34.5 kv transformers; and (7) appurtenant facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is November 20, 1967. The application is on file with the Commission for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 67–12993; Filed, Nov. 2, 1967; 8:47 a.m.]

[Docket No. CP68–67]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Application

OCTOBER 30, 1967.

Take notice that on August 31, 1967, Texas Eastern Transmission Corp. (Applicant), Post Office Box 2521, Houston, Tex. 77001, filed in Docket No. CP68–67 an application pursuant to subsection (c) of section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of additional quantities of natural gas to existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate the following facilities together with related appurtenances:

(1) Approximately 94 miles of 36-inch pipeline loops at various locations and in varying lengths along its pipeline system between St. Francisville, La., and Lambertville, N.J.;

(2) Approximately 14 miles of 30-inch pipeline loops at various locations and in varying lengths along its pipeline system between St. Francisville, La., and Lambertville, N.J.;

(3) Dual river crossings of 30-inch and 36-inch pipe of the Conemaugh River, Cumberland River, and Ohio River;

(4) An additional 19,800 horsepower gas turbine compressor unit at the Barton, La., Compressor Station;

(5) An additional 15,000 horsepower electric centrifugal compressor unit at the Mount Pleasant, Tenn., Compressor Station;

(6) An additional 19,800 horsepower gas turbine compressor unit at the Bernville, Pa., Compressor Station;

(7) A 19,800 horsepower gas turbine compressor unit on the 36-inch Venice Line near White Castle, La.;

(8) Upgrade the 15,000 horsepower gas turbine compressor units at Grantville and Bechtelsville, Pa., to 18,500 horsepower; and

(9) A metering and regulating station in Dauphin County, Pa.

Applicant also seeks authorization to sell and deliver, under long-term service agreements, additional maximum daily quantities of 35,374 Mcf of natural gas to 13 existing customers. Applicant states that the facilities proposed above will provide approximately 136,683 Mcf of additional peak day capacity on its pipeline system. Applicant further states that the additional facilities and sales of natural gas proposed above are necessary to enable it to meet its customers growing demands for their increasing market requirements. Applicant also states that the facilities proposed above will be constructed over a 3-year period.

Applicant estimates the total cost of the facilities proposed at approximately $63,804,000, said cost to be financed by the issuance and sale of bonds and securities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before November 20, 1967.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 67-12994; Filed, Nov. 2, 1967; 8:47 a.m.]

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