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Internal Revenue Bulletin

Cumulative Bulletin 1952-1

JANUARY-JUNE 1952

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SPECIAL ATTENTION is directed to the cautionary notice on this page that published rulings of the Bureau do not have the force and effect of Treasury Decisions and that they are applicable only to facts presented in the published case

Treasury Department : : : : Bureau of Internal Revenue

Internal Revenue Bulletin

Cumulative Bulletin 1952-1

JANUARY–JUNE 1952

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The rulings reported in the Internal Revenue Bulletin are for the information of taxpayers and their counsel as showing the trend of official opinion in the administration of the Bureau of Internal Revenue; the rulings other than Treasury Decisions have none of the force or effect of Treasury Decisions and do not commit the Department to any interpretation of the law which has not been formally approved and promulgated by the Secretary of the Treasury. Each ruling embodies the administrative application of the law and Treasury Decisions to the entire state of facts upon which a particular case rests. It is especially to be noted that the same result will not necessarily be reached in another case unless all the material facts are identical with those of the reported case. As it is not always feasible to publish a complete statement of the facts underlying each ruling, there can be no assurance that any new case is identical with the reported case. As bearing out this distinction, it may be observed that the rulings published from time to time may appear to reverse rulings previously published.

Officers of the Bureau of Internal Revenue are especially cautioned against reaching a conclusion in any case merely on the basis of similarity to a published ruling, and should base their judgment on the application of all pertinent provisions of the law and Treasury Decisions to all the facts in each case. These rulings should be used as aids in studying the law and its formal construction as made in the regulations and Treasury Decisions previously issued.

In addition to publishing all Internal Revenue Treasury Decisions, it is the policy of the Bureau of Internal Revenue to publish all rulings and decisions, including opinions of the Chief Counsel for the Bureau of Internal Revenue, which, because they announce a ruling or decision upon a novel question or upon a question in regard to which there exists no previously published ruling or decision, or for other reasons, are of such importance as to be of general interest. It is also the policy of the Bureau to publish all rulings or decisions which revoke, modify, amend, or affect in any manner whatever any published ruling or decision. In many instances opinions of the Chief Counsel for the Bureau of Internal Revenue are not of general interest because they announce no new ruling or new construction of the revenue laws but simply apply rulings already made public to certain situations of fact which are without special significance. It is not the policy of the Bureau to publish such opinions. Therefore, the numbers assigned to the published opinions of the Chief Counsel for the Bureau of Internal Revenue are not consecutive. Unless otherwise specifically indicated, all published rulings and decisions have received the consideration and approval of the Chief Counsel for the Bureau of Internal Revenue.

UNITED STATES GOVERNMENT PRINTING OFFICE : WASHINGTON 1952

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The Internal Revenue Bulletin service consists of Bulletins issued every other week and semiannual Cumulative Bulletins.

The Bulletins contain the rulings and decisions which are made public and all Treasury Department decisions (known as Treasury Decisions) pertaining to Internal Revenue matters. The semiannual Cumulative Bulletins contain all rulings and decisions (including Treasury Decisions) published during the previous 6 months.

The complete Bulletin service may be obtained on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington 25, D. C., for $3.25 per year; foreign, $4.60. Single copies of the Bulletin, 15 cents each.

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1950	1950–1	.75	1950–2	1.50
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1952	1952–1	.75	----------	-----

[1] House, Senate, and conference reports on revenue bills enacted as the Act of October 3, 1913, the Act of October 22, 1914, and the Revenue Acts of 1918 to 1938, inclusive, and on amendments to such Acts.

[2] Printed in one volume.

All inquiries in regard to these publications and subscriptions should be sent to the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

INTRODUCTORY NOTES

Internal Revenue Cumulative Bulletin 1952–1, in addition to all decisions of the Treasury Department (called Treasury Decisions) pertaining to Internal Revenue matters, contains opinions of the Chief Counsel for the Bureau of Internal Revenue, rulings and decisions pertaining to income, estate, gift, sales, excess profits, employment, social security, and miscellaneous taxes, and legislation affecting the revenue statutes, as indicated on the title page of this Bulletin, published in Bulletins 1 to 13, inclusive, for the period January 1 to June 30, 1952. It also contains a cumulative list of announcements relating to decisions of The Tax Court of the United States, published in the Internal Revenue Bulletin Service from January 1 to June 30, 1952.

Income tax rulings are printed in two parts. The rulings under the Internal Revenue Code are printed as part I, the law headings corresponding with the sections of the Code, as amended, and the regulations headings corresponding with the section headings of Regulations 111 or 103. Rulings under the Revenue Act of 1938 and prior revenue acts are printed as part II, the law headings corresponding with the section headings of those revenue acts and the regulations headings corresponding with the article headings of the applicable regulations.

Rulings under titles VIII and IX of the Social Security Act and under subchapters A and C, chapter 9, of the Internal Revenue Code in force prior to January 1, 1940, are published under article headings of Regulations 91 and 90, respectively; rulings under subchapters A and C, chapter 9, of the Code in force on or after January 1, 1940, are published under the section headings of Regulations 106 and 107, respectively; rulings under the Carriers Taxing Act of 1937 and under subchapter B, chapter 9, of the Code for periods prior to January 1, 1949, are published under the article headings of Regulations 100, and rulings under subchapter B, chapter 9, of the Code for periods subsequent to December 31, 1948, will be published under the section headings of Regulations 114.

ABBREVIATIONS

The following abbreviations are used throughout the Bulletin.

A, B, C, etc.—The names of individuals.
A. R. M.—Committee on Appeals and Review memorandum.
A. R. R.—Committee on Appeals and Review recommendation.
A. T.—Alcohol and Tobacco Tax Division.
B. T. A.—Board of Tax Appeals.
C. B.—Cumulative Bulletin.
Ct. D.—Court decision.
C. T.—Taxes on employment by carriers.
D. C.—Treasury Department circular.
Em. T.—Taxes imposed by chapter 9 of the Internal Revenue Code.

E. O.—Executive Order.
E. P. C.—Excess Profits Tax Council ruling or memorandum.
E. T.—Estate and gift tax ruling.
G. C. M.—General Counsel's, Assistant General Counsel's, or Chief Counsel's memorandum.
I. R. B.—Internal Revenue Bulletin.
I. R. C.—Internal Revenue Code.
I. T.—Income Tax Division.
M, N, X, Y, Z, etc.—The names of corporations, places, or businesses, according to context.
Mim.—Mimeograph.
MS. or M. T.—Miscellaneous Branch.
O. or L. O.—Solicitor's law opinion.
O. D.—Office decision.
Op. A. G.—Opinion of the Attorney General.
P. T.—Processing Tax Division.
S. T.—Sales Tax Branch.
Sil.—Silver Tax.
S. M.—Solicitor's memorandum.
Sol. Op.—Solicitor's opinion.
S. R.—Solicitor's recommendation.
S. S. T.—Taxes on employment by others than carriers.
Tob.—Tobacco Branch.
T. B. M.—Advisory Tax Board memorandum.
T. B. R.—Advisory Tax Board recommendation.
T. C.—The Tax Court of the United States.
T. D.—Treasury Decision.
x and *y* are used to represent certain numbers, and when used with the word 'dollars'' represent sums of money.

ANNOUNCEMENT RELATING TO DECISIONS OF THE TAX COURT OF THE UNITED STATES

In order that taxpayers and the general public may be informed whether the Commissioner has acquiesced in a decision of The Tax Court of the United States disallowing a deficiency in tax determined by the Commissioner to be due, announcement will be made in the Internal Revenue Bulletin at the earliest practicable date. (No announcements are made in the Bulletin with respect to memorandum opinions of the Tax Court.) Notice that the Commissioner has acquiesced or nonacquiesced in a decision of the Tax Court relates only to the issue or issues decided adversely to the Government. Decisions so acquiesced in should be relied upon by officers and employees of the Bureau of Internal Revenue as precedents in the disposition of other cases.

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THE TAX COURT OF THE UNITED STATES

CUMULATIVE LIST OF ANNOUNCEMENTS RELATING TO DECISIONS OF THE TAX COURT OF THE UNITED STATES PUBLISHED IN THE INTERNAL REVENUE BULLETIN SERVICE FROM JANUARY 1, 1952, TO JUNE 30, 1952, INCLUSIVE

1952-13-13842

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[a] Board of Tax Appeals.

[1] Estate tax decision.

[2] Acquiescence relates only to the issue whether the Christenson Steamship Co. was liable for declared value excess-profits tax for 1944.

[3] Acquiescence relates only to the charge-off with respect to partial bad debt deductions.

[4] Acquiescence relates only to the issue whether the transitory provisions of Cuban law canceled interest prior to June 4, 1940.

[5] Nonacquiescence published in Cumulative Bulletin 1951-1, page 13, withdrawn.

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Dressen, Martin	32348	17	1443
F			
Fabres, Estanislao	21456	15	403
Finkenberg's Sons, Inc., A	27230	17	973
First National Bank of Middletown, Ohio, The, executor of estate of Mary G. Gordon	27792	17	427
Flagg et al., S. Griswold, trustees of Marie W. F. Nugent-Head Trust	29799	17	817
G			
Gale, Elsie B. (formerly Elsie B. Wimpfheimer)	19583	13	661
Gordon, Mary G., estate of	27792	17	427
Gramm, Christianna K., estate of [3]	27511	17	1063
Gramm et al., Theodore K., executors of estate of Christianna K. Gramm [3]	27511	17	1063
H			
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Haynes, Raymond B	27292	17	772
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Hitchcock, Edna C.[2]	19462	16	1363
Hobson, Alice C. G., surviving wife of Arthur L. Hobson	25951	17	854
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Hobson, John L., administrator c. t. a. of estate of Arthur L. Hobson	25951	17	854
Horrmann et ux., William C	28362	17	903
Hunt Foods, Inc.[4]	20431	17	365
I			
International Bedaux Co., Inc	21656	17	612
Ivanhoe Foods, Inc	25899	16	1348
J			
Jergens, Andrew	30176	17	806
Johnson, Harold R.	21848	17	1261
K			
Kentucky Distributing Co., The	25496	17	312
Kerrigan Iron Works, Inc	19767	17	566

[a] Board of Tax Appeals.

[1] Nonacquiescence published in Cumulative Bulletin 1940-2, page 10, withdrawn.

[2] Acquiescence relates only to the issue whether the Christenson Steamship Co. was liable for declared value excess-profits tax for 1944.

[3] Gift tax decision.

[4] Acquiescence relates only to the issue whether compensation paid by the taxpayer to two of its officers was reasonable.

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L			
Lanova Corporation	22682	17	1178
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Lehman Company of America, Incorporated, The	21839	17	422
Lehman, Robert [3]	28246	17	652
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M			
MacDonald et ux., D. A	29726	17	934
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Meaker Co., Inc., C. G	25290	16	1348
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Nienhuys, Jan Willem, estate of [6]	25248	17	1149
Nugent-Head Trust, Marie W. F	29799	17	817
O			
Oppenheimer, Ruth W	19938	16	515
Oregon Pulp and Paper Co.[7]	101543	[a] 47	772
Orellana, Renato	21464	15	403
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P			
Perez, Sergio	21463	15	403
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R			
Recine, Carlos	21454	15	403
Resler, Fay (also known as Fay Lieberman Resler)	27984	17	1085
Resler, Jacob, estate of	27983	17	1085
Risopatron, Pablo	21460	15	403

[a] Board of Tax Appeals.

[1] Nonacquiescence published in Cumulative Bulletin 1950–1, page 7, withdrawn.

[2] Acquiescence relates only to the issue whether the Christenson Steamship Co. was liable for declared value excess-profits tax for 1944.

[3] Acquiescence relates only to the issue whether a partnership in which petitioner had an interest realized ordinary income on January 1, 1944, when restrictions terminated as to stock theretofore received by the partnership for services rendered.

[4] Acquiescence relates only to the issue whether the taxpayer is entitled to surtax exemptions for two of his children claimed as dependents.

[5] Acquiescence as to result only.

[6] Estate tax decision.

[7] Nonacquiescence published in Cumulative Bulletin 1943, page 37, withdrawn.

[8] Nonacquiescence published in Cumulative Bulletin 1948–1, page 4, withdrawn.

[9] Gift tax decision.

ACQUIESCENCES—Continued

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S			
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Salt et al., Lloyd Bergen, executors of estate of Albert L. Salt [2]	27039	17	92
Schneider, Jorge	21453	15	403
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V			
Vial, Louis	21448	15	403
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W			
Wakelee et ux., Louis E	28411	17	745
Wellington, Herbert G	27308	17	772
Wier et al., Mary Norwood executors of estate of Robert W. Wier [2]	27538	17	409
Wier, Robert W., estate of [2]	27538	17	409

[1] Gift tax decision.
[2] Estate tax decision.
[3] Acquiescence relates only to the issues whether amounts paid as compensation to officers were excessive and whether deductions for traveling expenses and sales commissions were allowable.
[4] Acquiescence relates only to the issue whether the Christenson Steamship Co. was liable for declared value excess-profits tax for 1942.

The Commissioner does NOT acquiesce in the following decisions:

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Affelder, Harry F	25558	17	471
Affelder, Rhoda L	25557	17	471
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Central Cuba Sugar Co.[2]	19687	16	882
Clark, Ruth S	29011	17	1357
Coke, Agnes Pyne	25822	17	403
Cold Metal Process Co., The	22486	17	916
D			
Dryfoos, Nathan I., estate of	25560	17	471
F			
First National Bank of Miami, The, executor of estate of Nathan I. Dryfoos	25560	17	471
G			
Gold, Frank	21407	16	1450
Golonsky, Isadore	21406	16	1450
H			
Heer-Andres Investment Co., The	28148	17	786
Hunt Foods, Inc.[3]	20431	17	365
K			
Kleberg, Alice G. K.[4]	86178	[a] 43	277
Kleberg, Alice G. K.[5]	102254	2	1024
Kleberg, Alice G. K., executrix of estate of Robert J. Kleberg, Sr.[4]	86179	[a] 43	277
L			
Lehman, Robert [6]	28246	17	652
Linde, Rose J	24517	17	584
Littman, Alan L	25555	17	471
Littman, Jennie	25554	17	471
Lux, Doris L	25559	17	471

[a] Board of Tax Appeals.

[1] Nonacquiescence relates only to estoppel with respect to partial bad debt deductions.

[2] Nonacquiescence relates only to the issue whether a portion of taxpayer's deductions for business expenses for the fiscal year ended June 30 1943, should be allocated to its successor corporation under section 45, I. R. C.

[3] Nonacquiescence relates only to the issue whether the deposit of sight drafts with a bank created "outstanding indebtedness" which was evidenced by bills of exchange under section 719(a)(1), I. R. C.

[4] Acquiescence published in Cumulative Bulletin 1941-1, page 6, withdrawn as to the issue whether the total sale price paid to taxpayer for a one-half interest in lease rentals was taxable for 1933 or only that part received in 1933.

[5] Acquiescence published in Cumulative Bulletin 1944, page 16, withdrawn as to the issue whether taxpayer was entitled to capital gains rates and a holding period in excess of 10 years in computing income tax on an amount received in 1934 as a second installment payment for transfer of a community interest in a contract right to receive future rentals.

[6] Nonacquiescence relates only to the issue whether an annual payment of $5,000 to the mother of petitioner s divorced wife is deductible under section 23(u) of the Internal Revenue Code.

NONACQUIESCENCES—Continued

Taxpayer	Docket No.	Report	
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M			
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Mills Estate, Inc	27835	17	910
P			
Pacific Mills	20888	17	705
Philadelphia Title Insurance Co	25942	17	1068
Pool et al., Elizabeth Sneed, executors of estate of J. T. Sneed, Jr	27995	17	1344
R			
Rutherford, Hazel S	29081	17	1357
S			
Selden, Elsa L	25556	17	471
Sneed, Jr., J. T., estate of	27995	17	1344
Sommerfeld Machine Co.[3]	16040	15	453
South Penn Oil Co	21975	17	27
W			
Wolf Envelope Co., The	25751	17	471

[1] Nonacquiescence relates only to the issue whether ordinary income or capital gain was realized in the liquidation of an inherited interest in a wine marketing pool.
[2] Estate tax decision.
[3] Nonacquiescence relates only to the issue with respect to excess profits tax relief under section 721(a)(2)(C) I. R. C.

INCOME TAX RULINGS.—PART I

INTERNAL REVENUE CODE

CHAPTER 1.—INCOME TAX

SUBCHAPTER B.—GENERAL PROVISIONS

PART II.—COMPUTATION OF NET INCOME

SECTION 22(a).—GROSS INCOME: GENERAL DEFINITION

SECTION 29.22(a)-1: What included in gross income. (Also Section 147, Section 29.147-1.)

1952-1-13737
I. T. 4068

INTERNAL REVENUE CODE

Where payments are made by a child-placing agency to foster parents solely for the purpose of reimbursing them for expenses incurred in taking care of children placed in their homes, and such payments are not in excess of the expenses incurred, neither the expenditures nor the reimbursements need be reflected in the foster parents' Federal income tax returns. Child-placing agencies are not required to file information returns under section 147(a) of the Internal Revenue Code with respect to such maintenance payments.

Advice is requested whether payments made by a child-placing agency to foster parents solely for the purpose of reimbursing them for expenses incurred in taking care of children placed in their homes, where such payments are not in excess of the expenses incurred, are includible in gross income of the foster parents, and whether child-placing agencies are required to file information returns under section 147(a) of the Internal Revenue Code with respect to such maintenance payments.

Information submitted to the Bureau by the Federal Security Agency shows that children who would otherwise lack the benefits of normal family home life are placed by child-placing agencies, both public and private, in foster homes of several types. There is the free home, in which the foster parents provide the full cost of caring for the child. There is also the foster boarding home, in which the foster parents receive funds to cover the cost, in whole or in part, of maintaining the child. Then there is the type of foster home in which, in addition to payment of expenses, a service fee is paid to the foster parents. There is also the type of foster home providing temporary care for children received from courts or social agencies to which a regular monthly payment, termed a subsidy, is made to keep the home open at all times, an additional *per diem* amount being paid when a child is in the home. Finally, there is the commercial home, the operators of which conduct the home as a business and seek to make a profit out of

the difference between the amounts received from the child-placing agency and the expenses incurred in caring for a child. The only type of foster home herein considered is the foster boarding home in which the foster parents, who are not *de jure* guardians but who for humane reasons desire to provide children with the advantages of home life, receive funds to cover the cost, in whole or in part, of *maintaining* children in the home. Many of such foster parents cannot afford to provide for the entire support of a child. Where a child is placed in such a foster boarding home, the agency, ordinarily after careful consideration of the cost of caring for children of various ages, makes a specified payment, usually at the end of a month, to cover, in whole or in part, amounts expended by the foster parents in providing food, shelter, school supplies, etc., for the child during the preceding month. Amounts paid or incurred for clothing and medical expenses usually are reported to the agency and provided for separately. This is accomplished either by direct payment to the vendor or physician, as the case may be, if the goods or services were supplied on credit, or by increasing the monthly check to the foster parents if they have expended their own funds. The amounts received by the foster parents do not exceed, and in many cases do not equal, the actual cost of maintaining the child. It is the practice of the child-placing agencies to set standards of care for children in foster boarding homes. The agencies have staffs of trained personnel which keep the foster homes under continuous surveillance to insure that adequate provision is made for the children, and any attempt by the foster parents to use for their own purposes the funds granted for the benefit of the children is quickly discovered and the foster parents are relieved of the children's care and custody.

It is held that where payments are made by a child-placing agency to foster parents solely for the purpose of reimbursing them for expenses incurred in taking care of children placed in their homes, and such payments are not in excess of the expenses incurred, neither the expenditures nor the reimbursements need be reflected in the foster parents' Federal income tax returns. It is further held that child-placing agencies are not required to file information returns under section 147(a) of the Internal Revenue Code with respect to such maintenance payments.

SECTION 29.22(a)–1: What included in gross income. 1952–8–13798
Mim. 6779
(Also Section 23(a), Section 29.23(a)–10.)

Inclusion in gross income of lessor of *all* Federal income taxes paid by lessee to, or for the account of, the lessor under a contract providing for a stipulated rental plus any Federal income taxes thereon.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 12, 1952.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Heads of Appellate Staff Districts, and Others Concerned:

1. Section 22(a) of the Internal Revenue Code provides for the inclusion in gross income of any gains, profits, and income arising out of the ownership or use of or interest in property, whether real or personal. Section 29.23(a)–10 of Regulations 111 provides that

taxes paid by a tenant to, or for the account of, the landlord for business property are additional rent and constitute a deductible item to the tenant and taxable income to the landlord.

2. Under a contract providing for payment to the lessor of a stipulated rental and any Federal income taxes thereon, the lessor is deemed to have received as rental income not only the stipulated rental, but in addition thereto *all* Federal income taxes paid by the lessee to, or for the account of, the lessor. The extent of the liability existing between the respective parties is one which must be determined under the general law applicable to contracts of that nature. For Federal income tax purposes, however, the amount to be included in the gross income of the lessor by reason of the taxes paid by the lessee should be determined by reference to the construction given by the parties to the contract under which such taxes are paid. The Bureau will not concern itself with the mechanics used by the respective parties in determining the extent of the lessee's liability so long as the lessor includes in gross income the *total* amount of Federal income taxes paid by the lessee. Thus, if A leases to B a parcel of real estate for an annual rental of $100,000 plus any Federal income taxes thereon, and for the year 1952 A and B agree that the total amount of Federal income taxes to be paid by B to, for, or on behalf of A for such year is $65,000, then the total rental for the year 1952 which is to be included in the gross income of A will be deemed to be $165,000.

JOHN B. DUNLAP,
Commissioner.

SECTION 29.22(a)–1: What included in gross income. 1952–9–13807 Ct. D. 1742

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT

1. GROSS INCOME—MONEY OBTAINED BY EXTORTION.

Money extorted from a victim with his consent induced solely by harassing demands and threats of violence is includible in the gross income of the recipient under the provisions of section 22(a) of the Internal Revenue Code.

2. DECISION AFFIRMED.

Decision of the United States Court of Appeals, Third Circuit, 189 Fed. (2d) 431 (1951), affirmed.

SUPREME COURT OF THE UNITED STATES

James Rutkin, petitioner, v. *United States of America*

On writ of certiorari to the United States Court of Appeals for the Third Circuit

[March 24, 1952]

OPINION

Mr. Justice BURTON delivered the opinion of the Court.

The principal issue before us is whether money obtained by extortion is income taxable to the extortioner under section 22(a) of the Internal Revenue Code.[1] For the reasons hereafter stated we hold that it is.

[1] "SEC. 22. GROSS INCOME.

"(a) GENERAL DEFINITION.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or *the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever* * * *." (Emphasis supplied.) 53 Stat. 9, 53 Stat. 574, 26 U. S. C. section 22a().

The petitioner, Rutkin, was indicted under 26 U. S. C. section 145(b)[2] for willfully attempting to evade and defeat a large part of his income and victory taxes for 1943. He was charged with filing a false and fraudulent return stating his net income to be $18,966.64, whereas he knew that it was $268,622.04. That difference, which would increase his tax liability from $6,843.93 to $222,408.32, was due largely to his omission from his original return of $250,000 received by him in cash from Joseph Reinfeld. The United States claims that this sum was obtained by petitioner by extortion and as such was taxable income. Petitioner contests both the fact that the money was obtained by extortion and the conclusion of law that it was taxable income if so obtained. He contends also that he did not willfully attempt to evade or defeat the tax. Petitioner was found guilty by a jury in the United States District Court for the District of New Jersey, fined $10,000 and sentenced to 4 years in prison. The court of appeals affirmed, one judge dissenting. 189 Fed. (2d) 431. We granted certiorari, 342 U. S. 808, so as to pass upon the alleged conflict between that decision and the decision in *Commissioner* v. *Wilcox*, 327 U. S. 404 [Ct. D. 1668, C. B. 1946–1, 6].

The facts are unusual but there can be no doubt that, under the instructions given the jury, we must regard its verdict as reflecting its conclusion that the $250,000 was obtained by petitioner by extortion.[3] There was substantial evidence supporting that result. Reinfeld's first association with petitioner was in 1929 with several others in a bootlegging operation known as the "High seas venture." It was accomplished through the use of a ship in the sale of whisky at sea more than 12 miles from shore. Reinfeld testified that petitioner contributed no money to the enterprise but was taken in because Reinfeld's associates were afraid that otherwise they would get "interference and trouble" from petitioner. His interest was recognized to be 6 percent but, when the venture was liquidated in 1933, he already was overdrawn and no distribution was made to him. Without including petitioner, the others then organized Browne Vintners Co., Inc., a New York corporation, to engage in the liquor business. In 1936 petitioner, without making an investment, claimed a 6 percent interest in Browne Vintners. Despite Reinfeld's denial of petitioner's claim, Reinfeld paid him $60,000 and took from him an assignment of "any and all of such shares of capital stock in the said Browne Vintners Co., Inc., that I am entitled to." In 1940 all the Browne Vintners stock was sold for $7,500,000 to a purchaser who also assumed $8,000,000 of the company's debts. The shares of stock when sold stood in the names of, and were transferred by, "nominees" so as to conceal the identity of Reinfeld and the other beneficial owners. A capital gains tax upon the profits from these sales was paid by the respective nominees.[4] Peti-

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[2] "SEC. 145. PENALTIES.

* * * * * * * *

"(b) * * * ATTEMPT TO DEFEAT OR EVADE TAX.—* * * any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than 5 years, or both, together with the costs of prosecution." 53 Stat. 62–63, 26 U. S. C. section 145(b).

[3] The instructions included the following:

"That somebody lied and committed perjury is perfectly patent because contradictory stories have been told, and you must say where the truth lies; and the problem of determining that truth is solely and peculiarly yours * * *.

* * * * * * * *

"But then we come to the admitted payment of $250,000. *Rutkin says that that $250,000 was a final settlement of his claim in Browne Vintners, and if that is so*—and the Government does not contend that the capital gains tax was not paid—*he would not be obliged to report that income.* But Reinfeld says no, 'that was the result of extortion. He got that money out of me by threatening me and my family,' and he told the instances where those threats were made. There is one piece of corroboration of that, and that is from one of the six or seven people who were present in Holtz's cellar. * * *

"If that money was extorted and was paid as a result of threats, then it was taxable income and Rutkin was under the duty of reporting that tax. * * *

* * * * * * * *

"* * * There is no contention here that the defendant didn't know he got the $250,000; *the whole point is whether he got it by extortion or whether he got it properly. If he got it properly the tax was already paid.*" (Emphasis supplied.)

[4] The United States concedes that although, on a strict construction of the Internal Revenue Code, it may be that the proceeds of the sales should have been reported by the beneficial rather than by the record owners, their failure to so report the proceeds does not provide a satisfactory basis for a charge against them of a willful attempt to evade and defeat the tax in violation of section 145(b).

tioner was neither a stockholder of record nor a beneficial owner of any of the stock of the company at any time.

In 1941, in response to petitioner's request, Reinfeld gave him about $10,000 to help buy a tavern. When petitioner used the money for other purposes Reinfeld refused to finance him further and his "trouble" with petitioner began. In 1942 petitioner again claimed that he had had an interest in Browne Vintners Company and that Reinfeld must give him $100,000 to help him pay his debts. Upon Reinfeld's refusal, petitioner threatened to kill him. From that time on, the record presents a lurid story of petitioner's unsatisfied demands upon Reinfeld for various sums up to $500,000, petitioner's threatening use of a gun and his repeated statements that he would kill Reinfeld and Reinfeld's family unless his demands were met. Finally, on May 11, 1943, in New Jersey, Reinfeld paid petitioner $250,000 in cash.[5]

Throughout this melodrama petitioner asserted that he was entitled to the payments he demanded from Reinfeld because of petitioner's alleged former interest in Browne Vintners Company. That interest never was identified by petitioner. Reinfeld and others testified positively that petitioner never had any such interest. Nevertheless, on May 11, Reinfeld handed to petitioner $250,000 in cash at the same time that Reinfeld paid $358,000 to Zillman and Stacher representing their conceded interest in the proceeds of Browne Vintners stock. Petitioner, with Zillman and Stacher, thereupon signed a "general release." It did not state the amounts paid but it did purport to release Reinfeld, Browne Vintners Company and others from all claims the signers had against them.

Under the jury's verdict, we accept the fact to be that petitioner had no basis for his claim to this $250,000 and that he obtained it by extortion. Accordingly, if proceeds of extortion constitute income taxable to the extortioner, his omission of it from his tax return was unlawful. The further factual issue whether, under all the surrounding circumstances, petitioner's omission of the $250,000 from his tax return amounted to a willful attempt to evade and defeat the tax is not open to review here. That issue is settled by the verdict of the jury supported by substantial evidence.[6] It remains for us to determine the legal issue of whether money obtained by extortion is taxable to the extortioner under section 22(a).

Under the instructions to the jury, extortion here meant that the $250,000 was paid to petitioner in response to his false claim thereto, his harassing demands therefor and his repeated threats to kill Reinfeld and Reinfeld's family unless

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[5] Reinfeld testified:

"Q. And did you think that their [your family's] lives were in danger?—A. I thought so, yes.

"Q. Did you do anything to protect their lives?—A. I paid off.

"Q. You thought that would protect them from a gunning man?—A. I hoped so."

[6] That issue was presented to the jury in conformity with the views of this Court expressed in *Spies* v. *United States*, 317 U. S. 492, 499 [Ct. D. 1571, C. B. 1943, 1038]. The charge included the following:

"If that money was extorted and was paid as a result of threats, then it was taxable income and Rutkin was under the duty of reporting that tax. But as I indicated to you before, the mere failure to report it doesn't satisfy the requirements of the law with regard to the violation of this statute, there must be something else which will indicate the willful intent to defeat and evade the tax. You may consider other elements that appear in the evidence, the fact that this money was paid over in cash; that no record of any kind was made of the receipt of that money; that the money was split and $100,000 of it sent to the sister-in-law of the defendant to be placed in her vault or 'wault' as it has been called here, and that the other $150,000 was placed in the defendant's own vault. You may consider these as factors surrounding the whole transaction.

"Rutkin says that he kept no books; kept no books at that time nor at any other time; kept no books when he received his profit, sixty, seventy, eighty thousand dollars a year, I think it was, from the bootlegging, and admits that he paid no tax; kept no books when he got this $250,000. These are all things that you may consider as circumstances surrounding the whole procedure. The payment of $250,000 was made in the presence of other people, these people being Zwillman, as I recall it, and Stacher who were there with Rutkin and the lawyers. Well, neither the lawyers nor any of these people, it seems to me, would be inclined to go out and publish it."

There is no suggestion that petitioner relied, at any time, upon any defense for his omission of the $250,000 from his tax return other than his false claim that it represented his beneficial interest in Browne Vintners stock and that the stockholding nominees had paid a capital gains tax on that interest when it was sold in 1940. When this claim was proved to have been false, and necessarily known by petitioner to have been false, that proof not only destroyed petitioner's claim to the money itself, but it also demonstrated the willfulness of his attempt to evade or defeat paying any tax on the $250,000.

the payment were made.[7] Petitioner was unable to induce Reinfeld to believe petitioner's false and fraudulent claims to the money to be true. He induced Reinfeld to consent to pay the money by creating a fear in Reinfeld that harm otherwise would come to him and to his family. Reinfeld thereupon delivered his own money to petitioner. Petitioner's control over the cash so received was such that, in the absence of Reinfeld's unlikely repudiation of the transaction and demand for the money's return, petitioner could enjoy its use as fully as though his title to it were unassailable.

An unlawful gain, as well as a lawful one, constitutes taxable income when its recipient has such control over it that, as a practical matter, he derives readily realizable economic value from it. *Burnet* v. *Wells*, 289 U. S. 670, 678 [Ct. D. 688, C. B. XII-1, 261 (1933)]; *Corliss* v. *Bowers*, 281 U. S. 376, 378 [Ct. D. 188, C. B. IX-1, 254 (1930)]. That occurs when cash, as here, is delivered by its owner to the taxpayer in a manner which allows the recipient freedom to dispose of it at will, even though it may have been obtained by fraud and his freedom to use it may be assailable by someone with a better title to it.

Such gains are taxable in the yearly period during which they are realized. This statutory policy is invoked in the interest of orderly administration. "[C]ollection of the revenue cannot be delayed, nor should the Treasury be compelled to decide when a possessor's claims are without legal warrant." *National City Bank* v. *Helvering*, 98 Fed. (2d) 93, 96 [Ct. D. 1386, C. B. 1939-1 (Part 1), 211]. There is no adequate reason why assailable unlawful gains should be treated differently in this respect from assailable lawful gains. Certainly there is no reason for treating them more leniently. *United States* v. *Sullivan*, 274 U. S. 259, 263 [T. D. 4028, C. B. VI-2, 177 (1927)].

There has been a widespread and settled administrative and judicial recognition of the taxability of unlawful gains of many kinds under section 22(a).[8] The application of this section to unlawful gains is obvious from its legislative history. Section II B of the Income Tax Act of 1913 provided that "the net income of a taxable person shall include gains, profits, and income * * * from * * * the transaction of any *lawful* business carried on for gain or profit, or gains or profits and income derived from any source whatever * * *." (Emphasis supplied.) 38 Stat. 167. In 1916 this was amended by omitting the one word "lawful" with the obvious intent thereafter to tax unlawful as well as lawful gains, profits or income derived from any source whatever.[9]

There is little doubt now that where unlawful gains are secured by the fraud of the taxpayer they are taxable.[10] In the instant case it is not questioned that the $250,000 would have been taxable to petitioner if he had obtained it by fraudulently inducing Reinfeld to believe petitioner's false claims to be true. That being so, it would be an extraordinary result to hold here that petitioner is to be tax free because his fraud was so transparent that it did not mislead his victim and his victim paid him the money because of fear instead of fraud.

We do not reach in this case the factual situation involved in *Commissioner* v. *Wilcox*, 327 U. S. 404. We limit that case to its facts. There embezzled funds were held not to constitute taxable income to the embezzler under section 22(a). The issue here is whether money extorted from a victim with his consent induced

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[7] In the New Jersey statute, in effect in 1943, extortion was defined as follows:

"Any person who, with intent to extort from any person any money or other thing of value * * * shall directly or indirectly threaten to kill or to do any bodily injury to any man, woman or child unless a sum of money be paid, shall be guilty of a high misdemeanor and punished by imprisonment at hard labor for a term of not exceeding 30 years, or by a fine not exceeding $5,000, or both." N. J. S. A. 2:127-4.

See also, the Federal statute, now in effect, relating to extortion affecting interstate commerce: "The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 60 Stat. 420, 18 U. S. C. section 420e-1(c).

[8] *Johnson* v. *United States*, 318 U. S. 189 [Ct. D. 1576, C. B. 1943, 1042] (money paid to a political leader as protection against police interference with gambling); *United States* v. *Sullivan*, 274 U. S. 259 (illicit traffic in liquor); *Humphreys* v. *Commissioner*, 125 Fed. (2d) 340 (protection payments to racketeer and ransom paid to kidnapper); *Chadick* v. *United States*, 77 Fed. (2d) 961 (graft); *United States* v. *Commerford*, 64 Fed. (2d) 28 (bribes); *Patterson* v. *Anderson*, 20 Fed. Supp. 799 (unlawful insurance policies); *Petit* v. *Commissioner*, 10 T. C. 1253 (black market gains); *Droge* v. *Commissioner*, 35 B. T. A. 829 (lotteries); *Richard* v. *Commissioner*, 15 B. T. A. 316 (illegal prize fight pictures); *McKenna* v. *Commissioner*, 1 B. T. A. 326 (race track bookmaking).

[9] For further discussion see dissent in *Commissioner* v. *Wilcox*, 327 U. S. 404, 410-411.

[10] For example, see *Akers* v. *Scofield*, 167 Fed. (2d) 718. There the taxpayer swindled a wealthy widow out of substantial funds with which he was to conduct fraudulently represented treasure hunts. He was required to pay taxes on those funds.

solely by harassing demands and threats of violence is included in the definition of gross income under section 22(a). We think the power of Congress to tax these receipts as income under the sixteenth amendment is unquestionable. The broad language of section 22(a) supports the declarations of this Court that Congress in enacting that section exercised its full power to tax income.[11] We therefore conclude that section 22(a) reaches these receipts.

We have considered the other contentions of petitioner but find them without merit sufficient to justify a reversal or remand of the case.

The judgment of the court of appeals accordingly is

Affirmed.

Dissenting opinion by Mr. Justice BLACK, with whom Mr. Justice REED, Mr. Justice FRANKFURTER, and Mr. Justice DOUGLAS concur.

SECTION 29.22(a)-1: What included in gross income.

INTERNAL REVENUE CODE

Family partnerships in which capital is a material income-producing factor. (See Mim. 6767, page 111.)

SECTION 29.22(a)-2: Compensation for personal services. 1952-6-13779 I. T. 4075

INTERNAL REVENUE CODE

Where a covered employer provides for payment of nonoccupational disability benefits to his employees pursuant to a plan approved, under subdivision 4 of section 211 of article 9 (known as the disability benefits law) of the New York workmen's compensation law, as a plan in existence on the effective date of the article (April 13, 1949), and such plan does not require contributions from his employees toward the cost of providing the benefits, no taxable income would be received by the employees.

Limitation on application of I. T. 4010 (C. B. 1950-1, 30).

Advice is requested whether employees are in receipt of taxable income where, pursuant to article 9 (known as the disability benefits law) of the New York workmen's compensation law, their employer provides nonoccupational disability benefits for them pursuant to a plan approved under subdivision 4 of section 211 as a plan in existence on the effective date (April 13, 1949) of such law, and such plan does not require contributions from the employees toward the cost of providing such benefits.

Under section 209 of article 9 of the New York workmen's compensation law (set forth in I. T. 4010, C. B. 1950-1, 30), every covered employer is given the right to require contributions from his employees toward the cost of providing nonoccupational disability benefits for them. However, subdivision 4 of section 211 of the New York law provides for an exception in the case of an approved plan

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[11] *Helvering* v. *Bruun*, 309 U. S. 461, 468 [Ct. D. 1450, C. B. 1940-1, 112]; *Helvering* v. *Clifford*, 309 U. S. 331, 334 [Ct. D. 1444, C. B. 1940-1, 105]; *Helvering* v. *Midland Ins. Co.*, 300 U. S. 216, 233 [Ct. D. 1206, C. B. 1937-1, 178]; *United States* v. *Safety Car Heating Co.*, 297 U. S. 88, 93 [Ct. D. 1073, C. B. XV-1, 294 (1936)]; *Douglas* v. *Willcuts*, 296 U. S. 1, 9 [Ct. D. 1041, C. B. XIV-2, 250 (1935)]; *Helvering* v. *Stockholms Enskilda Bank*, 293 U. S. 84, 89 [Ct. D. 887, C. B. XIII-2, 299 (1934)]; *Bowers* v. *Kerbaugh-Empire Co.*, 271 U. S. 170, 174 [T. D. 3881, C. B. V-1, 199 (1926)]; *Irwin* v. *Gavit*, 268 U. S. 161, 166 [T. D. 3710, C. B. IV-1, 123 (1925)]; *Eisner* v. *Macomber*, 252 U. S. 189, 203 [T. D. 3010, C. B. 3, 25 (1920)]. The scope of section 22(a) in some instances is limited by specific provisions, e. g., section 22(b)(9) (income from discharge of indebtedness), section 22(b)(13) (compensation of members of Armed Forces), but no such provisions apply here.

providing such benefits if the plan was in existence on the effective date of the law and does not require contributions from the employees.

Section 211 of article 9 of the New York workmen's compensation law makes provision for the payment of nonoccupational disability benefits by means of an insurance contract with a private company, payment of premiums to the State fund, or by a self-insurance arrangement. Subdivision 4 of section 211 provides as follows:

4. by a plan in existence on the effective date of this article. If on the effective date of this article the employees of a covered employer or any class or classes of such employees are entitled to receive disability benefits under a plan or agreement which remains in effect on July first, nineteen hundred fifty, the employer, subject to the requirements of this section, shall be relieved of responsibility for making provision for benefit payments required under this article until the earliest date, determined by the chairman for the purposes of this article, upon which the employer shall have the right to discontinue the provisions thereof or to discontinue his contributions towards the cost. Any such plan or agreement may be extended, with or without modification, by agreement or collective bargaining between an employer or employers or association of employers and an association of employees, in which event the period for which the employer is relieved of such responsibility shall include such period of extension. Any other plan or agreement in existence on the effective date of this article which the employer may, by his sole act, terminate at any time, or with respect to which he is not obligated to continue for any period to make contributions, may be accepted by the chairman as satisfying the obligation to provide for the payment of benefits under this article if such plan or agreement provides benefits at least as favorable as the disability benefits provided by this article. The chairman may require that the employer shall enter into an agreement in writing with the chairman that he will pay the assessments set forth in sections two hundred fourteen and two hundred twenty-eight and that until the expiration of ninety days after he shall have filed written notice with the chairman of his election to terminate such plan or agreement or to discontinue making necessary contributions to its cost, he will continue to provide for the payment of the disability benefits under such plan or agreement or will provide for the payment of benefits deemed by the chairman to be at least as favorable as the benefits provided under this article with no greater contributions from the employees than those required under section two hundred nine.

During any period in which any plan or agreement or extension thereof authorized under this subdivision provides for payment of benefits under this article, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in said plan or agreement rather than as provided under this article, other than the benefits provided in section two hundred seven, and provided the employer or carrier has agreed to pay the assessments described in sections two hundred fourteen and two hundred twenty-eight.

Any such plan or agreement may be extended with or without modification, provided the benefits under such plan or agreement, as extended or modified, shall be found by the chairman to be at least as favorable as the benefits provided by this article.

The foregoing provisions of the New York law make it clear that the obligations and benefits of the employees shall be determined by the terms of a preexisting plan, rather than by the law. Thus, if a qualified plan was in existence on the effective date of the law, and the plan required no contributions from the employees toward the cost of providing nonoccupational disability benefits, the employer would have no right to demand such contributions from his employees. In such a case, the employer would not be relinquishing any right to require contributions from his employees, and thus could not be considered as assuming any liability for them which would result in taxable income to them. In all other cases, the New York law contemplates that employers may demand contributions from their employees toward the cost of providing disability benefits.

Accordingly, it is held that where a covered employer provides for payment of nonoccupational disability benefits to his employees pursuant to a plan approved, under subdivision 4 of section 211 of article 9 (known as the disability benefits law) of the New York workmen's compensation law, as a plan in existence on the effective date of the article (April 13, 1949), and such plan does not require contributions from his employees toward the cost of providing the benefits, no taxable income would be received by the employees. I. T. 4010 (C. B. 1950-1, 30) is hereby limited in its application to the extent indicated herein.

Since the extent of the application of I. T. 4010, *supra*, was not clear to many affected New York employers and employees, that ruling, as limited by the instant ruling, will be applied prospectively so as to require withholding of income tax at the source on wages only as to payroll periods beginning on or after January 1, 1952.

SECTION 22(b).—GROSS INCOME: EXCLUSIONS FROM GROSS INCOME

SECTION 29.22(b)(4)-1: Interest upon State obligations. 1952-2-13747
T. D. 5875

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Amending section 29.22(b)(4)-1 of Regulations 111, relating to interest upon State obligations.

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 29.22(b)(4)-1 of Regulations 111 [26 CFR 29.22(b)(4)-1] is amended by striking the third sentence thereof which reads as follows: "Special tax bills issued for special benefits to property, if such tax bills are legally collectible only from owners of the property benefited, are not the obligations of a State, Territory, or political subdivision."

PAR. 2. Because the amendment made by this Treasury Decision will operate to relieve taxpayers from a limitation applicable under existing regulations, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of such Act.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved December 28, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register January 2, 1952, 8:53 a. m.)

SECTION 22(d).—GROSS INCOME: [INVENTORIES—ELECTIVE METHOD]

SECTION 29.22(d)-1: Inventories under elective method. 1952-12-13833 I. T. 4084

INTERNAL REVENUE CODE

Price indices for January 1952, published by the Bureau of Labor Statistics on March 11, 1952, for use by department stores employing the retail inventory and elective inventory methods.

The following price indices for January 1952, published by the Bureau of Labor Statistics on March 11, 1952, for use by department stores employing the retail inventory and elective inventory methods, are accepted by the Bureau of Internal Revenue pursuant to Treasury Decision 5605 (C. B. 1948-1, 16), approved March 4, 1948, and Mimeograph 6244 (C. B. 1948-1, 21), dated March 9, 1948, for appropriate application to inventories for taxable years of 12 months ended on December 31, 1951, and January 31, 1952.

Bureau of Labor Statistics, department store inventory price indices, by department groups

[January 1941=100]

Group	January 1951	January 1952	Percent change from January 1951 to January 1952
I. Piece goods, domestics, and draperies	216.4	211.7	−2.2
II. Shoes	214.0	213.7	−.1
III. Ladies' underwear	179.1	177.3	−1.0
IV. Ladies' outerwear and girls' wear	174.2	180.2	3.4
V. Men's and boys' wear	197.1	207.5	5.3
VI. Furniture and bedding	204.2	208.4	2.1
VII. Home furnishings	194.0	192.2	−.9
VIII. Major appliances and electrical goods	170.5	162.8	−4.5
IX. Notions and toilet articles	157.9	159.0	.7
X. Ladies' accessories	166.2	170.5	2.6
Total, Groups I, II, III, IV, V, IX, and X	189.0	192.0	1.6
Total, Groups VI, VII, and VIII	191.7	189.5	−1.1
Store total	189.6	191.1	.8

SECTION 23(a).—DEDUCTIONS FROM GROSS INCOME: EXPENSES

SECTION 29.23(a)-1: Business expenses. 1952-8-13799 Ct. D. 1741

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT

1. GROSS INCOME—DEDUCTIONS—ORDINARY AND NECESSARY BUSINESS EXPENSES—PAYMENTS MADE BY OPTICIANS TO DOCTORS PRESCRIBING EYEGLASSES.

Under the long-established practice in the optical industry in the localities where petitioners, opticians, did business, payments of one-third of the retail sales prices received were made monthly by them to doctors who prescribed the eyeglasses which petitioners sold. *Held:* Such payments are deductible by them as ordinary and necessary expenses of carrying on business, under the provisions of section 23(a)(1)(A) of the Internal Revenue Code.

2. DECISION REVERSED.

Decision of the United States Court of Appeals for the Fourth Circuit, 188 Fed. (2d) 269 (1951), affirming 14 T. C. 1066 (1950), reversed.

SUPREME COURT OF THE UNITED STATES

Thomas B. Lilly and Helen W. Lilly, petitioners, v. *Commissioner of Internal Revenue*

On writ of certiorari to the United States Court of Appeals for the Fourth Circuit

[March 10, 1952]

OPINION

Mr. Justice BURTON delivered the opinion of the Court.

Petitioners, Thomas B. Lilly and Helen W. Lilly, his wife, were engaged in the optical business in North Carolina and Virginia in 1943 and 1944. Pursuant to agreements reflecting an established and widespread practice in that industry in those localities, they paid to the respective doctors, who prescribed the eyeglasses which they sold, one-third of the retail sales price received for the glasses. The question here is whether such payments were deductible by petitioners as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code.[1] For the reasons hereafter stated we hold that they were.

Petitioners owned and operated as partners the City Optical Company with offices in Wilmington, Fayetteville and Greensboro, North Carolina, and Richmond, Virginia. Petitioner Helen W. Lilly also owned and operated the Duke Optical Company in Fayetteville.

Since long before 1922 when Thomas B. Lilly established his business in Wilmington, eye doctors, in that locality and to a substantial extent throughout comparable communities in North Carolina, Virginia and elsewhere in the United States, not only examined their patients' eyes and prescribed glasses, but also sold them glasses. The doctors bought the frames and lenses at wholesale, prepared and fitted the glasses to the patients and sold the glasses at a profit.

Lilly and other opticians offered to fill the prescriptions for the doctors and to supply and fit the frames to the patients. To compensate the doctors for their loss of profit on the sales, the opticians generally paid the doctors one-third of the retail price of the glasses. While information as to this arrangement was not volunteered to the patients, it was freely disclosed on inquiry. The doctors made it a practice to ask their patients to bring in their new glasses for verification of the prescriptions and to enable the doctors to see that the frames were properly fitted. Without further charge, they made whatever reexaminations and modifications were needed.

For income tax purposes, petitioners treated their payments to the doctors as ordinary and necessary expenses of carrying on business and deducted them from their gross incomes. The doctors, in turn, included them in their taxable gross incomes. However, in 1943 and 1944, the respondent Commissioner of Internal Revenue disallowed these deductions in petitioners' returns and thereby increased petitioners' taxable income as follows:

	City Optical Company	*Duke Optical Company*
1942	[2] $57,063.45	
1943	61,601.95	$6,568.87
1944	60,021.65	4,798.35

The Tax Court sustained the Commissioner on the ground that the payments to the doctors were contrary to public policy. One judge dissented. 14 T. C. 1066. The resulting tax deficiencies totaled $124,107.78. The court of appeals

[1] "SEC. 23. DEDUCTIONS FROM GROSS INCOME.
"In computing net income there shall be allowed as deductions:
"(a) EXPENSES.—
"(1) TRADE OR BUSINESS EXPENSES.—
"(A) IN GENERAL.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *" 53 Stat. 12, 56 Stat. 819, 26 U. S. C. section 23(a)(1)(A).

[2] The year 1942 was involved in the calculation of the tax for 1943 because of section 6 of the Current Tax Payment Act of 1943, 57 Stat. 145–149.

affirmed. 188 Fed. (2d) 269. We granted certiorari, 342 U. S. 808, to resolve the disputed question of statutory construction and to pass upon the application to these facts of the principles announced in *Textile Mills Corp.* v. *Commissioner*, 314 U. S. 326 [Ct. D. 1532, C. B. 1941-2, 200], and *Commissioner* v. *Heininger*, 320 U. S. 467 [Ct. D. 1596, C. B. 1944, 484].

The facts are not in dispute. The payments to the doctors were made by petitioners monthly in the regular course of their business. Under the long-established practice in the optical industry in the localities where petitioners did business, these payments, in 1943 and 1944, were normal, usual and customary in size and character. The transactions from which they arose were of common or frequent occurrence in the type of business involved. They reflected a nation-wide practice.[3] Consequently, they were "ordinary" in the generally accepted meaning of that word. See *Deputy* v. *duPont*, 308 U. S. 488, 495 [Ct. D. 1435, C. B. 1940-1, 118]; *Welch* v. *Helvering*, 290 U. S. 111, 114 [Ct. D. 775, C. B. XII-2, 112 (1933)].

The payments likewise were "necessary" in the generally accepted meaning of that word. It was through making such payments that petitioners had been able to establish their business. Discontinuance of the payments would have meant, in 1943 or 1944, either the resumption of the sale of glasses by the doctors or the doctors' reference of their patients to competing opticians who shared profits with them. Several doctors testified that they had recommended petitioners and petitioners' competitor, the American Optical Company, simultaneously. Both were sharing profits with the doctors on substantially the same basis. If either had stopped making the payments while the other continued them, there is no reason to doubt that the doctors thereafter would have omitted their recommendation of the nonpaying optician. In 1943 and 1944 the continuance of these payments was as essential to petitioners as were their other business expenses. As has been said of legal expenses under somewhat comparable circumstances, "To say that this course of conduct and the expenses which it involved were extraordinary or unnecessary would be to ignore the ways of conduct and the forms of speech prevailing in the business world." *Commissioner* v. *Heininger*, 320 U. S. 467, 472.[4]

There is no statement in the Act, or in its accompanying regulations, prohibiting the deduction of ordinary and necessary business expenses on the ground that they violate or frustrate "public policy."

The Tax Court in the instant case made no finding of fact that the payments to the doctors were not ordinary and necessary business expenses. It sustained the Commissioner's disallowance of their deductibility because it held that, as a matter of law, the contracts under which the payments were made violated public policy.[5]

We do not have before us the issue that would be presented by expenditures which themselves violated a Federal or State law or were incidental to such violations.[6] In such a case it could be argued that the outlawed expenditures,

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[3] The American Optical Company, with more than 250 outlets distributed over 47 States, followed this practice, both in competition with petitioners and elsewhere. See also, Snell, Some Principles of Medical Ethics Applied to the Practice of Opthalmology, 117 A. M. A. J. 497-499 (1941); "What Do You Pay for Eyeglasses?" Fortune Magazine, Oct. 1940, p. 103.

[4] * * * "Without this expense, there would have been no business. Without the business, there would have been no income. Without the income, there would have been no tax. To say that this expense is not ordinary and necessary is to say that that which gives life is not ordinary and necessary." *Heininger* v. *Commissioner*, 133 Fed. (2d) 567, 570.

[5] "We conclude that the payments under the contracts between the two optical businesses, composed of petitioners, and the oculists are not deductible as ordinary and necessary expenses *because* the contracts under which these payments were made violated public policy." (Emphasis supplied.) 14 T. C. at 1086.

[6] Deductions to cover penalties for unlawful conduct were disallowed in *Commissioner* v. *Longhorn Portland Cement Co.*, 148 Fed. (2d) 276 [Ct. D. 1665, C. B. 1946-1, 53], (penalties for violation of State antitrust laws); and *Great Northern R. Co.* v. *Commissioner*, 40 Fed. (2d) 372 (penalties against railroad for violating Federal statutes or regulations). Cf. *Rossman Corp.* v. *Commissioner*, 175 Fed. (2d) 711, 713-714 (where an overcharge under the Emergency Price Control Act was allowed to be deducted because it did not frustrate any "sharply defined policies" of the Act). As to deductibility of legal fees incident to the defense of a taxpayer against charges of illegal conduct, see *Commissioner* v. *Heininger*, 320 U. S. 467, s. c., 133 Fed. (2d) 567; *Kornhauser* v. *United States*, 276 U. S. 145 [T. D. 4222, C. B. VII-2, 267 (1928)]; *Commissioner* v. *Longhorn Cement Co.*, *supra*; 4 Mertens, Law of Federal Income Taxation, 384-389; and see generally, Note, 54 Harv. L. Rev. 852-860.

by virtue of their illegality, were not "ordinary and necessary" business expenses within the meaning of section 23(a)(1)(A).[7]

In *Textile Mills Corp.* v. *Commissioner*, 314 U. S. 326, this Court accepted an interpretation of that section by a Treasury regulation which disallowed the deduction of certain expenditures for lobbying purposes. In doing so, the Court referred to the fact that some types of lobbying expenditures had long been condemned by it, and that the interpretative regulation had itself been in effect many years with congressional acquiescence. The instant case does not come within that precedent.

In *Commissioner* v. *Heininger*, 320 U. S. 467, this Court was asked to go further and to disallow certain attorneys' fees and other legal expenses. They were reasonable in amount and had been lawfully incurred by a licensed dentist (1) in resisting the issuance by the Postmaster General of a fraud order which would have destroyed the dentist's business and (2) in connection with subsequent proceedings on judicial review of the same controversy. While the services resulted in an injunction which stayed the order during the time that the taxable income in question was received, the final result of the litigation was unsuccessful for the taxpayer. Nevertheless, the expenditures were permitted to be deducted as ordinary and necessary expenses of the taxpayer's business. The opinion in that case reviews the position of the Bureau of Internal Revenue, the Board of Tax Appeals and the Federal courts. Id., at 473–474. It refers to the narrowing of "the generally accepted meaning of the language used in section 23(a) in order that tax deduction consequences *might not frustrate sharply defined National or State policies* proscribing particular types of conduct." (Emphasis supplied.) Id., at 473. It concludes that the "language of section 23(a) contains no express reference to the lawful or unlawful character of the business expenses which are declared to be deductible. * * * If the respondent's litigation expenses are to be denied deduction, it must be because allowance of the deduction would frustrate the sharply defined policies of 39 U. S. C. sections 259 and 732 which authorize the Postmaster General to issue fraud orders." Id., at 474. Neither that decision nor the rule suggested by it requires disallowance of petitioners' expenditures as deductions in the instant case.

Assuming for the sake of argument that, under some circumstances, business expenditures which are ordinary and necessary in the generally accepted meanings of those words may not be deductible as "ordinary and necessary" expenses under section 23(a)(1)(A) when they "frustrate sharply defined National or State policies proscribing particular types of conduct," *supra*, nevertheless the expenditures now before us do not fall in that class. The policies frustrated must be National or State policies evidenced by some governmental declaration of them. In 1943 and 1944 there were no such declared public policies proscribing the payments which were made by petitioners to the doctors.

Customs and the actions of organized professional organizations have an appropriate place in determining in a factual sense what are ordinary and necessary expenses at a given time and place. For example, they materially affect competitive standards which determine whether certain expenditures are in fact ordinary and necessary. Evidence of them is admissible on that issue. They do not, however, in themselves constitute the "sharply defined National or State policies" the frustration of which may, as a matter of law, preclude the deductibility of an expense under section 23(a)(1)(A).

We voice no approval of the business ethics or public policy involved in the payments now before us. We recognize the province of legislatures to translate progressive standards of professional conduct into law and we note that legis-

[7] The Government calls attention to its prosecution of certain other opticians in other States, in 1946, for violations of the Sherman Antitrust Act due to price-fixing agreements made with oculists in the course of interstate commerce. The consent decrees in those cases lend little support to the Government's contention that the payments made by petitioners in 1943 and 1944 in North Carolina and Virginia were not deductible. In fact, the recitals in those decrees tend to confirm the existence of a long-established, widespread, undisturbed practice of the kind described. *United States* v. *Bausch & Lomb Optical Co.*, Civil Action No. 46C 1332; *United States* v. *American Optical Co.*, Civil Action No. 46C 1333; *United States* v. *House of Vision-Belgard-Spero, Inc.*, Civil Action No. 48C, 607; and *United States* v. *Uhlemann Optical Co. of Illinois*, Civil Action No. 48C 608 (all in U. S. D. C. N. D. Ill.).

lation has been passed in recent years in North Carolina and other States outlawing the practice here considered.[8] We recognize also the organized activities of the medical profession in dealing with the subject.[9] A resulting abolition of the practice will reflect itself in the tax returns of the parties without the retroactive hardship complained of here.[10]

The judgment of the court of appeals is reversed and the cause is remanded with directions to remand to the Tax Court with instructions to set aside its judgment insofar as it is inconsistent with this opinion.

It is so ordered.

Mr. Justice DOUGLAS took no part in the consideration or decision of this case.

SECTION 29.23(a)-1: Business expenses.

INTERNAL REVENUE CODE

Amount paid to a corporation by an officer or director under section 16(b) of the Securities Exchange Act of 1934. (See I. T. 4069, page 28.)

SECTION 29.23(a)-1: Business expenses.

INTERNAL REVENUE CODE

Cost of 1-year baseball player's contract with renewal option. (See I. T. 4078, page 39.)

SECTION 29.23(a)-10: Rentals.

INTERNAL REVENUE CODE

Federal income taxes of lessor paid by lessee. (See Mim. 6779, page 8.)

SECTION 29.23(a)-15: Nontrade or nonbusiness expenses.

INTERNAL REVENUE CODE

Legal expenses incurred in contesting Federal gift tax deficiency. (See Ct. D. 1743, page 32.)

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[8] Remington's Wash. Rev. Stat., 1949 Supp., section 10185-14; Deering's Cal. Business and Professions Code, 1951, sections 650, 652; N. C. Laws 1951, c. 1089, sections 21, 23.

[9] The present trend may lead to the complete abolition of the practice. If so, its abolition will have been accomplished largely by the direct action of those qualified to pass judgment on its justification. This gradually increasing opposition to the practice bears witness to the widespread existence of the practice in such recent times as 1943 and 1944. See Resolution of Section on Opthalmology of the American Medical Association adopted in June, 1924, but not then presented to the A. M. A. House of Delegates, quoted in 117 A. M. A. J. 498 (1941); Address of Chairman Albert C. Snell, M. D., before the Section on Ophthalmology, 117 A. M. A. J. 497-499 (1941); Principles of Medical Ethics of the American Medical Association (1943 and 1949); editorials in 131 A. M. A. J. 1128 (1946); 136 A. M. A. J. 176-177 (1948).

[10] The payments made to the doctors in the instant case, and disallowed as deductions by the courts below, amounted to between 56 percent and 72 percent of petitioners' taxable business income. Their income thus taxed had been transferred long ago to the doctors and they had paid their income tax on it.

SECTION 23(b).—DEDUCTIONS FROM GROSS INCOME: INTEREST

SECTION 29.23(b)-1: Interest. 1952-12-13834
(Also Section 43, Section 29.43-2.) Ct. D. 1745

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT

1. GROSS INCOME—DEDUCTIONS—ACCRUED INTEREST—REDEMPTION OF COUPONS ON MORTGAGE BONDS.

Taxpayer corporation was formed on January 1, 1940, as the culmination of reorganization proceedings involving 65 corporations, and, in accordance with the reorganization plan, in January 1940, issued mortgage bonds dated January 1, 1939, and bearing interest from that date. The interest coupons for 1939 and 1940 were redeemed by the corporation in 1940, as required by the reorganization plan. The corporation computes its tax liability on the accrual basis, and in its income tax return for 1940 claimed deduction for the 1939 and 1940 coupons as "interest accrued" in 1940. *Held:* The amount allocated as 1939 interest was properly deductible from 1940 income as interest accrued in 1940. Affirmed in United States Supreme Court *per curiam* decision (1949), 338 U. S. 883.

2. DECISION AFFIRMED.

Decision of The Tax Court of the United States, 9 T. C. 1018 (1948), affirmed.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Commissioner of Internal Revenue, petitioner, v. *Philadelphia Transportation Company, respondent*

On petition for review of the decision of The Tax Court of the United States

[March 21, 1949]

OPINION

By GOODRICH, Circuit Judge: The Philadelphia Transportation Co., the taxpayer here, was formed on January 1, 1940 as the culmination of reorganization proceedings involving 65 corporations concerned in Philadelphia's public transportation system. In accordance with the reorganization plan, the taxpayer issued, in January, 1940, mortgage bonds dated January 1, 1939 and bearing interest from that date. The interest coupons for 1939 and 1940 were redeemed by the taxpayer in 1940, as required by the reorganization plan.

The taxpayer computes its tax liability on an accrual basis. In its income tax return for 1940, it claimed a deduction for the 1939 and 1940 coupons as "interest accrued" in 1940.[1]

These basic facts raise the crucial question, the answer to which will dispose of the case. Was the interest allocated as 1939 interest properly deducted from the taxpayer's 1940 income as interest accrued in 1940? The Tax Court held that it was. In this appeal, the Commissioner seeks reversal on three principal grounds. He argues, first, that the amount deducted was not interest. It was not interest, he says, because interest is compensation for the use of money, and the taxpayer held no money, borrowed or otherwise, in 1939. The Commissioner looks for support on this point to the statutory language which refers to "interest accrued on indebtedness." He concludes that without indebtedness in 1939, there could have been no interest. And there was no indebtedness in 1939, he says, because the taxpayer had no corporate existence then.

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[1] The applicable section of the Internal Revenue Code, section 23(b), provides:
"SEC. 23. DEDUCTIONS FROM GROSS INCOME.
In computing net income there shall be allowed as deductions:
* * * * * * *
(b) INTEREST.—All interest paid or accrued within the taxable year on indebtedness * * *." 26 U. S. C. A. section 23(b).

The Commissioner's second point is that the taxpayer took over the obligation to pay 1939 interest as a part of the cost of the assets acquired in the reorganization. We discuss this point below. And finally the Commissioner argues that even if the amount in question be treated as interest, a deduction of interest for more than the current year may not be made from that year's income.

The point last stated is easily answered. No provision of the Internal Revenue Code prohibits such a deduction. Section 43 of the Code, 26 U. S. C. A. section 43, provides that "the liabilities of one year cannot be used to reduce the income of a subsequent year." It is upon this provision that the Commissioner relies. But the issue is whether the item in question here is a liability of the year 1940. If it accrued in 1940, it is deductible in 1940 and in no other year, whether or not it is based on transactions allocated for other purposes to other periods. One decision specifically supports the deduction of 2 years' interest in one year in a proper case,[2] and three other decisions, including one from this court, support the proposition in principle.[3]

We turn, then, to the Commissioner's first two arguments. We think that the fog surrounding the no debt-no interest contention is best cleared by a simply hypothetical illustration. A corporation is formed in 1940. It is brand new and without corporate forebears. It issues in 1940 a series of 20-year coupon bonds. For reasons best known to the management, it is decided to date the bonds as of January 1, 1939 to mature January 1, 1959, and to redeem the first two interest coupons in 1940. The corporation pays its taxes on an accrual basis. Can there be any doubt that the interest accrued on the two coupons in 1940 and was properly deductible in that year? We think that in the hypothetical case the situation is the same as if the 1940 interest coupons were just double the later ones in amount. There was indebtedness in 1940, interest accrued on that indebtedness in 1940, and we think it is chargeable for tax purposes, as well as bookkeeping purposes, for that year.

We think the present case is similar to the hypothetical one in all respects except that the taxpayer was the product of a reorganization and came into existence with the obligation to pay fixed and variable interest on the bonds it was to issue to the shareholders of its corporate predecessors. These added factors do not, in our judgment, alter the result. The taxpayer, as a new corporation, created its own new indebtedness. It did not assume existing liabilities on which interest had already accrued against predecessor companies. If it had, there would be merit in the Commissioner's point that the obligation was part of the cost of the assets acquired by the taxpayer.[4]

But that is not the fact. No obligation was owed by the predecessor companies to their shareholders except insofar as assets might have remained for distribution to them when corporate affairs were wound up. Moreover, neither the present taxpayer nor any of its predecessors was in a position to take advantage of a 1939 deduction for the interest payments in question. As our brethren in the Ninth Circuit said in *Commissioner* v. *Columbia River Paper Mills*, 126 Fed. (2d) 1009, 1010 (C. C. A. 9, 1942): "The arrangement was a logical one under the circumstances, * * * It is not suggested that there was any purpose of tax avoidance * * *." We conclude, therefore, as we did in *Pressed Steel Car Co.* v. *Commissioner*, 152 Fed. (2d) 280 (C. C. A. 3, 1946), that the Tax Court correctly decided that the amount in dispute represented accrued interest within the meaning of section 23(b) of the Internal Revenue Code.[5]

The decision of the Tax Court will be affirmed.

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[2] *Oregon Pulp & Paper Co.* v. *Commissioner*, 47 BTA 722 (1942), petition for review dismissed (C. C. A. 9, November 2, 1943).

[3] *Commissioner* v. *Pressed Steel Car Co., Inc.*, 152 Fed. (2d) 280 (C. C. A. 3, 1945); *Ernst Kern Co.* v. *Commissioner*, 1 T. C. 249 (1942); *Columbia River Paper Mills* v. *Commissioner*, 43 BTA 104 (1940), aff'd 126 Fed. (2d) 2009 (C. C. A. 9, 1942). It is true that our decision was made at a time when the Dobson case blinders prevented the judicial eye from roving over the record. We think the result was right though perforce compelled.

[4] Cases in which the indebtedness was that of the taxpayer's vendor or predecessor, and was taken over by the taxpayer with the obligation to pay interest already accrued, have been properly treated as capital transactions. *Commissioner* v. *Breyer*, 151 Fed. (2d) 267, 272 (C. C. A. 3, 1945); *Rodney* v. *Commissioner*, 145 Fed. (2d) 692 (C. C. A. 2, 1944); *Pratt-Mallory Co.* v. *United States*, 12 Fed. Supp. 1020, 1023 (Ct. Cl. 1936). Cases like *Lloyd* v. *Commissioner*, 154 Fed. (2d) 643 (C. C. A. 3, 1946), in which the proceeds of the sale of unmatured interest coupons by a banking syndicate which was not the obligor were held improperly declared as a deduction for payment of "interest," are clearly without application to the present case.

[5] All the authorities on this point have reached the same result, with one exception. *Commissioner* v. *Pressed Steel Car Co., Inc.*, 152 Fed. (2d) 280 (C. C. A. 3, 1945); *Ernst Kern Co.* v. *Commissioner*, 1 T. C. 249 (1942); *Columbia River Paper Mills* v. *Commissioner*, 43 BTA 104 (1940), aff'd 126 Fed. (2d) 1009 (C. C. A. 9, 1942); *Oregon Pulp & Paper Co.* v. *Commissioner*, 47 BTA 722 (1942), petition for review dismissed (C. C. A. 9, November 2, 1943). Contra: *Commissioner* v. *Drovers Journal Publishing Co.*, 135 Fed. (2d) 276 (C. C. A. 7, 1943).

SECTION 23(bb).—DEDUCTIONS FROM GROSS INCOME: CIRCULATION EXPENDITURES

SECTION 29.23(bb)-1: Circulation expenditures. 1952-1-13738
(Also Section 113(b), Section 29.113(b)(1)-1.) T. D. 5873

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Regulations 111 amended to conform to section 204 of the Revenue Act of 1950, relating to circulation expenditures of newspapers, magazines, and other periodicals.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On September 18, 1951, notice of proposed rule making to conform Regulations 111 [26 CFR, part 29] to section 204 of the Revenue Act of 1950 (Public Law 814, 81st Cong.), approved September 23, 1950, was published in the Federal Register (16 F. R. 9480). No comments or suggestions were received with respect to such notice during the 30 days following such publication. The following amendments are hereby adopted:

PARAGRAPH 1. There is inserted immediately following section 29.23(aa)-1 [26 CFR 29.23(aa)-1] the following:

SEC. 204. CIRCULATION EXPENDITURES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) DEDUCTION FROM GROSS INCOME.—Section 23 is hereby amended by adding at the end thereof the following new subsection:

"(bb) CIRCULATION EXPENDITURES.—Notwithstanding section 24(a), all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary permits a revocation of such election subject to such conditions as he deems necessary."

* * * * * * *

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1945, except that in the case of any taxable year beginning prior to January 1, 1950—

(1) the amendments shall not be applicable with respect to expenditures for which a deduction was not allowed the taxpayer for such year, if allowance of credit or refund with respect to such year is barred on the date of the enactment of this Act by reason of any law or rule of law; and

(2) the election provided in section 23(bb) of the Internal Revenue Code shall not (despite the last sentence of such section) be applicable with respect to any expenditure for which a deduction was claimed by the taxpayer under his latest treatment, prior to the date of the enactment of this Act, of such expenditure in connection with his tax liability for such taxable year.

SEC. 29.23(bb)-1. CIRCULATION EXPENDITURES.—(a) *In general.*—(1) *Allowance of deduction.*—Effective only with respect to taxable years beginning after December 31, 1945 (see, however, paragraph (b) of this section), section 23(bb) provides for the deduction from gross income (notwithstanding the provisions of section 24(a) and the regulations thereunder, relating to items not deductible from gross income) of all expenditures to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical subject to the two following rules. The deduction is not allowable with respect to expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical. The deduction is allowable only to the publisher making the circulation expenditures.

(2) *Election to capitalize.*—A taxpayer entitled to the deduction for circulation expenditures provided in section 23(bb) may, in lieu of taking such deduction, elect to charge to capital account the portion of such circulation expenditures which under approved standard methods of accounting is properly chargeable to capital account. As a general rule, expenditures normally made from year to year in an effort to maintain circulation are not properly chargeable to capital account; however, expenditures made in an effort to establish or to increase circulation are properly chargeable to capital account. For example, if a newspaper normally employs five persons to obtain renewals of subscriptions by telephone, the expenditures in connection therewith would not be properly chargeable to capital account. However, if such newspaper, in a special effort to increase its circulation, hires for a limited period 20 additional employees to obtain new subscriptions by means of telephone calls to the general public, the expenditures in connection therewith would be properly chargeable to capital account. If an election is made by the taxpayer to treat any portion of his circulation expenditures as chargeable to capital account, such election must be for the total amount of all such expenditures which are properly so chargeable; in such case, no deduction will be allowed for any such expenditures which are properly chargeable to capital account. If such election is made with respect to a particular taxable year, the taxpayer must continue for subsequent taxable years to charge to capital account all circulation expenditures which are properly so chargeable, unless the Commissioner, on application in writing made to him by the taxpayer, permits a revocation of such election with respect to any subsequent taxable year, subject to such conditions as the Commissioner deems necessary. The election referred to in this paragraph shall be made by a statement attached to the taxpayer's return for the first taxable year to which such election is applicable, or, in case the return for the first taxable year to which such election is applicable is filed prior to January 1, 1952, by a statement in writing to that effect filed with the Commissioner of Internal Revenue, Washington 25, D. C., on or before January 1, 1952.

(b) *Limitations on retroactive application of section 23(bb).*—(1) Section 204(c) of the Revenue Act of 1950 provides certain limitations on the retroactive application of the provisions of section 23(bb) of the Code in the case of taxable years beginning after December 31, 1945, and before January 1, 1950. Such limitations are as follows: (i) Section 23(bb) is not applicable with respect to circulation expenditures for which a deduction was not allowed the taxpayer for any such year, if allowance of a credit or refund with respect to such year was barred on September 23, 1950, by reason of any law or rule of law; and (ii) the election provided in section 23(bb) will not (despite the last sentence thereof) be permitted with respect to any circulation expenditure for which a deduction was claimed by the taxpayer under his latest treatment (prior to September 23, 1950) of such expenditure in connection with his tax liability for such year.

(2) The first limitation prevents the deduction under section 23(bb) of expenditures which have been capitalized for any taxable year beginning after December 31, 1945, and before January 1, 1950, if the allowance of credit or refund for such year attributable to such deduction was barred on September 23, 1950. However, if the allowance of a credit or refund for such taxable year was not barred on September 23, 1950, such expenditures may not be capitalized unless the taxpayer so elects. In the absence of such election, the taxpayer may, within the applicable period of limitations, file a claim for refund of any overpayment resulting from the deduction of such expenditures in lieu of their previous capitalization.

(3) The second limitation prevents a taxpayer who claimed a deduction rom gross income for circulation expenditures for any taxable year beginning ıfter December 31, 1945, and before January 1, 1950, from subsequently electing ınder section 23(bb) to capitalize such expenditures for such year in lieu of he deduction. Whether a deduction is to be considered claimed by such taxpayer, for the purpose of the second limitation, depends on his latest treatment (for example, in a return, claim for refund, or petition or amended petition to The Tax Court of the United States), prior to September 23, 1950, of such expenditures in connection with his tax liability for such year.

PAR. 2. There is inserted immediately preceding section 29.113(b)(1)-1 [26 CFR 29.113(b)(1)-1] the following:

SEC. 204. CIRCULATION EXPENDITURES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(b) TECHNICAL AMENDMENT.—Section 113(b)(1)(A) is hereby amended by inserting after "carrying charges" the following: ", or for expenditures described in section 23(bb),".

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1945, except that in the case of any taxable year beginning prior to January 1, 1950—

(1) the amendments shall not be applicable with respect to expenditures for which a deduction was not allowed the taxpayer for such year, if allowance of credit or refund with respect to such year is barred on the date of the enactment of this Act by reason of any law or rule of law; and

(2) the election provided in section 23(bb) of the Internal Revenue Code shall not (despite the last sentence of such section) be applicable with respect to any expenditure for which a deduction was claimed by the taxpayer under his latest treatment, prior to the date of the enactment of this Act, of such expenditure in connection with his tax liability for such taxable year.

PAR. 3. Section 29.113(b)(1)-1 [26 CFR 29.113(b)(1)-1] is amended by inserting immediately following the fourth paragraph (which paragraph begins with the words "Capital expenditures and carrying charges") the following new paragraph:

For taxable years beginning after December 31, 1945, expenditures to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical, described in section 23(bb), are chargeable to capital account only in accordance with and in the manner provided in section 29.23(bb)-1.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code (53 Stat. 32, 467; 26 U. S. C. 62, 3791) and section 23(bb) of the Internal Revenue Code (64 Stat. 1219; 26 U. S. C. 23(bb).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved December 7, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 12, 1951, 8:52 a. m.)

SECTION 23(c).—DEDUCTIONS FROM GROSS INCOME: TAXES GENERALLY

SECTION 29.23(c)-1: Taxes. 1952-11-13831
Ct. D. 1744

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT

1. GROSS INCOME—DEDUCTIONS—RETAIL SALES TAX—OKLAHOMA CIGARETTE TAX.

Until an existing doubt is resolved by the State courts as to whether the Oklahoma tax on cigarettes is a "sales tax" as distinguished from an "excise tax" or an exaction of some other kind, the amount of such tax paid by a consumer-purchaser is not deductible from gross income under the provisions of section 23(c)(3) of the Internal Revenue Code. There was no proof in this case that the taxpayer, as a consumer, purchased any of the cigarettes involved from a wholesaler, jobber, or retailer who had paid for and affixed the cigarette tax stamps to the cigarette packages.

2. DECISION REVERSED.

Decision of The Tax Court of the United States, 15 T. C. 609 (1950), reversed and cause remanded.

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Commissioner of Internal Revenue, petitioner, v. *Williard I. and Agnes B. Thompson, respondents*

On petition to review the decision of The Tax Court of the United States

Before PHILLIPS, Chief Judge, and BRATTON and PICKETT, Circuit Judges

[December 31, 1951]

OPINION

BRATTON, Circuit Judge: Williard I. Thompson and Agnes B. Thompson are husband and wife, and they reside in Oklahoma. In their joint income tax return for the year 1947 they claimed certain deductions from gross income, one deduction being for tax paid on cigarettes. The Commissioner of Internal Revenue disallowed certain claimed deductions, including the one for tax paid on cigarettes. On redetermination, the Tax Court sustained the taxpayer in respect to that deduction, 15 T. C. 609; and the Commissioner sought review.

Deductions from gross income are allowed as a matter of legislative grace. A taxpayer claiming a deduction must bring himself clearly within the terms of a statute authorizing it. And the burden rests upon the taxpayer to point to a statute authorizing the deduction and bring himself clearly within its provisions; otherwise, the deduction is to be disallowed. *New Colonial Ice Co.* v. *Helvering*, 292 U. S. 435 [Ct. D. 841, C. B. XIII-1, 194 (1934)]; *White* v. *United States*, 305 U. S. 281 [Ct. D. 1372, C. B. 1938-2, 238]; *Deputy* v. *du Pont*, 308 U. S. 488 [Ct. D. 1435, C. B. 1940-1, 118].

The Tax Court relied upon section 23(c)(3) of the Internal Revenue Code, 26 U. S. C. section 23(c)(3), as authorizing the deduction in question. And the Tax Court pointed to Treasury Regulations 111, section 29.23(c)-1-(*b*). The statute provides in presently pertinent part that in the case of a tax imposed by a State upon persons engaged in selling tangible personal property at retail, which is measured by the gross sale price or the gross receipts from the sale or which is a stated sum per unit of such property sold, if the amount of such tax is separately stated, then to the extent that the amount so stated is paid by the purchaser to such person such amount shall be allowed as a deduction in computing the net income of the purchaser as if such amount constituted a tax imposed upon and paid by such purchaser. The statute permits the purchaser of tangible personal property from a retailer to deduct the amount of the tax imposed by State law upon the retailer, if the tax is separately stated and is paid by the purchaser. One prerequisite of the deduction under the statute is that the State tax be imposed upon the retailer. Another is that the tax be

separately stated. And the third is that the purchaser pay the tax. If the purchaser pays the full amount of the tax, the deduction is to be taken accordingly. If he pays only part of the tax, he is authorized to deduct the amount paid. That is the plain scope of the statute and it is not to be enlarged by administrative regulation or judicial interpretation.

Turning to the law of Oklahoma, chapter 16, title 68, Oklahoma Statutes 1941, is entitled "Cigarette Stamp Tax." Section 586, as amended (O. S. Supp. 1943), defines the terms "wholesaler," "jobber," "retailer," and "consumer." Section 586a provides that in lieu of any and all forms of tax upon the sale, gift, or consumption of cigarettes within the State, there is levied a stamp excise tax at rates therein specified; that the tax shall be paid only once on any cigarettes sold or received for consumption in the State; that it shall be paid by the person making the first sale or first receiving the cigarettes for consumption within the State; that payment of the tax shall be evidenced by stamps which shall be furnished by and purchased from the Tax Commission; that the stamps shall be securely affixed to the end of the package in which the cigarettes are sold or from which consumed; and that the stamps shall denote the amount of the tax paid. Section 586c, as amended (O. S. Supp. 1943), relates to permits, fees, displays, and other requirements of manufacturers, wholesalers, warehousemen, jobbers, distributors, and retailers. And section 586d, as amended (O. S. Supp. 1943) provides that every wholesaler, jobber, or warehouseman doing business within the State and required to secure a license or permit as provided under the preceding section shall within 72 hours, excluding Sundays and holidays, from the time cigarettes come into his possession, and before making any sale or distribution thereof for consumption, cause the same to have affixed thereto the stamp or stamps as required by the Act; that every retailer receiving cigarettes from a manufacturer, wholesaler, jobber, warehouseman, or distributor not required to secure a permit as provided in the preceding section, or to affix stamps as required under the preceding paragraph, shall within 72 hours, excluding Sundays and holidays, from the time such cigarettes come into his possession, and before making any sale or distribution thereof for consumption, affix stamps upon the cigarette packages in the proper denomination and amount, as required by section 586a; that it shall be unlawful for any person to sell or consume cigarettes on which the tax has not been paid, and which are not contained in packages to which are securely affixed the stamps evidencing payment of the tax imposed by the Act; and that every person violating the provisions of the section shall be guilty of a misdemeanor and punished as therein specified. The Act does not speak of the exaction as a sales tax. Section 586a imposes the tax, and it expressly denominates the tax a stamp excise tax. And the requirement that stamps be affixed to cigarettes manufactured or received for sale is not dependent upon the actual sale of such cigarettes. The manufacturer, wholesaler, warehouseman, jobber, or distributor in certain instances, and the retailer in other instances, is required to affix the stamps to cigarettes within a specified time after manufacturing or receiving them for sale without regard to whether they are actually sold later. Under the statutory scheme, securing the stamps from the Tax Commission and affixing them to cigarettes within the specified time is required even though the cigarettes are not actually sold. Payment or liability for the tax and sale of the cigarettes are not necessarily concurrent incidents or events. Viewed in the light of these considerations, and in the absence of a judicial determination by the courts of Oklahoma, it is not clear that the exaction is a sales tax as distinguished from an excise imposed upon the privilege of engaging in the occupation of a manufacturer, wholesaler, warehouseman, jobber, distributor, or retailer of cigarettes. Until the courts of Oklahoma shall have determined the exact nature of the tax, it is at least open to question. And a deduction from gross income cannot be allowed under section 23(c)(3) of the Internal Revenue Code unless it is clear that under the law of Oklahoma the tax on cigarettes is a sales tax as distinguished from an excise tax or an exaction of some other kind. *Cf. Helvering* v. *Fitch*, 309 U. S. 149 [Ct. D. 1439, C. B. 1940-1, 165].

Moreover, there was no proof in this case that the taxpayer, as a consumer, purchased any of the cigarettes involved from a wholesaler or jobber who had paid for and affixed the cigarette tax stamps to the cigarette packages, nor was there proof that the taxpayer, as a consumer, purchased the cigarettes from a retailer who had paid for and affixed the stamps to the packages. Hence there was no proof that the tax sought to be deducted was imposed upon a retailer.

The decision of the Tax Court is reversed and the cause is remanded.

SECTION 23(e).—DEDUCTIONS FROM GROSS INCOME: LOSSES BY INDIVIDUALS

SECTION 29.23(e)-1: Losses by individuals. 1952-2-13748
(Also Section 23(a), Section 29.23(a)-1; I. T. 4069
Section 113(b), Section 29.113(b)(1)-1;
Section 117, Section 29.117-1.)

INTERNAL REVENUE CODE

The amount paid to a corporation by an officer or director thereof pursuant to the requirements of section 16(b) of the Securities Exchange Act of 1934 (48 Stat. 881, 896), relating to the purchase and sale of the corporation's securities, is not allowable as a deduction for Federal income tax purposes, and such amount may not be added to the basis of securities retained by him. The capital gain realized by an officer or director of a corporation in a transaction covered by section 16(b) of the Securities Exchange Act of 1934 is includible in his gross income.

Advice is requested with respect to the treatment, for Federal income tax purposes, of the amount paid to a corporation by an officer or director thereof pursuant to the requirements of section 16(b) of the Securities Exchange Act of 1934 (48 Stat. 881, 896), relating to the purchase and sale of the corporation's securities.

Section 16(b) of the Securities Exchange Act of 1934, *supra*, provides in part as follows:

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. * * *

In the instant case, the taxpayer purchased three blocks of common stock of the corporation in which he was an officer and director. The first block was purchased in August 1949 at a cost of $49x$ dollars, the second block was purchased in September 1949 at a cost of $50x$ dollars, and the third block was purchased in November 1949 at a cost of $53x$ dollars. In January 1950 the taxpayer sold one block of such stock for $58x$ dollars. In compliance with an order of the Securities and Exchange Commission issued under section 16(b) of the Securities Exchange Act of 1934, *supra*, he paid to the corporation $9x$ dollars, representing the greatest profit he could have realized within any period of less than 6 months, i. e., the difference between $58x$ dollars, the amount received upon the sale of stock in January 1950, and $49x$ dollars, the cost of the stock purchased in August 1949, despite the fact that he still retains the certificate representing the block of stock purchased in August 1949.

The obligation imposed on an officer or director to pay over to the corporation the maximum profit resulting from any purchase and sale of securities within the purview of section 16(b) of the Securities Exchange Act of 1934, *supra*, is in the nature of a penalty, and the allowance of a deduction for the amount of such a payment would frustrate the public policy expressed in the statute. This position is in accord with the decision in *William F. Davis, Jr.*, v. *Commissioner* (17 T. C., 549) which holds that the sanction thus imposed is in the nature of a penalty and that the deduction of the amount of such penalty should not be allowed since it would mitigate the deterrent effect of the statute and subvert a sharply defined public policy.

In the instant case, the stock actually sold by the taxpayer, not having been held by a dealer in securities primarily for sale to customers in the ordinary course of his trade or business, was a capital asset within the meaning of section 117(a) of the Internal Revenue Code. Therefore, the gain realized from the sale of such stock, measured by the difference between the selling price and the cost of the stock actually sold, constitutes capital gain which is includible in the taxpayer's gross income.

Section 113(b) of the Internal Revenue Code provides that the adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under section 113(a) of the Code, adjusted to the extent provided by section 113(b) of the Code. There is no provision of the Code under which a taxpayer would be permitted to adjust the basis of stock retained by him for the amount of any payments required under section 16(b) of the Securities Exchange Act of 1934, *supra*.

In view of the foregoing, it is held that the amount paid to a corporation by an officer or director thereof pursuant to the requirements of section 16(b) of the Securities Exchange Act of 1934, *supra*, is not allowable as a deduction for Federal income tax purposes, and that such amount may not be added to the basis of securities retained by him. The capital gain realized by an officer or director of a corporation in a transaction covered by section 16(b) of the Securities Exchange Act of 1934 is includible in his gross income.

SECTION 29.23(e)-1: Losses by individuals. 1952-13-13843
I. T. 4086

INTERNAL REVENUE CODE

Deductibility for Federal income tax purposes of losses sustained by individuals due to war conditions existing after the termination of World War II.

Advice is requested as to the deductibility, for Federal income tax purposes, of losses sustained by individuals due to war conditions existing after the termination of World War II.

In the instant case, the taxpayer, a United States citizen employed by the Federal Government, was stationed at Seoul, Korea, on June 27, 1950, when that city was invaded by the North Koreans. Because of impending danger, the taxpayer was ordered to, and did, abandon his post and all his personal property.

Section 23(e) of the Internal Revenue Code provides in part that in computing net income there shall be allowed as deductions:

(e) LOSSES BY INDIVIDUALS.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—
(1) if incurred in trade or business; or
(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or
(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. * * *

Losses sustained by individuals due to war conditions existing after the termination of World War II are not deductible as "war losses" under section 127 of the Internal Revenue Code. Such losses, however, may be deductible under section 23(e) of the Code. In I. T. 3519 (C. B. 1941-2, 96) it is held that a loss due to the destruction of personal property as a result of bombardment is deductible as a "casualty" loss under section 23(e)(3) of the Code. Other losses are also deductible under section 23(e)(3), if sustained as a result of destruction due to active military operations, or from looting or theft. On the other hand, losses sustained through confiscation and seizure of property under authority of the laws of a foreign country (whether or not an enemy country) are not "casualty" losses, and such losses are not deductible unless incurred in trade or business or in a transaction entered into for profit, in which event they would be deductible under section 23(e) (1) or (2) of the Code. (See *United States* v. *S. S. White Dental Manufacturing Co. of Pennsylvania*, 274 U. S. 398, T. D. 4059, C. B. VI-2, 198 (1927); *Commissioner* v. *Jacob F. Brown*, 54 Fed. (2d) 563, certiorari denied, 286 U. S. 556; *Hector Fezandie, Executor*, v. *Commissioner*, 12 B. T. A. 1325; and *Appeals of Emil Stern and Jules Stern*, 5 B. T. A. 89, acquiescence, C. B. VIII-1, 43 (1929).)

In determining the amount of the deductible loss, consideration must be given to any salvage value and to any insurance or other compensation received. (See section 29.23(e)-1 of Regulations 111.)

SECTION 23(m).—DEDUCTIONS FROM GROSS INCOME: DEPLETION

SECTION 29.23(m)-16: Charges to capital and to expense in case of oil and gas wells. 1952-3-13756 Mim. 6754

Treatment under section 29.23(m)-16(*b*) of Regulations 111 of certain development costs of oil and gas wells.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., January 7, 1952.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Heads of Field Divisions, Appellate Staff, and Others Concerned:

1. The Bureau has given exhaustive consideration to the classification of certain expenditures made in connection with the completion of an oil or gas well and the preparations necessary for the production of oil or gas therefrom, with reference to the option provided in section 29.23(m)-16(*b*) of Regulations 111.

2. Section 29.23(m)-16(*b*) of Regulations 111 states that within the option are "expenditures made by an operator for wages, fuel, repairs, hauling, supplies, etc., incident to and necessary for the drill-

ing of wells and the preparation of wells for the production of oil or gas." Such language excludes expenditures incurred in installing production facilities. The items thus excluded consist of expenditures relating to the installation of such equipment as pumping equipment, flow lines, separators, storage tanks, treating equipment, salt water disposal equipment, etc. Equipment of a character which is ordinarily considered as having a salvage value, whether it consists of production facilities or equipment necessary for the completion of a well, including cost of casing in a well (even though cemented in the well to such an extent that it has no net salvage value) is a depreciable item, the cost of which may be recovered only through the depreciation allowance. A producing well is completed when the casing, including the "Christmas tree," has been installed.

3. After careful consideration, it has been concluded that the costs of installation of the items listed below are not subject to the option provided for in section 29.23(m)-16(*b*) of Regulations 111:

1. Oil well pumps (upon initial completion of the well), including the necessary housing structures.
2. Oil well pumps (after the well has flowed for a time), including the necessary housing structures.
3. Oil well separators, including the necessary housing structures.
4. Pipelines from the well head to oil storage tanks on the producing lease.
5. Oil storage tanks on the producing lease.
6. Salt water disposal equipment, including any necessary pipelines.
7. Pipelines from the mouth of a gas well to the first point of control, such as a common carrier pipeline, natural gasoline plant, or carbon black plant.
8. Recycling equipment, including any necessary pipelines.
9. Pipelines from oil storage tanks on the producing leasehold to a common carrier pipeline.

JOHN B. DUNLAP,
Commissioner.

SECTION 24.—ITEMS NOT DEDUCTIBLE

SECTION 29.24–1: Personal and family expenses. 1952–7–13788
T. D. 5889

TITLE 26.—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Section 29.24–1 of Regulations 111 amended. Deduction allowable for attorneys' fees paid for production or collection of alimony includible in gross income under section 22(k).

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 111 [26 CFR, part 29] to the decision of The Tax Court of the United States in *Barbara B. LeMond*, 13 T. C. 670, such regulations are amended as follows:

Section 29.24–1 [26 CFR 29.24–1] is amended by striking out the sixth sentence and inserting in lieu thereof the following:

Amounts paid as damages for breach of promise to marry and attorneys' fees and other costs of suit to recover such damages are not deductible. Generally, attorneys' fees paid in a suit for divorce or separate maintenance are not deductible. However, the part of an attorney's fee paid in a divorce or separate maintenance proceeding which is properly attributable to the production or collection of amounts includible in gross income under section 22(k) is deductible under section 23(a)(2).

Because this Treasury Decision removes a restriction by permitting attorneys' fees to be deducted in computing net income in certain instances when such fees are paid for the production or collection of taxable income, it is found that it is unnecessary to issue such Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in section 62 of the Internal Revenue Code (53 Stat. 32, 26 U. S. C. 62).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved March 11, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 14, 1952, 8:50 a. m.)

SECTION 29.24–1: Personal and family expenses. 1952–9–13814
(Also Section 23(a), Section 29.23(a)–15.) Ct. D. 1743

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT

1. GROSS INCOME—DEDUCTIONS—PERSONAL EXPENSES—LEGAL EXPENSES PAID FOR CONTESTING GIFT TAX DEFICIENCY.

Legal expenses incurred by petitioner in contesting a gift tax deficiency with regard to gifts of stock which he had made to his three children were nondeductible personal expenses not connected with the production or collection of income, despite petitioner's contentions that the gifts of stock in the closely held family corporation were part of a general plan to produce income for himself and that the stock transfers and related attorney's fee were mere incidents of his management, conservation, or maintenance of property held for the production of income.

2. DECISION AFFIRMED.

Decision of the United States Court of Appeals, Fifth Circuit, 188 Fed. (2d) 964 (1951), affirmed.

SUPREME COURT OF THE UNITED STATES

Joseph T. Lykes, petitioner, v. *United States of America*

On writ of certiorari to the United States Court of Appeals for the Fifth Circuit

[March 24, 1952]

OPINION

Mr. Justice BURTON delivered the opinion of the Court.

The question here is whether, for Federal income tax purposes, an individual taxpayer was entitled to deduct, from his gross income, an attorney's fee paid

for contesting the amount of his Federal gift tax. For the reasons hereafter stated we hold that he was not.

In 1940, Joseph T. Lykes, petitioner herein, gave to his wife and to each of his three children, respectively, 250 shares of common stock in Lykes Brothers, Inc., a closely held family corporation. In his Federal gift tax return he valued the shares at $120 each and, on that basis, paid a tax of $13,032.75. In 1944, the Commissioner of Internal Revenue revalued the shares at $915.50 each and notified petitioner of a gift tax deficiency of $145,276.50. Through his attorney, petitioner sought a redetermination of the deficiency, forestalled an assessment, and, in 1946, paid $15,612.75 in settlement of the deficiency pursuant to a finding of the Tax Court based on stipulated facts. In 1944, petitioner had paid his attorney $7,263.83 for legal services in the gift tax controversy but, in his Federal income tax return, had not deducted that expenditure from his taxable income. In 1946, he claimed a tax refund on the ground that the attorney's fee should have been deducted under section 23(a)(2) of the Internal Revenue Code.[1] His claim was denied by the Commissioner and petitioner sued for a refund. On stipulated and uncontroverted facts the district court held, as a matter of law, that the payment should have been deducted and entered judgment for petitioner. 84 Fed. Supp. 537.[2] The court of appeals reversed. 188 Fed. (2d) 964. Because of the important statutory issue involved and petitioner's claim that this case is distinguishable from *Cobb* v. *Commissioner*, 173 Fed. (2d) 711, we granted certiorari. 342 U. S. 810.

I. Deductions from an individual's taxable income are limited to those allowed by section 23.[3] Their extent depends upon the legislative policy expressed in the fair and natural meaning of that section.[4]

Section 24 adds that in "computing net income no deduction shall in any case be allowed in respect of—(1) Personal, living, or family expenses * * *." 53 Stat. 16, 56 Stat. 826, 26 U. S. C. section 24(1). Insofar as gifts to members of a donor's family are in the nature of personal or family expenses, the donor's expenditures for accounting, legal or other services incurred in making those gifts are of a like nature. The nondeductibility of such expenditures, therefore, is indicated both by the absence of any affirmative allowance of their deductibility under section 23 and by the express denial of the deductibility of all personal or family expenses under section 24.

If the expenditure in the instant case had been made before 1942, it is clear that it would not have been deductible. At that time section 23 permitted an individual to deduct "ordinary and necessary expenses paid or incurred during the taxable year *in carrying on any trade or business* * * *." (Emphasis supplied.) 53 Stat. 12, 26 U. S. C. (1940 ed.) section 23(a)(1). It made no mention of nontrade or nonbusiness expenses. Accordingly, in *Higgins* v. *Commissioner*, 312 U. S. 212 [Ct. D. 1486, C. B. 1941-1, 339], when this Court held that expenses incurred by an individual taxpayer in looking

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[1] "SEC. 23. DEDUCTIONS FROM GROSS INCOME.
"In computing net income there shall be allowed as deductions:
"(a) EXPENSES.—
* * * * * * *
"(2) NON-TRADE OR NON-BUSINESS EXPENSES.—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year *for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.*" (Emphasis supplied.) 53 Stat. 12, 56 Stat. 819, 26 U. S. C. section 23(a)(2).

[2] "To construe the law as giving to the Commissioner the power to assess a taxpayer with a deficiency tax greatly in excess of what he owes and to hold that such law denies to the taxpayer the right to contest such assessment, except at his own personal expense, just isn't justice under the law. The statute in question gives the Commissioner no such power * * *" 84 Fed. Supp. 537, 539.

[3] The tax is "levied, collected, and paid for each taxable year upon the net income of every individual * * *." 53 Stat. 5, 26 U. S. C. section 11. "'Net income' means the gross income computed under section 22, less the deductions allowed by section 23." 53 Stat. 9, 26 U. S. C. section 21.

[4] There have been expressions by this Court placing a restrictive interpretation upon allowable deductions by virtue of "the now familiar rule that an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer." *Interstate Transit Lines* v. *Commissioner*, 319 U. S. 590, 593 [Ct. D. 1586, C. B. 1943, 1016]; *Deputy* v. *du Pont*, 308 U. S. 488, 493 [Ct. D. 1435, C. B. 1940-1, 118]; *New Colonial Ice Co.* v. *Helvering*, 292 U. S. 435, 440 [Ct. D. 841, C. B. XIII-1, 194 (1934)]. Such an interpretation is not necessary here and is not relied upon in this case. See Griswold, An Argument against the Doctrine that Deductions Should Be Narrowly Construed as a Matter of Legislative Grace, 56 Harv. L. Rev. 1142.

after his own income-producing securities were not expenses "incurred * * * in carrying on any trade or business," it also held that they were not deductible.[5]

To change that result, Congress, in 1942, added the present section 23(a)(2).[6] That provision, as demonstrated in its legislative history, permits the deduction of some, but not all, of the nontrade and nonbusiness expenses of an individual taxpayer. It specifies those paid or incurred (1) "for the production or collection of income" or (2) "for the management, conservation, or maintenance of property held for the production of income." See H. R. Rept. No. 2333, 77th Cong., 2d sess.[7] Congress might have gone further. However, neither the decision that occasioned the amendment, the Committee Reports on it, nor the language adopted in it indicate that Congress sought to make such a change of policy as would authorize widespread deductibility of personal, living or family expenditures in the face of section 24(1). *Bingham's Trust* v. *Commissioner*, 325 U. S. 365, 374 [Ct. D. 1643, C. B. 1945, 103]; *McDonald* v. *Commissioner*, 323 U. S. 57, 61-63 [Ct. D. 1617, C. B. 1944, 94].

Inasmuch as the ordinary and necessary character of the legal expenses incurred in the instant case is not questioned, their deductibility turns wholly upon the nature of the activities to which they relate.[8] The first issue, therefore, is whether petitioner's gifts, and the legal expenses related to them, were made for the "production or collection of income" within the meaning of section 23(a)(2). Generally a gift is the antithesis of such production or collection because it reduces the donor's resources whether income producing or not. However, petitioner suggests that although he stated in his gift tax return that the purpose of his gifts was to express his love for the donees, yet the gifts were part of a general plan to produce income for himself. In support of this, he points out that the gifts consisted of 1,000 shares of stock in a closely held family corporation of which he is the president and in which he retained personal ownership of about 2,000 like shares, and that one of the donees, his son, is now actively identified with the corporation and is one of its directors.[9] The district

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[5] And see *United States* v. *Pyne*, 313 U. S. 127 [Ct. D. 1509, C. B. 1941-1, 342] (attorney's fees and other expenses of executors in caring for securities and investments not deductible); *City Bank Co.* v. *Helvering*, 313 U. S. 121 [Ct. D. 1511, C. B. 1941-1, 344] (similar expenses of testamentary trustee not deductible); *Van Wart* v. *Commissioner*, 295 U. S. 112 [Ct. D. 963, C. B. XIV-1, 292 (1935)] (attorney's fee for litigation to recover income for a ward not deductible).

[6] See note 1, *supra*.

[7] "* * * Due partly to the inadequacy of the statute and partly to court decisions, nontrade or nonbusiness expenses are not deductible, although nontrade or nonbusiness income is fully subject to tax. The bill corrects this inequity by allowing all of the ordinary and necessary expenses paid or incurred for the production or collection of income or for the management, conservation or maintenance of property held for the production of income. Thus, whether or not the expense is in connection with the taxpayer's trade or business, if it is expended in the pursuit of income or in connection with property held for the production of income, it is allowable.

"* * * The expenses, however, of carrying on a transaction which does not constitute a trade or business of the taxpayer and is not carried on for the production of income or for the management, conservation, or maintenance of property, but which is carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses.

"Expenses, to be deductible under section 23(a)(2), must be ordinary and necessary, which rule presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of income, or to the management, conservation, or maintenance of property held for that purpose.

"A deduction under this section is subject, except for the requirement of being incurred in connection with a trade or business, to all the restrictions and limitations that apply in the case of the deduction under section 23(a)(1)(A) of an expense paid or incurred in carrying on any trade or business." Id., at 46, 75. To the same effect, see S. Rept. No. 1631, 77th Cong. 2d sess. at 87-88.

[8] For cases resulting in the nondeductibility of legal expenses, see (e. g., *Croker* v. *Burnet*, 62 Fed. (2d) 991 (C. A. D. C. Cir., *en banc*) (defending suit to have taxpayer's husband declared incompetent and to set aside his transfer of property to taxpayer); *Dickey* v. *Commissioner*, 14 B. T. A. 1295 (defense against suit for malicious prosecution); *Joyce* v. *Commissioner*, 3 B. T. A. 393 (defense of validity of postnuptial agreement); *Oransky* v. *Commissioner*, 1 B. T. A. 1239 (defense and settlement of action for death due to negligence of taxpayer's minor son using taxpayer's automobile). See *Kornhauser* v. *United States*, 276 U. S. 145 [T. D. 4222, C. B. VII-2, 267 (1928)], for an example of legal expenses held deductible as business expenditures rather than personal ones.

[9] The record shows that the corporation was organized in 1910 by petitioner's elder brothers and was originally engaged in the cattle, ranching and meat packing business. Later it engaged in extensive steamship and stevedoring operations through a subsidiary. While it was a large enterprise with numerous stockholders besides petitioner, his wife and children, the stock never had been on the open market. It was held by sons, nephews and sons-in-law of the Lykes brothers. It was the practice of the brothers to foster in this way a continuity of family ownership and management. At the time of petitioner's gift of 1,000 shares of common stock, there were outstanding about 25,000 shares of that class of stock.

court did not find that these facts, or anything else in the record, provided an adequate basis for reclassifying petitioner's stock transfers and his payment of a related legal fee as expenditures for the production of income, rather than as gifts accompanied by an ordinary and necessary attorney's fee for contesting the amount of a Federal gift tax treating the stock transfers as gifts. The court of appeals, on review of the entire record, expressly held that the transfers were gifts and that the attorney's fee was not proximately related to the production of income. That court then applied to the attorney's fee the interpretation of section 23(a)(2) approved in *Cobb* v. *Commissioner, supra*. We agree to the applicability of that interpretation which disallows the fee as a deduction from taxable income.[10]

Similarly, there is no substantial factual basis here for treating the stock transfers and the related attorney's fee as mere incidents of petitioner's "management, conservation, or maintenance of property held for the production of income." Even assuming that petitioner's 3,000 shares in Lykes Brothers, Inc., did constitute property originally held by him for the production of income, there is no finding, and no adequate basis for a finding, that his donation of one-third of that stock actually was not the gift he represented it to be. Petitioner does not claim that the gift itself is deductible and, if it, as the principal item in the transaction is not deductible, we find no adequate basis in this record for holding the related attorney's fee deductible.

II. Legal expenses do not become deductible merely because they are paid for services which relieve a taxpayer of liability. That argument would carry us too far. It would mean that the expense of defending almost any claim would be deductible by a taxpayer on the ground that such defense was made to help him keep clear of liens whatever income-producing property he might have. For example, it suggests that the expense of defending an action based upon personal injuries caused by a taxpayer's negligence while driving an automobile for pleasure should be deductible. Section 23(a)(2) never has been so interpreted by us. It has been applied to expenses on the basis of their immediate purposes rather than upon the basis of the remote contributions they might make to the conservation of a taxpayer's income-producing assets by reducing his general liabilities. See *McDonald* v. *Commissioner, supra*, at 62–63.

While the threatened deficiency assessment of nearly $150,000 added urgency to petitioner's resistance of it, neither its size nor its urgency determined its character. It related to the tax payable on petitioner's gifts, as gifts, and it was finally settled on an agreed revaluation of the securities constituting those gifts. The expense of contesting the amount of the deficiency was thus at all times attributable to the gifts, as such, and accordingly was not deductible.

If, as suggested, the relative size of each claim, in proportion to the income-producing resources of a defendant, were to be a touchstone of the deductibility of the expense of resisting the claim, substantial uncertainty and inequity would inhere in the rule. For example, the expense of defending a personal injury suit for negligence, or a suit for alienation of affections, claiming $1,000 damages, probably would not be a deductible expense for any defendant. On the other hand, if the same plaintiff on the same facts asked for $5,000, $10,000 or $100,000 damages, and the defendant held some income-producing property, that defendant might be permitted to deduct from his taxable income the same expense for precisely the same services as those upon which his less well-to-do neighbor would have to pay a tax in the other case. It is not a ground for defense that the claim, if justified, will consume income-producing property of the defendant. We find no such distinction made or implied in the Revenue Act.

III. While the Treasury regulations, in 1944, did not refer to the issue now before us, they were consistent with the position we have taken.[11] Furthermore, since 1946, T. D. 5513 [C. B. 1946–1, 61], 26 CFR section 29.23(a)-15(k), has unequivocally stated that legal expenses incurred by an individual in the determination of gift tax liability are not deductible. That interpretation of section 23(a)(2) appears in the following language:

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[10] The issue here is distinguishable from that in *Bingham's Trust* v. *Commissioner, supra*. In that case the legal expenses were incurred partly in contesting an income tax deficiency assessed against the taxpaying trust and partly in winding up the trust after its expiration. All of those expenses were integral parts of the management or conservation of the trust property for the production of income and, as such, deductible under section 23(a)(2).

[11] Treas. Reg. 111, section 29.23(a)-15(b).

"Expenses paid or incurred by an individual in determining or contesting any liability asserted against him do not become deductible * * * by reason of the fact that property held by him for the production of income may be required to be used or sold for the purpose of satisfying such liability. Thus, *expenses paid or incurred by an individual in the determination of gift tax liability*, except to the extent that such expenses are allocable to interest on a refund of gift taxes, *are not deductible, even though property held by him for the production of income must be sold to satisfy an assessment for such tax liability* or even though, in the event of a claim for refund, the amount received will be held by him for the production of income." (Emphasis supplied.)

Such a regulation is entitled to substantial weight. See *Commissioner* v. *South Texas Co.*, 333 U. S. 496, 501 [Ct. D. 1697, C. B. 1948–1, 82]; *Morrissey* v. *Commissioner*, 296 U. S. 344, 355 [Ct. D. 1064, C. B. XV–1, 264 (1936)]; *Fawcus Machine Co.* v. *United States*, 282 U. S. 375, 378 [Ct. D. 278, C. B. X–1, 424 (1931)]. Since the publication of that Treasury Decision, Congress has made many amendments to the Internal Revenue Code without revising this administrative interpretation of section 23(a)(2). See Revenue Act of 1948, c. 168, 62 Stat. 110; Revenue Act of 1950, c. 994, 64 Stat. 906; Revenue Act of 1951, c. 521, 65 Stat. 542; *Higgins* v. *Commissioner*, *supra*, at 216; *Morrissey* v. *Commissioner*, *supra*, at 345.

The judgment of the court of appeals accordingly is

Affirmed.

Mr. Justice BLACK dissents.

Dissenting opinion by Mr. Justice JACKSON, with whom Mr. Justice FRANKFURTER joins.

PART III.—CREDITS AGAINST TAX

SECTION 35.—CREDIT FOR TAX WITHHELD ON WAGES

SECTION 29.35–2: Credit for "special refunds" of employee social security tax. 1952–13–13844 T. D. 5903

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS ENDING AFTER DECEMBER 31, 1941

Regulations 111 amended pursuant to authority contained in section 322(a)(4) of the Internal Revenue Code, as added by section 206 (b)(1) and (c) of the Social Security Act Amendments of 1950 [C. B. 1950–2, 217, 237].

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On February 28, 1952, notice of proposed rule making with respect to regulations under section 322(a)(4) of the Internal Revenue Code, as added by section 206 (b)(1) and (c) of the Social Security Act Amendments of 1950 [C. B. 1950–2, 217, 237], approved August 28, 1950, was published in the Federal Register (17 F. R. 1764). No objection to the rules proposed having been received, the amendments of Regulations 111 [26 CFR, part 29] set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately after section 29.35–1, as added by Treasury Decision 5325 [C. B. 1944, 152], approved January 8, 1944 [26 CFR 29.35–1], the following:

SEC. 29.35–2. CREDIT FOR "SPECIAL REFUNDS" OF EMPLOYEE SOCIAL SECURITY TAX.—(*a*) *In general.*—In the case of an employee receiving wages from more than one employer during the calendar year, amounts may be deducted and withheld as employee social security tax under section 1400 with respect to more than $3,600 wages (for example, on $4,500 if the employee is paid $2,500 by one employer and $2,000 by another). Section 1401(d) permits, under certain conditions, a so-called "special refund" of the amount of such employee social security tax deducted and withheld with respect to wages in excess of $3,600 by reason of the employee working for more than one employer during the calendar year.

An employee who is entitled to a special refund of employee tax with respect to wages received during a calendar year commencing after December 31, 1950, and who is also required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year) may obtain the benefits of such special refund only by claiming credit for such special refund in the same manner as if such special refund were an amount deducted and withheld as income tax at the source under subchapter D of chapter 9. The credit with respect to a special refund is not allowable unless the return, amended return, or claim for refund, on which the special refund is claimed, is filed within 2 years after the calendar year in which payment is made of the wages with respect to which the special refund of tax is claimed. See section 1401(d) (3) and (4) and section 408.802(c) of Regulations 128 pertaining to tax under the Federal Insurance Contributions Act. For special provisions for claiming special refunds in the case of employees not required to file income tax returns, see section 408.802(c) (3) of Regulations 128.

The amount of the special refund allowed as a credit shall be considered as an amount deducted and withheld as income tax at the source under subchapter D of chapter 9. If the amount of such special refund when added to amounts deducted and withheld as income tax under subchapter D of chapter 1 exceeds the taxes imposed by such chapter, the amount of the excess constitutes an overpayment of income tax under chapter 1, and interest on such overpayment is allowed to the extent provided under section 3771 of the Code upon an overpayment of income tax resulting from a credit for income tax withheld at source. See section 322(a) (2) and (4).

(*b*) *Federal and State employees.*—The provisions of this section shall apply to the amount of a special refund (under section 1401(d)(4)(A)) allowable to an employee of a Federal agency or a wholly owned instrumentality of the United States, and to the amount of a special refund (under section 1401(d)(4)(B)) allowable to an employee of any State or political subdivision thereof (or any instrumentality of any one or more of the foregoing).

PAR. 2. There is inserted immediately preceding section 29.322–1 [26 CFR 29.322–1] the following:

SECTION 206 (b)(1) AND (c) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950 [APPROVED AUGUST 28, 1950]

* * * * * * *

(b) (1) Section 322(a) of the Internal Revenue Code is amended by adding at the end thereof the following new paragraph:

"(4) CREDIT FOR 'SPECIAL REFUNDS' OF EMPLOYEE SOCIAL SECURITY TAX.—The Commissioner is authorized to prescribe, with the approval of the Secretary, regulations providing for the crediting against the tax imposed by this chapter for any taxable year of the amount determined by the taxpayer or the Commissioner to be allowable under section 1401(d) as a special refund of tax imposed on wages received during the calendar year in which such taxable year begins. If more than one taxable year begins in such calendar year, such amount shall not be allowed under this section as a credit against the tax for any taxable year other than the last taxable year so beginning. The amount allowed as a credit under such regulations shall, for the purposes of this chapter, be considered an amount deducted and withheld at the source as tax under subchapter D of chapter 9."

* * * * * * *

(c) * * * the amendment made by subsection (b)(1) of this section shall be applicable only with respect to taxable years beginning after December 31, 1950, and only with respect to "special refunds" in the case of wages paid after December 31, 1950.

(This Treasury Decision is issued under authority contained in section 322(a)(4) of the Internal Revenue Code, as added by section 206 (b)(1) and (c) of the Social Security Act Amendments of 1950 (64 Stat. 538).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 27, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 2, 1952, 8:51 a. m.)

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

SECTION 41.—GENERAL RULE

SECTION 29.41-1: Computation of net income. 1952-9-13808
(Also Section 112(a), Section 29.112(a)-1; Mim. 6789
Section 117, Section 29.117-1.)

Modification of Mimeograph 6243 (C. B. 1948-1, 44) relating to futures trading and the Federal income tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., April 2, 1952.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Heads of Appellate Staff Districts, and Others Concerned:

1. Mimeograph 6243 (C. B. 1948-1, 44) is modified by changing the number of paragraph 5 thereof to 6 and by substituting a new paragraph 5 to read as follows:

5. Under authority contained in section 3791(b) of the Internal Revenue Code, the provisions of this mimeograph will be applied without retroactive effect with respect to those commodities futures trades (that is, the purchase and the corresponding sale or the sale and corresponding purchase) made prior to March 8, 1948, the date of issuance of this mimeograph, where at the time the trader instructed his broker to make the purchase or sale, he simultaneously specifically directed the broker to treat each such purchase or sale as a "long" purchase or "short" sale or as closing out a long or short position (unless by reason of the facts of the case such direction would not be needed to secure the desired treatment; for example, where a purchase was made through one broker and the corresponding sale made through another) and the broker acted in conformity with such direction and made appropriate entries on his books to reflect the necessary changes in the trader's account.

JOHN B. DUNLAP,
Commissioner.

SECTION 42.—PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED

SECTION 29.42–6: Noninterest-bearing obligations issued at a discount. 1952–4–13761
D. C. 885
(Amendment 1)

REGULATIONS GOVERNING OPTIONS OPEN TO OWNERS OF MATURING UNITED STATES SAVINGS BONDS OF SERIES E

[1952. First Amendment to Department Circular No. 885. Fiscal Service. Bureau of the Public Debt]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, January 9, 1952.

To Owners of United States Savings Bonds of Series E and Others Concerned:

Pursuant to the Second Liberty Bond Act, as amended, Subpart B of Department Circular No. 885 [C. B, 1951–2, 32], dated March 26, 1951, is hereby amended and revised to read as follows:

SUBPART B.—FURTHER INTEREST AFTER MATURITY

SEC. 329.3. Owners of Bonds of Series E, which mature on and after May 1, 1951, have the option of retaining the matured bonds for a further 10-year period and earning interest upon the maturity values thereof, payable at the rate of 2½ percent simple interest per annum, if redeemed during the first 7½ years, as provided in the table of redemption values at the end of these regulations, and payable at a higher rate thereafter so that the aggregate return for the 10-year extension period will be about 2.9 percent compounded semiannually. NO ACTION IS REQUIRED OF OWNERS DESIRING TO TAKE ADVANTAGE OF THE EXTENSION. MERELY BY CONTINUING TO HOLD THEIR BONDS AFTER MATURITY OWNERS WILL EARN FURTHER INTEREST IN ACCORDANCE WITH THE SCHEDULE SET FORTH IN THE TABLE AT THE END OF THESE REGULATIONS.[1]

SEC. 329.4. Interest hereunder accrues at the end of the first half-year period following maturity and each successive half-year period thereafter. If the bonds are redeemed before the end of the first half-year period following maturity, the owner is entitled to payment only at the face value thereof.

JOHN W. SNYDER,
Secretary of the Treasury.

SECTION 43.—PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN

SECTION 29.43–1: "Paid or incurred" and "paid or accrued." 1952–8–13800
I. T. 4078
(Also Section 29.43–2; Section 23(a), Section 29.23(a)–1.)

INTERNAL REVENUE CODE

The cost of a 1-year uniform professional baseball player's contract, with the standard optional renewal clause, purchased after

[1] The first sentence of section 329.3 of Subpart B as originally issued stated that interest upon the maturity values of the bonds would *accrue* at the rate of 2½ percent simple interest per annum for the first 7½ years, whereas the last sentence of that section makes it clear that the rate of accrual is governed by the schedule set forth in the table at the end of the regulations. Actually the schedule provides for the accrual of interest at a rate *higher* than 2½ percent for the 7- to 7½-year period following maturity, although such rate is collectible during (but not before) the 7½- to 8-year period (which in the schedule is designated as the 17½- to 18-year period after issue date). The purpose of this amendment is to render clear this attractive feature of the extended maturity value of Bonds of Series E.

the end of the playing season to which the contract related, constitutes a business expense for the taxable year in which "paid or incurred," depending on the method of accounting used by the purchaser.

I. T. 2993 (C. B. XV-2, 146 (1936)) revoked

I. T. 2993 (C. B. XV-2, 146 (1936)) holds that where a baseball club purchased from another club a 1-year "uniform player's contract," with the standard optional renewal clause, after the end of the playing season to which the contract related, and the purchaser engaged the player's services for 2 years, the cost of the contract should be amortized by the purchaser over the life of the new contract.

Upon reconsideration, it is held that the cost of a 1-year uniform professional baseball player's contract, with the standard optional renewal clause, purchased after the end of the playing season to which the contract related, constitutes a business expense for the taxable year in which "paid or incurred," depending on the method of accounting used by the purchaser. (See *Commissioner* v. *Pittsburgh Athletic Co.*, 72 Fed. (2d) 883, *Commissioner* v. *Chicago National League Ball Club*, 74 Fed. (2d) 1010, and *Helvering* v. *Kansas City American Association Baseball Co.*, 75 Fed. (2d) 600; see also sections 29.43-1 and 29.43-2 of Regulations 111, and the first rule established in I. T. 2932, C. B. XIV-2, 61 (1935).) Accordingly, I. T. 2993, *supra*, is hereby revoked.

SECTION 29.43-2: When charges deductible. 1952-8-13801
I. T. 4079

INTERNAL REVENUE CODE

Treatment by employers of deductions, for Federal income and excess profits tax purposes, of payments to employees pursuant to retroactive wage increases and salary adjustments awarded by the Salary Stabilization Board under the provisions of the Defense Production Act of 1950 (64 Stat. 798) and Executive Order 10161 (15 F. R. 6105), both as amended.

Advice is requested relative to the treatment by employers of deductions, for Federal income and excess profits tax purposes, of payments to employees pursuant to retroactive wage increases and salary adjustments awarded by the Salary Stabilization Board under the provisions of the Defense Production Act of 1950 (64 Stat. 798) and Executive Order 10161 (15 F. R. 6105), both as amended.

I. T. 3716 (C. B. 1945, 140) holds that in a case in which an employer was ready and willing to pay retroactive wage increases requiring the approval of the National War Labor Board, the amounts of such increased wages awarded by the Board are deductible for the year in which the employer filed an application for such approval with the Board, to the extent that such payments relate to services rendered in the year of the application or years prior thereto. I. T. 3716 also holds that in a case in which the employer contests the wage increases or allowances and retroactive pay increases are ordered by the National War Labor Board, the deduction therefor is allowable only for the year in which the controversy is settled. I. T. 3716 states that this principle is equally applicable to wage and salary adjustments under Public Law 729 (56 Stat. 765), approved October 2, 1942, as amended, which adjustments are subject to the approval

of the National War Labor Board, the Commissioner of Internal Revenue, or the War Food Administrator.

The principles set forth in I. T. 3716, *supra*, are applicable to retroactive wage increases and salary adjustments awarded by the Salary Stabilization Board under the provisions of the Defense Production Act of 1950 (64 Stat. 798) and Executive Order 10161 (15 F. R. 6105), both as amended.

SECTION 29.43-2: When charges deductible.

INTERNAL REVENUE CODE

Cost of 1-year baseball player's contract with renewal option. (See I. T. 4078, page 39.)

SECTION 29.43-2: When charges deductible.

INTERNAL REVENUE CODE

Interest on predated bonds issued in connection with reorganization. (See Ct. D. 1745, page 21.)

PART V.—RETURNS AND PAYMENT OF TAX

SECTION 52.—CORPORATION RETURNS

SECTION 29.52-1: Corporation returns. 1952-8-13802
G. C. M. 27080

INTERNAL REVENUE CODE

A corporation was organized under the laws of a certain State, its corporate life being fixed in the charter at 30 years. The expiration of the 30-year period was not discovered until a short time thereafter, at which time a new corporation was organized under the laws of the same State, with the same name and capital structure. The assets of the old corporation were then conveyed to the new corporation in exchange for the capital stock of the latter, the stock certificates being issued to the stockholders of the old corporation in the same ratio and amount as their stockholders in that corporation. *Held*, for Federal income tax purposes, the two corporations should be treated as separate and distinct taxable entities which are required to file separate Federal income tax returns.

S. M. 4947A (C. B. V-2, 120 (1926)) modified.

An opinion is requested whether separate and distinct corporate entities are to be recognized, for Federal income tax purposes, under the circumstances hereinafter stated.

In the instant case, a corporation had been organized under the laws of a certain State, its corporate life being fixed in the charter at 30 years. The expiration of the 30-year period was not discovered until a short time thereafter, at which time a new corporation was organized under the laws of the same State, with the same name and capital structure. The assets of the old corporation were then conveyed to the new corporation in exchange for the capital stock of the latter, the stock certificates being issued to the stockholders of the

old corporation in the same ratio and amount as their stockholdings in that corporation.

S. M. 4947A (C. B. V–2, 120 (1926)) holds in part and in effect that where, by reason of the expiration of the charter of a corporation, it became necessary to organize a new corporation under the laws of the same State with the same corporate powers and the same stockholdings as those in the old corporation, the new corporation is, for taxing purposes, a continuation of the corporate entity of the old corporation, and that only one income tax return is required. It is believed, however, that such conclusions should no longer be followed in view of the principles set forth in *New Colonial Ice Co., Inc.*, v. *Helvering* (292 U. S. 435; Ct. D. 841, C. B. XIII–1, 194 (1934)).

In the New Colonial Ice Co. case, a corporation, pursuant to a reorganization agreement, transferred its assets, liabilities, and business on April 13, 1922, to a new corporation organized under the laws of the same State, after which transfer the new corporation had substantially the same stock, stockholdings, corporate powers, and business as the old corporation. During 1921 and the part of 1922 preceding the transfer, the old corporation had sustained statutory net losses which the new corporation, attempting to treat itself as a continuation of the old corporate entity, claimed as a deduction from its income realized during 1922 and 1923. The Court held that the two corporations were separate and distinct corporate entities, basing its opinion on the fact that there was a voluntary and contractual transfer, not by operation of law, of assets and business from one corporation to the other.

In *Weber Flour Mills Co.* v. *Commissioner* (82 Fed. (2d) 764), a case not involving a reorganization, a corporation was created upon the expiration of the charter of its predecessor corporation, and all of the assets and the business of the old corporation were transferred to the new corporation. The new corporation, organized under the laws of the same State, had precisely the same capital structure as that of the old corporation. The court followed the principles and conclusions in the New Colonial Ice Co. case and held that the two corporations were separate taxable entities.

In view of the foregoing, it is the opinion of this office that, for Federal income tax purposes, the two corporations in the instant case should be treated as separate and distinct taxable entities which are required to file separate Federal income tax returns. Accordingly, S. M. 4947A, *supra*, is hereby modified.

MASON B. LEMING,
Acting Chief Counsel, Bureau of Internal Revenue.

SECTION 53.—TIME AND PLACE FOR FILING RETURNS

SECTION 29.53–2: Extensions of time for filing returns. 1952–7–13789 T. D. 5890

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A. PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Time extended for filing income and excess profits tax returns of members of a group of affiliated corporations for taxable years ending after March 31, 1951, and before April 1, 1952.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

Pursuant to the authority contained in section 53(a)(2) of the Internal Revenue Code, the time for filing the return for a taxable year ending after March 31, 1951, and before April 1, 1952, by a corporation having the privilege of making a consolidated return for such taxable year under section 141 of the Code is hereby extended to and including July 15, 1952.

Inasmuch as this Treasury Decision cannot effectuate its purpose unless it is promulgated prior to March 15, 1952, it is found that it is impracticable to issue this Treasury Decision with notice of public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in sections 53(a)(2), 62, and 3791 of the Internal Revenue Code (53 Stat. 28, 32, 467; 26 U. S. C. 53(a)(2), 62, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved March 12, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 12, 1952, 10:35 a. m.)

SECTION 29.53–2: Extensions of time for filing returns. 1952–1–13744
Mim. 6741
(Also Section 56, Section 29.56–2.)

Time extended for filing income and excess profits tax returns of corporate taxpayers for taxable years ended after March 31, 1951, and before December 1, 1951.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 21, 1951.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, and Others Concerned:

1. Section 124 of the Revenue Act of 1951 provides in effect that, for taxable years which ended after March 31, 1951, but before October 1, 1951, corporate taxpayers subject to the income and excess profits tax shall, after the date of enactment (October 20, 1951) of the Revenue Act of 1951 and on or before January 15, 1952, make and file returns for such taxable years with respect to the tax imposed by chapter 1 of the Internal Revenue Code, as amended by the Revenue Act of 1951. Under the provisions of section 124 of the Revenue Act of 1951, such return, so made and filed, shall constitute the return for such taxable year for all purposes of the Internal Revenue Code, and any return for any of the specified taxable years that may have been filed on or before October 20, 1951, shall not be considered a return for such year for any purposes of the Internal Revenue Code.

Corporate taxpayers having taxable years ending October 31, 1951, and November 30, 1951, are required, under the provisions of section 53(a)(1) of the Internal Revenue Code, to file income and excess profits tax returns on or before January 15, 1952, and February 15, 1952, respectively.

2. In view of the problems confronting corporate taxpayers as the result of the enactment of the Revenue Act of 1951 on October 20, 1951, a general extension of time is hereby granted to all corporate taxpayers to and including March 15, 1952, for the filing of income and excess profits tax returns and the payment of any tax due for taxable years ending after March 31, 1951, and before December 1, 1951. This extension of time is granted under the authority of sections 53(a)(2) and 56(c)(1) of the Internal Revenue Code.

3. For the purpose of the computation of interest with respect to the payment of any tax due on income and excess profits tax returns filed pursuant to the extension granted under paragraph 2, such extension shall be deemed to have been granted for such period only as may be necessary to make and file the required return. Accordingly, interest on the difference between the amount of tax shown to be due on the return so made and filed and the amount already paid will be computed at the rate of 6 percent only from the original due date of such return to the date of payment. Any corporate taxpayer desiring to avoid the accumulation of interest charges on the amount of income and excess profits taxes due on returns to be filed under the extension granted may make an advance payment to the collector of internal revenue for the district in which such return will be filed, clearly identifying such payment in order to aid the collector of internal revenue in the proper application of such payment and in computing interest on deferred payments.

4. Correspondence regarding this mimeograph should refer to its number and the symbols A&C:Col.

JOHN B. DUNLAP,
Commissioner.

SECTION 29.53-2: Extensions of time for filing returns. 1952-1-13745
Mim. 6742

Extensions of time for filing income tax returns

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 26, 1951.

Collectors of Internal Revenue and Others Concerned:

1. Under the provisions of section 29.53-2, Regulations 111, authority for granting extensions of time for filing income tax returns has been delegated to collectors of internal revenue. Heretofore it has been the policy to limit the granting of extensions in the first instance to a period of 30 days. However, in unusual cases where the circumstances warrant the action, collectors are authorized to grant additional time for filing returns up to the maximum of 6 months.

2. Hereafter it will be the policy for collectors in granting extensions of time for filing individual and corporation income tax returns, whenever necessary, to grant the extension for a period of 90 days in the first instance. In granting such extensions, collectors shall urge

upon the taxpayer the importance of filing the returns within the 90-day period so as to avoid the necessity of acting upon requests for additional time, except where absolutely necessary.

3. In granting extensions of time for filing returns, the usual conditions as set forth in Mimeograph 6157 [C. B. 1947–2, 64], dated July 1, 1947, will be observed with respect to (1) filing requests, (2) meritorious reasons for the request, and (3) in the case of corporations, tentative returns and the payment of installments of taxes as due. In all cases it will be necessary, under section 295 of the Internal Revenue Code, to assert interest at the rate of 6 percent per annum on the unpaid amount of tax or installment thereof from the due date until the expiration of the period of the extension.

4. Correspondence relating to the contents of this mimeograph should refer to its number and to the symbols A&C: Col.

JOHN B. DUNLAP,
Commissioner.

SECTION 29.53–2: Extensions of time for filing returns. 1952–7–13790
Mim. 6777
(Also Section 56, Section 29.56–2.)

Extension of time for filing income and excess profits tax returns of corporate taxpayers for taxable years ending after March 31, 1951, and before December 1, 1951.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 10, 1952.

Collectors of Internal Revenue and Others Concerned:

1. Mimeograph 6741 (page 43, this Bulletin), dated December 21, 1951, granted (paragraph 2) a general extension of time to all corporate taxpayers to and including March 15, 1952, for the filing of income and excess profits tax returns and the payment of any tax due for taxable years ending after March 31, 1951, and before December 1, 1951. That extension of time was granted under the authority of sections 53(a)(2) and 56(c)(1) of the Internal Revenue Code.

2. Many inquiries have been received as to the maximum extension of time beyond March 15, 1952, which collectors will be authorized to grant to such corporate taxpayers.

3. The general extension of time which has been granted by Mimeograph 6741 is to be included as a portion of the maximum time provided in sections 53(a)(2) and 56(c)(1) of the Code, and any additional extension shall be limited to the date set forth below:

Taxable year	*Expiration date of maximum extension*
Ending after March 31, 1951, but before October 1, 1951	July 15, 1952.
Ending October 31, 1951	July 15, 1952.
Ending November 30, 1951	August 15, 1952.

4. The requirements of existing regulations and instructions with respect to granting extensions must be observed.

5. Correspondence regarding this mimeograph should refer to its number and the symbols A&C: Col.

FRED S. MARTIN,
Assistant Commissioner.

SECTION 55.—PUBLICITY OF RETURNS

1952-2-13749
T. D. 5877

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 458.—INSPECTION OF RETURNS

Inspection of income, excess-profits, declared value excess-profits, capital stock, estate, and gift tax returns by Senate Committee on Armed Services.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

SEC. 458.309. INSPECTION OF RETURNS BY SENATE COMMITTEE ON ARMED SERVICES.—(*a*) Pursuant to the provisions of sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U. S. C. 55(a), 508, 603, 729(a), and 1204), and of the Executive order issued thereunder, any income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax return for any period to and including 1950 shall be open to inspection by the Senate Committee on Armed Services or any duly authorized subcommittee thereof, for the purpose of exercising a continuous watchfulness through a continuous study of all policies, programs, activities, operations, facilities, requirements, and practices of the Department of Defense, the armed services, and other agencies exercising functions relating to them, and the administration thereof.

The inspection of returns herein authorized may be made by the committee or a duly authorized subcommittee thereof, acting directly as a committee or as a subcommittee, or by or through such examiners or agents as the committee or subcommittee may designate or appoint in its written request hereinafter mentioned. Upon written request by the chairman of the committee or of the authorized subcommittee to the Secretary of the Treasury, giving the names and addresses of the taxpayers whose returns it is necessary to inspect and the taxable periods covered by the returns, the Secretary and any officer or employee of the Treasury Department 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 the committee or subcommittee or by such examiners or agents as the committee or subcommittee may designate or appoint, in the office of the Commissioner of Internal Revenue. Any information thus obtained by the committee or subcommittee thereof shall be held confidential: *Provided, however*, That any portion or portions thereof relevant or pertinent to the purpose of the investigation may be submitted by the committee to the United States Senate.

(*b*) Because of the immediate need of the said Senate Committee on Armed Services to inspect the tax returns herein mentioned, it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(*c*) This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

JOHN W. SNYDER,
Secretary of the Treasury.

Approved December 29, 1951.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register December 29, 1951, 11 : 36 a. m.)

INSPECTION OF INCOME, EXCESS-PROFITS, DECLARED VALUE EXCESS-PROFITS, CAPITAL STOCK, ESTATE, AND GIFT TAX RETURNS BY THE SENATE COMMITTEE ON ARMED SERVICES

By virtue of the authority vested in me by sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U. S. C. 55(a), 508, 603, 729(a), and 1204), it is hereby ordered that any income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax return for any period to and including 1950 shall be open to inspection by the Senate Committee on Armed Services or any duly authorized subcommittee thereof for the purpose of exercising a continuous watchfulness through a continuous study of all policies, programs, activities, operations, facilities, requirements, and practices of the Department of Defense, the armed services, and other agencies exercising functions relating to them, and the administration thereof, subject to the conditions stated in the Treasury Decision relating to the inspection of such returns by that committee, approved by me this date.

This Executive order shall be effective upon its filing for publication in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE,
December 29, 1951.

(E. O. 10316)

(Filed with the Division of the Federal Register December 29, 1951, 11 : 36 a. m.)

1952–3–13759
T. D. 5878

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 458.—INSPECTION OF RETURNS

Inspection of income, excess-profits, declared value excess-profits, capital stock, estate, and gift tax returns by Senate Committee on Rules and Administration.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

SEC. 458.310. INSPECTION OF RETURNS BY SENATE COMMITTEE ON RULES AND ADMINISTRATION.—(*a*) Pursuant to the provisions of sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U. S. C. 55(a), 508, 603, 729(a), and 1204), and of the Executive order issued

thereunder, any income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax return for any period to and including 1950 shall, during the Eighty-second Congress, be open to inspection by the Senate Committee on Rules and Administration or any duly authorized subcommittee thereof in connection with its studies of matters relating to the election of Members of Congress, corrupt practices, contested elections, credentials and qualifications, and Federal elections generally.

The inspection of returns herein authorized may be made by the committee or a duly authorized subcommittee thereof, acting directly as a committee or as a subcommittee, or by or through such examiners or agents as the committee or subcommittee may designate or appoint in its written request hereinafter mentioned. Upon written request by the chairman of the committee or of the authorized subcommittee to the Secretary of the Treasury, giving the names and addresses of the taxpayers whose returns it is necessary to inspect and the taxable periods covered by the returns, the Secretary and any officer or employee of the Treasury Department 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 the committee or subcommittee or by such examiners or agents as the committee or subcommittee may designate or appoint, in the office of the Commissioner of Internal Revenue. Any information thus obtained by the committee or subcommittee thereof shall be held confidential: *Provided, however,* That any portion or portions thereof relevant or pertinent to the purpose of the investigation may be submitted by the committee to the United States Senate.

(*b*) Because of the immediate need of the said Senate Committee on Rules and Administration to inspect the tax returns herein mentioned, it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(*c*) This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

JOHN W. SNYDER,
Secretary of the Treasury.

Approved January 24, 1952.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register January 24, 1952, 4:59 p. m.)

INSPECTION OF INCOME, EXCESS-PROFITS, DECLARED VALUE EXCESS-PROFITS, CAPITAL STOCK, ESTATE, AND GIFT TAX RETURNS BY THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

By virtue of the authority vested in me by sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U. S. C. 55(a), 508, 603, 729(a), and 1204), it is hereby ordered that any income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax return for any

period to and including 1950 shall, during the Eighty-second Congress, be open to inspection by the Senate Committee on Rules and Administration or any duly authorized subcommittee thereof in connection with its studies of matters relating to the election of Members of Congress, corrupt practices, contested elections, credentials and qualifications, and Federal elections generally, subject to the conditions stated in the Treasury Decision relating to the inspection of such returns by that committee, approved by me this date.

This Executive order shall be effective upon its filing for publication in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE,
January 24, 1952.

(E. O. 10321)

(Filed with the Division of the Federal Register January 24, 1952, 4:59 p. m.)

1952–5–13768
T. D. 5882

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 458.—INSPECTION OF RETURNS

Inspection of income, excess-profits, declared value excess-profits, capital stock, estate, and gift tax returns by the Senate Committee on Expenditures in the Executive Departments.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

SEC. 458.307a. INSPECTION OF RETURNS BY SENATE COMMITTEE ON EXPENDITURES IN THE EXECUTIVE DEPARTMENTS DURING SECOND SESSION, EIGHTY-SECOND CONGRESS.—(*a*) Pursuant to the provisions of sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U. S. C. 55(a), 508, 603, 729(a), and 1204), and of the Executive order issued thereunder, any income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax return for the years 1945 to 1950, inclusive, shall, during the second session of the Eighty-second Congress, be open to inspection by the Senate Committee on Expenditures in the Executive Departments or the duly authorized subcommittee thereof, in connection with its studies of the operation of Government activities at all levels with a view to determining its economy and efficiency.

The inspection of returns herein authorized may be made by the committee or such duly authorized subcommittee thereof, acting directly as a committee or as a subcommittee, or by or through such examiners or agents as the committee or the subcommittee may designate or appoint in its written request hereinafter mentioned. Upon written request by the chairman of the committee or of the authorized subcommittee to the Secretary of the Treasury, giving the names and addresses of the taxpayers whose returns it is necessary to inspect and the taxable periods covered by the returns, the Secretary and any officer or employee of the Treasury Department 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 the committee or the subcommittee or by such examiners or agents as the committee or the subcommittee may designate or appoint, in the office of the Commissioner of Internal Revenue. Any information thus obtained by the committee or the subcommittee thereof shall be held confidential: *Provided, however*, That any portion or portions thereof relevant or pertinent to the purpose of the investigation may be submitted by the committee to the United States Senate.

(*b*) Because of the immediate need of the said committee to inspect the tax returns herein mentioned, it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(*c*) This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

JOHN W. SNYDER,
Secretary of the Treasury.

Approved February 11, 1952.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register February 11, 1952, 2:39 p. m.)

INSPECTION OF INCOME, EXCESS-PROFITS, DECLARED VALUE EXCESS-PROFITS, CAPITAL STOCK, ESTATE, AND GIFT TAX RETURNS BY THE SENATE COMMITTEE ON EXPENDITURES IN THE EXECUTIVE DEPARTMENTS

By virtue of the authority vested in me by sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U. S. C. 55(a), 508, 603, 729(a), and 1204), it is hereby ordered that any income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax return for the years 1945 to 1950, inclusive, shall, during the second session of the Eighty-second Congress, be open to inspection by the Senate Committee on Expenditures in the Executive Departments or the duly authorized subcommittee thereof in connection with its studies of the operation of Government activities at all levels with a view to determining its economy and efficiency, subject to the conditions stated in the Treasury Decision relating to the inspection of such returns by that committee, approved by me this date.

This Executive order shall be effective upon its filing for publication in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE,
February 11, 1952.

(E. O. 10326)

(Filed with the Division of the Federal Register February 11, 1952, 2:39 p. m.)

1952-6-13785
T. D. 5886

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 458.—INSPECTION OF RETURNS

Inspection of income tax returns by the Senate Committee on Interior and Insular Affairs.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

SEC. 458.311. INSPECTION OF RETURNS BY SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS.—(*a*) Pursuant to the provisions of section 55(a) of the Internal Revenue Code (53 Stat. 29, 54 Stat. 1008, 55 Stat. 722; 26 U. S. C. 55(a)), and of the Executive order issued thereunder, any income tax return for the years 1946 to 1950, inclusive, shall, during the Eighty-second Congress, be open to inspection by the Senate Committee on Interior and Insular Affairs or any duly authorized subcommittee thereof in connection with its studies of relations of the United States with the Indians and the Indian tribes and measures relating to the care, education, and management of Indians, including the care and allotment of Indian lands and general and special measures relating to claims which are paid out of Indian funds.

The inspection of returns herein authorized may be made by the committee or a duly authorized subcommittee thereof, acting directly as a committee or as a subcommittee, or by or through such examiners or agents as the committee or subcommittee may designate or appoint in its written request hereinafter mentioned. Upon written request by the chairman of the committee or of the authorized subcommittee to the Secretary of the Treasury, giving the names and addresses of the taxpayers whose returns it is necessary to inspect and the taxable periods covered by the returns, the Secretary and any officer or employee of the Treasury Department 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 the committee or subcommittee or by such examiners or agents as the committee or subcommittee may designate or appoint, in the office of the Commissioner of Internal Revenue. Any information thus obtained by the committee or subcommittee shall be held confidential: *Provided, however*, That any portion or portions thereof relevant or pertinent to the purpose of the investigation may be submitted by the committee to the United States Senate.

(*b*) Because of the immediate need of the said Senate Committee on Interior and Insular Affairs to inspect the tax returns herein mentioned, it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(c) This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

JOHN W. SNYDER,
Secretary of the Treasury.

Approved March 4, 1952.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register March 4, 1952, 1:56 p. m.)

INSPECTION OF INCOME TAX RETURNS BY THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat. 29, 54 Stat. 1008, 55 Stat. 722; 26 U. S. C. 55(a)), it is hereby ordered that any income tax return for the years 1946 to 1950, inclusive, shall, during the Eighty-second Congress, be open to inspection by the Senate Committee on Interior and Insular Affairs or any duly authorized subcommittee thereof in connection with its studies of relations of the United States with the Indians and the Indian tribes and measures relating to the care, education, and management of Indians, including the care and allotment of Indian lands and general and special measures relating to claims which are paid out of Indian funds, subject to the conditions stated in the Treasury Decision relating to the inspection of such returns by that committee, approved by me this date.

This Executive order shall be effective upon its filing for publication in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE,
March 4, 1952.

(E. O. 10331)

(Filed with the Division of the Federal Register March 4, 1952, 1:56 p. m.)

1952–9–13815
T. D. 5894

TITLE 26—INTERNAL REVENUE.—CHAPTER I. SUBCHAPTER E, PART 458.—INSPECTION OF RETURNS

Inspection of certain tax returns by the Committee on the Judiciary, House of Representatives.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

SEC. 458.312. INSPECTION OF RETURNS BY COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES.—(a) Pursuant to the provisions of sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54 Stat. 989, 1008, 55 Stat. 722; 26 U. S. C. 55(a), 508, 603, 729(a), and 1204), and of the Executive order issued thereunder, any income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax return for any period

to and including 1951, shall, during the Eighty-second Congress, be open to inspection by the Committee on the Judiciary, House of Representatives, or any duly authorized subcommittee thereof in connection with its inquiry with reference to the administration of the Department of Justice and the office of the Attorney General of the United States.

The inspection of returns herein authorized may be made by the committee or a duly authorized subcommittee thereof, acting directly as a committee or as a subcommittee, or by or through such examiners or agents as the committee or subcommittee may designate or appoint in its written request hereinafter mentioned. Upon written request by the chairman of the committee or of the authorized subcommittee to the Secretary of the Treasury, giving the names and addresses of the taxpayers whose returns it is necessary to inspect and the taxable periods covered by the returns, and stating the specific allegations and complaints with respect to each taxpayer whose return is sought and the nature of the credible evidence upon which such allegations and complaints are based, the Secretary and any officer or employee of the Treasury Department 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 the committee or subcommittee or by such examiners or agents as the committee or subcommittee may designate or appoint, in the office of the Commissioner of Internal Revenue. Any information thus obtained by the committee or subcommittee shall be held confidential: *Provided, however,* That any portion or portions thereof relevant or pertinent to the purpose of the investigation may be submitted by the committee to the House of Representatives.

(*b*) Because of the immediate need of the said Committee on the Judiciary to inspect the tax returns herein mentioned, it is found that it is impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(*c*) This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

Approved April 12, 1952.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register April 14, 1952, 11:39 a. m.)

INSPECTION OF TAX RETURNS BY COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES

By virtue of the authority vested in me by sections 55(a), 508, 603, 729(a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54 Stat. 989, 1008; 55 Stat. 722; 26 U. S. C. 55(a), 508, 603, 729(a), and 1204), it is hereby ordered that any income, excess-profits, declared value excess-profits, capital stock, estate, or gift tax return for any

period to and including 1951, shall, during the Eighty-second Congress, be open to inspection by the Committee on the Judiciary, House of Representatives, or any duly authorized subcommittee thereof, in connection with the inquiry authorized by resolution of said committee adopted January 29, 1952, with reference to the administration of the Department of Justice and the office of the Attorney General of the United States, when the chairman of such committee or subcommittee submits a written statement of the specific allegations and complaints with respect to each taxpayer whose return is sought, and the nature of the credible evidence upon which such allegations and complaints are based, subject to the conditions stated in the Treasury Decision relating to the inspection of such returns by that committee, approved by me this date.

This Executive order shall be effective upon its filing for publication in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE,
April 12, 1952.

(E. O. 10343)

(Filed with the Division of the Federal Register April 14, 1952, 11:39 a. m.)

SECTION 29.55(b)-1: Inspection of returns. 1952-2-13751
Mim. 6747

Charges applicable to the furnishing of copies of returns and other documents.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., January 3, 1952.

Officers and Employees, Bureau of Internal Revenue, and Others Concerned:

1. The following revised charges are established for copies of returns or other documents furnished to applicants authorized to receive them pursuant to existing laws and regulations which do not specifically set forth the charges to be made for such service:

a. Except as set forth below, a charge of 50 cents per page will be made for each copy of a return or other document.

b. For each copy of Form W-2 or of other returns and documents of substantially the same size, a charge of 50 cents each will be made, even though copies of both sides of the return or document are furnished.

c. For each copy of a page substantially larger than the size used in the largest income tax returns, the basic rate of 50 cents per page will be increased proportionately (in multiples of 25 cents) to such amount as may appear reasonable under the circumstances.

d. A charge of 50 cents will be made for each certification.

e. No charges will be made for copies of returns or other documents furnished for official use by the officers of any branch of the Federal Government.

2. Copies of returns or other documents will be mailed promptly to applicants, accompanied by statements of account in the form attached when charges are to be made. The statement of account should be prepared in triplicate (quadruplicate in the case of applications by State governments), the original and one copy being forwarded to the applicant (original and two copies in the case of State governments) and the remaining copy being retained pending receipt of payment. When payment is received, the date and amount thereof will be noted on the retained copy of the statement of account, and if the payment is by cash, an appropriate receipt will be issued.

3. The statements of account will be prepared by the office complying with the request for copies of returns or other documents. All remittances received by field offices other than offices of collectors of internal revenue will be forwarded to the appropriate collector of internal revenue together with the retained copy of the statement of account, for deposit as miscellaneous receipts. Remittances received by divisions or offices of the Bureau in Washington complying with requests for copies of returns or other documents will be forwarded to the Administrative Services Branch of the Income Tax Division, for deposit as miscellaneous receipts.

4. This mimeograph will be effective with respect to all copies of returns or other documents furnished on or after February 1, 1952, and supersedes Mimeograph 3512 (C. B. VI-1, 100 (1927)), dated February 4, 1927. All other instructions in conflict with the provisions of this mimeograph are also superseded to the extent of the conflict.

JOHN B. DUNLAP,
Commissioner.

Attachment—Exhibit A.

EXHIBIT A

(To be prepared on office letterhead)

(Insert date)

(Name and
address of applicant)

(Salutation)

The amount shown below is due, pursuant to existing laws and regulations, for the copies of returns or other documents enclosed herewith:

------ copies of returns or other documents @ $0.50 per page	$----------
------ copies of other returns or documents @ ————	----------
------ certifications @ $0.50	----------
Total amount due	----------

Remittance should be made payable to the collector of internal revenue (Treasurer of the United States, in the case of statements issued by offices of the Bureau in Washington) and forwarded, *together with a copy of this statement, to this office.* Stamps are not accepted in payment.

Very truly yours,

(Title of officer)

Enclosure:
1 copy of this letter.

SECTION 56.—PAYMENT OF TAX

SECTION 29.56-2: Extension of time for payment of the tax or installment thereof.

INTERNAL REVENUE CODE

Corporate taxpayers for taxable years ended after March 31, 1951, and before December 1, 1951. (See Mim. 6741, page 43.)

SECTION 29.56-2: Extension of time for payment of the tax or installment thereof.

INTERNAL REVENUE CODE

Corporate taxpayers for taxable years ended after March 31, 1951, and before December 1, 1951. (See Mim. 6777, page 45.)

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS

SUPPLEMENT A.—RATES OF TAX

SECTION 107.—COMPENSATION FOR SERVICES RENDERED FOR A PERIOD OF THIRTY-SIX MONTHS OR MORE AND BACK PAY

SECTION 29.107-2: Artistic work or invention. (Also Section 117, Sections 29.117-1, 29.117-6, 29.117-7, and 29.117-10.) 1952-5-13769 T. D. 5881

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Regulations 111 amended to conform to sections 210 and 211 of the Revenue Act of 1950, relating to definition of capital assets and to certain short sales of capital assets.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On September 20, 1951, notice of proposed rule making, regarding sections 210 and 211 of the Revenue Act of 1950, approved September 23, 1950, was published in the Federal Register (16 F. R. 9570). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments set forth below are hereby adopted. Such amendments are necessary in order to conform Regulations 111 [26 CFR, part 29] to sections 210 and 211 of the Revenue Act of 1950.

PARAGRAPH 1. Section 29.107-2, as amended by Treasury Decision 5458 [C. B. 1945, 45], approved June 15, 1945 [26 CFR 29.107-2] is further amended by adding at the end of the first paragraph thereof the following new sentence:

In the case of taxable years beginning after September 23, 1950, for the purpose of determining the tax which would be attributable to gain on the sale o

exchange of an artistic work had such gain been received ratably in any prior taxable year, such gain shall be treated as gain from the sale or exchange of property which is not a capital asset.

PAR. 2. There is inserted immediately preceding section 29.117–1 [26 CFR 29.117–1] the following:

SEC. 210. CAPITAL GAINS AND LOSSES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) DEFINITION OF CAPITAL ASSETS.—Section 117(a)(1) (relating to the definition of capital assets) is hereby amended to read as follows:

"(1) CAPITAL ASSETS.—The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

"(A) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

"(B) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l), or real property used in his trade or business;

"(C) a copyright; a literary, musical, or artistic composition; or similar property; held by—

"(i) a taxpayer whose personal efforts created such property, or

"(ii) a taxpayer in whose hands the basis of such property is determined, for the purpose of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in the hands of the person whose personal efforts created such property; or

"(D) an obligation of the United States or any of its possessions, or of a State or Territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue."

(b) AMENDMENT OF SECTION 117(j).—The first sentence of section 117(j)(1) is hereby amended by inserting before the period at the end thereof the following: ", or (C) a copyright, a literary, musical, or artistic composition, or similar property, held by a taxpayer described in subsection (a)(1)(C)".

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after the date of the enactment of this Act.

PAR. 3. Section 29.117–1, as amended by Treasury Decision 5425 [C. B. 1945, 10, 29], approved December 29, 1944 [26 CFR 29.117–1], is further amended by adding at the end of the second paragraph thereof the following new paragraph:

With respect to taxable years beginning after September 23, 1950, a copyright, a literary, musical, or artistic composition, and similar property are excluded from the term "capital assets" if held by a taxpayer whose personal efforts created such property, or held by a taxpayer in whose hands the basis of such property is determined, for the purpose of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in the hands of the person whose personal efforts created such property. As to the application of section 117(j) to the sale or exchange of such property held by such a taxpayer, see section 29.117–7. The phrase "similar property" includes, for example, such property as a theatrical production, a radio program, a newspaper cartoon strip, or any other property eligible for copyright protection (whether under statute or common law), but does not include a patent or an invention, or a design which may be protected only under the patent law and not under the copyright law.

PAR. 4. Section 29.117-6 [26 CFR 29.117-6] is amended as follows:

(A) By changing the title thereof to read "GAINS AND LOSSES FROM SHORT SALES; IN GENERAL."

(B) By adding at the end thereof the following new paragraph:

As to certain short sales of capital assets made after September 23, 1950, to which section 117(l) applies, see section 29.117-10.

PAR. 5. Section 29.117-7, as amended by Treasury Decision 5394 [C. B. 1944, 274], approved July 27, 1944 [26 CFR 29.117-7], is further amended as follows:

(A) By adding after "ordinary course of trade or business," in the first sentence of the first paragraph thereof the following:

or, with respect to taxable years beginning after September 23, 1950, is not a copyright, a literary, musical, or artistic composition, or similar property, held by a taxpayer described in section 117(a)(1)(C),

(B) By adding after "ordinary course of his trade or business," in the first sentence of the fourth paragraph thereof the following:

or, with respect to taxable years beginning after September 23, 1950, which is a copyright, a literary, musical, or artistic composition, or similar property, held by a taxpayer described in section 117(a)(1)(C),

PAR. 6. There is inserted immediately after section 29.117-9, as added by Treasury Decision 5851 [C. B. 1951-2, 63], approved August 10, 1951 [26 CFR 29.117-9], the following:

SEC. 211. SHORT SALES OF CAPITAL ASSETS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) TREATMENT OF SHORT SALES.—Section 117 (relating to capital gains and losses) is hereby amended by adding at the end thereof the following new subsection:

"(l) SHORT SALES, ETC.—In the case of a short sale of property made by the taxpayer after the date of the enactment of the Revenue Act of 1950:

"(1) SHORT-TERM GAINS AND HOLDING PERIODS.—If substantially identical property has been held by the taxpayer on the date of such short sale for not more than 6 months (determined without regard to the effect, under subparagraph (B) of this paragraph, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

"(A) any gain upon the closing of such short sale shall be considered as a gain upon the sale or exchange of a capital asset held for not more than 6 months (notwithstanding the period of time any property used to close such short sale has been held); and

"(B) the holding period of such substantially identical property shall be considered to begin (notwithstanding the provisions of subsection (h)) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This subparagraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For the purposes of this paragraph, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

"(2) LONG-TERM LOSSES.—If substantially identical property has been held by the taxpayer on the date of such short sale for more than 6 months, any loss upon the closing of such short sale shall be

considered as a loss upon the sale or exchange of a capital asset held for more than 6 months (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding the provisions of subsection (g)(2)).

"(3) RULES FOR APPLICATION OF SUBSECTION.—

"(A) The provisions of paragraph (1)(A) or (2) shall not apply to the gain or loss, respectively, on any quantity of property used to close such short sale which is in excess of the quantity of the substantially identical property referred to in the applicable paragraph.

"(B) For the purposes of this subsection—

"(i) the term 'property' includes only stocks and securities (including stocks and securities dealt with on a 'when issued' basis), and commodity futures, which are capital assets in the hands of the taxpayer;

"(ii) in the case of futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, a commodity future requiring delivery in one calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month; and

"(iii) in the case of a short sale of property by an individual, the term 'taxpayer', in the application of this paragraph and paragraphs (1) and (2), shall be read as 'taxpayer or his spouse'; but an individual who is legally separated from the taxpayer under a decree of divorce or of separate maintenance shall not be considered as the spouse of the taxpayer.

"(C) Where the taxpayer enters into two commodity futures transactions on the same day, one requiring delivery by him in one market and the other requiring delivery to him of the same (or substantially identical) commodity in the same calendar month in a different market, and the taxpayer subsequently closes both such transactions on the same day, this subsection shall have no application to so much of the commodity involved in either such transaction as does not exceed in quantity the commodity involved in the other."

(b) EFFECTIVE DATE.—The amendment made by this section shall be applicable only with respect to taxable years beginning after the date of the enactment of this Act.

SEC. 29.117-10. GAINS AND LOSSES FROM CERTAIN SHORT SALES OF CAPITAL ASSETS.—(a) *General.*—Section 117(l) provides rules as to the tax consequences of certain short sales of property if, at the time of the short sale or on or before the date of the closing of the short sale, the taxpayer holds property substantially identical to that sold short. The term "property" is defined in section 117(l) to include only stocks and securities (including stocks and securities dealt with on a "when issued" basis) and commodity futures, which are capital assets in the hands of the taxpayer. The section applies to short sales of such property made after September 23, 1950, but only with respect to gains and losses realized in taxable years beginning after September 23, 1950. Certain restrictions on the application of the section to commodity futures are provided in section 117(l)(3) and subsection (c)(2) of this section.

(b) *Treatment of short sales.*—The first two rules, which are set forth in section 117(l)(1), are applicable whenever property substantially identical to that sold short has been held by the taxpayer on the date of the short sale for not more than 6 months (determined without regard to rule (2), below, relating to the holding period) or is acquired by him after the short sale and on or before the date of the closing thereof. These rules are:

Rule (1). Any gain upon the closing of such short sale shall be considered as a gain upon the sale or exchange of a capital asset held for not more than 6 months (notwithstanding the period of time any property used to close such short sale has been held); and

Rule (2). The holding period of such substantially identical property shall be considered to begin (notwithstanding the provisions of section 117(h)) on the date of the closing of such short sale or on the date of a sale, gift, or other disposition of such property, whichever date occurs first.

For the purpose of rule (1) and rule (2), the acquisition of an option to sell property at a fixed price shall be considered a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

The third rule, which is set forth in section 117(l)(2), is applicable whenever property substantially identical to that sold short has been held by the taxpayer on the date of the short sale for more than 6 months. This rule is:

Rule (3). Any loss upon the closing of such short sale shall be considered as a loss upon the sale or exchange of a capital asset held for more than 6 months, notwithstanding the period of time any property used to close such short sale has been held. For the purpose of rule (3), the acquisition of an option to sell property at a fixed price is not considered a short sale, and the exercise or failure to exercise such option is not considered as a closing of a short sale.

Rules (1) and (3) do not apply to the gain or loss attributable to so much of the property sold short as exceeds in quantity the substantially identical property referred to in sections 117(l)(1) and 117(l)(2), respectively. Rule (2) applies to the substantially identical property referred to in section 117(l)(1) in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short. If property substantially identical to that sold short has been held by the taxpayer on the date of the short sale for not more than 6 months, or is acquired by him after the short sale and on or before the date of the closing thereof, *and* if property substantially identical to that sold short has been held by the taxpayer on the date of the short sale for more than 6 months, all three rules are applicable.

The following examples illustrate the application of these rules to short sales of stock in the case of a taxpayer who makes his return on the basis of the calendar year:

Example (1). A buys 100 shares of X stock at $10 per share on February 1, 1951, sells short 100 shares of X stock at $16 per share on July 1, 1951, and closes the short sale on August 2, 1951, by delivering the 100 shares of X stock purchased on February 1, 1951, to the lender of the stock used to effect the short sale. Since 100 shares of X stock had been held by A on the date of the short sale for not more than 6 months, the gain of $600 realized upon the closing of the short sale is, by application of rule (1), a short-term capital gain.

Example (2). A buys 100 shares of X stock at $10 per share on February 1, 1951, sells short 100 shares of X stock at $16 per share on July 1, 1951, closes the short sale on August 1, 1951, with 100 shares of X stock purchased on that date at $18 per share, and on August 2, 1951, sells at $18 per share the 100 shares of X stock purchased on February 1, 1951. The $200 loss sustained upon the closing of the short sale is a short-term capital loss to which section 117(l) has no application. By application of rule (2), however, the holding period of the 100 shares of X stock purchased on February 1, 1951, and sold on August 2, 1951, is considered to begin on August 1, 1951, the date of the closing of the short sale. The $800 gain realized upon the sale of such stock is, therefore, a short-term capital gain.

Example (3). A buys 100 shares of X stock at $10 per share on February 1, 1951, sells short 100 shares of X stock at $16 per share on September 1, 1951, sells on October 1, 1951, at $18 per share the 100 shares of X stock purchased on February 1, 1951, and closes the short sale on October 1, 1951, with 100 shares of X stock purchased on that date at $18 per share. The $800 gain realized upon the sale of the 100 shares of X stock purchased on February 1, 1951, is a long-term capital gain to which section 117(l) has no application. Since A had held 100 shares of X stock on the date of the short sale for more than 6 months, the $200 loss sustained upon the closing of the short sale is, by application of rule (3), a long-term capital loss.

Example (4). A sells short 100 shares of X stock at $16 per share on February 1, 1951. He buys 250 shares of X stock on March 1, 1951, at $10 per share and holds the latter stock until September 2, 1951 (more than 6 months), at which time, 100 of the 250 shares of X stock are delivered to close the short sale made on February 1, 1951. Since substantially identical property was acquired by A after the short sale and before it was closed, the $600 gain realized on the closing of the short sale is, by application of rule (1), a short-term capital gain. The holding period of the remaining 150 shares of X stock is not affected by section 117(l), since this amount of the substantially identical property exceeds the quantity of the property sold short.

Example (5). A buys 100 shares of X stock at $10 per share on February 1, 1951, buys an additional 100 shares of X stock at $20 per share on July 1, 1951, sells short 100 shares of X stock at $30 per share on September 1, 1951, and closes the short sale on February 1, 1952, by delivering the 100 shares of X stock purchased on February 1, 1951, to the lender of the stock used to effect the short sale. Since 100 shares of X stock had been held by A on the date of the short sale for not more than 6 months, the gain of $2,000 realized upon the closing of the short sale is, by application of rule (1), a short-term capital gain, and the holding period of the 100 shares of X stock purchased on July 1, 1951, is considered, by application of rule (2), to begin on February 1, 1952, the date of the closing of the short sale. If, however, the 100 shares of X stock purchased on July 1, 1951, had been used by A to close the short sale, then, since 100 shares of X stock had been held by A on the date of the short sale for not more than 6 months, the gain of $1,000 realized upon the closing of the short sale would be, by application of rule (1), a short-term capital gain, but the holding period of the 100 shares of X stock purchased on February 1, 1951, would not be affected by section 117(1). If, on the other hand, A purchased an additional 100 shares of X stock at $40 per share on February 1, 1952, and used such shares to close the short sale at that time, then, since 100 shares of X stock had been held by A on the date of the short sale for more than 6 months, the loss of $1,000 sustained upon the closing of the short sale would be, by application of rule (3), a long-term capital loss, and, since 100 shares of X stock had been held by A on the date of the short sale for not more than 6 months, the holding period of the 100 shares of X stock purchased on July 1, 1951, would be considered, by application of rule (2), to begin on February 1, 1952, but the holding period of the 100 shares of X stock purchased on February 1, 1951, would not be affected by section 117(1).

Example (6). A buys 100 shares of X preferred stock at $10 per share on February 1, 1951. On July 1, 1951, he enters into a contract to sell 100 shares of XY common stock at $16 per share when, as, and if issued pursuant to a particular proposed plan of reorganization. On August 2, 1951, he receives 100 shares of XY common stock in exchange for the 100 shares of X preferred stock purchased on February 1, 1951, and delivers such common shares in performance of his July 1, 1951, contract. Assume that the exchange of the X preferred stock for the XY common stock is a tax-free exchange pursuant to section 112(b)(3), and that on the basis of all of the facts and circumstances existing on July 1, 1951, the "when issued" XY common stock is substantially identical to the X preferred stock. Since 100 shares of substantially identical property had been held by A for not more than 6 months on the date of entering into the July 1, 1951, contract of sale, the gain of $600 realized upon the closing of the contract of sale is, by application of rule (1), a short-term capital gain.

(c) *Other rules for the application of section 117(l).*—(1) *Substantially identical property.*—The term "substantially identical property" is to be applied according to the facts and circumstances in each case. In general, as applied to stocks or securities, the term has the same meaning as the term "substantially identical stock or securities" used in section 118, relating to wash sales of stock or securities. For certain restrictions on the term as applied to commodity futures see paragraph (2) hereinafter. Ordinarily, stocks or securities of one corporation are not considered substantially identical to stocks or securities of another corporation. In certain situations they may be substantially identical; for example, in the case of a reorganization the facts and circumstances may be such that the stocks and securities of predecessor and successor corporations are substantially identical property. Similarly, bonds or preferred stock of a corporation are not ordinarily considered substantially identical to the common stock of the same corporation. However, in certain situations, as, for example, where the preferred stock or bonds are convertible into common stock of the same corporation, the relative values, price changes, and other circumstances may be such as to make such bonds or preferred stock and the common stock substantially identical property. Similarly, depending on the facts and circumstances, the term may apply to the stocks and securities to be received in a corporate reorganization or recapitalization, traded in on a when issued basis, as compared with the stocks or securities to be exchanged in such reorganization or recapitalization.

(2) *Commodity futures.*—As provided in section 117(l)(3)(B)(ii), in the case of futures transactions in any commodity on or subject to the rules of a

board of trade or commodity exchange, a commodity future requiring delivery in one calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month. For example, commodity futures in May wheat and July wheat are not considered, for the purpose of section 117(1), substantially identical property. Similarly, futures in different commodities which are not generally through custom of the trade used as hedges for each other (such as corn and wheat, for example) are not considered substantially identical property. If commodity futures are otherwise substantially identical property the mere fact that they were procured through different brokers will not remove them from the scope of the term "substantially identical property". Commodity futures procured on different markets may come within the term "substantially identical property" depending upon the facts and circumstances in the case, with the historical similarity in the price movements in the two markets as the primary factor to be considered.

Since section 117(1) applies only to sales or exchanges of capital assets, *bona fide* hedging transactions in commodity futures entered into by flour millers, producers of cloth, operators of grain elevators, etc., for the purpose of their business, and which do not give rise to capital gain or loss, are not within the scope of section 117(1).

Section 117(1)(3)(C), relating to so-called "arbitrage" transactions in commodity futures, provides that where a taxpayer enters into two commodity futures transactions on the same day, one requiring delivery by him in one market and the other requiring delivery to him of the same (or substantially identical) commodity in the same calendar month in a different market, and the taxpayer subsequently closes both such transactions on the same day, section 117(1) shall have no application to so much of the commodity involved in either such transaction as does not exceed in quantity the commodity involved in the other.

The following example indicates the application of section 117(1) to a commodity futures transaction:

Example. A, who makes his return on the basis of the calendar year, on February 1, 1951, enters into a contract through broker X to purchase 10,000 bushels of December wheat on the Chicago market at $2 per bushel. On July 1, 1951, he enters into a contract through broker Y to sell 10,000 bushels of December wheat on the Chicago market at $2.25 per bushel. On August 2, 1951, he closes both transactions at $2.50 per bushel. The $2,500 loss sustained on the closing of the short sale is a short-term capital loss to which section 117(1) has no application. By application of rule (2) in subsection (b) of this section, however, the holding period of the futures contract entered into on February 1, 1951, is considered to begin on August 2, 1951, the date of the closing of the short sale. The $5,000 gain realized upon the closing of such contract is, therefore, a short-term capital gain.

(3) *Husband and wife.*—Section 117(1)(3)(B)(iii) provides that, in the case of a short sale of property by an individual, the term "taxpayer" shall be read as "taxpayer or his spouse". Thus, if the spouse of a taxpayer holds or acquires property substantially identical to that sold short by the taxpayer, and the other conditions of this section are met, then the rules set forth herein are applicable to the same extent as if the taxpayer held or acquired the substantially identical property. For this purpose, an individual who is legally separated from the taxpayer under a decree of divorce or of separate maintenance shall not be considered as the spouse of the taxpayer.

(This Treasury Decision is issued under authority contained in sections 62 and 3791 of the Internal Revenue Code (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved February 11, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register February 13, 1952, 8:53 a. m.)

SECTION 111.—DETERMINATION OF AMOUNT OF, AND RECOGNITION OF, GAIN OR LOSS

SECTION 29.111-1: Computation of gain or loss. (Also Section 115, Sections 29.115-4 and 29.115-6.) 1952-12-13835 T. D. 5899

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Regulations 111 amended—Distributions by corporations out of increase in value of property accrued prior to March 1, 1913.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On February 7, 1952, notice of proposed rule making with respect to distributions by a corporation out of increase in value of property accrued before March 1, 1913, was published in the Federal Register (17 F. R. 1189). No objection to the proposed rules having been received, Regulations 111 [26 CFR, part 29] are hereby amended as follows:

PARAGRAPH 1. Section 29.111-1 [26 CFR 29.111-1] is amended as follows:

(A) By striking therefrom the first sentence of the second paragraph and inserting in lieu thereof the following:

Even though property is not sold or otherwise disposed of, gain is realized if the sum of all the amounts received which are required by section 113(b) to be applied against the basis of the property exceeds such basis. Except as otherwise provided in section 115(b) with respect to distributions out of increase in value of property accrued prior to March 1, 1913, such gain is includible in gross income under section 22(a) as "gains or profits and income derived from any source whatever". See section 29.115-4.

(B) By inserting before the period at the end of the third sentence of the example, the following: "other than a distribution out of increase of value of property accrued prior to March 1, 1913."

PAR. 2. Section 29.115-4 [26 CFR 29.115-4] is amended as follows:

(A) By striking from the first sentence thereof the parenthetical expression reading "(see section 29.111-1)".

(B) By inserting immediately after the second sentence thereof the following:

(A distribution out of increase in value of property accrued prior to March 1, 1913, shall be applied against and reduce the adjusted basis of the stock provided in section 113(b), but the fact that such distribution is in excess of such basis does not render such excess subject to tax.)

PAR. 3. Section 29.115-6 [26 CFR 29.115-6] is amended by striking therefrom "(See section 29.111-1)" and inserting in lieu thereof "(See sections 29.111-1 and 29.115-4)".

The amendments to sections 29.111-1, 29.115-4, and 29.115-6 of Regulations 111, covering taxable years beginning after December 31, 1941, set forth in this Treasury Decision, are hereby made applicable to

taxable years beginning after December 31, 1933, and before January 1, 1942 (such years being covered by Regulations 86, 94, 101, and 103).

(This Treasury Decision is issued under the authority contained in sections 62, 3791 (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 13, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 15, 1952, 9:04 a. m.)

SECTION 112(a).—RECOGNITION OF GAIN OR LOSS: GENERAL RULE

SECTION 29.112(a)-1: Sales or exchanges.

INTERNAL REVENUE CODE

Modification of Mimeograph 6243 (C. B. 1948-1, 44) relating to futures trading. (See Mim. 6789, page 38.)

SECTION 112(b).—RECOGNITION OF GAIN OR LOSS: EXCHANGES SOLELY IN KIND

SECTION 29.112(b)(7)-3: Making and filing of written elections. 1952-10-13823 T. D. 5898

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Section 29.112(b)(7)-3 of Regulations 111, relating to making and filing of written elections by shareholders to be governed by section 112(b)(7) of the Internal Revenue Code, amended.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

Regulations 111 [26 CFR, part 29] are amended as follows:

PARAGRAPH 1. Section 29.112(b)(7)-3, as added by Treasury Decision 5356 [C. B. 1944, 220, 224], approved April 19, 1944 [26 CFR 29.112(b)(7)-3], is amended by inserting immediately after the second sentence thereof the following:

An election shall be considered as timely filed if it is placed in the mail on or before midnight of the thirtieth day after the adoption of the plan of liquidation, as shown by the post mark on the envelope containing the written election or as shown by other available evidence of the mailing date.

PAR. 2. Because the amendment made by this Treasury Decision merely liberalizes the provisions of existing regulations relating to the filing of certain elections, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of such Act.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved April 24, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 29, 1952, 8:55 a. m.)

SECTION 112(g).—RECOGNITION OF GAIN OR LOSS: DEFINITION OF REORGANIZATION

SECTION 29.112(g)-3: Exchanges solely of stock or securities, or property, solely for stock or securities, in pursuance of plan of reorganization. 1952-11-13827 I. T. 4081

INTERNAL REVENUE CODE AND PRIOR REVENUE LAWS

An exchange of bonds for the same principal amount of new bonds of the same corporation pursuant to a plan of reorganization constitutes a recapitalization and hence a reorganization, within the meaning of section 112(g) of the Code, and no gain or loss is recognized upon the transaction.

I. T. 2035 (C. B. III-1, 55 (1924)) and I. T. 2778 (C. B. XIII-1, 79 (1934)) revoked.

Reconsideration has been given to I. T. 2035 (C. B. III-1, 55 (1924)) and I. T. 2778 (C. B. XIII-1, 79 (1934)) in the light of the decisions in *Sigmund Neustadt Trust et al.* v. *Commissioner* (43 B. T. A. 848, acquiescence, C. B. 1951-1, 2, affirmed, 131 Fed. (2d) 528), *The Mutual Fire, Marine & Inland Insurance Co.* v. *Commissioner* (12 T. C. 1057, acquiescence, C. B. 1951-2, 3) and *Union Pacific Railroad Co. et al.* v. *Commissioner* (14 T. C. 401, acquiescence, C. B. 1951-2, 4).

The position was taken in I. T. 2035, *supra*, that an exchange of old bonds for a new issue of bonds constituted a refinancing transaction and not a nontaxable recapitalization for gain or loss purposes. In I. T. 2778, *supra*, it was held that gain from an exchange of "Series A" debentures for "Series B" debentures of the same corporation must be recognized.

Section 112(b)(3) of the Internal Revenue Code provides that no gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization. Section 112(g)(1)(E) of the Code defines the term "reorganization" as including a "recapitalization."

In view of the decisions in the Neustadt, the Mutual Fire, Marine & Inland Insurance, and the Union Pacific Railroad cases, cited above, it is now the position of the Bureau that an exchange of bonds for the same principal amount of new bonds of the same corporation pursuant to a plan of reorganization constitutes a recapitalization and hence a reorganization, within the meaning of section 112(g) of the Code, and that no gain or loss is recognized upon the transaction. Accordingly, I. T. 2035, *supra*, and I. T. 2778, *supra*, are hereby revoked.

SECTION 113(b).—ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS: ADJUSTED BASIS

SECTION 29.113(b)(1)–1: Adjusted basis: General rule.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5876, page 23.)

SECTION 29.113(b)(1)–1: Adjusted basis: General rule.

INTERNAL REVENUE CODE

Securities retained where an amount has been paid to a corporation by an officer or director under section 16(b) of the Securities Exchange Act of 1934. (See I. T. 4069, page 28.)

SECTION 114.—BASIS FOR DEPRECIATION AND DEPLETION

SECTION 29.114–1: Basis for allowance of depreciation and depletion. 1952–5–13770 I. T. 4073

INTERNAL REVENUE CODE

Where the establishment and operation of a treatment plant within 50 miles of bentonite deposits are not prevented, at least in part, by physical factors, such transportation from the point of extraction of the mineral to the treatment plant as is in excess of 50 miles may not be considered as a part of "mining" within the meaning of section 114(b)(4)(B) of the Internal Revenue Code. Any increase in value of the mineral attributable to transportation which is not in excess of 50 miles is includible in gross income from the property for the purpose of computing depletion.

• Advice is requested whether the transportation of bentonite from deposits to a treatment plant which is more than 50 miles away may be treated as a part of "mining" under the provisions of section 114(b)(4)(B) of the Internal Revenue Code for the purpose of computing depletion.

Section 114(b)(4)(A) of the Internal Revenue Code provides in part that the allowance for depletion under section 23(m) of the Code in the case of bentonite shall be 15 per centum of the "gross income from the property" during the taxable year. Section 114(b)(4)(B) of the Code provides in part as follows:

> (B) Definition of Gross Income From Property.—As used in this paragraph the term "gross income from the property" means the gross income from mining. The term "mining", as used herein, shall be considered to include not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products, and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which the ordinary treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills. * * *

The provisions of section 114(b)(4)(B) of the Internal Revenue Code, *supra*, relating to the inclusion of transportation in the term "mining," were added to that section by section 207 of the Revenue Act of 1950. The report of the Senate Finance Committee (Senate Report No. 2375, 81st Cong., 2d sess., C. B. 1950–2, 483, 522) contains the following language with respect to the above-quoted section of the Code:

* * * The Code section here involved was added in the 1943 Revenue Act so that the law would clearly have the same meaning as that intended by the depletion provisions in the 1932 Act and contemporary Treasury regulations interpretative thereof. Those regulations specified that the gross income computation for depletion purposes was to be "before transportation from the place where the last of the processes listed below was applied." Terrain, water supply, or other factors, sometimes permit the application of ordinary treatment processes directly on the mining property. At other times the plants to apply such processes to obtain the commercially marketable mineral products are normally located some distance from the mouth or opening of the mine, but are at the nearest practicable point at which such processes can be efficiently performed. The transportation to these plants and the ordinary treatment processes applied are included as a part of mining in determining gross income for percentage depletion purposes.

This rule, intended to be applied in accordance with normal standards, clearly would not extend to transportation to distant points far beyond the locations where mine operators would normally locate such plants. But the rule would be applicable when the location of the plant or mill is at a point not substantially more distant from the point of extraction than is reasonably necessary for efficient and economical operation.

In the Conference Report (House of Representatives Report No. 3124, 81st Cong., 2d sess., C. B. 1950–2, 580, 584) it is stated:

The House recedes with an amendment which * * * limits the transportation permitted by the Senate amendment to be included as gross income from mining to so much of such transportation as does not exceed 50 miles unless the Secretary finds conditions to be such that the mineral must be transported to a greater distance to the plant or mill in which the ordinary treatment processes are applied.

The statute as ultimately enacted is consistent with the foregoing portion of the report of the conferees.

In view of the specific wording of the statute, it is clear that if establishment and operation of a treatment plant are not prevented, at least in part, by physical factors, a finding may not be made that the mineral must be transported for processing in excess of 50 miles from the point of extraction. In other words, such a finding may not be made solely upon the basis of what may be classified broadly as economic considerations.

In the instant case, an investigation by a representative of the Bureau reveals that construction and operation of a treatment plant within 50 miles of the bentonite deposits are not prevented by terrain, lack of water, lack of power, lack of fuel, or any other physical requirement. Accordingly, it is held that such transportation of the bentonite from the point of extraction to the treatment plant as is in excess of 50 miles may not be considered as a part of "mining" within the meaning of section 114(b)(4)(B) of the Internal Revenue Code. However, any increase in the value of the mineral attributable to transportation which is not in excess of 50 miles is includible in "gross income from the property" for the purpose of computing depletion.

SECTION 115.—DISTRIBUTIONS BY CORPORATIONS

SECTION 29.115-3: Earnings or profits. 1952-12-13836
(Also Section 141, Section 29.141-1.) I. T. 4085

INTERNAL REVENUE CODE

Method of apportioning the income and excess profits tax of an affiliated group of corporations filing consolidated Federal income and excess profits tax returns for taxable years ending after June 30, 1950, in determining the earnings and profits of each member of such group.

Advice is requested as to the method of apportioning the income and excess profits tax of an affiliated group of corporations filing consolidated Federal income and excess profits tax returns for taxable years ending after June 30, 1950, in determining the earnings and profits of each member of such group.

The excess profits tax for taxable years ending after June 30, 1950, as in the case of normal tax and surtax, is imposed as a part of the income tax on corporations under chapter 1 of the Internal Revenue Code, whereas for taxable years beginning after December 31, 1939, and before January 1, 1946, the excess profits tax was imposed as a separate tax under subchapter E of chapter 2 of the Code. In this regard, section 40.0(b) of Regulations 130 states that the normal tax, surtax, and excess profits tax on corporations are reported on the corporation income tax return, and are treated as one tax for all purposes, including assessment, collection, payment, period of limitations, and the consolidated return privilege.

Notwithstanding the fact that the excess profits tax for taxable years ending after June 30, 1950, is imposed as a part of the income tax under chapter 1 (subchapter D) of the Internal Revenue Code, separate calculations apportioning the income tax and the excess profits tax of an affiliated group of corporations are deemed necessary in computing the earnings and profits of each member of the affiliated group because of (1) adjustments to the consolidated normal-tax net income required in determining the consolidated excess profits net income and (2) allowance of a consolidated excess profits credit in computing the consolidated adjusted excess profits net income.

Accordingly, it is held that in determining the earnings and profits of each member of an affiliated group of corporations filing consolidated Federal income and excess profits tax returns for taxable years ending after June 30, 1950, the consolidated normal tax and surtax imposed under subchapter B of chapter 1 of the Internal Revenue Code should be apportioned among the members of the group in accordance with the ratio of that portion of the consolidated normal-tax net income attributable to each member of the affiliated group to the consolidated normal-tax net income, leaving out of consideration any member of the group having no net income. The consolidated excess profits tax imposed under subchapter D of chapter 1 of the Code should be apportioned among the members of the group in accordance with the ratio of that portion of the consolidated adjusted excess profits net income attributable to each member of the affiliated group to the consolidated adjusted excess profits net income, leaving out of consideration any member of the group having no net income. The taxes thus deter-

mined should be (*a*) increased or decreased, as the case may be, by the amount of any section 452 adjustment attributable to each company, and (*b*) decreased by the amount of the consolidated credit for foreign taxes attributable to each company. In the event that the income taxes paid to a foreign country or United States possession are in excess of the amounts allowed as credits, the excess should be taken into consideration in arriving at the earnings and profits. (For similar method under prior law, see I. T. 3637, C. B. 1944, 258, and I. T. 3692, C. B. 1944, 261.)

SECTION 29.115-4: Distributions other than a dividend.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5899, page 63.)

SECTION 29.115-6: Distributions from depletion or depreciation reserves.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5899, page 63.)

SECTION 116.—EXCLUSIONS FROM GROSS INCOME

SECTION 29.116-2: Income of foreign governments, international organizations, and their employees. 1952-11-13828 I. T. 4082

INTERNAL REVENUE CODE

A railway system which is owned and operated by a foreign government, and is so closely integrated with the executive arm of such government as to be a part thereof, is exempt, under section 116(c) of the Internal Revenue Code, from United States income tax on income from sources within the United States. Compensation received by the railway system's employees who are not citizens of the United States is exempt from United States income tax under section 116(h) of the Code, provided proper certification is made as required by section 116(h)(2) of the Code.

Advice is requested whether the income, from sources within the United States, of a railway system which is owned and operated by a foreign government is exempt from tax as income of the foreign government within the meaning of section 116(c) of the Internal Revenue Code, and whether compensation received by its employees is exempt from United States income tax under section 116(h) of the Code.

The railway system (sometimes hereinafter referred to as Railways) is not a corporation, it has no shares or shareholders, and no private interests are involved. Railways is under the supervision of a director general who is appointed by the president of the foreign government which owns it. The director general must submit an annual budget for Railways to the president for approval. Settlement of all but

minor claims against it, increases in fares, and the abolition of railway stations are all subject to presidential approval.

The revenue of Railways is derived primarily from passenger and freight traffic and is used for its own expenses. Railways is not subject to taxes, national or local. Amounts derived from sales taxes collected by it on fares, freight, and services rendered are added to the service rates collected by it and are retained for its benefit. If Railways should require financial assistance from the government for its operations for any year, the director general so indicates before July 1 of the preceding year so that the president may fix the amount to be allocated for such purpose in the proposed national budget. In several instances, the government has enacted special legislation appropriating additional funds for the use of Railways.

Railways is authorized to issue bonds in limited amounts, secured by its own resources, subject to the approval of the president. The major borrowing, however, is accomplished by loans guaranteed by the government. The salaries of the director general and of virtually all of the employees of Railways are fixed by law. Details of employment, such as periodic salary increases and employment of persons related by blood or marriage, are regulated by law. Employees of Railways who work in the United States are given official government passports of the type issued only to individuals regarded as government employees or officials. The visas which the United States Government grants to such employees classify them as government officials.

Section 116 of the Internal Revenue Code provides that specified items, including the following, shall not be included in gross income and shall be exempt from tax:

(c) INCOME OF FOREIGN GOVERNMENTS AND OF INTERNATIONAL ORGANIZATIONS.—The income of foreign governments * * * received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments * * * or from interest on deposits in banks in the United States of moneys belonging to such foreign governments * * * or from any other source within the United States.

* * * * * * *

(h) COMPENSATION OF EMPLOYEES OF FOREIGN GOVERNMENTS OR OF THE COMMONWEALTH OF THE PHILIPPINES.—

(1) RULE FOR EXCLUSION.—Wages, fees, or salary of any employee of a foreign government * * * (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government * * *

(A) If such employee is not a citizen of the United States * * * and

(B) If, in the case of an employee of a foreign government * * * the services are of a character similar to those performed by employees of the Government of the United States in foreign countries * * * and

(C) If, in the case of an employee of a foreign government * * * the foreign government * * * grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country * * *

(2) CERTIFICATE BY SECRETARY OF STATE.—The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States, performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries. * * *

The railway system in the instant case is so closely integrated with the executive arm of the foreign government as to be a part thereof. (See *Louis Vial* v. *Commissioner*, 15 T. C. 403, acquiescence, page 4), this Bulletin. But *cf.* I. T. 3789, C. B. 1946-1, 100, in which it is held that a *corporation* wholly owned by a foreign government is an entity separate and distinct from such government.)

Accordingly, it is held that income received by the railway system from sources within the United States is exempt from United States income tax under section 116(c) of the Internal Revenue Code. It is also held that compensation received by the railway system's employees who are not citizens of the United States is exempt from United States income tax under section 116(h) of the Code, provided proper certification is made as required by section 116(h)(2) of the Code.

SECTION 117.—CAPITAL GAINS AND LOSSES

SECTION 29.117-1: Meaning of terms.

INTERNAL REVENUE CODE

Gain from sale of securities by an officer or director of a corporation where an amount is paid to the corporation under section 16(b) of the Securities Exchange Act of 1934. (See I. T. 4069, page 28.)

SECTION 29.117-1: Meaning of terms.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5881, page 56.)

SECTION 29.117-1: Meaning of terms.

INTERNAL REVENUE CODE

Modification of Mimeograph 6243 (C. B. 1948-1, 44) relating to futures trading. (See Mim. 6789, page 38.)

SECTION 29.117-6: Gains and losses from short sales; in general.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5881, page 56.)

SECTION 29.117-7: Gains and losses from involuntary conversions and from the sale or exchange of certain property used in the trade or business. 1952-7-13791 Mim. 6776

Treatment under section 117(j) of the Internal Revenue Code of gains realized upon the sale of livestock held for draft, breeding, or dairy purposes.

Mimeograph 6660 (C. B. 1951-2, 60) revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 6, 1952.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Heads of Appellate Staff Districts, and Others Concerned:

1. Section 117(j)(1) of the Internal Revenue Code was amended by sections 323(a), 324, and 325(a) of the Revenue Act of 1951 to read as follows:

> (1) DEFINITION OF PROPERTY USED IN THE TRADE OR BUSINESS.—For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l), held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or (C) a copyright, a literary, musical, or artistic composition, or similar property, held by a taxpayer described in subsection (a)(1)(C). Such term also includes timber or coal with respect to which subsection (k) (1) or (2) is applicable and unharvested crops to which paragraph (3) is applicable. Such term also includes livestock, regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for 12 months or more from the date of acquisition. Such term does not include poultry.

The penultimate sentence of section 117(j)(1) of the Code, added by section 324 of the Revenue Act of 1951, is applicable with respect to taxable years beginning after December 31, 1941, except that the extension of the holding period from 6 to 12 months is applicable only with respect to taxable years beginning after December 31, 1950. The last sentence of section 117(j)(1) of the Code, also added by section 324 of the Revenue Act of 1951, is applicable only with respect to taxable years beginning after December 31, 1950.

2. Accordingly, for taxable years beginning after December 31, 1941, and before January 1, 1951, livestock, regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for more than 6 months from date of acquisition constitutes "property used in the trade or business," and, under appropriate circumstances (see section 117(j)(2) of the Code), gains and losses from sales or exchanges thereof are subject to treatment as gains and losses from sales or exchanges of capital assets. For taxable years beginning after December 31, 1950, livestock (not including poultry), regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for 12 months or more from date of acquisition constitutes "property used in the trade or business," and, under appropriate circumstances (see section 117(j)(2) of the Code), gains and losses from sales or exchanges thereof are subject to treatment as gains and losses from sales or exchanges of capital assets.

3. The position of the Bureau with respect to the application of section 117(j) of the Code, as stated in Mimeograph 6660 (C. B. 1951–2, 60) dated June 27, 1951, is, in general, not in accord with the foregoing. Accordingly, Mimeograph 6660 is revoked. However, such revocation should not be considered as reinstating I. T. 3666 (C. B. 1944, 270) or I. T. 3712 (C. B. 1945, 176).

4. Pending amendment of Regulations 111 to conform to section 324 of the Revenue Act of 1951, collectors of internal revenue, internal revenue agents in charge, and heads of Appellate Staff districts may proceed in the disposition of any case involving the treatment of gains and losses realized upon the sale or exchange of livestock alleged by the taxpayer to constitute "property used in the trade or business" if, under the circumstances of the case, the treatment prescribed by section 117(j) of the Code, as amended, is clearly applicable.

JOHN B. DUNLAP,
Commissioner.

SECTION 29.117-7: Gains and losses from involuntary conversions and from the sale or exchange of certain property used in the trade or business.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5881, page 56.)

SECTION 29.117-10: Gains and losses from certain short sales of capital assets.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5881, page 56.)

SECTION 120.—UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS

SECTION 29.120-1: Unlimited deduction for charitable and other contributions. 1952-13-13845 T. D. 5909

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Regulations 111 amended to conform to Public Law 918 (81st Cong.) [C. B. 1951-2, 178].

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On March 4, 1952, notice of proposed rule making, regarding amendments to the income tax regulations made necessary by Public Law 918 (81st Cong.) [C. B. 1951-1, 178], approved January 11, 1951, was published in the Federal Register (17 F. R. 1899). No objection to the rules proposed having been received, the amendments to Regulations 111 [26 CFR, part 29] set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 29.120-1 [26 CFR 29.120-1] the following:

PUBLIC LAW 918, 81st CONGRESS,
APPROVED JANUARY 11, 1951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 120 of the Internal Revenue Code (relating to unlimited deduction for charitable and other contributions) is hereby amended by striking out "in respect of preceding taxable years" and inserting in lieu thereof "in respect of such year or preceding taxable years".

SEC. 2. The amendment made by this Act shall be applicable to taxable years beginning after December 31, 1942.

PAR. 2. Section 29.120–1, as amended by Treasury Decision 5855 [C. B. 1951–2, 141], approved September 13, 1951 [26 CFR 29.120–1], is further amended to read as follows:

SEC. 29.120–1. UNLIMITED DEDUCTION FOR CHARITABLE AND OTHER CONTRIBUTIONS.—(*a*) Under the circumstances specified in section 120, the 15 percent limitation imposed by section 23(o) on the deduction for charitable and other contributions is not applicable.

(*b*) The following rules shall apply with respect to the taxes included in determining for any taxable year whether the amount of the gifts, contributions, and taxes referred to in section 120 exceeds 90 percent of the net income computed without the benefit of any deduction for gifts or contributions:

(1) In the case of a taxable year beginning before January 1, 1943, there shall be included income, war-profits, and excess-profits taxes paid during such taxable year in respect of preceding taxable years.

(2) In the case of a taxable year beginning after December 31, 1942, there shall be included, in addition to the income, war-profits, and excess-profits taxes paid during such taxable year in respect of preceding taxable years, the amount of income tax paid during such taxable year in respect of such taxable year. For example, there shall be included the amount paid as estimated tax during the taxable year, to the extent such amount does not exceed the tax for such taxable year.

(3) In the case of a taxable year beginning after December 31, 1950, the amount of income tax paid during the taxable year shall be determined without regard to any payment of tax imposed under subchapter E of chapter 1 of the Internal Revenue Code, which subchapter relates to the tax on self-employment income.

(*c*) In the case of a husband and wife making a joint return for any taxable year, the 15 percent limitation imposed by section 23(o) on the deduction for charitable and other contributions shall not be applicable if in the taxable year and in each of the ten preceeding taxable years the amount of the contributions or gifts described in section 23(o) (or corresponding provisions of prior revenue acts) made by the husband and wife together during each such year plus the amount of income, war-profits, or excess-profits taxes paid by the husband and wife together during each such year (determined under the rules of (b) of this section), exceeds 90 percent of the net income of the husband and wife together for each such year, as computed without the benefit of any deduction for contributions or gifts.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved June 3, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 6, 1952, 8:55 a. m.)

SECTION 127(a).—WAR LOSSES: CASES IN WHICH LOSS DEEMED SUSTAINED, AND TIME DEEMED SUSTAINED

SECTION 29.127(a)-1: Description of war losses. 1952-9-13809
(Also Section 19.127(a)-1, Regulations 103.) T. D. 5892

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 19 AND PART 29

Amending section 19.127(a)-1 of Regulations 103 and section 29.127(a)-1 of Regulations 111, relating to description of war losses.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

Regulations 103 [26 CFR, part 19] and Regulations 111 [26 CFR, part 29] are hereby amended by substituting "section 23(e)" for "section 23(e)(3)" in the fourth sentence of the second paragraph of section 19.127(a)-1 of Regulations 103, as amended by Treasury Decision 5600 [C. B. 1948-1, 5], approved February 2, 1948 [26 CFR 19.127(a)-1], and in the sixth sentence of the second paragraph of section 29.127(a)-1 of Regulations 111 [26 CFR 29.127(a)-1].

The sentence in section 29.127(a)-1, Regulations 111, as amended by this Treasury Decision, will read as follows:

Unless such loss is treated under section 117(j) as a loss from the sale or exchange of a capital asset, such loss is deductible as an ordinary loss under the provisions of section 23(f) in the case of a corporation and section 23(e) in the case of an individual.

(This Treasury Decision is issued pursuant to the authority contained in section 62 of the Internal Revenue Code (53 Stat. 32; 26 U. S. C. 62).)

Inasmuch as the purpose of this Treasury Decision is merely to correct a technical error, it is found that it is unnecessary to issue this Treasury Decision under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved April 4, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 9, 1952, 8:50 a. m.)

SECTION 130A.—EMPLOYEE STOCK OPTIONS

SECTION 29.130A-1: Meaning and use of certain terms. 1952-13-13846 T. D. 5911

(Also Sections 29.130A-2, 29.130A-3, 29.130A-4, 29.130A-5; Section 22(a), Section 29.22(a)-1; Section 113(a), Section 29.113(a)-1.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Regulations 111 amended to conform to section 218 of the Revenue Act of 1950 and section 331 of the Revenue Act of 1951, relating to restricted stock options.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On October 18, 1951, notice of proposed rule making, regarding section 218 of the Revenue Act of 1950, approved September 23, 1950, was published in the Federal Register (16 F. R. 10640). Such notice stated that the regulations therein set forth in tentative form were subject to any changes which might be necessitated by the Revenue Bill of 1951 (H. R. 4473) then pending before the Congress. Legislation relating to the subject matter of the notice was enacted as section 331 of the Revenue Act of 1951, approved October 20, 1951. After consideration of all relevant matter presented by interested persons regarding the rules proposed, the amendments to Regulations 111 [26 CFR, part 29] set forth below are hereby adopted. Such amendments are necessary in order to conform Regulations 111 to section 218 of the Revenue Act of 1950, and to section 331 of the Revenue Act of 1951.

PARAGRAPH 1. There is inserted immediately following section 29.130-1 [26 CFR 29.130-1] the following:

SEC. 218. STOCK OPTIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) TREATMENT OF CERTAIN EMPLOYEE STOCK OPTIONS.—Supplement B of chapter 1 is hereby amended by adding at the end thereof the following new section:

"SEC. 130A. EMPLOYEE STOCK OPTIONS.

"(a) TREATMENT OF RESTRICTED STOCK OPTIONS.—If a share of stock is transferred to an individual pursuant to his exercise after 1949 of a restricted stock option, and no disposition of such share is made by him within two years from the date of the granting of the option nor within six months after the transfer of such share to him—

"(1) no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

"(2) no deduction under section 23(a) shall be allowable at any time to the employer corporation of such individual or its parent or subsidiary corporation with respect to the share so transferred; and

"(3) no amount other than the option price shall be considered as received by either of such corporations for the share so transferred.

This subsection and subsection (b) shall not apply unless (A) the individual, at the time he exercises the restricted stock option, is an employee of the corporation granting such option or of a parent or

subsidiary corporation of such corporation, or (B) the option is exercised by him within 3 months after the date he ceases to be an employee of any of such corporations.

"(b) SPECIAL RULE WHERE OPTION PRICE IS BETWEEN 85 PERCENT AND 95 PERCENT OF VALUE OF STOCK.—If no disposition of a share of stock acquired by an individual upon his exercise after 1949 of a restricted stock option is made by him within two years from the date of the granting of the option nor within six months after the transfer of such share to him, but, at the time the restricted stock option was granted, the option price was less than 95 per centum of the fair market value at such time of such share, then, in the event of any disposition of such share by him, or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever is applicable, an amount equal to the amount (if any) by which the option price is exceeded by the lesser of—

"(1) the fair market value of the share at the time of such disposition or death, or

"(2) the fair market value of the share at the time the option was granted.

In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income.

"(c) ACQUISITION OF NEW STOCK.—If stock transferred to an individual upon his exercise of the option is exchanged by him for stock or securities in an exchange within the provisions of section 112(b)(2) or (3), or if new stock, as described in section 113(a)(19), is acquired upon a distribution with respect to such stock, the stock or securities acquired in such exchange and such new stock shall be considered as having been transferred to him upon his exercise of such option. A similar rule shall be applied in the case of a series of such exchanges or acquisitions.

"(d) DEFINITIONS.—As used in this section—

"(1) RESTRICTED STOCK OPTION.—The term 'restricted stock option' means an option granted after February 26, 1945, to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

"(A) At the time such option is granted the option price is at least 85 per centum of the fair market value at such time of the stock subject to the option; and

"(B) Such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

"(C) Such individual, at the time the option is granted, does not own stock possessing more than 10 per centum of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For the purposes of this subparagraph—

"(i) such individual shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

"(ii) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

"(2) PARENT CORPORATION.—The term 'parent corporation' means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation

if, at the time of granting of the option, each of the corporations other than the employer corporation owns stock possessing more than 50 per centum of the total combined voting power of all classes of stock in one of the other corporations in such chain.

"(3) SUBSIDIARY CORPORATION.—The term 'subsidiary corporation' means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing more than 50 per centum of the total combined voting power of all classes of stock in one of the other corporations in such chain.

"(4) DISPOSITION.—The term 'disposition' includes a sale, exchange, gift, or any transfer of legal title, but does not include—

"(A) a transfer from a decedent to his estate or a transfer by bequest or inheritance:

"(B) an exchange which is within the provisions of section 112(b) (2) or (3); or

"(C) a mere pledge or hypothecation.

"(e) MODIFICATION, EXTENSION, OR RENEWAL OF OPTION.—For the purposes of subsection (d), if the terms of any option to purchase stock are modified, extended, or renewed, the following rules shall be applied with respect to transfers of stock made upon an exercise of the option after the making of such modification, extension, or renewal:

"(1) Such modification, extension, or renewal shall be considered as the granting of a new option;

"(2) The fair market value of such stock at the time of the granting of such option shall be considered as (A) the fair market value of such stock on the date of the original granting of the option, (B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or (C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal, whichever is the highest."

(b) EFFECTIVE DATE.—The amendment made by this section shall be applicable with respect to taxable years ending after December 31, 1949.

SEC. 331. STOCK OPTIONS. [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) OPTION SUBJECT TO STOCKHOLDER APPROVAL.—Section 130A(d) (relating to definition of restricted stock option) is hereby amended by striking out "As used in" and inserting "For the purposes of" and by adding at the end thereof the following:

"(5) STOCKHOLDER APPROVAL.—If the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if it had been enacted as part of section 218 of the Revenue Act of 1950.

SEC. 29.130A-1. MEANING AND USE OF CERTAIN TERMS.—For the purpose of section 130A—

(*a*) *Option.*—The term "option" includes the right or privilege of an individual to purchase stock from a corporation by virtue of an offer of the corporation continuing for a stated period of time, whether or not irrevocable, to sell such stock at a stated price, such individual being under no obligation to purchase. Such right or privilege, when granted, must be evidenced in writing. The individual who has such right or privilege is referred to as the optionee and the corporation offering to sell stock under such an arrangement is referred to as the optionor. While no particular form of words is necessary, the written option should express, among other things, an offer to sell at a stated option price and the period of time during which the offer shall remain open.

An option may be granted as part of or in conjunction with an employee stock purchase plan or subscription contract.

An arrangement between a corporation and an employee may involve more than one option. For example, if a corporation on June 1, 1951, grants to an employee the right to purchase 1,000 shares of its stock on or after June 1, 1952, another 1,000 shares on or after June 1, 1953, and a further 1,000 shares on or after June 1, 1954, all shares to be purchased before June 1, 1955, provided the employee at the time of exercise of any of the purchase rights is employed by the corporation, such an arrangement will be construed as the grant to the employee on June 1, 1951, of three options, each for the purchase of 1,000 shares. Similarly, if a corporation grants to an employee on January 1, 1952, the right to purchase 1,000 shares of its stock at $85 per share during 1952, at $75 per share during 1953, and at $65 per share during 1954, such an arrangement will be construed as the grant to the employee on January 1, 1952, of three alternative options, one option for the purchase of 1,000 shares at $85 per share during 1952, an alternative option for the purchase of 1,000 shares at $75 per share during 1953, and a third alternative option for the purchase of 1,000 shares at $65 per share during 1954.

(*b*) *Time and date of granting of option.*—The words "the date of the granting of the option" and "the time such option is granted", and similar phrases, refer to the date or time when the corporation completes the corporate action constituting an offer of stock for sale to an individual under the terms and conditions of a restricted stock option. Ordinarily, if the corporate action contemplates an immediate offer of stock for sale to an individual or to a class including such individual, or contemplates a particular date on which such offer is to be made, the time or date of the granting of the option is the time or date of such corporate action if the offer is to be made immediately, or the date contemplated as the date of the offer, as the case may be. However, an unreasonable delay in the giving of notice of such offer to the individual or to the class will be taken into account as indicating that the corporation contemplated that the offer was to be made at the subsequent date on which such notice is given. If the terms of the offer do not specify the amount of the option price, the option will not be considered granted prior to the date on which the amount of the option price becomes fixed or determinable.

If the corporation imposes conditions on the granting of an option (as distinguished from conditions governing the exercise of the option), such conditions shall be given effect in accordance with the intent of the corporation. A special rule is provided by section 130A(d)(5), as added by the Revenue Act of 1951, for options subject to stockholders approval. If the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval. A condition which does not require corporate action, such as the approval of some regulatory or governmental agency, for example, a stock exchange or the Securities and Exchange Commission, is ordinarily considered a condition upon the exercise of the option unless the corporate action clearly indicates that the option is not to be granted until such condition is satisfied. If an option is granted to an individual upon the condition that such individual will become an employee of the corporation granting the option or of its parent or subsidiary corporation, such option is not granted prior to the date the individual becomes such an employee.

In general, conditions imposed upon the exercise of an option will not operate to make ineffective the granting of the option. For example, on June 1, 1951, the A Corporation grants to X, an employee, an option to purchase 5,000 shares of the corporation stock exercisable by X on or after June 1, 1952, provided he is employed by the corporation on June 1, 1952. Such an option is granted to X on June 1, 1951.

(*c*) *Stock.*—The term "stock" means capital stock of any class, including voting or nonvoting common or preferred stock. The term includes both treasury stock and stock of original issue. Special classes of stock authorized to be issued to and held by employees are within the scope of the term "stock" as used in section 130A, provided such stock otherwise possesses the rights and characteristics of capital stock.

(*d*) *Option price.*—The term "option price" means the consideration in money or property which, pursuant to the terms of the option, is the price at which the stock subject to the option is purchased.

(*e*) *Exercise.*—The term "exercise", when used in reference to an option, means the act of acceptance by the optionee of the offer to sell contained in the option. In general, the time of exercise is the time when there is a sale

or a contract to sell between the corporation and the individual. An agreement or undertaking by the employee to make payments under a stock purchase plan does not constitute the exercise of an option so long as the payments made remain subject to withdrawal by employee. If the terms of the offer do not specify the amount of the option price, the option will not be considered exercised prior to the date on which the amount of the option price becomes fixed or determinable.

(*f*) *Transfer.*—The term "transfer", when used in reference to the transfer to an individual of a share of stock pursuant to his exercise of a restricted stock option means the transfer of ownership of such share, or the transfer of substantially all the rights of ownership. Such transfer must, within a reasonable time, be evidenced on the books of the corporation.

SEC. 29.130A-2. RESTRICTED STOCK OPTION.—(*a*) *In general.*—A "restricted stock option" is an option granted after February 26, 1945, to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if (1) at the time such option is granted the option price is at least 85 percent of the fair market value at such time of the stock subject to the option; and (2) such option by its terms is not transferable by such individual otherwise than by will or by the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and (3) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock either of the employer corporation or of its parent or subsidiary corporation.

At the time the option is granted, the relationship between the individual to whom an option is granted and the corporation granting the option (or a corporation which is a parent or subsidiary thereof) must be the legal and *bona fide* relationship of employer and employee. For rules applicable to the determination whether the employer-employee relationship exists, see section 405.104 of Regulations 116, relating to collection of income tax at source on wages. An option granted prior to employment or after termination of employment is not a restricted stock option. As to the granting of an option conditioned upon employment, see section 29.130A-1(*b*). The option must be granted for a reason connected with the individual's employment by the corporation or by its parent or subsidiary corporation. An option may qualify as a restricted stock option only if, under the terms of the option, it is not transferable (other than by will or by the laws of descent and distribution) by the individual to whom it is granted, and is exercisable, during the lifetime of such individual, only by him. Accordingly, an option which is transferable by the individual to whom it is granted during his lifetime, or is exercisable during such individual's lifetime by another person, is not a restricted stock option.

(*b*) *Ownership of 10 percent of stock.*—In determining the amount of stock owned by an individual, for the purpose of applying the 10 percent test of section 130A(d)(1)(C), stock of the employer corporation or of its parent or subsidiary owned (directly or indirectly) by or for such individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants, shall be considered as owned by such individual. For the purpose of section 130A, if a corporation, partnership, estate, or trust owns (directly or indirectly) stock of the employer corporation or of its parent or subsidiary, such stock shall be considered as being owned proportionately by or for the shareholders, partners, or beneficiaries of the corporation, partnership, estate, or trust.

SEC. 29.130A-3. EXERCISE OF RESTRICTED STOCK OPTION.—The special rules of income tax treatment provided in subsections (a) and (b) of section 130A are applicable only if the following conditions exist with respect to the transfer of a share of stock to an individual:

(a) The share of stock is transferred to the individual pursuant to his exercise after 1949 of a restricted stock option; and

(b) At the time the option is exercised by him, the individual is an employee of the corporation granting such option (or of a parent or subsidiary thereof) or was an employee of any such corporations within 3 months prior to the date the option is exercised.

The special treatment provided in subsections (a) and (b) of section 130A shall apply only if the restricted stock option is exercised by the individual to whom it was granted. Such special treatment shall not be applicable with respect to stock transferred pursuant to the exercise of the option by the

individual's executor, administrator, heir, or legatee. Under the provisions of section 130A(d)(1)(B), an option may qualify as a restricted stock option although it is transferable at death to the individual's executor, administrator, heir, or legatee. Thus, the fact that a restricted stock option may be exercised by an executor, administrator, heir, or legatee does not deprive the individual who exercises such option during his lifetime of the special treatment provided in section 130A.

At the time of exercise of a restricted stock option, the status of the individual exercising such option must be that of a *bona fide* employee of the corporation granting the option or that of a *bona fide* employee of a parent or subsidiary of such corporation, or such individual must have been a *bona fide* employee of any such corporation within 3 months previous to the date of exercise.

The determination whether an option ultimately exercised is a restricted stock option is made as of the date such option is granted. An option which is a restricted stock option when granted does not lose its character as such an option by reason of subsequent events, and an option which is not a restricted stock option when granted does not become such an option by reason of subsequent events. See, however, section 29.130A–4, relating to modification, extension, or renewal of an option. This rule is illustrated as follows:

Example 1. S–1 Corporation is a subsidiary of S Corporation which, in turn, is a subsidiary of P Corporation. On June 1, 1951, P grants to an employee of P a restricted stock option to purchase a share of stock of S–1. On January 1, 1952, S sells a portion of the S–1 stock which it owns to an unrelated corporation and, as of that date, S–1 ceases to be a subsidiary of S. On May 1, 1952, while still employed by P, the employee exercises his option to purchase a share of S–1 stock. The employee has exercised a restricted stock option.

Example 2. Assume P grants an option to an employee under the same facts as in example 1 above, except that on June 1, 1951, S–1 is not a subsidiary of either S or P. Such option is not a restricted stock option on June 1, 1951. On January 1, 1952, S purchases from an unrelated corporation a sufficient number of shares of S–1 stock to make S–1, as of that date, a subsidiary of S. On May 1, 1952, while still employed by P, the employee exercises his option to purchase a share of S–1 stock. The employee has not exercised a restricted stock option.

SEC. 29.130A–4. MODIFICATION, EXTENSION, OR RENEWAL.—Subsection (e) of section 130A provides rules for determining whether a share of stock transferred to an individual upon his exercise of an option, after the terms thereof have been modified, extended, or renewed, is transferred pursuant to the exercise of a restricted stock option. For the purpose of such determination, the statute provides that:

(a) Any modification, extension, or renewal of the terms of an option to purchase stock shall be considered as the granting of a new option; and

(b) The fair market value of the stock subject to the option at the time of the granting of such option shall be considered as the fair market value of such stock (1) on the date of the original granting of the option, (2) on the date of the making of such modification, extension, or renewal, or (3) at the time of the making of any intervening modification, extension, or renewal, whichever is the highest.

The time or date when an option is modified, extended, or renewed shall be determined, insofar as applicable, in accordance with the rules governing determination of the time or date of granting an option provided in section 29.130A–1(*b*). A modification of an option includes any material change in the terms or conditions of the option. For example, a material change in the terms of the option with respect to the kind or price of the shares of stock subject to the option is a modification of the option. Likewise, a material change in the time of issuance of stock subject to the option, the terms of payment for such stock, or an acceleration or postponement of the exercise date is a modification of the option. However, a mere change in the terms of the option, with respect to the number or price of the shares of stock subject to the option, to reflect a stock dividend or stock split-up is not a modification of the option. Where an option is amended solely to increase the number of shares subject to the option, such increase shall not be considered as a modification of the option, but shall be treated as the grant of new option for the additional shares. An extension of an option refers to the granting by the corporation to the optionee of an additional period of time within which to exercise the option beyond the time originally prescribed. A renewal of an option is the granting

by the corporation of the same rights or privileges contained in the original option on the same terms and conditions. The foregoing rules apply as well to successive modifications, extensions, and renewals.

A restricted stock option may, as a result of a modification, extension, or renewal, thereafter cease to be a restricted stock option, or an option may, by modification, extension, or renewal, thereafter become a restricted stock option. The rule stated in subsection (e) of section 130A is illustrated as follows:

Example 1. On June 1, 1950, the X Corporation grants to an employee an option to purchase 100 shares of the stock of X Corporation at $90 per share, such option to be exercised on or before June 1, 1952. At the time the option is granted, the fair market value of the X Corporation stock is $100 per share. On February 1, 1951, before the employee exercises the option, X Corporation modifies the option to provide that the price at which the employee may purchase the stock shall be $80 per share. On February 1, 1951, the fair market value of the X Corporation stock is $90 per share. Under section 130A(e), the X Corporation is deemed to have granted an option to the employee on February 1, 1951, to purchase at $80 per share 100 shares of stock having a fair market value of $100 per share, that is, the higher of the fair market value of the stock on June 1, 1950, and on February 1, 1951. The exercise of such option by the employee after February 1, 1951, is not the exercise of a restricted stock option.

Example 2. On June 1, 1950, the X Corporation grants to an employee a restricted stock option to purchase 100 shares of X Corporation stock at $90 per share, exercisable after December 31, 1951, and on or before June 1, 1952. On June 1, 1950, the fair market value of X Corporation's stock is $100 per share. On February 1, 1951, X Corporation modifies the option to provide that the option shall be exercisable on or after February 1, 1951, and on or before June 1, 1952. On February 1, 1951, the fair market value of X Corporation stock is $110 per share. Under section 130A(e), X Corporation is deemed to have granted an option to the employee on February 1, 1951, to purchase at $90 per share 100 shares of stock having a fair market value of $110 per share, that is, the higher of the fair market value of the stock on June 1, 1950, and on February 1, 1951. The exercise of such option by the employee is not the exercise of a restricted stock option.

Example 3. The facts are the same as in example 1, except that the employee exercised the option to the extent of 50 shares on January 15, 1951, prior to the date of the modification of the option. Any exercise of the option after February 1, 1951, the date of the modification, is not the exercise of a restricted stock option. See example 1, above. The exercise of the option on January 15, 1951, pursuant to which 50 shares were acquired, is the exercise of a restricted option.

Example 4. On June 1, 1950, the X Corporation grants to an employee an option to purchase 100 shares of the stock of X Corporation at $80 per share, such option to be exercised on or before June 1, 1952. At the time the option is granted the fair market value of the X Corporation stock is $100 per share. On February 1, 1951, before the employee exercises the option, the X Corporation modifies the option to provide that the number of shares of stock which the employee may purchase at $80 per share will be 250. On February 1, 1951, the fair market value of the X Corporation stock is $90 per share. Under these facts, the X Corporation has granted two options, one option (not a restricted stock option) with respect to 100 shares having been granted on June 1, 1950, and the other option (a restricted stock option) with respect to the additional 150 shares having been granted on February 1, 1951. In the absence of facts identifying which option is exercised first, the employee will be deemed to have exercised the options in the order in which they were granted.

SEC. 29.130A-5. OPERATION OF SECTION 130A.—With respect to taxable years ending after December 31, 1949—

(*a*) *Rules applicable to all restricted stock options.*—(1) *In general.*—If a share of stock is transferred to an individual pursuant to his timely exercise of a restricted stock option and is not disposed of by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him, then subsection (a) of section 130A provides that—

(i) No income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(ii) No deduction under section 23(a) shall be allowable at any time to the employer corporation of such individual or its parent or subsidiary corporation with respect to the share so transferred; and

(iii) No amount other than the option price shall be considered as received by either of such corporations for the share so transferred.

For the purpose of the foregoing rules, each share of stock transferred pursuant to a restricted stock option is treated separately. For example, if an individual, while employed by a corporation granting him a restricted stock option, exercises the option with respect to part of the stock covered by the option, and if such individual exercises the balance of the option more than 3 months after leaving such employment, the application of section 130A to the stock obtained upon the earlier exercise of the option is not affected by the fact that the income taxes of the employer and the individual with respect to the stock obtained upon the later exercise of the option are not determined under section 130A.

(2) *Holding period.*—The special rules provided in section 130A(a) are not applicable if the individual disposes of the share of stock within 2 years from the date the option is granted or within 6 months after the transfer of such share to him. Section 130A is not made inapplicable by a transfer within the 2-year or 6-month period if such transfer is not a disposition of the stock as defined in paragraph (3) of this subsection, for example, a transfer from the decedent to his estate or a transfer by bequest or inheritance. Similarly, a disposition by the executor, administrator, heir, or legatee is not a disposition by the decedent.

(3) *Disposition of stock.*—The term "disposition", for the purpose of section 130A, includes a sale, exchange, gift, or any transfer of legal title, but does not include a transfer from a decedent to his estate or a transfer by bequest or inheritance, an exchange which is within the provisions of section 112(b) (2) or (3), or a mere pledge or hypothecation. However, a disposition of the stock pursuant to a pledge or hypothecation is a disposition by the individual, even though the making of the pledge or hypothecation is not such a disposition.

If an individual exercises a restricted stock option, a share of stock acquired pursuant to such exercise is not considered disposed of by the individual if such share is taken in the name of the individual and another person jointly with right of survivorship, or is subsequently transferred into such joint ownership, or is retransferred from such joint ownership to the sole ownership of the individual. However, if such individual and his joint owner transfer such share to another person, the individual has made a disposition of such share. Likewise, if a share of stock held in the joint names of such individual and another person is transferred to the name of such other person, there is a disposition of such share by the individual. If an individual exercises a restricted stock option and a share of stock is transferred to another or is transferred to such individual in his name as trustee for another, the individual has made a disposition of such share.

(4) *Examples.*—The rules of subsection (a) of section 130A are illustrated as follows:

Example 1. On June 1, 1951, the X Corporation grants to E, an employee, a restricted stock option to purchase 100 shares of X Corporation stock at $95 per share. On that date, the fair market value of X Corporation stock is $100 per share. On June 1, 1952, while employed by X Corporation, E exercises the option in full and pays X Corporation $9,500, and on that day X Corporation transfers to E 100 shares of its stock having a fair market value of $12,000. Prior to June 1, 1953, E makes no disposition of the 100 shares so purchased. E realizes no income on June 1, 1952, with respect to the transfer to him of the 100 shares of X Corporation stock. X Corporation is not entitled to any deduction at any time with respect to its transfer to E of the stock. In computing its gain or loss, if any, upon such transfer, X Corporation is considered to have received no more than $9,500 for the stock so transferred. E's basis for such 100 shares is $9,500.

Example 2. Assume, in example 1, that on August 1, 1953, 2 years and 1 month after the granting of the option and 1 year and 1 month after the transfer of the shares to him, E sells the 100 shares of X Corporation stock for $13,000, which is the fair market value of the stock on that date. For the taxable year in which the sale occurs, E realizes a gain of $3,500 ($13,000 minus E's basis of $9,500), which is treated as long-term capital gain.

Example 3. Assume, in example 2, that on August 1, 1953, E makes a gift of the 100 shares of X Corporation stock to his son. Such disposition results in no realization of gain to E either for the taxable year in which the option is exercised or the taxable year in which the gift is made. E's basis of $9,500 becomes the donee's basis for determining gain or loss.

Example 4. Assume, in example 1, that on May 1, 1953, 1 year and 11 month after the granting of the option and 11 months after the transfer of the share to him, E sells the 100 shares of X Corporation stock for $13,000. The specia rules of section 130A(a) are not applicable to the transfer of the stock b X Corporation to E, because disposition of the stock was made by E withi 2 years from the date the option was granted.

Example 5. Assume, in example 1, that E dies on September 1, 1952, ownin the 100 shares of X Corporation stock acquired by him pursuant to his exercis on June 1, 1952, of the restricted stock option. On the date of death, the fai market value of the stock is $12,500. No income is realized by E by reason c the transfer of the 100 shares to his estate. If E's executor elects to value th stock as of the date of death, the basis of the 100 shares in the hands of th executor is $12,500.

(*b*) *Additional rules applicable where the option price is between 85 percen and 95 percent of the value of the stock.*—(1) *In general.*—If all the condition necessary for the application of subsection (a) of section 130A exist, subsectio (b) of section 130A provides additional rules which are applicable in case where, at the time the restricted stock option is granted, the option price pe share is less than 95 percent (but not less than 85 percent) of the fair marke value of such share. In such case, upon the disposition of such share by th individual after the expiration of the 2-year and the 6-month periods, or upo his death while owning such share (whether occurring before or after th expiration of such periods), there shall be included in the individual's gros income as compensation (and not as gain upon the sale or exchange of a capita asset) the amount, if any, by which the option price is exceeded by the lesse of the fair market value of the share at the time the option was granted c the fair market value of the share at the time of such disposition or deat The amount of such compensation shall be included in the individual's gros income for the taxable year in which the disposition occurs or for the taxab year closing with his death, whichever event results in the application of sectio 130A(b).

The application of the special rules provided in section 130A(b) shall n affect the rules provided in section 130A(a) with respect to the individua exercising the option, the employer corporation, or its parent or subsidiary co poration. Thus, notwithstanding the inclusion of an amount as compensatio in the gross income of an individual, as provided in section 130A(b), no incom results to the individual at the time the stock is transferred to him, and no dedu tion under section 23(a) is allowable at any time to the employer corporatio or its parent or subsidiary with respect to such amount. Likewise, for the pu pose of determining gain or loss, if any, realized by any of such corporatio by reason of the transfer of a share of stock with respect to which the rules section 130A(b) apply, no amount other than the option price shall be consider as received by any of such corporations for the stock so transferred.

If the individual exercises a restricted stock option during his lifetime a dies before the stock is transferred to him pursuant to his exercise of the optio the transfer of such stock to the individual's executor, administrator, heir, legatee is deemed, for the purpose of section 130A, to be a transfer of the sto to the individual exercising the option and a further transfer by reason death from such individual to his executor, administrator, heir, or legatee.

(2) *Basis.*—If the special rules provided in subsection (b) of sectio 130A are applicable to the disposition of a share of stock by an individua the basis of such share in the individual's hands at the time of such dispo tion, determined under section 113, shall be increased by an amount equal the amount includible as compensation in his gross income under secti 130A(b). If the special rules provided in section 130A(b) are applicab to a share of stock upon the death of an individual, the basis of such sha in the hands of the estate or the person receiving the stock by bequest or heritance shall be determined under section 113, and shall not be increas by reason of the inclusion upon the decedent's death of any amount in gross income under section 130A(b). See example 8, below, with respect the determination of basis of the share in the hands of a surviving joint own

(3) *Examples.* The operation of section 130A(b) may be illustrated as f lows:

Example 1. On June 1, 1951, the X Corporation grants to E, an employ a restricted stock option to purchase a share of X Corporation's stock for $ The fair market value of the X Corporation stock on such date is $100 share. On June 1, 1952, E exercises the restricted stock option and on t

date the X Corporation transfers the share of stock to E. On January 1, 1954, E sells the share for $150, its fair market value on that date. E makes his income tax return on the basis of the calendar year. The income tax consequences to E and to X Corporation are as follows:

Compensation in the amount of $15 is includible in E's gross income for 1954, the year of the disposition of the share. The $15 represents the difference between the option price ($85) and the fair market value of the share on the date the option was granted ($100), since such value is less than the fair market value of the share on the date of disposition ($150). For the purpose of computing E's gain or loss on the sale of the share, E's cost basis of $85 is increased by $15, the amount includible in E's gross income as compensation. Thus, E's basis for the share is $100. Since the share was sold for $150, E realizes a gain of $50, which is treated as long-term capital gain.

The X Corporation is entitled to no deduction under section 23(a) at any time with respect to the share transferred to E. For the purpose of computing gain or loss, if any, to the X Corporation on account of the transfer of the share to E, the X Corporation shall not be considered to have received any amount other than $85 for the share.

Example 2. Assume, in example 1 above, E sells the share of X Corporation stock on January 1, 1955, for $75, its fair market value on that date. Since $75 is less than the option price ($85), no amount in respect of the sale is includible as compensation in E's gross income for 1955. E's basis for determining gain or loss on the sale is $85. Since E sold the share for $75, E realized a loss of $10 on the sale, which loss is treated as a long-term capital loss.

Example 3. Assume, in example 1 above, that instead of selling the share on January 1, 1954, E makes a gift of the share on that day. In such case, $15 is includible as compensation in E's gross income for 1954. E's cost basis of $85 is increased by $15, the amount includible in E's gross income as compensation. Thus, E's basis for the share is $100, which becomes the donee's basis, as of the time of the gift, for determining gain or loss.

Example 4. Assume, in example 2 above, that instead of selling the share on January 1, 1955, E makes a gift of the share on that date. Since the fair market value of the share on that day ($75) is less than the option price ($85), no amount in respect of the disposition by way of gift is includible as compensation in E's gross income for 1955. E's basis for the share is $85, which becomes the donee's basis, as of the time of the gift, for the purpose of determining gain. The donee's basis for the purpose of determining loss, determined under section 113(a)(2), is $75 (fair market value of the share at the date of gift).

Example 5. Assume, in example 1 above, that after acquiring the share of stock on June 1, 1952, E dies on August 1, 1953, at which time the share has a fair market value of $150. Compensation in the amount of $15 is includible in E's gross income for the taxable year closing with his death, such $15 being the difference between the option price ($85) and the fair market value of the share when the option was granted ($100), since such value is less than the fair market value at date of death ($150). The basis of the share in the hands of E's estate is determined under section 113(a)(5) without regard to the $15 includible in the decedent's gross income.

Example 6. Assume, in example 5 above, that E dies on August 1, 1952, at which time the share has a fair market value of $150. Although E's death occurred within 2 years from the date of the granting of the option and within 6 months after the transfer of the share to him, the income tax consequences are the same as in example 5.

Example 7. Assume the same facts as in example 1 above, except that the share of stock was issued in the names of E and his wife jointly with right of survivorship, and except that E and his wife sold the share on June 15, 1953, for $150, its fair market value on that date. Compensation in the amount of $15 is includible in E's gross income for 1953, the year of the disposition of the share. The basis of the share in the hands of E and his wife for the purpose of determining gain or loss on the sale is $100, that is, the cost of $85 increased by the amount of $15 includible as compensation in E's gross income. The gain of $50 on the sale is treated as long-term capital gain, and is divided equally between E and his wife.

Example 8. Assume the same facts as in example 1 above, except that the share of stock was issued in the names of E and his wife jointly with right of survivorship, and except that E predeceased his wife on August 1, 1953, at which time the share had a fair market value of $150. Compensation in the

amount of $15 is includible in E's gross income for the taxable year closing with his death. See example 5, above. The basis of the share in the hands of E's wife as survivor is, under sections 113(a) and 130A(b), the cost of $85 increased by the $15 includible in the decedent's gross income, or $100.

Example 9. Assume in example 8 above that E's wife predeceased him on July 1, 1953. Section 130A(b) does not apply in respect of her death. Upon the subsequent death of E on August 1, 1953, the income tax consequences in respect of E's taxable year closing with the date of his death, and in respect of the basis of the share in the hands of his estate, are the same as in example 5 above. If E had sold the share on July 15, 1953 (after the death of his wife), for $150, its fair market value at that time, the income tax consequences would be the same as in example 1 above.

(c) *Acquisition of other stock or securities.*—Section 130A(c) provides that the special rules stated in subsections (a) and (b) of section 130A, if applicable with respect to stock transferred to an individual upon his exercise of an option, shall likewise be applicable with respect to (1) stock or securities acquired by such individual in exchange for such stock, if the exchange is within the provisions of section 112(b) (2) or (3), and (2) new stock, as described in section 113(a)(19), acquired upon a distribution with respect to such stock. Such new stock and such stock or securities so acquired shall, for the purpose of section 130A, be considered as having been transferred to the individual upon his exercise of the option. A similar rule shall be applied in the case of a series of such exchanges or acquisitions.

For example, if new stock, as described in section 113(a)(19), is acquired upon a distribution with respect to stock transferred to the individual upon the timely exercise of a restricted stock option, and if such new stock is disposed of within 2 years from the date the option was granted or within 6 months after the original stock was transferred to such individual, section 130A is not applicable with respect to such new stock. If the disposition occurs after the 2-year and 6-month periods, section 130A is applicable.

PAR. 2. Section 29.22(a)-1, as amended by Treasury Decision 5600 [C. B. 1948-1, 5], approved February 2, 1948 [26 CFR 29.22(a)-1], is further amended as follows:

(A) By striking the first word of the third paragraph, and by inserting in lieu thereof the following: "Except as otherwise provided in section 130A, if"; and

(B) By adding at the end of the third paragraph thereof the following sentence:

See section 130A and the regulations prescribed thereunder for special rules with respect to stock transferred from an employer to an employee pursuant to the timely exercise of a restricted stock option.

PAR. 3. Section 29.113(a)-1, as amended by Treasury Decision 5402 [C. B. 1944, 229, 237], approved September 5, 1944 [26 CFR 29.113(a)-1], is further amended by adding at the end thereof the following sentence:

For special rules for determining the basis for gain or loss in the case of the disposition of a share of stock acquired pursuant to the timely exercise of a restricted stock option where the option price was between 85 percent and 95 percent of the fair market value of the stock at the time the option was granted, see section 130A(b).

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 of the Internal Revenue Code (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved June 5, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 9, 1952, 8:55 a. m.)

SUPPLEMENT C.—CREDITS AGAINST TAX

SECTION 131.—TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES

SECTION 29.131-1: Analysis of credit for taxes. 1952-5-13771 I. T. 4074

INTERNAL REVENUE CODE

The Cuban tax upon stock dividends referred to in article 23, chapter IV of Cuban Law No. 2, enacted May 22, 1951, falls within the United States concept of an income tax and is allowable as a credit against United States income tax under section 131(a) of the Internal Revenue Code, subject to the limitations imposed by section 131(b) of the Code.

Advice is requested whether the Cuban tax upon stock dividends referred to in article 23, chapter IV of Cuban Law No. 2, enacted May 22, 1951, is allowable as a credit against United States income tax under section 131 of the Internal Revenue Code.

The Cuban dividend tax originated with chapter 6 of the basic tax law of the Republic of Cuba enacted January 29, 1931, such law having been amended by later laws to provide for increased rates of tax. In I. T. 3998 (C. B. 1950-1, 64) it is held that the taxes imposed on dividends by the Cuban laws in question qualify as income taxes which are allowable, under section 131 of the Internal Revenue Code, as credits against United States income tax. Article 23, chapter IV of Cuban Law No. 2, enacted May 22, 1951, contains the following paragraph:

The tax shall also be exacted in respect of dividends paid in kind, including stock dividends or other securities issued by the same company.

It is alleged that the Cuban taxing authorities contend that this provision of law merely codified existing law. In any event, the Cuban tax on dividends is imposed with respect to all dividends on stock, whether they be cash dividends, property dividends, or dividends consisting of additional shares of the same stock. Stock dividends are not specifically taxed as such; they are merely included within the general scope of dividends subject to the Cuban tax.

Section 131 of the Internal Revenue Code provides in part as follows:

(a) ALLOWANCE OF CREDIT.—If the taxpayer chooses to have the benefits of this section, the tax imposed by this chapter [chapter 1 of the Code] * * * shall be credited with:

(1) CITIZENS AND DOMESTIC CORPORATIONS.—In the case of a * * * domestic corporation, the amount of any income * * * taxes paid or accrued during the taxable year to any foreign country * * *

In *Mary Duke Biddle et al.* v. *Commissioner* (302 U. S. 573; Ct. D. 1303, C. B. 1938-1, 309), the Supreme Court of the United States said: "Section 131 does not say that the meaning of its words is to be determined by foreign taxing statutes and decisions, and there is nothing in its language to suggest that in allowing the credit for foreign tax payments, a shifting standard was adopted by reference to foreign characterizations and classifications of tax legislation."

Since the law in question is a part of the over-all Cuban tax law which has been held, in I. T. 3998, *supra*, to impose an income tax, the

fact that some of the items taxed are nonincome items is not material except insofar as those items affect the limitations imposed by section 131(b) of the Code by being excluded from the numerator and denominator of the limiting fraction. Even though for limitation purposes the nature of the income to be included or excluded from gross income is important, for the purposes of the tax it is not important since the tax, as such, is indivisible.

Accordingly, it is held that the Cuban tax upon stock dividends referred to in article 23, chapter IV of Cuban Law No. 2, enacted May 22, 1951, falls within the United States concept of an income tax and is allowable as a credit against United States income tax under section 131(a) of the Internal Revenue Code, subject to the limitations imposed by section 131(b) of the Code.

SECTION 29.131–1: Analysis of credit for taxes. 1952–11–13829 I. T. 4083

INTERNAL REVENUE CODE

The profits tax of 7 percent of net revenue imposed by the Province of Quebec under section 6 of the Quebec Corporation Tax Act falls within the United States concept of an income tax and is allowable as a credit against United States income tax to the extent provided by section 131 of the Internal Revenue Code.

Advice is requested whether the profits tax of 7 percent of net revenue imposed by the Province of Quebec under section 6 of the Quebec Corporation Tax Act (11 Geo. VI, ch. 33) qualifies as an income tax which may be allowed as a credit against United States income tax.

Section 6 of the Quebec Corporation Tax Act reads in part as follows:

In addition to the taxes on capital and upon places of business mentioned in this act, every company, partnership or person * * *, every holding company and every mining company whose annual profits are not taxed under the Quebec Mining Act (Revised Statutes, 1941, chapter 196), having its head office or an office in the province or which is carrying on business therein, directly or through a person paid by salary, commission or otherwise, acting as employee, vendor, agent, representative or in any other capacity, shall pay annually a tax equivalent to 7 per centum of the net revenue of their respective financial year in progress at the time of the coming into force of this act and of each of their subsequent respective financial years.

Section 7 of the Quebec Corporation Tax Act enumerates the deductions allowable in computing profits; section 8 thereof enumerates those items which are not allowable as deductions in computing profits; and section 9 enumerates exemptions and deductions from the tax imposed under the provisions of the act.

Section 131 of the Internal Revenue Code provides in part as follows:

(a) ALLOWANCE OF CREDIT.—If the taxpayer chooses to have the benefits of this section, the tax imposed by this chapter [chapter 1 of the Code] * * * shall be credited with:

(1) CITIZENS AND DOMESTIC CORPORATIONS.—In the case of a citizen of the United States and of a domestic corporation, the amount of any income * * * taxes paid or accrued during the taxable year to any foreign country * * *

Section 29.131–2 of Regulations 111 defines "foreign country" as meaning any foreign state or political subdivision thereof, or any foreign political entity, which levies and collects income, war-profits, or excess-profits taxes.

In construing the provisions of the Federal internal revenue laws relative to credits for foreign income taxes, the Bureau has held that in order for a tax to be allowable as a credit under section 131, the tax imposed by the foreign country must be a tax on income within the meaning of that term as used and understood for Federal income tax purposes. (See G. C. M. 18182, C. B. 1937–1, 149.)

It is held that the profits tax of 7 percent of net revenue imposed by the Province of Quebec under section 6 of the Quebec Corporation Tax Act falls within the United States concept of an income tax and is allowable as a credit against United States income tax to the extent provided by section 131 of the Internal Revenue Code.

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX

SECTION 141.—CONSOLIDATED RETURNS

SECTION 29.141–1: Consolidated income and excess profits tax returns of affiliated corporations.

INTERNAL REVENUE CODE

Apportionment of income and excess profits tax among members of affiliated group in determining their earnings and profits. (See I. T. 4085, page 68.)

SECTION 143.—WITHHOLDING OF TAX AT SOURCE

SECTION 29.143–1: Withholding tax at source. (Also Section 144, Section 29.144–1.) 1952–10–13817 T. D. 5897

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 7.—TAXATION PURSUANT TO TREATIES.—SUBPART—IRELAND, REGULATIONS EFFECTIVE JANUARY 1, 1952

Release of excess tax withheld, and exemption from, or reduction in rate of, withholding under sections 143 and 144 of the Internal Revenue Code in the case of residents of Ireland and of foreign corporations managed and controlled in Ireland, as affected by the reciprocal income tax convention between the United States and the Republic of Ireland proclaimed by the President of the United States on December 24, 1951.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

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SECTION 7.1000. INTRODUCTORY.—The income tax convention between the United States and the Republic of Ireland, signed September 13, 1949, proclaimed by the President of the United States on December 24, 1951, and effective (as respects the United States tax) for taxable years beginning on or after January 1, 1951, hereinafter referred to as the convention, provides in part as follows:

ARTICLE I

(1) The taxes which are the subject of the present convention are:

(a) In the United States of America: The Federal income taxes, including surtaxes (hereinafter referred to as United States tax).

(b) In Ireland: The income tax (including surtax) and the corporation profits tax (hereinafter referred to as Irish tax).

(2) The present convention shall also apply to any other taxes of a substantially similar character imposed by either contracting party subsequently to the date of signature of the present convention.

ARTICLE II

(1) In the present convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term "Ireland" means the Republic of Ireland and the term "Irish" has a corresponding meaning.

(c) The terms "territory of one of the contracting parties" and "territory of the other contracting party" mean the United States or Ireland as the context requires.

(d) The term "United States corporation" means a corporation, association or other like entity created or organised in or under the laws of the United States.

(e) The term "Irish corporation" means any kind of juridical person created under the laws of Ireland.

(f) The terms "corporation of one contracting party" and "corporation of the other contracting party" mean a United States corporation or an Irish corporation as the context requires.

(g) The term "resident of Ireland" means any person (other than a citizen of the United States or a United States corporation) who is resident in Ireland for the purposes of Irish tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in Ireland if its business is managed and controlled in Ireland.

(h) The term "resident of the United States" means any individual who is resident in the United States for the purposes of United States tax and not resident in Ireland for the purposes of Irish tax, and any United States

corporation and any partnership created or organised in or under the laws of the United States, being a corporation or partnership which is not resident in Ireland for the purposes of Irish tax.

(i) The term "Irish enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Ireland.

(j) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United States.

(k) The terms "enterprise of one of the contracting parties" and "enterprise of the other contracting party" mean a United States enterprise or an Irish enterprise, as the context requires.

(l) The term "permanent establishment" when used with respect to an enterprise of one of the contracting parties means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting parties shall not be deemed to have a permanent establishment in the territory of the other contracting party merely because it carries on business dealings in the territory of such other contracting party through a *bona fide* commission agent or broker acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting parties maintains in the territory of the other contracting party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting party has a subsidiary corporation which is a corporation of the other contracting party or which is engaged in trade or business in the territory of such other contracting party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(2) For the purposes of Articles VI, VII, VIII, IX, and XIV a resident of Ireland shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year. The same principle shall be applied, *mutatis mutandis*, by Ireland in the case of a resident of the United States.

(3) In the application of the provisions of the present convention by one of the contracting parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that contracting party relating to the taxes which are the subject of the present convention.

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ARTICLE VI

(1) The rate of United States tax on dividends derived from a United States corporation by a resident of Ireland who is subject to Irish tax on such dividends and not engaged in trade or business in the United States shall not exceed 15 percent: *provided* that such rate of tax shall not exceed 5 percent if such resident is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to 5 percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Dividends derived from sources within Ireland by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such dividends, and (c) not engaged in trade or business in Ireland, shall be exempt from Irish surtax.

(3) Either of the contracting parties may terminate this Article by giving written notice of termination to the other contracting party, through diplomatic channels, on or before the 30th day of June in any calendar year after the calendar year in which the exchange of the instruments of ratification takes place and in such event paragraph (1) hereof shall cease to be effective as to United States tax on and after the 1st day of January, and paragraph (2) hereof shall cease to be effective as to Irish tax on and after the 6th day of April, in the calendar year next following that in which such notice is given.

ARTICLE VII

(1) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United States by a resident of Ireland who is subject to Irish tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in Ireland controlling, directly or indirectly, more than 50 percent of the entire voting power in the paying corporation.

(2) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within Ireland by a resident of the United States who is subject to United States tax on such interest and not engaged in trade or business in Ireland, shall be exempt from Irish tax; but such exemption shall not apply to such interest paid by a corporation resident in Ireland to a United States corporation controlling, directly or indirectly, more than 50 percent of the entire voting power in the paying corporation.

ARTICLE VIII

(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade-marks, and other like property, and derived from sources within the United States by a resident of Ireland who is subject to Irish tax on such royalties or other amounts and not engaged in trade or business in the United States, shall be exempt from United States tax.

(2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade-marks, and other like property, and derived from sources within Ireland by a resident of the United States who is subject to United States tax on such royalties or other amounts and not engaged in trade or business in Ireland shall be exempt from Irish tax.

(3) For the purposes of this article, the term "royalties" shall be deemed to include rentals in respect of motion picture films.

ARTICLE IX

(1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of Ireland who is subject to Irish tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall not exceed 15 percent: *provided* that any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

(2) Royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and rentals from real property or from an interest in such property, derived from sources within Ireland by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such royalties and rentals, and (c) not engaged in trade or business in Ireland, shall be exempt from Irish surtax.

ARTICLE X

(1) Any salary, wage, similar remuneration, or pension, paid by the Government of the United States to an individual (other than a citizen of Ireland who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from Irish tax.

(2) Any salary, wage, similar remuneration, or pension, paid by the Government of Ireland to an individual (other than a citizen of the United States who is not also a citizen of Ireland) in respect of services rendered to Ireland in the discharge of governmental functions, shall be exempt from United States tax.

(3) The provisions of this article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the contracting parties for purposes of profit.

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ARTICLE XII

(1) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United States by an individual who is a resident of Ireland shall be exempt from United States tax.

(2) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within Ireland by an individual who is a resident of the United States shall be exempt from Irish tax.

(3) The term "life annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

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ARTICLE XV

(1) Dividends and interest paid, on or after the 1st day of January in the calendar year in which the exchange of instruments of ratification takes place, by an Irish corporation shall be exempt from United States tax except where the recipient is a citizen of or a resident in the United States or a United States corporation.

(2) Dividends and interest paid, on or after the 6th day of April of the first year of assessment specified in Article XXII(2)(b)(i) of this convention, by a United States corporation shall be exempt from Irish tax except where the recipient is a resident of Ireland.

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ARTICLE XX

(1) The taxation authorities of the contracting parties shall exchange such information (being information available under the respective taxation laws of the contracting parties) as is necessary for carrying out the provisions of the present convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present convention. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this article, the term "taxation authorities" means, in the case of the United States, the Commissioner of Internal Revenue or his authorised representative and, in the case of Ireland, the Revenue Commissioners or their authorised representative.

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ARTICLE XXII

(1) The present convention shall be ratified and the instruments of ratification shall be exchanged at Washington, District of Columbia, as soon as possible.

(2) Upon exchange of ratifications, the present convention shall have effect

(a) as respects United States tax, for the taxable years beginning on or after the 1st day of January in the calendar year in which the exchange of instruments of ratification takes place;

(b) (i) as respects Irish income tax, for the year of assessment beginning on the 6th day of April in the calendar year in which the exchange of instruments of ratification takes place and subsequent years; (ii) as respects Irish surtax, for the year of assessment beginning on the 6th day of April immediately preceding the calendar year in which the exchange of instruments of ratification takes place, and subsequent years; and (iii) as respects Irish corporation profits tax, for any chargeable accounting period beginning on or after the 1st day of April in the calendar year in which the exchange of instruments of ratification takes place, and for the unexpired portion of any chargeable accounting period current at that date.

ARTICLE XXIII

(1) The present convention shall continue in effect indefinitely but either of the contracting parties may, on or before the 30th day of June in any calendar

year following the calendar year in which the exchange of instruments of ratification takes place, give to the other contracting party, through diplomatic channels, notice of termination and, in such event, the present convention shall cease to be effective

(a) as respects United States tax, for the taxable years beginning on or after the 1st day of January in the calendar year next following that in which such notice is given;

(b) (i) as respects Irish income tax, for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given; (ii) as respects Irish surtax, for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given; and (iii) as respects Irish corporation profits tax, for any chargeable accounting period beginning on or after the 1st day of April in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present convention or of any article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present convention or by treaties previously concluded between the contracting parties.

As used in this Treasury Decision, unless the context otherwise requires, the terms defined in the above articles of the convention shall have the meaning so assigned to them.

SEC. 7.1001. DIVIDENDS.—(*a*) *General.*—Under Article VI of the convention the rate of tax imposed with respect to dividends by section 211(a) of the Internal Revenue Code (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 231(a) of the Internal Revenue Code (relating to foreign corporations not engaged in trade or business within the United States) is reduced to 15 percent in the case of dividends derived from a United States corporation and received in taxable years beginning on or after January 1, 1951, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is resident in Ireland for the purposes of Irish tax, or by a foreign corporation (whether or not created or organized in or under the laws of Ireland) whose business is managed and controlled in Ireland, if such alien or corporation is subject to Irish tax on such dividends and at no time during the taxable year had a permanent establishment within the United States. As to what is a United States corporation, see Article II(1)(d) of the convention.

Thus, if a nonresident alien who is resident in Ireland for the purposes of Irish tax performs personal services within the United States during the taxable year, has at no time during such year a permanent establishment within the United States, and is subject to Irish tax on a dividend derived by him in such year from a United States corporation, he is entitled to the reduced rate of tax with respect to such dividend, as provided in Article VI of the convention, even though under the provisions of section 211(b) of the Internal Revenue Code he has engaged in trade or business within the United States during such year by reason of his having rendered personal services therein.

The fact that the payee of the dividend is not required to pay Irish tax on such dividend because of the application of reliefs or exemptions under Irish revenue laws does not prevent the application of the reduction in rate of United States tax with respect to such dividend. If the dividend would have been subject to Irish tax had the payee thereof derived an income large enough to require payment of tax, then liability to Irish tax exists for the purpose of the reduction in

rate of United States tax. As to what constitutes a permanent establishment, see Article II (1) (l) of the convention.

In the case of dividends paid on or after January 1, 1951, by an Irish corporation, as defined in Article II(1)(e) of the convention, no withholding of United States tax is required. See Article XV(1) of the convention.

(*b*) *Dividends paid by a United States subsidiary corporation.*— Under the proviso of Article VI(1) of the convention dividends derived from a domestic corporation by a foreign corporation whose business is managed and controlled in Ireland and which controls, directly or indirectly, at the time the dividend is paid 95 percent or more of the entire voting power in such domestic corporation are, when received in taxable years beginning on or after January 1, 1951, subject to tax at the rate of only 5 percent, if (1) not more than 25 percent of the gross income of such paying corporation for the 3-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporations, if any), (2) the relationship between such domestic corporation and such foreign corporation has not been arranged or maintained primarily with the intention of securing such reduced rate of 5 percent, (3) such foreign corporation is subject to Irish tax on such dividends, and (4) such foreign corporation at no time during the taxable year had a permanent establishment within the United States.

Any domestic corporation which claims or contemplates claiming that dividends paid or to be paid by it on or after January 1, 1951, are subject only to the 5 percent rate shall file the following information with the Commissioner of Internal Revenue as soon as practicable: (1) the date and place of its organization; (2) the location of the management and control of the foreign corporation to which the dividends are paid or to be paid; (3) the number of outstanding shares of stock of the domestic corporation having voting power and the voting power thereof; (4) the person or persons beneficially owning such stock of the domestic corporation and their relationship to such foreign corporation; (5) the amount of gross income by years of the domestic corporation for the 3-year period immediately preceding the taxable year in which the dividend is paid; (6) the amount of interest and dividends by years included in the gross income of the domestic corporation, and the amount of interest and dividends by years received by such corporation from its subsidiary corporations, if any; and (7) the relationship between the domestic corporation and the foreign corporation to which it pays the dividend.

As soon as practicable after such information is filed, the Commissioner of Internal Revenue will determine whether the dividends concerned fall within the scope of the proviso of Article VI(1) of the convention and may authorize the release of excess tax withheld with respect to dividends which come within such proviso. In any case in which the Commissioner of Internal Revenue has notified the domestic corporation that the dividends fall within the scope of such proviso the reduced withholding rate of 5 percent will apply to any dividends subsequently paid by such corporation to the foreign corporation, unless the stock ownership of the domestic corporation, or the

character of its income, or the place of management and control of the corporation to which the dividend is paid materially changes; or unless the Commissioner of Internal Revenue determines that the relationship between the two corporations is being maintained primarily with the intention of securing the reduced rate of tax; and, if such change in stock ownership, character of income, or place of management and control occurs, the domestic corporation shall promptly notify the Commissioner of Internal Revenue of the then existing facts with respect thereto. The continued application of the reduced withholding rate is also dependent upon the continued fulfillment of conditions (3) and (4) of the first paragraph of this subsection.

(*c*) *Effect of address in Ireland on withholding in case of dividends.*—For the purpose of withholding of the tax in the case of dividends every nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address is in Ireland shall be deemed by United States withholding agents to be a nonresident alien who is (1) resident in Ireland for the purposes of Irish tax, (2) subject to Irish tax on such dividends, and (3) without a permanent establishment in the United States; and every foreign corporation whose address is in Ireland shall be deemed by such withholding agents to be a foreign corporation whose business is managed and controlled in Ireland and which is (1) subject to Irish tax on such dividends and (2) without a permanent establishment in the United States.

(*d*) *Rate of withholding.*—Withholding at source in the case of dividends derived from a United States corporation and paid on or after January 1, 1952, to nonresident aliens (including a nonresident alien individual, fiduciary, and partnership) and to foreign corporations, whose addresses are in Ireland, shall be at the rate of 15 percent in every case except that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the withholding agent that (1) such dividends fall within the scope of the proviso of Article VI(1) of the convention or (2) the reduced rate of tax shall not apply.

The preceding provisions respecting the application of the reduced withholding rate in the case of dividends paid to nonresident aliens and foreign corporations with addresses in Ireland are based upon the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived and consequently is the person liable to United States tax upon such dividend. As to action by the recipient who is not the owner of the dividend, see section 7.1007 of these regulations.

The rate at which United States tax has been withheld from any dividend paid on and after 30 days from the date on which this Treasury Decision is filed with the Division of the Federal Register to any person whose address is in Ireland at the time the dividend is paid shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment, or on an accompanying statement.

SEC. 7.1002. INTEREST.—(*a*) *General.*—Interest (other than interest falling within the scope of (*c*) of this section) on bonds, securities, notes, debentures, or any other form of indebtedness, including interest on obligations of the United States, obligations of instrumental-

ities of the United States, and mortgages and bonds secured by real property, derived from sources within the United States and received in taxable years beginning on or after January 1, 1951, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is resident in Ireland for the purposes of Irish tax, or by a foreign corporation (whether or not created or organized in or under the laws of Ireland) whose business is managed and controlled in Ireland, is exempt from United States tax under the provisions of Article VII(1) of the convention if such alien or corporation is subject to Irish tax on such interest and at no time during the taxable year had a permanent establishment within the United States. Such interest is, therefore, not subject to the withholding provisions of the Internal Revenue Code. As to what constitutes a permanent establishment, see Article II(1)(l) of the convention.

The provisions of section 7.1001(*a*) of these regulations relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

(*b*) *Application of exemption from withholding.*—To obviate withholding at the source in the case of coupon bond interest the nonresident alien resident in Ireland for the purposes of Irish tax, or the foreign corporation whose business is managed and controlled in Ireland, shall for each issue of bonds submit Form 1001–IR in duplicate to the paying agent with each presentation of interest coupons. Such form shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor, the name and address of the owner of such interest, and the amount of such interest. Such form shall contain a statement that the owner (1) is resident in Ireland for the purposes of Irish tax, or is a foreign corporation whose business is managed and controlled in Ireland, (2) has no permanent establishment in the United States, and (3) is subject to Irish tax on such interest.

The exemption from United States tax contemplated by Article VII(1) of the convention, insofar as it concerns coupon bond interest, is applicable only to the owner of such interest. The person presenting such coupon, or on whose behalf it is presented, shall for the purpose of the exemption from tax be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon is not the owner of the bond, Form 1001, and not Form 1001–IR, shall be executed.

The original and duplicate ownership certificates, Form 1001–IR, must be forwarded to the Commissioner of Internal Revenue by the withholding agent with the quarterly return on Form 1012, as provided in existing regulations with respect to Form 1001. See section 29.143–7 of this chapter [Regulations 111]. Form 1001–IR need not be listed on Form 1012.

For general provisions pertaining to the use, without reference to the provisions of the convention, of ownership certificate, Form 1001, by nonresident aliens and nonresident foreign corporations, see section 29.143–4 and section 29.143–6 of this chapter.

To obviate withholding at the source in the case of interest, other than interest payable by means of coupons, the nonresident alien

resident in Ireland for the purposes of Irish tax, or the foreign corporation whose business is managed and controlled in Ireland, shall notify the withholding agent by letter in duplicate that such income is exempt from United States tax under the provisions of Article VII(1) of the convention. The letter of notification shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor and the name and address of the owner of such interest. It shall also contain a statement that the owner (1) is resident in Ireland for the purposes of Irish tax, or is a foreign corporation whose business is managed and controlled in Ireland, (2) has no permanent establishment in the United States, and (3) is subject to Irish tax on such interest. This letter shall constitute authorization for the payment of such interest without deduction of the tax at source.

The letter of notification in the case of interest, other than interest payable by means of coupons, must be filed for each three-calendar-year period, and the first such letter filed by the taxpayer with any withholding agent shall be filed not later than 20 days preceding the date of the first payment of interest in such period. If the taxpayer files such letter with the withholding agent in the calendar year 1952, or in any subsequent calendar year, no additional letter need be filed prior to the end of the two calendar years immediately following the calendar year in which such letter is so filed unless the Commissioner of Internal Revenue notifies the withholding agent that an additional letter must be filed by the taxpayer at any earlier date. If, after filing a letter of notification, the taxpayer ceases to be eligible for the benefit of the convention, he must promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the interest as recorded on the books of the payer, the exemption from United States tax will no longer apply unless a letter of notification is duly executed and filed with the withholding agent by the new owner of record of such interest.

Each letter of notification, or the duplicate thereof, must be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Clearing Branch, Washington 25, D. C.

In the case of interest paid on or after January 1, 1951, by an Irish corporation, as defined in Article II(1)(e) of the convention, no withholding of United States tax is required. See Article XV(1) of the convention.

(*c*) *Exemption not applicable to interest paid by subsidiary corporation to its parent corporation.*—Under the exception contained in Article VII(1) of the convention any interest derived from sources within the United States and paid by a domestic corporation to a foreign corporation whose business is managed and controlled in Ireland is not exempt from United States tax if such foreign corporation controls, directly or indirectly, at the time the interest is paid more than 50 percent of the entire voting power of all classes of stock of such domestic corporation. The exemption from United States tax provided by Article VII(1) of the convention does not, therefore, apply to such interest paid by such domestic corporation.

In any case in which a foreign corporation whose business is managed and controlled in Ireland anticipates the receipt of interest from a domestic corporation and the relationship existing between the for-

eign corporation and the domestic corporation is such as to render uncertain whether, by reason of the exception contained in Article VII(1) of the convention, the exemption will apply to such interest, the foreign corporation shall not undertake to file any Form 1001–IR or letter of notification prescribed by (*b*) of this section unless it has, prior to such filing, applied for and received from the Commissioner of Internal Revenue, Washington 25, D. C., a determination that such foreign corporation does not control, directly or indirectly, more than 50 percent of the entire voting power in the paying corporation. The application to the Commissioner shall contain a full statement of all the facts pertinent to a determination of the question.

As soon as practicable after the application has been filed, the Commissioner of Internal Revenue will determine whether the foreign corporation has such control of the domestic corporation as to render the exemption provided by Article VII(1) of the convention inapplicable to interest paid by such domestic corporation to such foreign corporation and shall notify the foreign corporation of his determination. The foreign corporation shall forthwith file with the domestic corporation a copy of the Commissioner's letter of notification.

If the Commissioner's determination is that the foreign corporation does not control, directly or indirectly, more than 50 percent of the entire voting power of all classes of stock of the domestic corporation, the foreign corporation may thereafter obviate withholding at the source with respect to subsequent payments of such interest by complying with the provisions of (*b*) of this section, that is, by submitting Form 1001–IR in the case of coupon bond interest, or the letter of notification for each three-calendar-year period in the case of interest other than interest payable by means of coupons.

A determination of the Commissioner that the foreign corporation does not have such control of the domestic corporation as to render the exemption provided by Article VII(1) of the convention inapplicable will apply until such time as the stock ownership of the domestic corporation has changed to the extent that interest to be received from the domestic corporation by the foreign corporation is no longer exempt from United States tax under Article VII(1) of the convention. If such change in stock ownership occurs, the foreign corporation shall promptly notify both the Commissioner of Internal Revenue and the domestic corporation of the then existing facts with respect to such stock ownership.

In any case in which a foreign corporation whose business is managed and controlled in Ireland has received on or after January 1, 1952, interest from a domestic corporation and the relationship existing between the foreign corporation and the domestic corporation was at the time the interest was paid such as to render uncertain whether, by reason of the exception contained in Article VII(1) of the convention, such interest was exempt from United States tax, the foreign corporation shall apply to the Commissioner of Internal Revenue for a similar determination as to the degree of control at the time the interest was paid. If the Commissioner's determination is that at such time the degree of control was such as to permit the application of the exemption provided by Article VII(1) of the convention, his letter of notification may, subject to the provisions of

section 7.1006(*e*) of these regulations, authorize the release of excess tax withheld with respect to such exempt interest.

SEC. 7.1003. PATENT AND COPYRIGHT ROYALTIES AND FILM RENTALS.—Royalties and other amounts (including rentals for the use of, or for the right to use, motion picture films) derived from sources within the United States and received in taxable years beginning on or after January 1, 1951, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is resident in Ireland for the purposes of Irish tax, or by a foreign corporation (whether or not created or organized in or under the laws of Ireland) whose business is managed and controlled in Ireland, when paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade-marks, and other like property, are exempt from United States tax under the provisions of Article VIII (1) and (3) of the convention if such alien or corporation is subject to Irish tax on such income and at no time during the taxable year had a permanent establishment within the United States. Such items of income are, therefore, not subject to the withholding provisions of the Internal Revenue Code. As to what constitutes a permanent establishment, see Article II(1)(l) of the convention.

The provisions of section 7.1001(*a*) of these regulations relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

To obviate withholding at the source in the case of such items the nonresident alien resident in Ireland for the purposes of Irish tax, or the foreign corporation whose business is managed and controlled in Ireland, shall notify the withholding agent by letter in duplicate that such income is exempt from United States tax under the provisions of Article VIII of the convention. The provisions of section 7.1002(*b*) of these regulations relating to the execution, filing, and effective period of the letter of notification prescribed therein with respect to interest are equally applicable with respect to the income falling within the scope of this section.

Each letter of notification, or the duplicate thereof, must be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Clearing Branch, Washington 25, D. C.

SEC. 7.1004. NATURAL RESOURCE ROYALTIES AND REAL PROPERTY RENTALS.--Under Article IX of the convention the rate of tax imposed with respect to natural resource royalties and real property rentals by section 211(a) of the Internal Revenue Code (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 231(a) of the Internal Revenue Code (relating to foreign corporations not engaged in trade or business within the United States) is reduced to 15 percent in the case of royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and in the case of rentals from real property or from an interest in such property, derived from sources within the United States and received in taxable years beginning on or after January 1, 1951, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is resident in Ireland for the purposes of Irish tax, or by a foreign corporation (whether or not created or organized in or under the laws of Ireland) whose business

is managed and controlled in Ireland, if such alien or corporation is subject to Irish tax on such income and at no time during the taxable year had a permanent establishment within the United States. As to what constitutes a permanent establishment, see Article II(1)(l) of the convention.

The provisions of section 7.1001(*a*) of these regulations relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

To secure the reduced rate of tax at the source in the case of such items the nonresident alien resident in Ireland for the purposes of Irish tax, or the foreign corporation whose business is managed and controlled in Ireland, shall notify the withholding agent by letter in duplicate that the rate of United States tax with respect to such income is reduced to 15 percent under the provisions of Article IX of the convention. The provisions of section 7.1002(*b*) of these regulations relating to the execution, filing, and effective period of the letter of notification prescribed therein with respect to interest are equally applicable with respect to the income falling within the scope of this section.

Each letter of notification, or the duplicate thereof, must be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Clearing Branch, Washington 25, D. C.

SEC. 7.1005. PENSIONS AND LIFE ANNUITIES.—Pensions, other than pensions paid by the Government of the United States to individuals in respect of services rendered thereto in the discharge of governmental functions, and any life annuity, derived from sources within the United States in taxable years beginning on or after January 1, 1951, by a nonresident alien individual who is resident in Ireland for the purposes of Irish tax are exempt from United States tax under the provisions of Article XII of the convention.

To obviate withholding at the source in the case of such exempt income the nonresident alien individual who is resident in Ireland for the purposes of Irish tax shall notify the withholding agent by letter in duplicate that such income is exempt from United States tax under the provisions of Article XII of the convention. The letter of notification shall be signed by the owner of the income, shall show the name and address of both the payer and the owner, and shall contain a statement that the owner, an individual, is neither a citizen nor a resident of the United States but is resident in Ireland for the purposes of Irish tax. This letter shall constitute authorization for the payment of such income without deduction of the tax at source unless the Commissioner of Internal Revenue subsequently notifies the withholding agent that the tax should be withheld from payments of such income made after receipt of such notice. If, after filing a letter of notification, the owner of the income ceases to be eligible for the benefit of the convention, he must promptly notify the withholding agent by letter in duplicate.

Each letter of notification, or the duplicate thereof, must be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Clearing Branch, Washington 25, D. C.

SEC. 7.1006. RELEASE OF EXCESS TAX WITHHELD AT SOURCE.—(*a*) *General.*—In order to bring the convention into force and effect at the earliest practicable date,

(1) the reduced rate of tax of 15 percent to be withheld at the source from dividends, natural resource royalties, and real property rentals, and

(2) the exemption from tax otherwise withheld at the source from interest, patent royalties, copyright royalties, film rentals, and the like,

are hereby made effective beginning January 1, 1952, in any case in which such natural resource royalties, real property rentals, interest, patent royalties, copyright royalties, film rentals, and the like are derived from sources within the United States, or in which such dividends are derived from a United States corporation, by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is resident in Ireland for the purposes of Irish tax, or by a foreign corporation whose business is managed and controlled in Ireland, if such alien or corporation is subject to Irish tax on such income and at no time during the taxable year in which such income is so derived had a permanent establishment within the United States.

In the case of every such taxpayer whose address at the time of payment was in Ireland and who furnishes to the withholding agent the letter of notification prescribed in section 7.1002(*b*), section 7.1003, or section 7.1004 of these regulations, where United States tax at the rate of 30 percent has been withheld on or after January 1, 1952, there shall be released (except as provided in (*e*) of this section) by the withholding agent and paid over to the person from whom it was withheld:

(1) in the case of natural resource royalties and real property rentals, an amount equal to 15 percent of such royalties and rentals, and

(2) in the case of interest (other than coupon bond interest), patent royalties, copyright royalties, film rentals, and the like, an amount equal to the tax so withheld.

In the case of every such taxpayer whose address at the time of payment was in Ireland and who furnishes to the withholding agent Form 1001–IR in duplicate, where United States tax at the rate of 28 percent or 30 percent, as the case may be, has been withheld from coupon bond interest on or after January 1, 1952, there shall be released (except as provided in (*e*) of this section) by the withholding agent and paid over to the person from whom it was withheld an amount equal to the tax so withheld, if such taxpayer also files in duplicate with the withholding agent as authorization for the release of such amount a Form 1001–IR clearly marked "SUBSTITUTE". One such substitute form shall be filed in duplicate with respect to each issue of bonds and will serve with respect to that issue to replace all Forms 1001 previously filed by such taxpayer in the calendar year in which the excess tax is released. The use of Form 1001–IR with each presentation of interest coupons for the purpose of obviating withholding of tax at source is set forth in section 7.1002(*b*) of these regulations.

In the case of dividends derived from a United States corporation and paid to a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) or to a foreign corporation, whose address at the time of payment was in Ireland, where United States tax at the rate of 30 percent has been withheld from such dividends on or after January 1, 1952, there shall be released (except as provided

in (*d*) of this section) by the withholding agent and paid over to the person from whom it was withheld an amount equal to 15 percent of such dividends.

(*b*) *Amounts withheld during 1951.*—For provisions respecting the refund of excess tax withheld during the calendar year 1951, see section 7.1010 of these regulations.

(*c*) *Pensions and life annuities.*—In order to bring the convention into force and effect at the earliest practicable date the exemption from tax otherwise withheld at the source from life annuities and pensions, other than pensions paid by the Government of the United States to individuals in respect of services rendered thereto in the discharge of governmental functions, is hereby made effective beginning January 1, 1952, in any case in which such pensions and life annuities are derived from sources within the United States by a nonresident alien individual who is resident in Ireland for the purposes of Irish tax.

In the case of every such taxpayer whose address at the time of payment was in Ireland and who furnishes to the withholding agent the letter of notification prescribed in section 7.1005 of these regulations, where United States tax at the rate of 30 percent has been withheld on or after January 1, 1952, from such pensions or life annuities, as the case may be, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to the tax so withheld.

(*d*) *Subsidiary's dividends.*—United States tax shall be withheld at the rate of 15 percent from any dividend derived from a United States corporation and paid on or after January 1, 1952, to a foreign corporation whose address is in Ireland unless, prior to the date of payment thereof, the Commissioner of Internal Revenue notifies the domestic corporation that such dividend falls within the scope of the proviso of Article VI(1) of the convention.

In the case of every domestic corporation receiving notification from the Commissioner of Internal Revenue under the provisions of section 7.1001(*b*) of these regulations that dividends paid or to be paid by it fall within the scope of the proviso of Article VI(1) of the convention, where United States tax in excess of the applicable rate of 5 percent has been withheld on or after January 1, 1952, from dividends which come within the scope of such proviso, the withholding agent shall, if so authorized in such notification, release and pay over to the foreign corporation from which it was withheld the excess tax withheld with respect to such dividends.

(*e*) *Interest paid where degree of stock ownership is determined.*—In the case of every foreign corporation whose address at the time of payment was in Ireland and which (1) furnishes to the domestic corporation a copy of the Commissioner's authorization of release prescribed in section 7.1002(*c*) of these regulations and (2) files the letter of notification prescribed in section 7.1002(*b*) of these regulations, or the substitute Form 1001–IR prescribed in (*a*) of this section, whichever is applicable, where United States tax at the rate of 28 percent or 30 percent, as the case may be, has been withheld on or after January 1, 1952, the withholding agent shall release and pay over to the foreign corporation from which it was withheld an amount equal to the tax so withheld.

SEC. 7.1007. ADDRESSEE NOT ACTUAL OWNER.—If any person with an address in Ireland who receives a dividend from a United States corporation with respect to which United States tax at the rate of only 15 percent has been withheld at source is a nominee or representative through whom such dividend flows to a person other than one described in section 7.1001(*a*) of these regulations as being entitled to such reduced rate of 15 percent, such recipient in Ireland will withhold an additional amount of United States tax equivalent to the difference between the United States tax which would have been withheld had the convention not been in effect (30 percent as of the date of approval of this Treasury Decision) and the 15 percent withheld at the source with respect to such dividend pursuant to section 7.1001(*d*) of these regulations.

In any case in which a fiduciary or partnership with an address in Ireland receives, otherwise than as a nominee or representative, a dividend from a United States corporation with respect to which United States tax at the rate of only 15 percent has been withheld at source, if a beneficiary of such fiduciary or a partner in such partnership is not entitled to the reduced rate of tax provided in Article VI(1) of the convention, the fiduciary or partnership will withhold an additional amount of United States tax with respect to the portion of such dividend included in such beneficiary's share of the distributed or distributable income, or in such partner's distributive share of the income, of such fiduciary or partnership, as the case may be. The amount of the additional tax is to be calculated in the same manner as under the immediately preceding paragraph.

If any amount of United States tax is released pursuant to section 7.1006(*a*) of these regulations by the withholding agent in the United States with respect to a dividend received by such a person with an address in Ireland, the latter will also withhold from such released amount any additional amount of United States tax, otherwise required to be withheld by the preceding provisions of this section in respect of such dividend, in the same manner as if at the time of payment of such dividend United States tax at the rate of only 15 percent had been withheld at source therefrom.

The amounts so withheld by such withholding agents in Ireland will be deposited, without converting such amounts into United States dollars, with the Irish Revenue Commissioners on or before the fifteenth day after the close of the calendar year quarter in which such withholding in Ireland occurs. Each withholding agent making such deposit will render therewith the appropriate Irish form as prescribed in regulations made by the revenue commissioners. The revenue commissioners have arranged that the amounts so deposited will be remitted by draft in United States dollars to the Collector of Internal Revenue, Baltimore, Md., U. S. A., on or before the end of the calendar month in which the deposits are made, such draft to be accompanied by the Irish form rendered by the withholding agents in Ireland in connection with such deposits.

SEC. 7.1008. INFORMATION TO BE FURNISHED IN ORDINARY COURSE.—In compliance with the provisions of Article XX of the convention the Commissioner of Internal Revenue will transmit to the Irish Revenue Commissioners, as soon as practicable after the close of the calendar year 1952 and of each subsequent calendar year during

which the convention is in effect, the following information relating to such preceding calendar year:

(*a*) The name and address of each person whose address as disclosed on each available Form 1042 is in Ireland deriving from sources within the United States dividends, interest, rent, royalties, salaries, wages, pensions, annuities, and other fixed or determinable annual or periodical income; and the amount of such income as disclosed on such form with respect to each such person.

(*b*) The duplicate copy of each available ownership certificate, Form 1001-IR, filed pursuant to section 7.1002(*b*), and substitute Form 1001-IR, filed pursuant to section 7.1006(*a*), of these regulations in connection with coupon bond interest.

SEC. 7.1009. BENEFICIARIES OF A DOMESTIC ESTATE OR TRUST.—A nonresident alien who is resident in Ireland for the purposes of Irish tax and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption from, or reduction in the rate of, United States tax provided in Articles VI, VII, VIII, IX, and XV of the convention with respect to dividends, interest, royalties, natural resource royalties, and real property rentals to the extent such item or items are included in his share of the distributed or distributable income of such estate or trust. In order to be entitled in such instance to the exemption from, or reduction in the rate of, tax such beneficiary must otherwise satisfy the requirements of these respective articles of the convention and must, where applicable, execute and submit to the fiduciary of such estate or trust in the United States the appropriate letter of notification prescribed in section 7.1002(*b*), section 7.1003, and section 7.1004 of these regulations.

SEC. 7.1010. REFUND OF INCOME TAX WITHHELD DURING 1951.—If United States tax withheld at the source during the year 1951 from dividends, interest, royalties, natural resource royalties, real property rentals, pensions, or life annuities is in excess of the tax imposed by chapter 1 (relating to the income tax) of the Internal Revenue Code, as modified by the convention, a claim by the taxpayer for the refund of any overpayment shall be made under section 322 of the Internal Revenue Code by filing Form 843 together with Form 1040NB, Form 1040NB-a, Form 1040B, or Form 1120NB, whichever is applicable, or with an amended return.

The taxpayer's total gross income from sources within the United States, including every item of capital gain subject to tax under the provisions of section 211(a)(1)(B) or 211(c) of the Internal Revenue Code, shall be disclosed on the return. In the event that securities are held in the name of a person other than the actual or beneficial owner, the name and address of such person must be furnished with the claim. There shall also be included in such claim for refund a statement:

(*a*) That the taxpayer was, at the time when the item or items of income were derived, (1) a nonresident alien (including a nonresident alien individual, fiduciary, or partnership) who at such time was resident in Ireland for the purposes of Irish tax, or (2) a foreign corporation whose business at such time was managed and controlled in Ireland.

(*b*) That the taxpayer at no time during the taxable year in which the income was derived had a permanent establishment in the United States.

(*c*) That the taxpayer is subject to Irish tax on the item or items of income for which the benefit of the convention is claimed.

If, however, the taxpayer is an individual who during the taxable year derived from sources within the United States income which consists exclusively of pensions or life annuities entitled to the benefit of Article XII of the convention, the statements specified in (*b*) and (*c*) above will not be required.

As to additional information required in the case of a foreign corporation claiming the benefit of the 5 percent rate on dividends, or in certain doubtful cases the benefit of the exemption with respect to interest, paid by a domestic corporation, see section 7.1001(*b*) or section 7.1002(*c*) of these regulations.

Because it is necessary to bring into effect at the earliest practicable date the rules of this Treasury Decision respecting reduced rates of, or exemptions from, tax and the rules respecting release or refund of amounts withheld in excess of such reduced rates, or with respect to exempt income, it is hereby found that it is impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 (53 Stat. 32 and 467; 26 U. S. C. 62 and 3791) of the Internal Revenue Code.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved April 21, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 23, 1952, 8:47 a. m.)

SECTION 144.—PAYMENT OF CORPORATION INCOME TAX AT SOURCE

SECTION 29.144–1: Withholding in the case of nonresident foreign corporations.

INTERNAL REVENUE CODE

Release of excess tax withheld and exemption from, or reduction in rate of, withholding in case of Irish corporations, as affected by the reciprocal income tax convention between the United States and the Republic of Ireland. (See T. D. 5897, page 89.)

SECTION 147.—INFORMATION AT SOURCE

SECTION 29.147–1: Return of information as to payment of $600 ($500 for years prior to 1948).

INTERNAL REVENUE CODE

Maintenance payments made by child-placing agencies to foster parents. (See I. T. 4068, page 7.)

SECTION 148.—INFORMATION BY CORPORATIONS

SECTION 29.148-1: Return of information as to payments of dividends. 1952-2-13752 I. T. 4070

INTERNAL REVENUE CODE

The filing of information returns (Forms 1096 and 1099) by corporations with respect to payments of dividends which, during the calendar year, amount to $1 or more per shareholder will be considered substantial compliance with section 29.148-1(a) of Regulations 111, as amended by Treasury Decision 5859 (C. B. 1951-2, 88).

A corporation, which during the calendar year 1951 paid dividends of less than $1 to most of its stockholders, requests permission to report only those dividends which amounted to $1 or more on information returns (Forms 1096 and 1099).

Treasury Decision 5859 (C. B. 1951-2, 88) dated September 20, 1951, by amending section 29.148-1(a) of Regulations 111, removes the limitation previously in effect under which corporations were required to file information returns with respect to dividend payments amounting to $100 or more during the calendar year. This change in the regulations resulted from the consideration given by the Congress to withholding on dividends in connection with the Revenue Act of 1950. The House bill included a provision which would have required corporations to withhold income tax on all dividends paid. That provision was eliminated by the Senate. The report of the Senate Committee on Finance (C. B. 1950-2, 483) indicates (C. B. 1950-2, 521) that the Commissioner proposed to revise the existing regulations so as to require "complete" reporting, and that in the opinion of the committee such revision of the regulations would "help to correct the problem at which the proposal for withholding on dividends was aimed." The report of the Committee on Ways and Means (C. B. 1950-2, 380) indicates (C. B. 1950-2, 407) the understanding on the part of the committee that the regulations would be amended so as to "remove the $100 limitation" in order to improve the reporting of dividends by recipients.

Although section 29.148-1(a) of Regulations 111, as amended by Treasury Decision 5859 (C. B. 1951-2, 88), provides that corporations making payments of dividends to any shareholder shall render information returns on Forms 1096 and 1099, the filing of information returns by corporations with respect to payments of dividends which, during the calendar year, amount to $1 or more per shareholder will be considered substantial compliance with such regulations.

SECTION 29.148-4: Returns of information as to patronage dividends, rebates, or refunds. 1952-13-13847 T. D. 5907

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Regulations 111 amended to conform to section 314 (c) and (d) of the Revenue Act of 1951 relating to information returns as to patronage dividends, rebates, or refunds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On February 26, 1952, notice of proposed rule making was published in the Federal Register (17 F. R. 1688), in order to conform Regulations 111 [26 CFR, part 29] to section 314 (c) and (d) of the Revenue Act of 1951 (Public Law 183, 82d Cong.), approved October 20, 1951. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments to Regulations 111 [26 CFR, part 29] set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately preceding section 29.148–1 of Regulations 111 [26 CFR 29.148–1], the following:

SEC. 314. INCOME TAX TREATMENT OF EXEMPT COOPERATIVES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(c) INFORMATION RETURNS.—Section 148 (relating to information by corporations) is hereby amended by adding at the end thereof the following:

"(f) PATRONAGE DIVIDENDS.—Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall render a correct return stating (1) the name and address of each patron to whom it has made such allocations amounting to $100 or more during the calendar year, and (2) the amount of such allocations to each patron. If required by the Secretary, any such corporation shall render a correct return of all patronage dividends, rebates, or refunds made during the calendar year to its patrons. This subsection shall not apply in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) exempt from taxation under section 101 (10) or (11) or in the case of any corporation subject to a tax imposed by supplement G."

(d) EFFECTIVE DATE.—* * * The amendment made by subsection (c) shall be applicable to the calendar year 1951 and subsequent calendar years.

PAR. 2. There is inserted immediately after section 29.148-3 of Regulations 111 [26 CFR 29.148–1] the following:

SEC. 29.148–4. RETURNS OF INFORMATION AS TO PATRONAGE DIVIDENDS, REBATES, OR REFUNDS.—(*a*) *In general.*—Any corporation allocating to any patron amounts aggregating $100 or more during the calendar year as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, rebate, or refund) shall, for the calendar year 1951 and for each subsequent calendar year, render a return of information with respect to such allocation on Forms 1096 and 1099. The allocation shall be reported for the calendar year during which the allocation is made, regardless of whether the allocation is deemed for the purpose of section 101(12)(B) to be made at the close of a preceding taxable year of the corporation.

(*b*) *Contents of return; manner of making and filing.*—A separate Form 1099 shall be prepared for each patron showing the name and address of the patron to whom such allocation is made, and the amount of the allocation. These forms, accompanied by transmittal Form 1096, showing the number of Forms 1099 filed therewith, shall be filed with the Commissioner of Internal Revenue,

Processing Division, C. C. Station, Kansas City 2, Missouri, on or before February 28 of the following year, except that the returns for the calendar year 1951 shall be filed on or before July 15, 1952.

(c) *Extension of time for filing.*—In any case in which it is impossible to file the return within the time prescribed in this section, the corporation may, upon a showing of such fact, obtain a reasonable extension of time for filing the return. Authority for granting extensions of time for filing the return of information is hereby delegated to the various collectors of internal revenue. Applications for such extensions shall be addressed to the collector of internal revenue for the district in which the corporation is required to file its income tax return, must contain a full recital of the causes for the delay, and must be submitted on or before the date prescribed for filing the return of information. No extension may be granted for more than 6 months.

(d) *Definitions.*—(1) *Cooperative association.*—For the purpose of this section, the term "cooperative association" includes any corporation operating on a cooperative basis and allocating amounts to patrons on the basis of the business done with or for such patrons, except that the term does not include any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) exempt from taxation under section 101 (10) or (11) or any corporation subject to a tax imposed by supplement G (relating to insurance companies).

(2) *Patron.*—For the purpose of this section, the term "patron" includes any person with whom or for whom the cooperative association does business on a cooperative basis, whether a member or a nonmember of the cooperative association, and whether an individual, a trust, estate, partnership, company, corporation, or cooperative association.

(3) *Patronage dividends, rebates, and refunds.*—For the purpose of this section, the term "patronage dividend, rebate, or refund" includes any amount allocated (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) by a cooperative association, to the account of a patron on the basis of the business done with or for such patron. The following are not patronage dividends, rebates, or refunds:

(i) Amounts distributed in redemption of capital stock, or in redemption or satisfaction of certificates of indebtedness, revolving fund certificates, retain certificates, letters of advice, or other similar documents;

(ii) In the case of a cooperative association marketing the products of members or other patrons, the amount paid in cash or merchandise by the association for such products to the extent such amount is fixed without reference to the earnings of the cooperative association. For this purpose, the term "earnings" includes the excess of amounts retained by the association to cover expenses or other items over the amount of such expenses or other items.

(4) *Allocation.*—For the purpose of this section, the term "allocation" includes distributions in cash or merchandise made by a cooperative association to a patron, the issuance by such association of capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, similar documents, or any other act by a cooperative association whereby a patron receives actual notice of the segregation on the books of such association of a portion of its assets for the account of such patron. Thus, a mere credit to the account of a patron on the books of the cooperative association, without actual notice to the patron, is not an allocation.

(e) *Examples.*—The application of this section may be illustrated by the following examples:

Example 1. Cooperative A, a marketing association operating on a pooling basis, receives the products of patron W on January 5, 1952. On the same day Cooperative A advances to W 45 cents per unit for the products so delivered and allocates to him a "retain certificate" having a face value calculated at the rate of 5 cents per unit. During the operation of the pool, and before substantially all the products in the pool are disposed of, Cooperative A advances to W an additional 40 cents per unit, the amount being determined by reference to the market price of the products sold and the anticipated price of the unsold products. At the close of the pool on November 10, 1952, Cooperative A determines the

excess of its receipts over the sum of its expenses and its previous advances to patrons, and allocates to W an additional 3 cents per unit and shares of the capital stock of A having an aggregate of face value calculated at the rate of 2 cents per unit.

The amount of patronage dividends, rebates, or refunds allocated to W during 1952 amount to 10 cents per unit, consisting of the aggregate of the following per-unit allocations: the face amount of the "retain certificate" (5 cents), the amount of cash distributions fixed with reference to the earnings of A (3 cents), and the face value of the capital stock of A (2 cents).

Example 2. Cooperative B, a marketing association operating on a pooling basis, receives the products of patron X on March 5, 1952. On the same day Cooperative B pays to X $1 per unit for such products, this amount being determined by reference to the market price of the product when received, and issues to him a "participation certificate" having no face value but which entitles X on the close of the pool to the proceeds derived from the sale of his products less the previous payment of $1 and the expenses and other charges attributable to such products. On March 5, 1955, Cooperative B, having sold the products in the pool, having deducted the previous payments for such products, and having determined the expenses and other charges of the pool, redeems the participation certificate of X in cash for 10 cents per unit. The allocation made to X during 1955, amounting to 10 cents per unit, is a patronage dividend, rebate, or refund. Neither the payment to X in 1952 of $1 nor the issuance to him of the participation certificate in that year constitutes a patronage dividend, rebate, or refund within the meaning of this section.

Example 3. Cooperative C, a purchasing association, obtains supplies for patron Y on May 1, 1952, and receives in return therefor $100. On February 1, 1953, Cooperative C, having determined the excess of its receipts over its cost and expenses, allocates to Y a cash distribution of $1 and a revolving fund certificate of a face amount of $1. The amount of patronage dividends, rebates, or refunds allocated to Y for 1953 are $2, the aggregate of the cash distribution of $1, and the face amount, $1, of the revolving fund certificate.

Example 4. Cooperative D, a service association, sells the products of members on a fee basis. It receives the products of patron Z under an agreement not to pool his products with those of other members, to sell his products, and to deliver to him the proceeds of the sale. Patron Z makes payments to Cooperative D during 1952 aggregating $75 for service rendered him by Cooperative D during that year. On May 15, 1953, Cooperative D, having determined the excess of its receipts over its costs and expenses, allocates to Z a cash distribution of $2. Such amount is a patronage dividend, rebate, or refund allocated by Cooperative D during 1953.

PAR. 3. Section 29.147–3, as amended by Treasury Decision 5687 [C. B. 1949–1, 9, 33], approved February 16, 1949 [26 CFR 29.147–3], is amended by inserting immediately before the first sentence thereof the following:

The provisions of this section shall not be applicable with respect to returns of information as to patronage dividends, rebates, or refunds required under section 148(f). See section 29.148–4.

(This Treasury Decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat. 32; 26 U. S. C. 62).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 29, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 2, 1952, 12:22 p. m.)

SECTION 181.—PARTNERSHIP NOT TAXABLE

SECTION 29.181-1: Partnerships. 1952-7-13792
(Also Section 22(a), Section 29.22(a)-1; Mim. 6767
Section 182, Section 29.182-1.)

Bureau position for taxable years beginning prior to January 1, 1951, with respect to family partnerships in which capital is a material income-producing factor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., February 19, 1952.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Heads of Appellate Staff Districts, and Others Concerned:

In *Commissioner* v. *W. O. Culbertson, Sr., et ux.* (337 U. S. 733, Ct. D. 1723, C. B. 1949-2, 5), the Supreme Court of the United States further clarified the principles governing the recognition of family members as partners for income tax purposes, as developed earlier in *Commissioner* v. *Francis E. Tower* (327 U. S. 280, Ct. D. 1670, C. B. 1946-1, 11), and *A. L. Lusthaus* v. *Commissioner* (327 U. S. 293, Ct. D. 1669, C. B. 1946-1, 9).

Certain of the principles developed in the Culbertson opinion are well understood: (1) that a partnership is an organization for the production of income to which each partner contributes one or both of the ingredients of income, capital or services; (2) that sections 181 and 182 of the Internal Revenue Code, which govern the taxation of the income of "Individuals carrying on business in partnership," must be read in the light of their relationship to sections 11 and 22(a) of the Code, relative to the taxation of individual incomes; (3) that to recognize as partners, within the meaning of sections 181 and 182 of the Code, persons who contributed neither capital nor services to the business during the taxable years in question would violate the first principle of income taxation, that income must be taxed to him who earns it; (4) that an "intent to provide money, goods, labor, or skill sometime in the future" is hence not enough to justify recognition of the person having such intent as a partner, as against "the demands of sections 11 and 22(a) of the Code that he who presently earns the income" of a business "through his own labor and skill and the utilization of his own capital be taxed therefor"; and (5) that the sufficiency of the contribution of an alleged partner is a question of fact to be determined, upon consideration of all the facts, through applying the basic test of the reality of a family partnership for income tax purposes, whether "the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." It is a corollary of those principles, recognized in the Culbertson decision itself, that a partnership may be valid for income tax purposes as to some alleged partners but not as to others.

This mimeograph is designed to clarify the position of the Bureau with respect to some aspects of the family partnership problem for taxable years beginning prior to January 1, 1951, concerning which there appears to be uncertainty. In one way or another the aspects of the problem that will be discussed have to do with the question whether an alleged partner is the real owner of an interest in the capital of a partnership which is attributed to him. This mimeograph is applicable only to cases in which capital is a material income-producing factor.

It is emphasized that this mimeograph does not attempt either to provide a ready formula for the solution of family partnership cases or to state comprehensively all of the principles that are applicable in such cases. The matters here dealt with are accordingly to be understood in their relationship to the total fact picture in the particular case and to the basic principles of the Culbertson opinion set out above, which will not be further elaborated.

1. *Reality of Capital Contribution.*—That a family member has acquired his partnership interest by, or as the result of, a gift, purchase, or loan from the taxpayer, and has not contributed to the partnership capital originating with himself, remains one of the factors to be considered. It should be understood, however, that the absence of "original" capital creates, rather than answers, the problem whether an alleged partner is entitled to recognition. It presents in all cases an issue for the exercise of sound judgment on all of the facts of the particular case as to whether a partnership in good faith was intended by the parties.

(*a*) *Basic Tests as to Gift Capital.*—With respect to gift capital, the answer turns upon the application of the over-all test of good faith, laid down in the *second* portion of the Culbertson opinion, to all of the facts bearing upon the concept of real ownership evolved in the *third* portion of that opinion, reading in part as follows:

* * * We did not say [in the Tower opinion] that the donee of an intra-family gift could never become a partner through investment of the capital in the family partnership, any more than we said that all family trusts are invalid for tax purposes in *Helvering* v. *Clifford*, *supra*. The facts may indicate, on the contrary, that the amount thus contributed and the income therefrom should be considered the property of the donee for tax, as well as general law, purposes. * * *

But application of the Clifford-Horst principle does not follow automatically upon a gift to a member of one's family, followed by its investment in the family partnership. If it did, it would be necessary to define "family" and to set precise limits of membership therein. We have not done so for the obvious reason that existence of the family relationship does not create a status which itself determines tax questions, but is simply a warning that things may not be what they seem. It is frequently stated that transactions between members of a family will be carefully scrutinized. But more particularly, the family relationship often makes it possible for one to shift tax incidence by surface changes of ownership without disturbing in the least his dominion and control over the subject of the gift or the purposes for which the income from the property is used. He is able, in other words, to retain "the substance of full enjoyment of all the rights which previously he had in the property." *Helvering* v. *Clifford*, *supra*, at 336.

The fact that transfers to members of the family group may be mere camouflage does not, however, mean that they invariably are. The Tower case recognized that one's participation in control and management of the business is a circumstance indicating an intent to be a bona fide partner despite the fact that the capital contributed originated elsewhere in the family. If the donee of property who then invests it in the family partnership exercises dominion

and control over that property—and through that control influences the conduct of the partnership and the disposition of its income—he may well be a true partner. Whether he is free to, and does, enjoy the fruits of the partnership is strongly indicative of the reality of his participation in the enterprise. In the Tower and Lusthaus cases we distinguished between active participation in the affairs of the business by a donee of a share in the partnership on the one hand, and his passive acquiescence to the will of the donor on the other. This distinction is of obvious importance to a determination of the true intent of the parties. * * *

In the ordinary gift capital case, the question whether a donee's partnership interest represents a mere "surface change of ownership," or conversely whether the donee has exercised dominion and control over his or her interest, represents the heart of the issue whether a partnership in good faith was intended, at least in those cases where the donee has not performed substantial services. In turn, all of the elements of the test of good faith intent laid down in the Culbertson opinion have an immediate bearing upon the reality of the donee's ownership, those elements being

* * * whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise.

The ascertainment of the presence or absence of dominion and control in a donee over his or her partnership interest through the application of this test of good faith intent means, of course, that all of the facts indicative of the exercise or nonexercise of control by the donee must be taken into account, and that single facts, such as the donor's retention of a majority interest entitling him to outvote the donee, can never be regarded as determinative in themselves. Some of the more important evidentiary matters indicative of the presence or absence of such dominion and control in donees in gift capital cases are discussed in subsections (*b*), (*c*), (*d*), (*e*), and (*f*) of this section.

(*b*) *Documentation Not Controlling.*—The execution of legally sufficient and irrevocable deeds or other instruments of gift may, under State law, be essential to the validity of an alleged gift but is, of course, of less ultimate significance than the conduct of the parties after the gift has been made. Reality and good faith are not ascertainable by any mechanical or formalistic test.

(*c*) *Participation in Management.*—Participation in the control and management of the business (as distinguished from the regular performance of nonmanagerial services) is not essential but is strong evidence of a donee partner's exercise of dominion and control if such participation is substantial. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect at least to major business decisions, and it presupposes substantial acquaintance with and interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that is appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as

to family discussions at home (or elsewhere) will not be accepted as a sufficient showing of actual consultation, but evidence of genuine consultation with respect to specific matters is entitled to consideration even though it has taken place in the home. Evidence of genuine consultation with respect to the distribution of profits or their retention in the business is significant, but it is not indispensable. This subsection presupposes a donee's freedom to participate in management; exclusion from the right so to participate is dealt with in subsection (*d*) of this section.

(*d*) *Retained Controls—Donee's Right To Withdraw.*—On the other hand, the donor may have retained such complete controls of assets essential to the business (for example, through retention of title to assets leased at will or for a relatively short term to the alleged partnership), or of income distributions, business management, and the sale or withdrawal of the interest of the donee, that the gift and the partnership interest stemming from it should be considered more nominal than real, and the donor should be treated as remaining the substantial owner of the interest, so that a partnership in good faith could not be predicated upon the donee's capital interest alone. The result should be the same if the donor can control the earning of income by the alleged partnership through his control of a nominally separate business organization of which the alleged partnership is really an adjunct or upon which it otherwise depends directly or indirectly for its income.

The presence of some of the indicated controls, though amounting to less than substantial ownership retained by the donor, may be considered along with other facts as tending to show the absence of intent in good faith to join the donee as a partner. While it is intended in this subsection to refer to controls exercisable under some provision of the gift instrument or partnership agreement, a general passive acquiescence of the donee in the will of the donor, as evidenced by the actual conduct of the parties, may be the equivalent of expressly retained controls.

It is not uncommon in ordinary business relationships for one partner to be made managing partner or to have voting control, and retention by the donor of control of business management or of voting control, standing alone, is of little significance unless the donee either legally or in a practical sense would not be free to withdraw his or her interest whenever dissatisfied with the way in which the business is being conducted. In deciding whether a donee has such freedom to withdraw, it is pertinent to consider all facts indicative generally of the donee's independence of, or dependence upon, the donor; whether the donee has such maturity and understanding of his or her rights as to be capable of deciding to exercise, and of exercising or bringing about the exercise of, such rights; and whether he or she can do so without suffering financial loss (because the partnership agreement would permit one or more of the partners to purchase the donee's interest for substantially less than its fair market value). Freedom to withdraw, in the sense here indicated, is also evidence of the reality of a donee's interest in cases where the donor has not retained any controls.

(*e*) *Income Distributions.*—If the donor has not retained significant controls of the type dealt with in subsection (*d*), above, the

actual distribution to a donee partner of all or the major portion of his distributive share of the business income (over and above amounts used for income tax payments) is entitled to substantial weight as evidence of the reality of the donee's interest, provided that the amounts distributed were used or were available for the donee's enjoyment, freed from the donor's control. As the Court stated in the Culbertson opinion, "Whether he [a donee] is free to, and does, enjoy the fruits of the partnership is strongly indicative of the reality of his participation in the enterprise." Even if significant controls have been retained by the donor, such distributions to a donee partner are entitled to some weight, unless the controls retained by the donor amount to substantial ownership.

On the other hand, distributions wholly or principally used to pay the donee's income tax, or applied for the donor's benefit (as for the payment of family expenses for which the donor is legally responsible), or deposited, loaned, or invested in such ways that the donor controls or can control their use or enjoyment, fall short of establishing real enjoyment by the donee. Nevertheless, the retention of partnership earnings with the acquiescence of the donee for the reasonable needs of the business is not inconsistent with *bona fide* ownership by the donee.

(*f*) *Evidentiary Matters in General.*—The discussion in subsections (*c*), (*d*), and (*e*) of this section of participation in management, retained controls, and income distributions is designed to emphasize the importance of those factors as evidence of the reality (or lack of reality) of intrafamily gifts. To give them weight accordingly does not affect the relevance of other evidentiary facts ordinarily taken into account, such as compliance with local partnership or fictitious name registration statutes; other publicity given to the partnership arrangements, particularly as affecting trade channels and banks or other sources of financing; control of business bank accounts; recognition of the interests of alleged partners in appropriate capital and drawing accounts in the books of account, in insurance policies, leases, and other business contracts, and in litigation affecting the business; and the ultimate realization or exchange of the interests of alleged partners if the business has been liquidated or incorporated, though the remoteness in point of time of such liquidation or incorporation may lessen the weight that should be given the facts in that regard. For the exercise of sound judgment, all relevant facts, both favorable and unfavorable to the taxpayer, must be taken into account.

(*g*) *Purchased Interests—Loans.*—The foregoing principles with respect to the reality of intrafamily gifts are not applicable, except to the extent provided in this subsection, to determination of the reality of the ownership of partnership interests acquired from a family member through alleged purchase, or resulting from a loan by such family member or with the aid of his or her credit. In such cases the reality of the ownership resulting from the transaction is considered to turn primarily upon whether the alleged purchase or loan was *bona fide* as such, in the sense that a real obligation was intended, enforceable against the purchaser or borrower irrespective of the success or failure of the partnership venture. If the alleged purchaser or borrower had insufficient means or credit standing to meet the obligation except out of partnership earnings, the transaction may

amount to a gift subject to deferred enjoyment (that is, with the income reserved by the seller or lender until the alleged obligation has been fully paid). But the transaction does not necessarily fall in one or another of these categories; it may be lacking in reality either as a gift or as a *bona fide* purchase or loan.

The Bureau will accept the *bona fides* of an alleged purchase or loan transaction if it meets either of the following basic tests:

(I) That it has the usual characteristics of an arm's length transaction, considering the terms of the agreement itself (as to price, due date of payment, rate of interest, and security, if any); the credit standing of the purchaser or borrower apart from family relationship to the seller, lender, or endorser; and the capacity of the purchaser or borrower to incur a legally binding obligation; or

(II) Assuming the lack of one or more usual characteristics of arm's length dealing, that the transaction was genuinely intended to promote the success of the business through securing participation in the business by the purchaser or borrower, or the addition of his or her credit to that of other participants.

Until the alleged purchase price or loan has been fully paid or the obligation has otherwise been discharged, the *indicia* of reality with respect to the ownership of gift capital under the foregoing subsections of this section will be taken into account in such cases only as an aid in determining doubtful questions as to whether a *bona fide* purchase or loan obligation was intended by the parties. They are relevant to that limited extent, except that purported income distributions to the purchaser or borrower used for payment of the purchase price or loan are entitled to little weight.

2. *Sufficiency of Capital Contribution—Services.*—The principles stated in this mimeograph are, as indicated above, concerned only with cases in which capital is a material income-producing factor. They are inapplicable in cases where the capital contribution of an alleged partner must be considered as having been really his at some time before its contribution to the partnership, but similar principles may be useful in determining the reality of such prior ownership where the capital was acquired from a family member.

If the interest of any alleged partner represents capital which is really his under the principles stated in section 1, and if such capital is not clearly unnecessary to the conduct of the business, such alleged partner is ordinarily entitled to recognition. That is so whether or not he or she performs any services for the partnership. The performance of substantial services may entitle an alleged partner to recognition, but there is no rule that makes the performance of services indispensable to recognition as a partner in gift capital cases or otherwise. See, however, section 7, below, as to the reasonableness of the agreed division of profits as bearing upon *bona fide* partnership intent, and as to allocation.

3. *Motive and Business Purpose.*—One of the most troublesome things that has crept into the family partnership field is the notion that the admission of a family member or trust to a business as a partner must have been intended in some way to promote the success of the business. The thought is most often stated negatively, as in comments to the effect that an alleged partner has not contributed

any "new capital," that he has contributed neither capital nor services that were not already available to the business, and that for either of those reasons no business purpose has been served by the admission of the alleged partner; hence, that there is an absence of required business purpose and nonrecognition must follow. Expressions of similar import can be found in the opinions in some of the decided cases, and they have at times been thought to lay down a rule of law as to the need for business purpose in antecedent family transactions, as well as in the partnership undertakings predicated upon them.

The Bureau considers that the absence of "new capital" or added services, like the absence of "original" capital, is but a part of the total picture to be considered in appraising the reality, good faith, and business purpose of family partnership arrangements. Reference has generally been made to such matters in the decided cases only where there was an absence of other facts deemed to support the reality and good faith of the acts of the parties.

In any event, the Bureau does not adhere to the position that there is an absence of required business purpose if a gift or other antecedent family transaction does not benefit the business in some way. An individual is entitled freely to dispose of his or her property so far as the income tax law is concerned, and may give or sell interests in a business to members of his family. The question with which the law concerns itself is whether the individual has really done so. There is no requirement that intrafamily gifts be motivated by a business purpose, which frequently they would not have, before the donee may be recognized as the owner, for income tax purposes, of the property given to him, and the same is true of other antecedent family transactions.

The Culbertson opinion stated a test of intent, whether "the parties in good faith *and acting with a business purpose* intended to join together in the present conduct of the enterprise." [Italics supplied.] The Bureau considers that the test of business purpose may be satisfied by the single fact (if it be a fact) that the alleged partner has invested in the business money or property, useful to the business, of which he or she is the real owner under the principles stated in section 1 hereof, even though such money or property had already been used in the business before the alleged partner acquired any interest therein. That conclusion is abundantly demonstrated by the action which the Court took in the Culbertson case itself in remanding it for factual decision whether there was "a bona fide intent that they [the sons] be partners in the conduct of the cattle business, either because of services to be performed during those [the taxable] years, or because of contributions of capital of which they were the true owners, as we have defined that term in the Clifford, Horst, and Tower cases."

That is not to say that the presence or absence of a tax avoidance motive behind intrafamily transactions and partnership arrangements is to be ignored. The presence or absence of a tax avoidance motive is one of many factors to be weighed in the determination of the reality of an intrafamily gift, sale, or loan, and of the existence of *bona fide* partnership intent. The presence of a tax avoidance motive, however, is of no consequence if the reality of the transfer of interest and the good faith of the parties are satisfactorily established.

4. *Trustees as Partners.*—For income tax purposes, supplement E of subchapter C of chapter 1 of the Code treats trusts as if they were recognizable legal entities. In the family partnership field, however, the question properly to be considered is ordinarily whether the trustee is entitled to recognition as a partner in relation to the trust. The Bureau does not adhere to the view that a trustee cannot in any circumstances become a partner for income tax purposes, regardless of some judicial expressions of such a rule.

Recognition of a trustee as partner for income tax purposes must turn upon the principles relative to family partnerships generally, and especially those stated in section 1 hereof, as applied to the particular facts of the trust-partnership situation. If the trustee is the grantor, or if he is a person subservient or amenable to the will of the grantor, the provisions of the trust instrument, particularly with relation to whether the trustee is freed from or subject to the normal responsibilities and liabilities of a fiduciary, the provisions of the partnership agreement, and the conduct of the parties must all be taken into account in determining whether the trustee in a fiduciary capacity has become the real owner of gift capital useful to the business and whether a partnership in good faith was intended.

In the absence of a substantial question whether the trust income is in any event taxable to the grantor, a trustee unrelated to and independent of the grantor, and subject to the ordinary responsibilities of a fiduciary, who as general partner has participated in management or has received actual distribution of all or a major part of the share of income distributable to the trust will ordinarily be accepted as the real owner of the partnership interest which he holds for the trust and as a *bona fide* partner, unless the grantor has retained such controls as to remain the substantial owner of that interest in accordance with section 1 (*d*), above. As to trustees as limited partners, see also section 6, below.

That the trustee is also a partner in his individual capacity does not preclude his recognition in relation to the trust under the foregoing principles but does warrant special scrutiny to ascertain whether as trustee he is subservient or amenable to the wishes of the grantor or is really representing the interests of the trust in a fiduciary capacity.

5. *Interests of Minor Children (Not Held in Trust).*—The recognition of minor children as the real owners of interests in partnership capital acquired by them in antecedent family transactions depends upon the application of the same principles as are applied generally in determining whether any family member is entitled to recognition as a partner for income tax purposes, and the principles of this statement will be so applied. See especially section 1, above. It is necessary in so doing, however, to take account of special problems, not only as to the legal disabilities of minors (including the control which the law ordinarily vests in others over their property), but also as to the actualities of the relative maturity or immaturity of minor children in particular cases.

The Bureau recognizes that in some instances a minor child may have sufficient maturity and experience to be treated by disinterested persons as competent to enter into business dealings and otherwise to conduct his or her affairs on an equal plane with adult persons. The Bureau will not press the legal disabilities of a minor under State

law so far as to deny the competence of such individuals to control their property where the evidence clearly shows the existence of such competence in fact. The disabilities of minors under State law will, however, be taken into account in determining whether a minor has control of property in other cases, it being presumed that such disabilities are necessary for the protection of the interests of the minor by reason of his or her immaturity, lack of experience, or submission to parental authority. Except upon a clear showing of the actual competence of a minor child, the Bureau will presume that control over his or her property is exercised by some other person.

Where it is claimed that the property of a minor child is controlled by another person who purports to represent the child in relation to a partnership of which the child is an alleged member, the recognition of the child as the real owner of an interest in partnership capital will depend (subject to other principles of this statement) upon whether such control is in a real sense exercised in a fiduciary capacity for the sole benefit of the child and whether there is such judicial supervision of the conduct of the fiduciary as reasonably to assure that the property of the child cannot be used for the benefit of another. The use of the child's property or income for support for which a parent is legally responsible will for that purpose be considered a use for the parent's benefit.

Judicial supervision of the conduct of a fiduciary will be deemed adequate to assure that the property of a minor cannot be used for the benefit of another if such supervision extends to all investments made by the fiduciary and is continuously exercised. It is considered that rules of State law which, despite the absence of such judicial supervision, hold a person controlling or dealing in a minor child's property responsible and accountable as a fiduciary are ordinarily not *in themselves* sufficient to assure the use of the property and its income solely for the benefit of the child; such liability, being dependent upon the institution of a suit or other proceeding for its enforcement, is subject to the interplay of family influence and other extraneous considerations to such an extent that it is not deemed an effective restraint upon parents or other persons who may be subject to it.

6. *Limited Partnerships.*—The limited partnership device, assuming that it does not appear in such form that the organization should be treated as an association taxable as a corporation, presents a special type of family partnership problem. It is one of the fundamental characteristics of a limited partnership under the Uniform Limited Partnership Act, now law in many States, that a limited partner may not engage in the management of the business without subjecting himself to liability as a general partner. Hence, significance cannot be attributed to the absence of services and participation in management on the part of a limited partner in determining whether a partnership in good faith was intended. On the other hand, the limited partnership device lends itself readily to the retention of important controls in the taxpayer if he be a general partner, and the interests of limited partners can be made more nominal than real.

The vesting of management powers in the general partner or partners is one element. The interests of limited partners may also be made unassignable in any real sense and may be required to be left in the business for a long term of years, subject only to the right of

the limited partner to bring about dissolution and an accounting for his interest by court decree, upon proof of some wrongdoing or unfitness of the general partner or partners or of special circumstances rendering a dissolution equitable. Particularly where the general partner or partners have discretion as to distributions of income to limited partners it may be that all substantial incidents of ownership are retained by the donor as general partner.

There can be no hard and fast rule as to the recognition of limited partners. The incidents of any limited partnership depend in part upon the nature of the agreement or limited partnership certificate and the respective rights and interests of general and limited partners as there provided for. The tests of section 1, above, and especially subsection (*d*) thereof, should be applied in the light of the incidents of the relation under the applicable limited partnership statute, the provisions of the partnership agreement or certificate, and all the facts of the particular case.

7. *Reasonableness of Agreed Division of Profits—Allocation.*—A wholly unreasonable agreement as to the sharing of partnership income may be evidence of the absence of *bona fide* partnership intent and, along with other pertinent evidence, may invalidate the partnership for income tax purposes. Even if a partnership is entitled to recognition for income tax purposes under the foregoing and other applicable principles, however, the agreed division of profits should be scrutinized to ascertain whether it involves the donative deflection of income attributable to personal services or the division of other income in disproportion to capital interests of which the recognized partners are accepted as the real owners. If the agreed division of profits does not reasonably accord with ordinary business arrangements of parties dealing at arm's length, considering the respective contributions by the recognized partners of services, skill, credit, and capital of which they are the real owners, it may be appropriate to make a fair allocation, to divide the income in shares to which persons dealing with each other at arm's length would reasonably agree under the particular circumstances, taking into account the relative proportions of the income attributable to services and to capital and all such contributions of the several recognized partners. The allocation of adequate, reasonable salaries to active partners before any other division of profits will frequently provide adequate compensation for their contributions of skill and services, and the adequacy and reasonableness of any such salaries allowed by the agreement of the parties should always be considered.

JOHN B. DUNLAP,
Commissioner.

SECTION 182.—TAX OF PARTNERS

SECTION 29.182–1: Distributive share of partners.

INTERNAL REVENUE CODE

Family partnerships in which capital is a material income-producing factor. (See Mim. 6767, page 111.)

SUPPLEMENT G.—INSURANCE COMPANIES

SECTION 201.—LIFE INSURANCE COMPANIES

SECTION 29.201-1: Tax on life insurance companies. 1952-6-13780
T. D. 5885
(Also Sections 29.201-5, 29.201-6; Section 202, Section 29.202-2; Section 203A, Sections 29.203A-1, 29.203A-2; Section 433, Section 40.433(a)-2, Regulations 130.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29 AND PART 40

Regulations 111 amended to conform to section 121(g)(3) of the Revenue Act of 1950 and Regulations 111 and 130 amended to conform to section 336 of the Revenue Act of 1951, relating to taxability of life insurance companies.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 111 [26 CFR, part 29] to section 121(g)(3) of the Revenue Act of 1950 (81st Cong., 2d sess.), approved September 23, 1950, and in order to conform Regulations 111 [26 CFR, part 29] and Regulations 130 [26 CFR, part 40] to section 336 of the Revenue Act of 1951 (82d Cong., 1st sess.), approved October 20, 1951, relating to taxability of life insurance companies, such regulations are amended as follows:

REGULATIONS 111 [26 CFR, PART 29]

PARAGRAPH 1. There is inserted immediately before section 29.201-1 [26 CFR 29.201-1] the following:

SEC. 121. INCREASE IN RATE OF CORPORATION INCOME TAXES [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(g) TECHNICAL AMENDMENTS.—

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(3) Effective with respect to taxable years beginning after June 30, 1950, and with respect to taxable years beginning on January 1, 1950, and ending on December 31, 1950, section 201(a)(1) (relating to tax on life insurance companies) is hereby amended by striking out "at the rates provided in section 13 or section 14(b) and in section 15(b)" and inserting in lieu thereof "computed as provided in section 13(b) and in section 15(b)".

SEC. 336. LIFE INSURANCE COMPANIES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) TAX FOR 1951.—Section 201(a)(1) (relating to imposition of tax on life insurance companies) is hereby amended by adding at the end thereof the following: "In lieu of the taxes imposed by the preceding sentence, there shall be levied, collected, and paid for taxable years

beginning in 1951 upon the 1951 adjusted normal-tax net income (as defined in section 203A) of every life insurance company a tax equal to the sum of the following:

"3¾ per centum of the amount thereof not in excess of $200,000, plus

"6½ per centum of the amount thereof in excess of $200,000."

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

* * * * * * *

(2) Section 201(f) (relating to disallowance of double deductions) is hereby amended by striking out "or 203" and inserting in lieu thereof ", 203, or 203A".

(d) EFFECTIVE DATE.—The amendments made by this section shall be applicable to taxable years beginning in 1951.

PAR. 2. Section 29.201-1, as amended by Treasury Decision 5816 [C. B. 1950-2, 62], approved December 5, 1950 [26 CFR 29.201-1], is further amended as follows:

(A) By striking from the first sentence the word "All" and inserting in lieu thereof the following: "Except as otherwise provided in section 29.203A-1 with respect to taxable years beginning in 1951, all".

(B) By striking the second sentence of the first paragraph of said section and inserting in lieu thereof the following:

With respect to taxable years beginning before July 1, 1950 (other than the calendar year 1950) the normal tax is imposed on the adjusted normal-tax net income (as defined in section 202) and the surtax is imposed on the adjusted corporation surtax net income (as defined in section 203) at the rates provided in section 13 or section 14(b) and in section 15(b) as these sections existed prior to their amendment by the Revenue Act of 1950. With respect to taxable years beginning after June 30, 1950, and with respect to taxable years beginning on January 1, 1950, and ending on December 31, 1950, the normal tax is imposed on the adjusted normal-tax net income (as defined in section 202) and the surtax is imposed on the adjusted corporation surtax net income (as defined in section 203) computed as provided in section 13(b) and in section 15(b).

(C) By adding at the end of the second paragraph thereof the following:

For computation of the 1951 adjusted normal-tax net income from the normal-tax net income, see sections 29.203A-1 and 29.203A-2.

(D) By striking from the third paragraph "203" and inserting in lieu thereof "203A".

PAR. 3. Section 29.201-5 [26 CFR 29.201-5] is amended by inserting after the first sentence thereof the following:

Interest paid is also one of the elements to be used in computing the amount of "required interest" for purposes of determining the reserve interest credit provided in section 203A in the case of taxable years beginning in 1951. See section 29.203A-2.

PAR. 4. Section 29.201-6 [26 CFR 29.201-6] is amended by inserting in the first sentence immediately preceding "certain reserves" the following: "and also for the purpose of determining required interest for taxable years beginning in 1951,".

PAR. 5. Section 29.202-2 [26 CFR 29.202-2] is amended by adding at the end thereof the following paragraph:

For taxable years beginning in 1951, an amount equal to eight times the amount of the applicable adjustment provided in the preceding paragraph must be added to normal-tax net income as a factor in determining 1951 adjusted normal-tax net income.

PAR. 6. There is inserted immediately following section 29.203-1 [26 CFR 29.203-1] the following:

SEC. 336. LIFE INSURANCE COMPANIES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) ADJUSTED NORMAL-TAX NET INCOME FOR 1951.—Chapter 1 is hereby amended by inserting after section 203 the following new section:

"SEC. 203A. 1951 ADJUSTED NORMAL-TAX NET INCOME.

"(a) 1951 ADJUSTED NORMAL-TAX NET INCOME.—For the purposes of section 201, the term '1951 adjusted normal-tax net income' means the normal-tax net income plus eight times the amount of the adjustment for certain reserves provided in section 202(c) and minus the reserve interest credit, if any, provided in subsection (b) of this section.

"(b) RESERVE INTEREST CREDIT.—For the purposes of subsection (a), the reserve interest credit shall be an amount determined as follows:

"(1) Divide the amount of the adjusted net income (as defined in subsection (c)) by the amount of the required interest (as defined in subsection (d)).

"(2) If the quotient obtained in paragraph (1) is 1.05 or more, the reserve interest credit shall be zero.

"(3) If the quotient obtained in paragraph (1) is 1.00 or less, the reserve interest credit shall be an amount equal to 50 per centum of the normal-tax net income.

"(4) If the quotient obtained in paragraph (1) is more than 1.00 but less than 1.05, the reserve interest credit shall be the amount obtained by multiplying the normal-tax net income by 10 times the difference between the figures 1.05 and such quotient.

"(c) ADJUSTED NET INCOME.—For the purposes of subsection (b)(1), the term 'adjusted net income' means the net income computed without any deduction for tax-free interest minus 50 per centum of the amount of the adjustment for certain reserves provided in section 202(c).

"(d) REQUIRED INTEREST.—For the purposes of subsection (b)(1), the term 'required interest' means the total of—

"(1) The sum of the amounts obtained by multiplying (A) each rate of interest assumed in computing the taxpayer's life insurance reserves by (B) the means of the amounts of the taxpayer's adjusted reserves computed at that rate at the beginning and end of the taxable year,

"(2) 2 per centum of the reserve for deferred dividends, and

"(3) Interest paid."

* * * * * * *

(d) EFFECTIVE DATE.—The amendments made by this section shall be applicable to taxable years beginning in 1951.

SEC. 29.203A-1. TAX ON LIFE INSURANCE COMPANIES FOR TAXABLE YEARS BEGINNING IN 1951.—Section 201(a), as amended by section 336 of the Revenue Act of 1951 (Public Law 183, 82d Cong.) provides that for taxable years beginning in 1951, the tax imposed on a life insurance company shall consist of a tax upon the 1951 adjusted normal-tax income of the company equal to 3¾ percent of the amount of such income not in excess of $200,000, plus 6½ percent of the amount of such income in excess of $200,000. The term "1951 adjusted normal-tax net income" means the normal-tax net income (consisting of net income, computed as provided in section 29.201-7, less the credit for partially tax-exempt interest allowed under section 26(a) and less the credit for dividends received allowed under section 26(b)) plus eight times the amount of the adjustment for certain reserves, computed as provided in section 202(c) (see section 29.202-2) and minus the reserve interest credit, if any, provided in section 203A(b) (see section 29.203A-2). The reserve and other policy liability credit is not allowed for purposes of the computations of 1951 adjusted normal-tax net income.

The tax imposed upon 1951 adjusted normal-tax net income by section 201(a) is in lieu of the tax on adjusted normal-tax net income and the tax on adjusted surtax net income imposed by section 201(a) for taxable years other than taxable years beginning in 1951.

SEC. 29.203A-2. RESERVE INTEREST CREDIT.—In computing 1951 adjusted normal-tax net income, a reserve interest credit is allowed where the "adjusted net income" of the company is less than 105 percent of its required interest. For the purpose of computing the reserve interest credit, the term "adjusted net income" means the net income of the company without any deduction for tax-free interest otherwise allowed by section 201(c)(7)(A), less 50 percent of the adjustment for certain reserves on contracts other than life insurance or annuity contracts provided in section 202(c).

The required interest for which a credit may be allowed consists of the total of:

(1) the sum of amounts obtained by multiplying each rate of interest assumed in computing life insurance reserves (see section 201(c)(2) and section 29.201-4) by the means of the amounts of the adjusted reserves, as defined in section 201(c)(3), computed at that rate at the beginning and the end of the taxable year;

(2) two percent of the reserve for deferred dividends; and

(3) interest paid.

To determine the amount of the reserve interest credit, it is necessary to divide the amount of the adjusted net income by the amount of the required interest. If the adjusted net income is 100 percent or less of the required interest, the reserve interest credit is an amount equal to 50 percent of the normal-tax net income. If the adjusted net income is 105 percent or more of the required interest, the reserve interest credit is zero. If the adjusted net income is more than 100 percent and less than 105 percent of the required interest, the reserve interest credit is computed by multiplying the normal-tax net income by 10 times the difference between 105 percent and the percentage established. Thus, if the adjusted net income of a life insurance company for the calendar year 1951 is $103,000 and the required interest for such year is $100,000, the adjusted net income is 103 percent of the required interest and the reserve interest credit, accordingly, is the normal-tax net income multiplied by 20 percent (10 times 2 percent, the difference between 105 percent and 103 percent).

In determining the percentage of the adjusted net income to required interest for purposes of determining the reserve interest credit, the figures shall be computed to at least the nearest one-tenth of a percentage point.

REGULATIONS 130 [26 CFR, PART 40]

PAR. 7. There is inserted immediately preceding section 40.433(a)-1 the following:

SEC. 336. LIFE INSURANCE COMPANIES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(c) TECHNICAL AMENDMENTS.—

(1) Section 433(a)(1)(H) (relating to excess profits net income of life insurance companies) is hereby amended by changing the semicolon at the end thereof to a period and by inserting thereafter the following: "In the case of taxable years beginning in 1951, there shall be used, in lieu of the figure referred to in clause (i) of the first sentence of this subparagraph, the figure .87;".

* * * * * * *

(d) EFFECTIVE DATE.—The amendments made by this section shall be applicable to taxable years beginning in 1951.

PAR. 8. Section 40.433(a)-2 [26 CFR 40.433(a)-2] is amended as follows:

(A) By inserting immediately before the period at the end of the first sentence of paragraph (h) of such section the following: "(as modified, in the case of a taxable year beginning in 1951, by the last sentence of such subparagraph)"; and

(B) By inserting in the second sentence of paragraph (h) of such section after "taxable year" the following: "(or, in the case of a taxable year beginning in 1951, by the figure .87)".

Because the rules set forth in this Treasury Decision for determining the income and excess profits tax liability of life insurance companies are applicable primarily to taxable years beginning in 1951, such rules, to effectuate their purpose, should be available to taxpayers prior to March 15, 1952. Accordingly, it is considered to be impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under authority contained in sections 62 and 3791 of the Internal Revenue Code (53 Stat. 32, 467; 26 U. S. C. 62, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved February 21, 1952.

E. H. FOLEY,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register February 27, 1952, 8:52 a. m.)

SECTION 29.201-5: Interest paid.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5885, page 121.)

SECTION 29.201-6: Adjusted reserves.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5885, page 121.)

SECTION 202.—ADJUSTED NORMAL-TAX NET INCOME

SECTION 29.202-2: Adjustment for certain reserves.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5885, page 121.)

SECTION 203A.—1951 ADJUSTED NORMAL-TAX NET INCOME

SECTION 29.203A-1: Tax on life insurance companies for taxable years beginning in 1951.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5885, page 121.)

SECTION 29.203A-2: Reserve interest credit.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5885, page 121.)

SECTION 211.—TAX ON NONRESIDENT ALIEN INDIVIDUALS

SECTION 29.211-7: Taxation of nonresident alien individuals. 1952-9-13810 T. D. 5893

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

Regulations 111 amended to conform to provisions of sections 213, 220 (as amended by Public Law 82, 82d Cong.), and 221 of the Revenue Act of 1950.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On December 13, 1951, there was published in the Federal Register (16 F. R. 12567) a notice of proposed rule making regarding the amendment of Regulations 111 [26 CFR, part 29] to conform to the provisions of section 213 (relating to capital gains of nonresident alien individuals), section 220 (relating to employees of United States working in possessions of the United States or in the Canal Zone), and section 221 (relating to residents of Puerto Rico) of the Revenue Act of 1950 (Public Law 814, 81st Cong.), approved September 23, 1950, as amended by Act of July 23, 1951 (Public Law 82, 82d Cong. [C. B. 1951-2, 350]). No objection to the rules proposed having been received, the amendments set forth below are hereby adopted.

PARAGRAPH 1. Section 29.4-1, as amended by Treasury Decision 5425 [C. B. 1945, 10], approved December 29, 1944 [26 CFR 29.4-1], is further amended by striking out "219" and inserting in lieu thereof the following: "221".

PAR. 2. Section 29.11-2 [26 CFR 29.11-2] is amended as follows:

(A) By inserting immediately preceding the last sentence the following:

A nonresident alien individual who is a *bona fide* resident of Puerto Rico during the entire taxable year is, in general, liable to the tax in the same manner as a resident alien individual. See sections 116(1) and 220.

(B) By striking out of the last sentence "219" and inserting in lieu thereof the following: "221".

PAR. 3. Section 29.23(e)-1 [26 CFR 29.23(e)-1] is amended by striking out of the last sentence of the first paragraph "section 213" and inserting in lieu thereof the following: "sections 211, 213, and 220".

PAR. 4. Section 29.23(o)-1, as amended by Treasury Decision 5425 [26 CFR 29.23(o)-1], is further amended by inserting in the fourth sentence of the third paragraph, immediately after "213(c)", the following: ", 220,".

PAR. 5. Section 29.25-3, as amended by Treasury Decision 5687 [C. B. 1949-1, 9], approved February 16, 1949 [26 CFR 29.25-3], is further amended by adding at the end of (d) thereof the following new subparagraph:

(7) *Alien resident of Puerto Rico.*—For taxable years beginning on or after January 1, 1951, a nonresident alien individual who is a *bona fide* resident of Puerto Rico during the entire taxable year and subject to tax under sections 11 and 12 is allowed as credits against net income the exemptions specified in section 25(b), even though as to the United States such individual is a nonresident alien. See, however, section 51(b)(2) and regulations thereunder which provide that a joint return may not be made if either the husband or wife at any time during the taxable year is a nonresident alien.

PAR. 6. Section 29.51–1, as amended by Treasury Decision 5687 [26 CFR 29.51–1], is further amended by striking out of (a)(4) thereof "and every individual residing within the United States though not a citizen thereof," and inserting in lieu thereof the following: "by every individual residing within the United States though not a citizen thereof, and, in the case of taxable years beginning on or after January 1, 1951, by every alien individual who is a *bona fide* resident of Puerto Rico during the entire taxable year,".

PAR. 7. Section 29.53–1, as amended by Treasury Decision 5861 [C. B. 1951–2, 41], approved October 18, 1951 [26 CFR 29.53–1], is further amended by inserting in the exception numbered "(1)" in the first paragraph, immediately after "nonresident alien individual", the following: "(except, in the case of a taxable year beginning on or after January 1, 1951, a *bona fide* resident of Puerto Rico during the entire taxable year)".

PAR. 8. There is inserted immediately preceding section 29.58–1 [26 CFR 29.58–1] the following:

SEC. 221. RESIDENTS OF PUERTO RICO [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(g) DECLARATION OF ESTIMATED TAX.—Section 58(a) (relating to declaration of estimated tax by individuals) is hereby amended by inserting after "Chapter 9 is not made applicable" the following: ", but including every alien individual who is a resident of Puerto Rico during the entire taxable year".

* * * * * * *

(k) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1950, * * *.

PAR. 9. Section 29.58–2, as amended by Treasury Decision 5687 [26 CFR 29.58–2], is further amended as follows:

(A) By striking out of the first paragraph of (b)(1) thereof "and (iii) every nonresident alien who is a resident of Canada or Mexico and who has wages subject to withholding at the source under section 1622," and inserting in lieu thereof the following:

(iii) every nonresident alien who is a resident of Canada, Mexico, or, in the case of taxable years beginning on or after January 1, 1951, Puerto Rico and who has wages subject to withholding at the source under section 1622, and (iv), in the case of taxable years beginning on or after January 1, 1951, every nonresident alien who has been, or expects to be, a resident of Puerto Rico during the entire taxable year,

(B) By revising so much of the first sentence of the fourth paragraph of (b)(1) thereof as precedes "and who has wages subject to withholding" to read as follows:

A nonresident alien who is (1) a resident of Canada or Mexico who enters into and leaves the United States at frequent intervals, or (2), in the case of taxable years beginning on or after January 1, 1951, a resident of Puerto Rico,

(C) By striking out of the fourth paragraph of (b)(1) thereof the following: "In the case of a nonresident alien gross income means only gross income from sources within the United States. Section 212(a)." and inserting in lieu thereof the following:

In the case of a nonresident alien (other than, for taxable years beginning on or after January 1, 1951, an alien resident of Puerto Rico during the entire taxable year) gross income means only gross income from sources within the United States. Sections 212(a) and 220.

(D) By inserting immediately after the fourth paragraph of (b)(1) thereof the following new paragraph:

A nonresident alien who has been, or expects to be, a resident of Puerto Rico during the entire taxable year is required, in the case of taxable years beginning on or after January 1, 1951, to file a declaration of estimated tax if his gross income meets the requirements of section 58(a). For the purpose of such declaration, gross income means gross income from all sources, other than sources within Puerto Rico, but including amounts received for services performed as an employee of the United States or any agency thereof. Sections 116(1) and 220.

PAR. 10. Section 29.58-3, as amended by Treasury Decision 5855 [C. B. 1951-2, 141], approved September 13, 1951 [26 CFR 29.58-3], is further amended by inserting in the second sentence of the fourth paragraph of (a) thereof, immediately after "the United States", the following: "(including, on or after January 1, 1951, Puerto Rico as if a part of the United States)".

PAR. 11. Section 29.58-4, as amended by Treasury Decision 5687 [26 CFR 29.58-4], is further amended by inserting at the end of the third sentence of the first paragraph, immediately after the words "a nonresident alien", the following: ", including such an alien who is a *bona fide* resident of Puerto Rico during the entire taxable year".

PAR. 12. Section 29.58-8, as added by Treasury Decision 5305 [C. B. 1943, 260], approved November 12, 1943, and amended by Treasury Decision 5419 [C. B. 1944, 175], approved November 25, 1944 [26 CFR 29.58-8], is further amended by striking out of the second paragraph "and Hawaii on the 15th day" and inserting in lieu thereof the following: ", Hawaii, and (in the case of taxable years beginning on or after January 1, 1951) Puerto Rico on the 15th day".

PAR. 13. There is inserted immediately preceding section 29.116-1 [26 CFR 29.116-1] the following:

SEC. 221. RESIDENTS OF PUERTO RICO [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(c) TAXATION OF INCOME OF RESIDENTS OF PUERTO RICO.—Section 116 (relating to exclusions from gross income) is hereby amended by adding at the end thereof the following new subsection:

"(1) INCOME FROM SOURCES WITHIN PUERTO RICO.—

"(1) RESIDENT OF PUERTO RICO FOR ENTIRE TAXABLE YEAR.—In the case of an individual who is a *bona fide* resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

"(2) TAXABLE YEAR OF CHANGE OF RESIDENCE FROM PUERTO RICO.—In the case of an individual citizen of the United States, who h?

been a *bona fide* resident of Puerto Rico for a period of at least two years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph."

* * * * * * *

(k) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1950, * * *.

PAR. 14. There is inserted immediately after section 29.116-5, as added by Treasury Decision 5555 [C. B. 1947-1, 52], approved March 24, 1947 [26 CFR 29.116-5], the following new section:

SEC. 29.116-6. EXCLUSION OF CERTAIN INCOME FROM SOURCES WITHIN PUERTO RICO.—For taxable years beginning on or after January 1, 1951, there is excluded from gross income in the case of an individual (whether a citizen of the United States or an alien) who is a *bona fide* resident of Puerto Rico during the entire taxable year income derived from sources within Puerto Rico, except such income as consists of amounts received for services performed as an employee of the United States or any agency thereof. Whether the individual is a *bona fide* resident of Puerto Rico shall be determined in general by applying to the facts and circumstances in each case the principles of sections 29.211-2, 29.211-3, 29.211-4, and 29.211-5, relating to what constitutes residence or nonresidence, as the case may be, in the United States in the case of an alien individual. Once *bona fide* residence in Puerto Rico has been established, temporary absence therefrom in the United States or elsewhere on vacation or business trips will not necessarily deprive an individual of his status as a *bona fide* resident of Puerto Rico. An individual taking up residence in Puerto Rico during the course of the taxable year is not entitled for such year to the exclusion provided in section 116(1).

For any taxable year beginning on or after January 1, 1951, there is excluded from gross income, in the case of an individual citizen of the United States who during such taxable year changes his residence from Puerto Rico to a place outside Puerto Rico after having been a *bona fide* resident of Puerto Rico for a period of at least 2 years immediately preceding the date of such change in residence, income derived from sources within Puerto Rico which is attributable to that part of such period of Puerto Rican residence which precedes the date of such change in residence, except such income as consists of amounts received for services performed as an employee of the United States or any agency thereof.

In any case in which any amount otherwise constituting gross income is excluded from gross income under the provisions of section 116(1), there shall not be allowed as a deduction from gross income any items of expenses or losses or other deductions properly allocable to, or chargeable against, the amounts so excluded from gross income. The apportionment and allocation of such expenses, losses, or deductions as between income from sources within Puerto Rico and income from other sources shall be determined in accordance with the principles of section 119 and the regulations thereunder.

PAR. 15. Section 29.117-1, as amended by Treasury Decision 5425 [26 CFR 29.117-1], is further amended by inserting at the end thereof the following new paragraph:

In the case of nonresident alien individuals not engaged in trade or business within the United States, see section 211 and the regulations thereunder for the determination of the net amount of capital gains subject to tax with respect to taxable years beginning on or after January 1, 1950.

PAR. 16. Section 29.117-2, as amended by Treasury Decision 5425 [26 CFR 29.117-2], is further amended as follows:

(A) By inserting immediately preceding the second sentence, which commences with the words "The percentage of the gain", of (*a*) thereof the following:

(In the case of nonresident alien individuals not engaged in trade or business within the United States, see section 211 and the regulations thereunder for the determination of the net amount of capital gains subject to tax with respect to taxable years beginning on or after January 1, 1950.)

(B) By inserting at the end of the first paragraph of (*c*) thereof the following new sentence:

In the case of nonresident alien individuals not engaged in trade or business within the United States, see section 211 and the regulations thereunder.

PAR. 17. Section 29.119-1 [26 CFR 29.119-1] is amended as follows:

(A) By inserting in the first sentence of the first paragraph, immediately after "Nonresident alien individuals", the following: "(except, in the case of a taxable year beginning on or after January 1, 1951, alien individuals who are *bona fide* residents of Puerto Rico during the entire taxable year)".

(B) By inserting in the first paragraph, immediately after "212(a),", the following: "220,".

PAR. 18. There is inserted immediately preceding section 29.131-1 [26 CFR 29.131-1] the following:

SEC. 221. RESIDENTS OF PUERTO RICO [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(h) FOREIGN TAX CREDIT.—Paragraphs (2) and (3) of section 131(a) (relating to allowance of credit) are hereby amended to read as follows:

"(2) RESIDENT OF THE UNITED STATES OR PUERTO RICO.—In the case of a resident of the United States and in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

"(3) ALIEN RESIDENT OF THE UNITED STATES OR PUERTO RICO.—In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and".

* * * * * * *

(k) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1950, * * *.

PAR. 19. Section 29.131-1, as amended by Treasury Decision 5855 [26 CFR 29.131-1], is further amended by revising so much of the second paragraph as precedes "the credit is as follows:" to read as follows:

In the case of an alien resident of the United States and, with respect to taxable years beginning on or after January 1, 1951, in the case of an alien individual who is a *bona fide* resident of Puerto Rico during the entire taxable year, who chooses to claim a credit for such taxes, the basis of

PAR. 19A. Section 29.131-3 [26 CFR 29.131-3] is amended by striking out of the second sentence of the first paragraph "sworn to or affirmed." and inserting in lieu thereof the following: "verified by a written declaration that it is made under the penalties of perjury.".

PAR. 20. There is inserted immediately preceding section 29.143–1 [26 CFR 29.143–1] the following:

SEC. 221. RESIDENTS OF PUERTO RICO [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(e) WITHHOLDING ON ALIEN RESIDENTS OF PUERTO RICO.—Section 143 (a)(1) (relating to withholding of tax at source on tax-free covenant bonds) and section 143(b) (relating to withholding of tax at source on dividends, interest, etc., paid to nonresident aliens) are each amended by adding at the end thereof the following:

"As used in this subsection the term 'nonresident alien individual' includes an alien resident of Puerto Rico."

* * * * * * *

(k) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1950, * * *.

PAR. 21. Section 29.143–1, as amended by Treasury Decision 5709 [C. B. 1949–2, 56], approved June 27, 1949 [26 CFR 29.143–1], is further amended by inserting after the first sentence of the penultimate paragraph of (*a*) thereof the following new sentence:

For the purpose of section 143 (a)(1) and (b) the term "nonresident alien individual" includes an alien resident of Puerto Rico.

PAR. 22. Section 29.147–3, as amended by Treasury Decision 5687 [26 CFR 29.147–3], is further amended by inserting immediately preceding the last paragraph the following:

(*m*) Payments made on or after January 1, 1951, to employees for services performed in Puerto Rico.

PAR. 23. Section 29.147–6 [26 CFR 29.147–6] is amended by inserting therein, immediately after "the United States", the following: "(including, on or after January 1, 1951, Puerto Rico as if a part of the United States)".

PAR. 24. There is inserted immediately preceding section 29.211–1 [26 CFR 29.211–1] the following:

SEC. 213. CAPITAL GAINS OF NONRESIDENT ALIEN INDIVIDUALS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) NONRESIDENT ALIEN INDIVIDUALS TEMPORARILY IN THE UNITED STATES.—Section 211(a)(1)(B) (relating to tax on nonresident alien individuals not engaged in trade or business within the United States) is hereby amended to read as follows:

"(B) CAPITAL GAINS OF ALIENS TEMPORARILY PRESENT IN THE UNITED STATES.—In the case of a nonresident alien individual not engaged in trade or business in the United States, there shall be levied, collected, and paid for each taxable year, in addition to the tax imposed by subparagraph (A)—

"(i) if he is present in the United States for a period or periods aggregating less than ninety days during such taxable year—a tax of 30 per centum of the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected during his presence in the United States exceed his losses, allocable to sources within the United States, from such sales or exchanges effected during such presence; or

"(ii) if he is present in the United States for a period or periods aggregating ninety days or more during such taxable year—a tax of 30 per centum of the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected at any time during such

year exceed his losses, allocable to sources within the United States, from such sales or exchanges effected at any time during such year.

For the purposes of this subparagraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such individual were engaged in trade or business in the United States, except that such gains and losses shall be computed without regard to the provisions of section 117(b) and such losses shall be determined without the benefits of the capital loss carry-over provided in section 117(e).

"(C) CROSS REFERENCE.—For inclusion in computation of tax of amount specified in shareholder's consent, see section 28."

(b) NO UNITED STATES TRADE OR BUSINESS AND INCOME OF MORE THAN $15,400.—

(1) Section 211(a)(2) is hereby amended to read as follows:

"(2) AGGREGATE MORE THAN $15,400.—The taxes imposed by paragraph (1) shall not apply to any individual if during the taxable year the sum of—

"(A) the aggregate amount received from the sources specified in paragraph (1)(A), plus

"(B) the amount, determined in accordance with the provisions of paragraph (1)(B), by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges,

is more than $15,400."

(2) So much of section 211(c) as precedes paragraph (4) thereof is hereby amended to read as follows:

"(c) NO UNITED STATES BUSINESS OR OFFICE AND GROSS INCOME OF MORE THAN $15,400.—A nonresident alien individual not engaged in trade or business within the United States shall be taxable without regard to the provisions of subsection (a)(1) if during the taxable year the sum of the aggregate amount received from the sources specified in subsection (a)(1)(A), plus the amount (determined in accordance with the provisions of subsection (a)(1)(B)) by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges, is more than $15,400, except that—

"(1) The gross income shall include only income from the sources specified in subsection (a)(1)(A) plus any gain (to the extent provided in section 117) from a sale or exchange of a capital asset if such gain would be taken into account were the tax being determined under subsection (a)(1)(B);

"(2) The deductions (other than the so-called 'charitable deduction' provided in section 213(c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a)(1)(A), except that any loss from the sale or exchange of a capital asset shall be allowed (to the extent provided in section 117 without the benefit of the capital loss carry-over provided in section 117(e)) if such loss would be taken into account were the tax being determined under subsection (a)(1)(B);

"(3) The tax imposed by this chapter (under sections 11 and 12, or under section 117(c)) shall, in no case, be less than 30 per centum of the sum of—

"(A) the aggregate amount received from the sources specified in subsection (a)(1)(A), plus

"(B) the amount, determined in accordance with the provisions of subsection (a)(1)(B), by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges; and".

* * * * * * *

(d) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1949.

SEC. 214. TREATY OBLIGATIONS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

No amendments made by this Act shall apply in any case where its application would be contrary to any treaty obligation of the United States.

PAR. 25. Section 29.211–7, as amended by Treasury Decision 5709 [26 CFR 29.211–7], is further amended as follows:

(A) By revising so much thereof as precedes (*a*) thereof to read as follows:

SEC. 29.211–7. TAXATION OF NONRESIDENT ALIEN INDIVIDUALS.—For the purposes of this section and sections 29.212–1, 29.213–1, 29.214–1, 29.215–1, and 29.217–2, nonresident alien individuals are divided into three classes: (1) nonresident alien individuals not engaged in trade or business within the United States at any time during the taxable year and deriving in such taxable year an amount of not more than $15,400 in the aggregate which is the gross amount of fixed or determinable annual or periodical income from sources within the United States plus, in the case of taxable years beginning on or after January 1, 1950, the excess of capital gains over capital losses, determined in accordance with paragraph (a) (2) of this section, from sources within the United States; (2) nonresident alien individuals not engaged in trade or business within the United States at any time during the taxable year and deriving in such taxable year an amount of more than $15,400 in the aggregate which is the gross amount of fixed or determinable annual or periodical income from sources within the United States plus, in the case of taxable years beginning on or after January 1, 1950, the excess of capital gains over capital losses, determined in accordance with paragraph (a) (2) of this section, from sources within the United States; and (3) nonresident alien individuals who at any time during the taxable year are engaged in trade or business in the United States. (But, in the case of taxable years beginning on or after January 1, 1951, see section 29.220–1 with respect to alien individuals who are *bona fide* residents of Puerto Rico during the entire taxable year.)

(B) By revising so much of (*a*) thereof as precedes the second sentence of the first paragraph to read as follows:

(*a*) *No United States business—General rule.*—(1) *Fixed or determinable annual or periodical income.*—A nonresident alien individual within class (1), referred to in the preceding paragraph, is liable to the tax upon the aggregate amount received from sources within the United States, determined under the provisions of section 119, which consists of fixed or determinable annual or periodical gains, profits, and income and, in the case of taxable years beginning on or after January 1, 1950, the excess of capital gains over capital losses, determined in accordance with subparagraph (2) hereof.

(C) By inserting after the first sentence of the second paragraph of (*a*) thereof the following:

In the case of taxable years beginning on or after January 1, 1950, the excess of capital gains over capital losses, determined in accordance with subparagraph (2) hereof, is also subject to tax and is to be aggregated with such fixed or determinable annual or periodical income in determining such $15,400.

(D) By inserting immediately preceding paragraph (*b*) the following new subparagraph:

(2) *Capital gains and losses.*—In the case of taxable years beginning on or after January 1, 1950, a nonresident alien individual within class (1), referred to in the introductory paragraph of this section, is liable to a tax of 30 percent upon the excess of capital gains derived from sources within the United States over capital losses allocable to such sources, determined under the provisions of section 119 and in accordance with the provisions of this subparagraph. This tax is in addition to the tax imposed, as indicated in subparagraph (1) hereof, upon the gross amount of fixed or determinable annual or periodical income derived from sources within the United States by such nonresident alien individual. However, section 211(a)(1)(B) and this subparagraph do not apply to any capital gain which is exempt from tax under a treaty or convention to which the United States is a party.

If he has been present in the United States for a period or periods aggregating less than 90 days during the taxable year, a nonresident alien individual not engaged in trade or business within the United States at any time during such taxable year is liable to a tax of 30 percent upon the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected during his presence in the United States exceed his losses, allocable to sources within the United States, from such sales or exchanges effected during such presence. Gains or losses from sales or exchanges of capital assets effected during such taxable year at times other than during such presence in the United States are not to be taken into account.

If he has been present in the United States for a period or periods aggregating 90 days or more during the taxable year, a nonresident alien individual not engaged in trade or business within the United States at any time during such taxable year is liable to a tax of 30 percent upon the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected at any time during such year exceed his losses, allocable to sources within the United States, from such sales or exchanges effected at any time during such year. Gains or losses from sales or exchanges effected at any time during such taxable year are to be taken into account even though such alien individual is not present in the United States at the time such sales or exchanges are effected.

In computing the total period of presence in the United States for a taxable year, all separate periods of presence in the United States during the taxable year are to be aggregated.

For the purpose of the computation of the excess of capital gains over capital losses subject to tax, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if the nonresident alien individual were engaged in trade or business within the United States, except that such gains or losses shall be computed without regard to the provisions of section 117(b) and that such losses shall be determined without the benefit of the provision under section 117(e) for the capital loss carry-over. The excess, if any, of capital losses over capital gains in such computation is of no tax significance, since such losses shall be allowed only to the extent of such gains.

Where sales or exchanges of capital assets (effected either during the period or periods of presence in the United States when such period or periods aggregate less than 90 days during the taxable year, or at any time during the taxable year when such period or periods aggregate 90 days or more during such taxable year) result only in capital losses allocable to United States sources, there being no gains derived from United States sources from such sales or exchanges, such losses shall not to any extent be allowed as a deduction from the fixed or determinable annual or periodical income derived by such nonresident alien individual from United States sources during such taxable year.

(E) By revising the first three sentences of paragraph (*b*) to read as follows:

A nonresident alien individual within class (2), referred to in the introductory paragraph of this section, is, in accordance with the provisions of section 211(c), subject to tax under sections 11 and 12, or in the alternative under section 117(c), upon the amount which is the sum of the aggregate of his fixed or determinable annual or periodical income specified in section 211(a)(1)(A), determined under the provisions of section 119, plus, in the case of taxable years beginning on or after January 1, 1950, any gain (to the extent provided in section 117) from a sale or exchange of a capital asset if such gain would be taken into account were the tax being determined under section 211(a)(1)(B) and under paragraph (a)(2) of this section, minus (1) the deductions properly allocable to such fixed or determinable annual or periodical income, (2) the so-called "charitable contributions" deduction provided in section 213(c), and (3), in the case of taxable years beginning on or after January 1, 1950, any loss (to the extent provided in section 117 without the benefit of the capital loss carry-over provided in section 117(e)) from the sale or exchange of a capital asset if such loss would be taken into account were the tax being determined under section 211(a)(1)(B) and under paragraph (a)(2) of this section. Such nonresident alien is entitled to the credits against net income allowable to an individual by section 25, subject to the limitations provided in section 214. However, the tax thus computed under sections 11 and 12, or in the alternative under section 117(c),

shall in no case be less than 30 percent (27½ percent prior to October 31, 1942, in the case of fixed or determinable annual or periodical income) of the amount which is the sum of the aggregate of the gross amounts of fixed or determinable annual or periodical income from sources within the United States plus, in the case of taxable years beginning on or after January 1, 1950, the amount, determined in accordance with the provisions of section 211(a)(1)(B) and of paragraph (a)(2) of this section, by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges.

PAR. 26. Section 29.212–1, as amended by Treasury Decision 5600 [C. B. 1948–1, 5], approved February 2, 1948 [26 CFR 29.212–1], is further amended as follows:

(A) By striking out the period at the end of the first sentence of paragraph (*a*) and inserting in lieu thereof the following:

and, in the case of taxable years beginning on or after January 1, 1950, any gain from the sale or exchange of a capital asset to the extent required to be included in gross income under the provisions of section 211(a)(1)(B) or section 211(c).

(B) By inserting in the second sentence of paragraph (*a*), immediately after "His taxable income does not include", the following: ", in the case of taxable years beginning before January 1, 1950,".

(C) By striking out the period at the end of (*a*) thereof and inserting in lieu thereof the following:

, except that in the case of taxable years beginning on or after January 1, 1950, any gain from the sale or exchange of a capital asset is includible in the taxable income of such nonresident alien individual to the extent required by the provisions of section 211(a)(1)(B) or section 211(c).

PAR. 27. Section 29.213–1 [26 CFR 29.213–1] is amended as follows:

(A) By striking out of (a)(1) thereof "received." and inserting in lieu thereof the following:

received, except that, in the case of taxable years beginning on or after January 1, 1950, losses allocable to sources within the United States from sales or exchanges of capital assets shall be allowed in accordance with the provisions of section 29.211–7(a)(2) to the extent of gains, derived from sources therein, from such sales or exchanges.

(B) By striking out so much of the first sentence of (a)(2) thereof as follows "for such year more than $15,400" and inserting in lieu thereof the following:

in the aggregate which is the gross amount of fixed or determinable annual or periodical income from sources within the United States plus, in the case of taxable years beginning on or after January 1, 1950, the excess of capital gains over capital losses, determined in accordance with section 29.211–7(a)(2), from sources within the United States is allowed for such year (1) such deductions as are properly allocable to such fixed or determinable annual or periodical income and (2), in the case of taxable years beginning on or after January 1, 1950, losses from sales or exchanges of capital assets, allocable to sources within the United States, to the extent and in the manner provided by section 29.211–7(b).

PAR. 28. Section 29.214–1, as amended by Treasury Decision 5517 [C. B. 1946–2, 8], approved June 12, 1946 [26 CFR 29.214–1], is further amended by striking out of (a)(2) thereof the words "amount of fixed or determinable annual or periodical income" and inserting in lieu thereof the following: "income described in section 211(a)(1)".

PAR. 29. Section 29.215–1 [26 CFR 29.215–1] is amended as follows:

(A) By inserting in (a)(1) thereof, immediately after the word "deductions", the following: "(except as provided in section 29.211–7(a)(2))".

(B) By striking out of (a)(2) thereof wherever occurring therein ixed or determinable annual or periodical income" and inserting i lieu thereof the following: "income described in section 211(a)(1)".

PAR. 30. There is inserted immediately preceding section 29.217-1 26 CFR 29.217-1] the following:

SEC. 213. CAPITAL GAINS OF NONRESIDENT ALIEN INDIVIDUALS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(c) TECHNICAL AMENDMENT.—Section 217(b) (relating to returns by nonresident alien individuals) is hereby amended by striking out "section 211(a)" and inserting in lieu thereof "section 211(a)(1)(A)".

(d) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1949.

PAR. 31. Section 29.217-2, as amended by Treasury Decision 5687 26 CFR 29.217-2], is further amended as follows:

(A) By striking out of (a)(1) and (a)(2) thereof wherever :curring therein "fixed or determinable annual or periodical income" id inserting in lieu thereof the following: "income described in ction 211(a)(1)".

(B) By striking out of the second sentence of (a)(2) thereof Such return" and inserting in lieu thereof the following: "Except s to gains from transactions described in section 211(a)(1)(B) in taxable year beginning on or after January 1, 1950, such return".

PAR. 32. Section 29.219-1 [26 CFR 29.219-1] is amended by striking it "fixed or determinable annual or periodical income" and in:rting in lieu thereof the following: "income described in section .1(a)(1)".

PAR. 33. There is inserted immediately after section 29.219-1 [26 FR 29.219-1] the following:

SEC. 221. RESIDENTS OF PUERTO RICO [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(d) ALIENS RESIDING IN PUERTO RICO.—Supplement H (relating to nonresident alien individuals) is hereby amended by adding at the end thereof the following new section:

"SEC. 220. ALIEN RESIDENTS OF PUERTO RICO.

"(a) NO APPLICATION TO CERTAIN ALIEN RESIDENTS OF PUERTO RICO.—The provisions of this supplement shall have no application to an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, and such alien shall be subject to the taxes imposed by sections 11 and 12.

"(b) CROSS REFERENCE.—For exclusion from gross income of income derived from sources within Puerto Rico, see section 116(1)(1)."

* * * * * * *

(k) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1950, * * *.

SEC. 29.220-1. ALIEN RESIDENTS OF PUERTO RICO.—In the case of taxable years ginning on or after January 1, 1951, the provisions of Supplement H relating the taxation of nonresident alien individuals do not apply to a nonresident en individual who is a *bona fide* resident of Puerto Rico during the entire xable year, irrespective of whether he has engaged in trade or business thin the United States during the taxable year. The income of such alien lividual from sources both within and without the United States is subject

o the normal tax and the surtax imposed by sections 11 and 12, respectively, xcept that under the provisions of section 116(1) income derived from sources ithin Puerto Rico (other than amounts received for services performed as n employee of the United States or any agency thereof) is excluded from ross income. For rules respecting filing of returns and payment of tax ee sections 51, 53, 56, 58, and 59 and the regulations thereunder.

PAR. 34. There is inserted immediately preceding section 29.251–1 26 CFR 29.251–1] the following:

SEC. 220. EMPLOYEES OF UNITED STATES WORKING IN POSSESSIONS OF THE UNITED STATES OR IN THE CANAL ZONE [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950, AS AMENDED BY PUBLIC LAW 82, 82d CONG., APPROVED JULY 23, 1951].

Effective with respect to taxable years beginning after December 31, 1950, section 251 (relating to income from sources within possessions of the United States) is hereby amended by adding at the end thereof the following new subsection:

"(j) EMPLOYEES OF UNITED STATES.—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States."

SEC. 221. RESIDENTS OF PUERTO RICO [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) INCOME OF INDIVIDUALS FROM SOURCES WITHIN PUERTO RICO.—Section 251(d) (relating to income from sources within possessions of United States) is hereby amended to read as follows:

"(d) DEFINITION.—As used in this section the term 'possession of the United States' does not include the Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico."

* * * * * * *

(k) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1950, * * *.

PAR. 35. Section 29.251–1, as amended by Treasury Decision 5709 26 CFR 29.251–1], is further amended as follows:

(A) By inserting immediately preceding the fourth sentence, which ommences with the words "Dividends received", of (2) of the first aragraph the following new sentence:

n the case of taxable years beginning on or after January 1, 1951, the salary r other compensation paid for services performed by a citizen of the United tates as an employee of the United States or any agency thereof shall for pur- oses of section 251 and this section be deemed to be derived from sources ithin the United States.

(B) By striking out of the first sentence of the fourth paragraph ection 119." and inserting in lieu thereof the following: "section 119 nd section 251(j).".

(C) By striking out of the first sentence of the example, which con- itutes the sixth paragraph, the words "Puerto Rico" and inserting lieu thereof the following: "a possession of the United States".

(D) By striking out of the third sentence of such example the ords "Puerto Rican" and by inserting in such sentence, immediately ter the words "real estate", the following: "located in such possession nd".

PAR. 35A. Section 29.251–2 [26 CFR 29.251–2] is amended by strik- g out of the third sentence "Puerto Rican real estate," and inserting lieu thereof the following: "real estate located in the possession,".

PAR. 36. Section 29.251-4, as amended by Treasury Decision 5534 [C. B. 1946-2, 71], approved August 28, 1946 [26 CFR 29.251-4], is further amended as follows:

(A) By striking out of the second sentence the following: "Puerto Rico,".

(B) By inserting at the end thereof, immediately after the words "self-governing nation.", the following new paragraph:

In the case of taxable years beginning before January 1, 1951, the term "possession of the United States", as used in sections 251 and 252 and section 29.251-1, this section, and section 29.252-1, also includes Puerto Rico. In the case of taxable years beginning after December 31, 1950—

(1) such term shall not include Puerto Rico when used in section 251, section 29.251-1, and this section with respect to citizens of the United States, and

(2) the provisions of section 252(a) and the regulations thereunder prescribed in section 29.252-1 shall have no application in the case of a citizen of Puerto Rico.

PAR. 37. There is inserted immediately preceding section 29.252-1 [26 CFR 29.252-1] the following:

SEC. 221. RESIDENTS OF PUERTO RICO [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

* * * * * * *

(b) CITIZENS OF THE UNITED STATES RESIDING IN PUERTO RICO.—Section 252(a) (relating to citizens of possessions of the United States) is hereby amended by adding at the end thereof the following new sentence: "This subsection shall have no application in the case of a citizen of Puerto Rico."

* * * * * * *

(k) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1950, * * *.

PAR. 38. Section 29.252-1 [26 CFR 29.252-1] is amended by adding at the end thereof the following new paragraph:

For taxable years beginning after December 31, 1950, the provisions of section 252(a) and the regulations thereunder prescribed in this section shall have no application in the case of a citizen of Puerto Rico.

(This Treasury Decision is issued under the authority contained in sections 62 and 3791 (53 Stat. 32 and 467; 26 U. S. C. 62 and 3791) of the Internal Revenue Code.)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved April 4, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 9, 1952, 8:50 a. m.)

SECTION 212.—GROSS INCOME

SECTION 29.212-2: Exclusion of earnings of foreign ships or aircraft from gross income. (Also Section 231, Section 29.231-3.) 1952-6-13781 I. T. 4076

INTERNAL REVENUE CODE

The Republic of Liberia satisfies the equivalent exemption requirements of sections 212(b)(1) and 231(d)(1) of the Internal Reve-

nue Code, relating to exclusion from gross income of earnings derived from the operation of ships documented under the laws of a foreign country.

SUPPLEMENT I.—FOREIGN CORPORATIONS

SECTION 231.—TAX ON FOREIGN CORPORATIONS

SECTION 29.231–3: Exclusion of earnings of foreign ships or aircraft from gross income.

INTERNAL REVENUE CODE

Republic of Liberia—equivalent exemption requirements. (See I. T. 4076, page 138.)

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES

SECTION 251.—INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES

SECTION 29.251–4: Definition. 1952-9-13811
I. T. 4080

INTERNAL REVENUE CODE

The Marshall Islands, administered by the United States under a trusteeship agreement, effective July 18, 1947, between the United States and the Security Council of the United Nations, do not constitute a possession of the United States within the meaning of section 251 of the Internal Revenue Code.

Advice is requested whether the Marshall Islands, administered by the United States under a trusteeship agreement between the United States and the Security Council of the United Nations, constitute a possession of the United States within the meaning of section 251 of the Internal Revenue Code, relating to income from sources within possessions of the United States.

The President was authorized by the Joint Resolution of July 18, 1947 (61 Stat. 397), to approve, on behalf of the United States, the trusteeship agreement between the United States and the Security Council of the United Nations for the former Japanese mandated islands, which are now known as the Territory of the Pacific Islands. The Marshall Islands are a part of such territory.

The trusteeship agreement for the former Japanese mandated islands (61 Stat. 3301), which is effective as of July 18, 1947, provides in part as follows:

ARTICLE 1

The Territory of the Pacific Islands, consisting of the islands formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the League of Nations, is hereby designated as a strategic area and placed under the trusteeship system established in the Charter of the United Nations. The Territory of the Pacific Islands is hereinafter referred to as the trust territory.

ARTICLE 2

The United States of America is designated as the administering authority of the trust territory.

* * * * * * *

ARTICLE 4

The administering authority, in discharging the obligations of trusteeship in the trust territory, shall act in accordance with the Charter of the United Nations, and the provisions of this agreement, and shall, as specified in Article 83(2) of the Charter, apply the objectives of the international trusteeship system, as set forth in Article 76 of the Charter, to the people of the trust territory.

* * * * * * *

ARTICLE 6

In discharging its obligations under Article 76(b) of the Charter, the administering authority shall:

1. foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence, as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the trust territory a progressively increasing share in the administrative services in the territory; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law for the territory; and shall take other appropriate measures toward these ends;

No specific term for the trusteeship is provided in the agreement.

In view of the limitations imposed by the trusteeship agreement, the United States does not have such sovereignty over the Marshall Islands as would justify the position that they constitute a possession of the United States. Accordingly, it is held that the Marshall Islands, administered by the United States under the trusteeship agreement, effective July 18, 1947, between the United States and the Security Council of the United Nations, do not constitute a possession of the United States within the meaning of section 251 of the Internal Revenue Code.

SUBCHAPTER D.—EXCESS PROFITS TAX

PART I.—RATE AND COMPUTATION OF TAX

SECTION 433.—EXCESS PROFITS NET INCOME

SECTION 40.433(a)-2, REGULATIONS 130: Computation of excess profits net income for the taxable year.

INTERNAL REVENUE CODE

Regulations 130 amended. (See T. D. 5885, page 121.)

SECTION 437.—INVESTED CAPITAL CREDIT

SECTION 40.437-2, REGULATIONS 130: Invested capital. 1952-13-13848
I. T. 4087

(Also Section 458, Section 40.458-1, Regulations 130.)

INTERNAL REVENUE CODE

A taxpayer which did not file Schedule EP of Form 1120 because it had less than $25.00 excess profits net income in a particular taxable year may exercise at a later date the election provided by sec-

tion 437(b)(1) of the Internal Revenue Code and compute its invested capital for such year under section 458 of the Code, relating to the historical invested capital method of determining invested capital, for the purpose of determining the amount of any unused excess profits credit carry-back or carry-over.

Advice is requested whether a taxpayer which did not file Schedule EP of Form 1120 because it had less than $25,000 excess profits net income in a particular taxable year may subsequently compute its excess profits credit for that year by use of the historical invested capital method under section 458 of the Internal Revenue Code for the purpose of determining the amount of any unused excess profits credit carry-back or carry-over to a preceding or subsequent year.

Section 437(b)(1) of the Internal Revenue Code provides in part as follows:

(1) ELECTION OF TAXPAYER.—The invested capital for any taxable year shall be the adjusted invested capital determined under paragraph (2) [of section 437(b) of the Code], except that if the taxpayer elects in its return for such taxable year to compute its invested capital under the provisions of section 458, the invested capital for such year shall be the historical invested capital determined under section 458. * * *

Section 40.437–2(c) of Regulations 130 provides in part as follows:

(c) *Election to use historical invested capital.*—If the taxpayer * * * elects on its return for the taxable year to compute its invested capital under the provisions of section 458, the invested capital of the taxpayer for such year shall be the historical invested capital determined under section 458. A separate election must be made for each taxable year, and an election once made is irrevocable with respect to the taxable year. A taxpayer making such election may not thereafter compute invested capital for the taxable year under section 437(b)(2). If the historical method is used on the return in determining the excess profits tax liability, the taxpayer will be deemed to have elected the historical method. A taxpayer which computes its excess profits tax on its return on the basis of a credit other than the invested capital credit may nevertheless elect the historical method for such year, in the event that the invested capital credit should subsequently become significant in the determination of its excess profits tax liability for such year, by attaching to its return for the taxable year a statement electing the historical method.

It is held that where a taxpayer did not file Schedule EP of Form 1120 because it had less than $25,000 excess profits net income in a particular taxable year, it may exercise at a later date the election provided by section 437(b)(1) of the Internal Revenue Code and compute its invested capital for such year under section 458 of the Code for the purpose of determining the amount of any unused excess profits credit carry-back or carry-over to a preceding or subsequent year.

SECTION 439.—BORROWED CAPITAL

SECTION 40.439–1, REGULATIONS 130: Borrowed capital. 1952–4–13762
I. T. 4072

INTERNAL REVENUE CODE

The taxpayer corporation receives from a factor monetary advances which are charged against merchandise shipments to the taxpayer's customers pursuant to the factor's agreement to purchase, subject to credit approval, all the accounts created by the taxpayer's sales. Such advances are not evidenced by separate notes or any other evidence of indebtedness. Under the terms of the agreement between the taxpayer and the factor, the taxpayer assigns to the factor "in absolute ownership" all accounts receivable

created by the taxpayer's sales, such assignment including the taxpayer's interest in the merchandise sold. *Held*, the advances received by the taxpayer are proceeds from the sale of accounts receivable to the factor and do not constitute borrowed capital within the purview of section 439(b) of the Internal Revenue Code.

Advice is requested whether monetary advances received by a taxpayer from a factor, under an agreement whereby the advances are charged against the accounts receivable created by the taxpayer's sales and the factor is obligated to purchase such receivables, constitute borrowed capital under section 439(b) of the Internal Revenue Code.

In the instant case, the factor advances money to the taxpayer which is charged against merchandise shipments to the taxpayer's customers pursuant to an agreement on the part of the factor to purchase, subject to credit approval, all accounts created by the taxpayer's sales. Such advances are not evidenced by separate notes or any other evidence of indebtedness.

The pertinent provisions of the agreement between the taxpayer and the factor are as follows:

1. We [the factor] shall purchase all the accounts created by your sales and on all sales which have been approved by our Credit Department we hereby assume the risk of your customers' insolvency after the merchandise has been actually received and finally accepted without dispute. We shall remit to you upon request the net proceeds due you from such sales, but in order to protect us against possible returns, claims, allowances, etc., we may reserve an amount of past sales which is in our opinion reasonably necessary to cover such contingencies. We may remit to you any amounts standing to your credit in excess of such reserves.

* * * * * * *

3. You [the taxpayer] hereby assign to us in absolute ownership all accounts receivable created by your sales, which assignment includes your interest in the merchandise sold. As such owners, we shall have all the rights of an unpaid seller, including the rights of replevin, reclamation, and stopping in transit, and any merchandise so recovered will be considered, as between us, as returned merchandise.

* * * * * * *

6. You will make no sales or deliveries of merchandise without first obtaining the written approval of our Credit Department as to terms and credit of purchasers, and we shall have the right to withdraw such approval at any time before delivery. We shall not be liable to any person or in any manner for refusing to approve delivery of any goods sold or for exercising our rights as set forth in this agreement. Shipping or delivery receipts are to be delivered to us promptly, and we shall have the right to withhold credit with respect to any sale until we have received such receipt.

7. You agree to indemnify and protect us against liability, loss or expense caused by or arising out of the rejection of goods or alleged claims or offsets of every kind and nature by purchasers other than those resulting from their financial inability to pay. You shall advise us of all disputes with purchasers upon receiving notice thereof and shall, subject to our approval, promptly adjust the same, advise us of adjustments, and in case any dispute remains unadjusted at the time a bill becomes due, we shall have the right to charge back to your account the amount or amounts involved therein and any expenses incurred by us, together with interest from the due date of original credit. Pending payment of the charge-back or reassignment or other adjustment thereof to our satisfaction, we shall remain the absolute owner of the account and of any rejected, returned, or recovered merchandise, and same shall be legibly marked and set apart by you as our property, and we shall have the right to take possession thereof at any time and dispose of same without further notice at such prices and terms as we may deem proper at public or private sale.

Section 439(b) of the Internal Revenue Code provides in part as follows:

(b) DAILY BORROWED CAPITAL.—For the purposes of this subchapter [subchapter D, chapter 1 of the Code], the daily borrowed capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following:

(1) The amount of the outstanding indebtedness (not including interest) of the taxpayer, incurred in good faith for the purposes of the business, which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, deed of trust, bank loan agreement, or conditional sales contract. In the case of property of the taxpayer subject to a mortgage or other lien, the amount of indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the taxpayer whether or not the taxpayer assumed or agreed to pay such indebtedness * * *

The provisions of section 439(b) of the Code are similar to the provisions of repealed section 719 of the Code, as added by section 201 of the Second Revenue Act of 1940 and amended by sections 205 and 230 of the Revenue Act of 1942. It has been held that to qualify an indebtedness as borrowed capital, two requirements must be met. First, the taxpayer must show an outstanding indebtedness and, second, such outstanding indebtedness must be evidenced by one of the types of documents specified in the Code. (See *Kellogg Commission Co.* v. *Commissioner*, 12 T. C. 182, and *Canister Co.* v. *Commissioner*, 164 Fed. (2d) 579, certiorari denied, 333 U. S. 874.)

There is no evidence in the instant case to show indebtedness or liability on the part of the taxpayer resulting from the monetary advances received from the factor. (*Cf. Brewster Shirt Corporation* v. *Commissioner*, 159 Fed. (2d) 227; Ct. D. 1724, C. B. 1949–2, 80, where the agreement clearly provided for unconditional liability on the part of the assignor.) On the contrary, since the factor is obligated to purchase, subject to credit approval, and the taxpayer is obligated to assign "in absolute ownership," all accounts receivable, the agreement clearly indicates an outright sale of such receivables.

Accordingly, it is held that the advances received by the taxpayer are proceeds from the sale of accounts receivable to the factor and do not constitute borrowed capital within the purview of section 439(b) of the Internal Revenue Code.

SECTION 446.—AVERAGE BASE PERIOD NET INCOME—DEPRESSED INDUSTRY SUBGROUPS

SECTION 40.446–2, REGULATIONS 130: Determination of depressed industry subgroups and adjusted rates of return therefor. 1952–13–13849 T. D. 5908

(Also Section 447, Sections 40.447–1 and 40.447–2, Regulations 130.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 40.—EXCESS PROFITS TAXES; TAXABLE YEARS ENDING AFTER JUNE 30, 1950

Final determinations of depressed industry subgroups and the adjusted rates of return therefor; industry base period yearly rates of return and industry base period rates of return.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. By virtue of the authority of section 446 (c) and (e) and section 447 (a) and (b) of the Internal Revenue Code, added by section 101 of the Excess Profits Tax Act of 1950, approved January 3, 1951, the final determination of industry subgroups and the adjusted rates of return therefor (computed to the nearest thousandth), and the final determination of industry base period yearly rates of return and industry base period rates of return (computed to the nearest thousandth), as shown in the amendments to Regulations 130 [26 CFR, part 40] made by paragraphs 2 and 4 of this Treasury Decision, are hereby proclaimed.

PAR. 2. Section 40.446–2 [26 CFR 40.446–2] of Regulations 130 is amended by adding at the end thereof the following:

(d) The final determinations of depressed industry subgroups and the adjusted rates of return therefor are the same as the tentative determinations and tentative adjusted rates of return set forth under (c) of this section. Accordingly, no redetermination is necessary of any application of section 446 properly made in accordance with a tentative determination and tentative adjusted rate and, therefore, the periods of limitation prescribed under section 322 and sections 275 and 276 are not extended as provided by section 446(h) and by (b) of this section, since no overpayment or deficiency in tax results from the final determinations of depressed industry subgroups and the adjusted rates of return therefor.

PAR. 3. Section 40.447–1 [26 CFR 40.447–1] of Regulations 130 is hereby amended by inserting at the end thereof the following:

(e) No redetermination is necessary of any application of section 442 which is properly made in accordance with a tentative base period yearly rate of return for 1946, 1947, or 1948. As to any application of section 442 which is properly made in accordance with a tentative base period yearly rate of return for 1949, and as to any application of sections 442 through 445 which is properly made in accordance with a tentative base period rate of return, no redetermination is necessary in any case where the final rate of return is the same as the tentative rate which was previously effective. The periods of limitation prescribed under section 322 and sections 275 and 276 are not extended, as provided by section 447(d) and by (d) of this section, except in a case where a redetermination is necessary because the applicable final rate is not the same as the tentative rate which was previously effective.

PAR. 4. Section 40.447–2 [26 CFR 40.447–2] of Regulations 130 is hereby amended to read as follows:

SEC. 40.447–2. TENTATIVE AND FINAL INDUSTRY BASE PERIOD RATES OF RETURN.—The industry classifications set forth in section 447(c), and the base period yearly rates of return and the base period rate of return (both the tentative rates described in section 447(d) and the final rates described in section 447 (a) and (b)) for each industry classification are as follows:

Major group number	Industry classification	Base period yearly rates of return (percent)					Base period rate of return (percent)	
		1946	1947	1948	1949			
		Tentative and final rate	Tentative and final rate	Tentative and final rate	Tentative rate	Final rate	Tentative rate	Final rate
	AGRICULTURE, FORESTRY, AND FISHERIES							
01 and 07	Farms and agricultural services, hunting, trapping	12.5	12.8	12.7	11.9	9.9	12.5	11.9
08	Forestry	6.1	8.2	9.2	10.7	6.2	8.5	7.4
09	Fisheries	9.1	2.1	4.5	4.5	2.2	4.8	4.2
	MINING							
10	Metal mining	5.2	11.8	13.8	8.7	7.7	10.1	9.9
11	Anthracite mining	6.4	5.8	8.0	4.5	4.0	6.2	6.1
12	Bituminous coal and lignite mining	6.3	14.6	15.4	7.7	5.8	11.3	10.9
13	Crude petroleum and natural gas extraction	5.1	9.7	11.8	11.2	8.8	10.0	9.3
14	Nonmetallic minerals except fuels	11.9	14.2	15.0	14.9	13.2	14.2	13.7
	CONTRACT CONSTRUCTION							
15 and 16	General contractors	8.6	10.5	13.7	14.5	12.3	12.2	11.6
17	Special trade contractors	12.6	15.2	15.1	9.7	9.9	13.1	13.1
	MANUFACTURING							
19	Ordnance and accessories	4.5	11.6	14.8	7.1	6.7	9.4	9.4
20	Food and kindred products	18.4	15.2	12.4	13.2	11.7	14.6	14.2
21	Tobacco manufactures	9.7	9.8	11.1	11.8	11.7	10.7	10.6
22	Textile mill products	24.0	23.2	20.6	10.3	9.5	19.2	19.0
23	Apparel and other finished products made from fabrics	21.8	16.7	10.4	8.0	6.2	13.8	13.3
24	Lumber and wood products	16.0	23.0	19.6	11.5	10.2	17.5	17.1
25	Furniture and fixtures	16.4	16.4	14.6	13.7	10.5	15.3	14.5
26	Paper and allied products	17.8	23.2	18.1	13.7	12.7	18.1	17.8
27	Printing, publishing, and allied industries	18.6	15.7	13.8	13.2	11.8	15.1	14.8
28	Chemicals and allied products	17.3	17.6	16.2	15.8	15.0	16.7	16.5
29	Products of petroleum and coal	6.1	8.7	11.3	6.6	6.4	8.3	8.2
30	Rubber products	18.6	12.4	13.4	9.0	8.7	13.2	13.1
31	Leather and leather products	19.3	15.9	10.2	8.3	7.3	13.3	13.0
32	Stone, clay, and glass products	15.4	16.3	17.2	16.8	16.0	16.5	16.3
33 and 34	Primary metal industries and fabricated metal products (except ordnance, machinery, and transportation equipment).	9.8	15.4	16.4	12.9	12.1	13.8	13.6
35	Machinery (except electrical)	9.4	16.0	17.2	14.7	13.4	14.6	14.3
36	Electrical machinery, equipment, and supplies	4.2	14.5	15.6	13.6	12.4	12.4	12.0
37	Transportation equipment	1.4	13.5	18.6	21.4	20.9	14.5	14.4
38 and 39	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks; including miscellaneous manufacturing industries.	11.9	13.8	13.5	12.8	10.4	13.0	12.4

Major group number	Industry classification	Base period yearly rates of return (percent)					Base period rate of return (percent)	
		1946	1947	1948	1949			
		Tentative and final rate	Tentative and final rate	Tentative and final rate	Tentative rate	Final rate	Tentative rate	Final rate
	TRANSPORTATION, COMMUNICATION, AND OTHER PUBLIC UTILITIES							
40	Railroads	2.1	3.9	5.3	4.0	3.7	3.9	3.8
41	Local and interurban railways and bus lines	4.1	[1] (2.9)	2.2	1.7	1.9	1.4	1.5
42	Trucking and warehousing	11.4	12.2	14.0	12.7	11.7	12.7	12.4
43	Highway transportation not elsewhere classified	24.1	15.1	12.1	10.4	9.2	15.2	14.9
44	Water transportation	9.1	9.9	8.1	8.4	7.8	8.9	8.7
45	Transportation by air	(2.6)	[1] (3.7)	1.3	4.3	3.9	.2	[1] (.1)
46	Pipeline transportation	11.1	10.5	10.5	9.1	8.9	10.1	10.0
47	Services incidental to transportation	8.1	10.0	7.1	7.2	6.5	8.1	7.9
48	Telecommunications	6.1	4.1	4.9	5.0	5.0	5.0	5.0
49	Utilities and sanitary services	7.0	6.3	6.1	6.5	6.2	6.4	6.4
	WHOLESALE TRADE							
50 and 51	Wholesale trade	16.5	15.[illegible]	12.6	9.7	8.2	13.3	12.8
	RETAIL TRADE							
52	Building materials and farm equipment	15.3	16.3	15.[illegible]	10.0	9.2	14.3	13.8
53	General merchandise	20.9	17.4	16.7	13.2	12.4	16.9	16.6
54	Food	15.8	13.9	12.9	15.8	13.6	14.6	14.0
55	Automotive dealers and gasoline service stations	27.5	33.0	27.3	15.7	15.8	25.0	24.9
56	Apparel and accessories	19.4	14.4	11.6	7.8	6.5	13.0	12.6
57	Furniture, home furnishings, and equipment	16.9	12.4	9.1	6.5	5.6	10.7	10.3
58	Eating and drinking places	12.6	6.6	5.7	6.2	4.9	7.5	7.2
59	Miscellaneous retail stores	14.3	10.7	9.1	6.8	6.2	9.8	9.7
	FINANCE, INSURANCE, AND REAL ESTATE							
60	Banking	.9	.7	.8	.8	.9	.8	.8
61	Credit agencies other than banks	3.3	3.7	4.8	5.1	5.2	4.3	4.4
62	Security and commodity brokers, dealers, exchanges, and services	2.8	1.5	1.5	2.4	2.3	2.1	2.1
63	Insurance carriers	2.4	2.4	2.8	3.2	3.2	2.7	2.7
64	Insurance agents, brokers, and service	8.3	9.5	10.0	10.3	7.7	9.6	8.9
65	Real estate	5.1	5.2	5.3	5.8	5.1	5.3	5.2
67	Holding and other investment companies	5.9	5.6	6.0	5.8	5.7	5.8	5.8

	SERVICES							
70	Hotels, rooming houses, camps, and other lodging places	9.6	8.6	8.1	7.8	6.9	8.5	8.2
72	Personal services	11.7	11.1	9.1	11.5	8.4	10.8	9.9
73	Miscellaneous business services	12.8	13.1	13.0	14.2	11.2	13.3	12.5
75	Automobile repair services and garages	14.8	13.7	12.5	10.6	9.2	12.7	12.2
76	Miscellaneous repair services	10.4	13.4	13.3	14.6	9.0	13.2	11.5
77	Radio broadcasting, including facsimile broadcasting, and television	24.9	18.8	12.5	10.1	9.2	15.8	15.4
78	Motion pictures	19.4	14.6	9.2	8.4	8.4	12.7	12.9
79	Amusement and recreation services except motion pictures	21.3	13.6	11.9	12.0	8.5	14.9	13.4
80, 81, 82, 84, 86, and 89.	Other services	8.8	9.7	10.3	8.3	8.6	9.3	9.4

[1] Parentheses indicate negative rate of return.

Because the determinations announced in this Treasury Decision are computed by specific formulae expressly prescribed in sections 446 and 447 of the Internal Revenue Code, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat. 32; 26 U. S. C. 62).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved June 3, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 6, 1952, 8:55 a. m.)

SECTION 447.—INDUSTRY BASE PERIOD RATES OF RETURN

SECTION 40.447-1, REGULATIONS 130: Industry base period rates of return.

INTERNAL REVENUE CODE

Regulations 130 amended. (See T. D. 5908, page 143.)

SECTION 40.447-2, REGULATIONS 130: Tentative and final industry base period rates of return.

INTERNAL REVENUE CODE

Regulations 130 amended. (See T. D. 5908, page 143.)

SECTION 458.—HISTORICAL INVESTED CAPITAL

SECTION 40.458-1, REGULATIONS 130: Historical invested capital method of determining invested capital.

INTERNAL REVENUE CODE

Election as to computation of invested capital. (See I. T. 4087, page 140.)

SUBCHAPTER E.—TAX ON SELF-EMPLOYMENT INCOME

SECTION 481.—DEFINITIONS

SECTION 29.481-2: Self-employment income. (Also Section 29.481-3.) 1952-3-13757 I. T. 4071

INTERNAL REVENUE CODE

Royalties derived by an individual subsequent to December 31, 1950, from a trade or business carried on by such individual on or

before December 31, 1950, even though not carried on after that date, constitute self-employment income within the meaning of section 481(b) of the Internal Revenue Code.

Advice is requested whether royalties received in 1951 by an individual from a trade or business carried on by him on or before, but not after, December 31, 1950, constitute self-employment income within the meaning of section 481(b) of the Internal Revenue Code.

Section 481 of the Internal Revenue Code, defining certain terms relating to the tax on self-employment income, provides in part as follows:

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this chapter [chapter 1 of the Code] which are attributable to such trade or business * * *

(b) SELF-EMPLOYMENT INCOME.—The term "self-employment income" means the net earnings from self-employment derived by an individual * * * during any taxable year beginning after December 31, 1950 * * *

(c) TRADE OR BUSINESS.—The term "trade or business," when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 23 * * *

It does not appear that section 481 of the Code requires that the trade or business referred to be carried on after December 31, 1950. The requirement of the statute is that the income be derived during any taxable year beginning after December 31, 1950, without specification as to when the trade or business is carried on.

Accordingly, it is held that royalties derived by an individual subsequent to December 31, 1950, from a trade or business carried on by such individual on or before December 31, 1950, even though not carried on after that date, constitute self-employment income within the meaning of section 481(b) of the Internal Revenue Code.

SECTION 29.481–2: Self-employment income. 1952–6–13782
I. T. 4077

INTERNAL REVENUE CODE

Fees and other remuneration received by a director of a corporation for performance of services as such constitute self-employment income within the meaning of section 481(b) of the Internal Revenue Code, and it is immaterial whether such remuneration is received for attending directors' meetings or serving on committees.

Advice is requested whether fees received by a director of a corporation constitute self-employment income within the meaning of section 481(b) of the Internal Revenue Code.

Section 481 of the Internal Revenue Code, defining certain terms relating to the tax on self-employment income, provides in part as follows:

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this chapter [chapter 1 of the Code] which are attributable to such trade or business * * *

(b) SELF-EMPLOYMENT INCOME.—The term "self-employment income" means the net earnings from self-employment derived by an individual * * * during any taxable year beginning after December 31, 1950 * * *

(c) TRADE OR BUSINESS.—The term "trade or business," when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 23, except that such term shall not include—* * *

Section 481(c) lists a number of functions and services which do not constitute the carrying on of a trade or business for self-employment tax purposes. Among the exceptions is the performance of service as an employee for Federal employment tax purposes. However, the regulations relating to the Federal Insurance Contributions Act (section 402.204 of Regulations 106) and the Federal Unemployment Tax Act (section 403.204 of Regulations 107) provide that a director of a corporation, as such, is not an employee of the corporation. Furthermore, it is the position of the Bureau that a director of a bank serving on a committee created pursuant to a Federal or State statute, corporate bylaws, or authority vested in the board of directors is deemed to be acting in the capacity of a director, as such, and should not be treated as an employee for Federal employment tax purposes. (See Mim. 6381, C. B. 1949-1, 179.)

Accordingly, it is held that fees and other remuneration received by a director of a corporation for performance of services as such constitute self-employment income within the meaning of section 481(b) of the Internal Revenue Code, and it is immaterial whether such remuneration is received for attending directors' meetings or for serving on committees.

SECTION 29.481-3: Trade or business.

INTERNAL REVENUE CODE

Royalties derived subsequent to December 31, 1950, from a trade or business not carried on after such date. (See I. T. 4071, page 148.)

CHAPTER 2.—ADDITIONAL INCOME TAXES

SUBCHAPTER E.—EXCESS PROFITS TAX

PART I

EXCESS PROFITS TAX COUNCIL

1952-11-13830
Mim. 6800

Organization change—Excess Profits Tax Council

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., April 28, 1952.

Officers and Employees of the Bureau of Internal Revenue and Others Concerned:

1. Effective immediately, the organization of the Excess Profits Tax Council is modified as follows:

(*a*) The positions of chairman and vice chairman are abolished;
(*b*) The executive committee is abolished;

(*c*) Incumbents of such positions and members of such committee are restored to full-time duty as Council members; and

(*d*) Executive direction of the Council is vested in the head of the Appellate Staff.

2. The operations of the Council will be under the immediate supervision of a coordinator to be designated by the Commissioner. The coordinator will exercise, for the Commissioner, final authority within the Bureau of Internal Revenue in respect to all issues arising under section 722 of the Internal Revenue Code in connection with determinations made with respect to particular cases. Panels of one or more Council members will continue to make determinations with respect to cases assigned to them for consideration and hearing, such determinations being subject to review by the coordinator.

3. Council members will continue to participate in the establishment of interpretative policies, to the extent deemed essential, prior to the adoption of such policies.

4. Prior instructions, to the extent inconsistent with the foregoing, are superseded.

JOHN B. DUNLAP,
Commissioner.

Approved April 28, 1952.

JOHN W. SNYDER,
Secretary of the Treasury.

CHAPTER 36.—COLLECTION

SUBCHAPTER F.—CLOSING AGREEMENTS AND COMPROMISES

SECTION 3760.—CLOSING AGREEMENTS

1952-7-13793
Mim. 6772

Agreements as to final determination of tax liability under section 3760 of the Internal Revenue Code.
Mimeograph 6383 (C. B. 1949-2, 100) modified.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 3, 1952.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Heads of Appellate Staff Districts, and Others Concerned:

1. Mimeograph 6383 (C. B. 1949-2, 100) dated March 31, 1949, prescribes the procedure to be followed in the preparation of agreements under section 3760 of the Internal Revenue Code as to final determination of tax liability (Form 866) and as to final determination covering specific matters (Form 906). Consistent with the pro-

visions of section 3760(b) of the Code, the procedure prescribed in that mimeograph requires the preparation of all such agreements for the approval of the Secretary of the Treasury, the Under Secretary, or an Assistant Secretary.

2. By virtue of and pursuant to the authority vested in him by Reorganization Plan No. 26 of 1950 (15 F. R. 4935), the Secretary of the Treasury has conferred and imposed upon the Commissioner of Internal Revenue all the rights, privileges, powers, and duties conferred and imposed upon the Secretary of the Treasury, the Under Secretary of the Treasury, or any Assistant Secretary of the Treasury by section 3760 of the Code with respect to any closing agreement relating to the liability of any person (or of the person or estate for whom he acts) respecting any internal revenue tax in any case in which the agreement (Form 866) relates only to tax liability for past taxable periods.

3. In view of such delegation of authority, agreements (Forms 866) as to final determination of tax liability for past taxable periods shall no longer be prepared for the approval of the Secretary of the Treasury, the Under Secretary of the Treasury, or an Assistant Secretary of the Treasury. Pending revision of Form 866, the words "if this agreement is approved by the Secretary of the Treasury, the Under Secretary, or an Assistant Secretary, within one year from the date this agreement is signed by the taxpayer" should be deleted from all present Forms 866 prepared after receipt of this mimeograph. Mimeograph 6383, *supra*, is hereby modified.

4. Correspondence relating to this mimeograph should refer to its number and to the symbols IT: UA.

JOHN B. DUNLAP,
Commissioner.

INCOME TAX RULINGS.—PART II

REVENUE ACT OF 1938 AND PRIOR REVENUE ACTS

SUBTITLE B.—GENERAL PROVISIONS

PART II.—COMPUTATION OF NET INCOME

SECTION 23(j).—DEDUCTIONS FROM GROSS INCOME: BAD DEBTS

ARTICLE 191, REGULATIONS 74: Bad debts. 1952-4-13763
G. C. M. 27137

REVENUE ACTS OF 1921, 1924, 1926, AND 1928

Under the Revenue Acts of 1921, 1924, 1926, and 1928, in order for a taxpayer to obtain the benefit of a deduction for *partial* worthlessness of a debt, a charge-off of the amount claimed to be worthless must have been made in the same taxable year in which the ascertainment of partial worthlessness was made.

G. C. M. 13114 (C. B. XIII-1, 116 (1934)) revoked.

Reconsideration has been given to G. C. M. 13114 (C. B. XIII-1, 116 (1934)), in which this office expressed the opinion that the decision of the United States Circuit Court of Appeals for the Sixth Circuit in *Liberty Bank & Trust Co.* v. *Commissioner* (59 Fed. (2d) 320) should be followed generally in determining the deductibility of *partially* worthless debts under the Revenue Acts of 1921, 1924, 1926, and 1928.

In the Liberty Bank & Trust Co. case, the court held that, in order to have the benefit of the deduction from gross income under the Revenue Act of 1921, a taxpayer was not required to charge off debts which were *partially* worthless until the Commissioner was satisfied of the worthlessness of that part of the debts for which the taxpayer sought the deduction. In G. C. M. 13114, *supra*, this office accepted the construction thus placed upon section 234(a)(5) of the Revenue Act of 1921 and concluded that such decision was applicable to all taxable years covered by the Revenue Acts of 1921 to 1928, inclusive (but was not applicable to cases arising under the Revenue Act of 1932 and later Acts).

Subsequently, however, that construction was seriously questioned by the courts, particularly by the decision of the United States Circuit Court of Appeals for the Ninth Circuit in *Santa Monica Mountain Park Co., Ltd.*, v. *United States* (99 Fed. (2d) 450, certiorari granted February 27, 1939, and dismissed on stipulation of counsel, 306 U. S. 666), which held that a charge-off during the taxable year is a condition precedent to the allowance of a deduction for *partially* worthless debts under section 234(a)(5) of the Revenue Act of 1926. (See also *United States* v. *Irland McK. Beckman*, 104 Fed. (2d) 260, certiorari denied, 308 U. S. 593, and *Mark T. Bender* v. *Heiner*, 27 Fed. Supp. 531.)

After further consideration of the question in the light of more recent court decisions, it is the opinion of this office that under the

Revenue Acts of 1921, 1924, 1926, and 1928, in order for a taxpayer to obtain the benefit of a deduction for *partial* worthlessness of a debt, a charge-off of the amount claimed to be worthless must have been made in the same taxable year in which the ascertainment of partial worthlessness was made. Accordingly, G. C. M. 13114, *supra*, is hereby revoked.

MASON B. LEMING,
Acting Chief Counsel, Bureau of Internal Revenue.

ESTATE AND GIFT TAXES

ESTATE TAX

SECTION 811.—GROSS ESTATE

SECTION 81.10, REGULATIONS 105: Valuation of property. (Also Section 812; Sections 81.11, 81.17, 81.20, 81.44, and 81.47c, Regulations 105.)

1952–13–13850
T. D. 5906

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—ESTATE TAX UNDER CHAPTER 3 OF THE INTERNAL REVENUE CODE, AS AMENDED

Sections 81.10, 81.11, 81.17, 81.20, 81.44, and 81.47c(*d*) of Regulations 105 amended.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On January 3, 1952, notice of proposed rule making, with respect to the valuation of certain classes of property for purposes of the estate tax, was published in the Federal Register (17 F. R. 82). After consideration of all relevant matter presented by interested persons regarding the rules proposed, the amendments to Regulations 105 [26 CFR, part 81] set forth below are hereby adopted.

PARAGRAPH 1. Section 81.10, as amended by Treasury Decision 5351 [C. B. 1944, 579], approved March 27, 1944 [26 CFR 81.10], is further amended as follows:

(A) By amending paragraph (*i*) thereof to read as follows:

(*i*) *Annuities, life estates, remainders, and reversions; estates of decedents dying after December 31, 1951.*—(1) *In general.*—The value of an annuity contract, or an insurance policy on the life of a person other than the decedent, issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts. See section 86.19(*i*) of Regulations 108, relating to the gift tax. As to insurance on the life of the decedent, see section 81.28. Except with respect to the afore-mentioned annuity contracts and insurance policies, the values of annuities, life estates, remainders, and reversions are to be computed by the methods hereinafter prescribed in this paragraph. The present worth of such an interest which is dependent upon the continuation of, or termination of the life of one person or upon a term-certain is to be computed with the use of Table I or Table II of this section. If the interest to be valued is dependent upon more than one life or there is a term-certain concurrent with one or more lives, see subparagraph (5) of this paragraph. For the purpose of the computation, the age of a person is to be taken as the age of that person at his nearest birthday. If the executor adopts the option set forth in section 811(j) see section 81.11.

(2) *Annuities.*—(i) *Payable annually at end of year.*—If the annuity is payable annually at the end of each year during the life of an individual, the amount payable annually should be multiplied by the figure in column 2 of Table I opposite the number of years in column 1 nearest the age of the individual whose life measures the duration of the annuity, or if payable for a definite number of years, the amount payable annually should be multiplied by the figure in column 2 of Table II opposite the number of years in column 1.

Example (1). The decedent received under the terms of his father's will an annuity of $10,000 a year payable annually for the life of his elder brother. At the time he died, an annual payment had just been made. The brother at the decedent's death was 40 years 8 months old. By reference to Table I, the figure in column 2 opposite 41 years, the number nearest to the brother's actual age, is found to be 17.6853. The present worth of the annuity at the date of the decedent's death is, therefore, $176,853 ($10,000 multiplied by 17.6853).

Example (2). The decedent was entitled to receive an annuity of $10,000 a year payable at the end of annual periods throughout a term-certain. At the time he died, an annual payment had just been made and five more annual payments were still to be made. By reference to Table II, it is found that the figure in column 2 opposite 5 years is 4.5151. The present worth of the annuity is, therefore, $45,151 ($10,000 multiplied by 4.5151).

(ii) *Payable at end of semiannual, quarterly, monthly, or weekly periods.*—If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the value should be determined by multiplying the aggregate amount to be paid within a year by the figure in column 2 of Table I opposite the number of years in column 1 nearest the actual age of the person whose life measures the duration of the annuity, or the figure in column 2 of Table II opposite the number of years the annuity is payable, as the case may be, and then multiplying the product by 1.0171 for weekly payments, by 1.0159 for monthly payments, by 1.0130 for quarterly payments, or by 1.0087 for semiannual payments.

Example. If, in example (1) given above under subdivision (i), the annuity is payable semiannually, the aggregate annual amount, $10,000, should be multiplied by the factor 17.6853, and the product multiplied by 1.0087. The present worth of the annuity at the date of death is, therefore, $178,391.62 ($10,000 × 17.6853 × 1.0087).

(iii) *Payable at beginning of annual, semiannual, quarterly, monthly, or weekly periods.*—(A) If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the sum of the first payment plus the present worth of a similar annuity, the first payment of which is not to be made until the end of the first period.

Example. The decedent was entitled to receive an annuity of $50 a month payable during the life of another. The decedent died on the day a payment was due. At the date of the decedent's death the person whose life measures the duration of the annuity was 50 years of age. The value of the annuity at the date of decedent's death is $50 plus the product of $50 × 12 × 14.8486 (see Table I) × 1.0159, or $9,100.82.

(B) If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown in Table II multiplied by 1.0177 for weekly payments, by 1.0189 for monthly payments, by 1.0218 for quarterly payments, by 1.0262 for semiannual payments, or by 1.0350 for annual payments.

Example. The decedent was the beneficiary of an annuity of $50 a month. On the day a payment was due, the decedent died. There were 300 payments to be made, including the payment due. The value of the annuity as of the date of decedent's death is the product of $50 × 12 × 16.4815 (see Table II) × 1.0189, or $10,075.80.

(3) *Life estates and terms for years.*—If the interest to be valued consists of the right of a person for his life, or for the life of another person, or for a term of years, either to receive the income of certain property or to use non-income-producing property, the value of the interest is the value of the property less the present worth of the remainder computed as shown below under subparagraph (4) of this paragraph.

Example. The decedent was entitled to receive the income from a fund of $50,000 during the life of a person 31 years old. The value of the life estate is $50,000 less $14,466 (computed as shown in the example under subparagraph (4) of this paragraph), or $35,534.

(4) *Remainders or reversionary interests.*—If the decedent had a remainder or a reversionary interest in property subject to the life estate of another, the

present worth of such interest should be obtained by multiplying the value of the property by the figure in column 3 of Table I opposite the number of years nearest to the actual age of the life tenant. In case the remainder or reversion is to take effect at the end of a term of years Table II should be used.

TABLE I

Table, single life, 3½ percent, showing the present worth of an annuity, or a life interest, and of a remainder interest

1 Age	2 Annuity	3 Remainder	1 Age	2 Annuity	3 Remainder
0	23. 9685	0. 16110	53	13. 8221	0. 51623
1	24. 9035	. 12838	54	13. 4734	. 52843
2	24. 8920	. 12878	55	13. 1218	. 54074
3	24. 8246	. 13114	56	12. 7679	. 55312
4	24. 7378	. 13418	57	12. 4120	. 56558
5	24. 6392	. 13763	58	12. 0546	. 57809
6	24. 5326	. 14136	59	11. 6960	. 59064
7	24. 4188	. 14534	60	11. 3369	. 60321
8	24. 2982	. 14956	61	10. 9776	. 61578
9	24. 1713	. 15400	62	10. 6186	. 62835
10	24. 0387	. 15865	63	10. 2604	. 64089
11	23. 9008	. 16347	64	9. 9036	. 65337
12	23. 7600	. 16840	65	9. 5486	. 66580
13	23. 6161	. 17344	66	9. 1960	. 67814
14	23. 4693	. 17857	67	8. 8464	. 69038
15	23. 3194	. 18382	68	8. 5001	. 70250
16	23. 1665	. 18917	69	8. 1578	. 71448
17	23. 0103	. 19464	70	7. 8200	. 72630
18	22. 8511	. 20021	71	7. 4871	. 73795
19	22. 6870	. 20596	72	7. 1597	. 74941
20	22. 5179	. 21187	73	6. 8382	. 76066
21	22. 3438	. 21797	74	6. 5231	. 77169
22	22. 1646	. 22424	75	6. 2148	. 78248
23	21. 9801	. 23070	76	5. 9137	. 79302
24	21. 7902	. 23734	77	5. 6201	. 80330
25	21. 5950	. 24418	78	5. 3345	. 81329
26	21. 3942	. 25120	79	5. 0572	. 82300
27	21. 1878	. 25843	80	4. 7884	. 83241
28	20. 9759	. 26584	81	4. 5283	. 84151
29	20. 7581	. 27347	82	4. 2771	. 85030
30	20. 5345	. 28129	83	4. 0351	. 85877
31	20. 3052	. 28932	84	3. 8023	. 86692
32	20. 0699	. 29755	85	3. 5789	. 87474
33	19. 8288	. 30599	86	3. 3648	. 88223
34	19. 5816	. 31464	87	3. 1601	. 88940
35	19. 3285	. 32350	88	2. 9648	. 89623
36	19. 0695	. 33257	89	2. 7788	. 90274
37	18. 8044	. 34185	90	2. 6019	. 90893
38	18. 5334	. 35133	91	2. 4342	. 91480
39	18. 2566	. 36102	92	2. 2754	. 92036
40	17. 9738	. 37092	93	2. 1254	. 92561
41	17. 6853	. 38101	94	1. 9839	. 93056
42	17. 3911	. 39131	95	1. 8507	. 93523
43	17. 0913	. 40180	96	1. 7256	. 93960
44	16. 7860	. 41249	97	1. 6082	. 94371
45	16. 4754	. 42336	98	1. 4982	. 94756
46	16. 1596	. 43441	99	1. 3949	. 95118
47	15. 8388	. 44564	100	1. 2973	. 95459
48	15. 5133	. 45703	101	1. 2033	. 95788
49	15. 1831	. 46859	102	1. 1078	. 96123
50	14. 8486	. 48030	103	. 9973	. 96509
51	14. 5101	. 49215	104	. 8318	. 97089
52	14. 1678	. 50413	105	. 4831	. 98309

TABLE II

Table showing the present worth at 3½ percent of an annuity for a term-certain, and of a remainder interest postponed for a term-certain

1 Number of years	2 Annuity	3 Remainder	1 Number of years	2 Annuity	3 Remainder
1	0. 9662	0. 966184	16	12. 0941	0. 576706
2	1. 8997	. 933511	17	12. 6513	. 557204
3	2. 8016	. 901943	18	13. 1897	. 538361
4	3. 6731	. 871442	19	13. 7098	. 520156
5	4. 5151	. 841973	20	14. 2124	. 502566
6	5. 3286	. 813501	21	14. 6980	. 485571
7	6. 1145	. 785991	22	15. 1671	. 469151
8	6. 8740	. 759412	23	15. 6204	. 453286
9	7. 6077	. 733731	24	16. 0584	. 437957
10	8. 3166	. 708919	25	16. 4815	. 423147
11	9. 0016	. 684946	26	16. 8904	. 408838
12	9. 6633	. 661783	27	17. 2854	. 395012
13	10. 3027	. 639404	28	17. 6670	. 381654
14	10. 9205	. 617782	29	18. 0358	. 368748
15	11. 5174	. 596891	30	18. 3920	. 356278

Example. The decedent was entitled to receive property worth $50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years 5 months old. By reference to Table I, it is found that the figure in column 3, opposite 31 years, is 0.28932. The present worth of the remainder interest at the date of death is, therefore, $14,466 ($50,000 multiplied by 0.28932).

(5) *Actuarial computations by Bureau.*—If the interest to be valued is dependent upon the continuation of, or termination of more than one life, or there is a term-certain concurrent with one or more lives, a special factor is necessary. Such factor is to be computed upon the basis of the Makehamized mortality table appearing as Table 38 of United States Life Tables and Actuarial Tables 1939–1941, published by the United States Department of Commerce, Bureau of the Census, and interest at the rate of 3½ percent a year, compounded annually. Many such factors may be found in, or readily computed with the use of the tables contained in a pamphlet entitled "Actuarial Values for Estate and Gift Tax," which may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington 25, D. C.; or a case requiring a special factor (provided the case is that of an actual decedent and not merely proposed or hypothetical) may be stated to the Commissioner who will furnish such factor. The request must be accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the interest, and by copies of the relevant instruments.

(B) By inserting after paragraph (*i*) but before Table A the following:

(*j*) *Annuities, life estates, remainders, and reversions; estates of decedents dying before January 1, 1952.*—In the case of decedents dying before January 1, 1952, the general principles and methods prescribed in paragraph (i) of this section (with one exception set forth in the next paragraph) are to be followed but the present worth of the interest to be valued is to be computed with the use of Table A or Table B (which appear at the end of this section) and if neither table is applicable the computation is to be made upon the basis of the Actuaries' or Combined Experience Table of Mortality, as extended, and interest at the rate of 4 percent a year, compounded annually. In the computation of the value of annuities the factors 1.01820 for monthly payments, 1.01488 for quarterly payments, and 1.00990 for semiannual payments are to be substituted for the factors appearing in (*i*) (2) (ii) of this section; and the factors 1.02154 for monthly payments, 1.02488 for quarterly payments, 1.02990 for semiannual

payments, and 1.04 for annual payments are to be substituted for the factors appearing in (*i*) (2) (iii) of this section.

The present worth of a life estate or term for years in specific property is to be obtained by multiplying the appropriate factor from column 2 of Table A or Table B by .04 and multiplying the product by the value of the property. A provision for the payment of income in semiannual, quarterly, or monthly installments does not affect the value of the life interest.

PAR. 2. Section 81.11, as amended by Treasury Decision 5699 [C. B. 1949–1, 181, 187], approved May 13, 1949 [26 CFR 81.11], is further amended by striking therefrom the ninth and tenth paragraphs (beginning with the words "The date of valuation of any property" and ending with the parenthetical expression which follows the example in the tenth paragraph) and inserting in lieu thereof the following:

It is provided in subsection (j) that any interest or estate so affected shall be included at its value at the date of death with adjustment for any difference in its value as of the later date not due to mere lapse of time. The purpose of this provision is to eliminate from the value as of the optional date changes in value due to lapse of time. Accordingly, the values of annuities, life, remainder, and reversionary interests are to be obtained by applying the methods prescribed in section 81.10(*i*) (or section 81.10(*j*), if applicable), using the age of each person, the duration of whose life may affect the value of the interest, as of the date of death and the value of the property as of the optional date. For example, a decedent was entitled to receive property (which at the time of his death was worth $50,000) upon the death of another person who was entitled to the income therefrom for life and who was 31 years old at the time of the decedent's death. The value at decedent's death of his remainder interest would, as explained in section 81.10(*i*), be $14,466 ($50,000 multiplied by 0.28932). If, due to economic conditions, the property declined in value and was worth only $40,000 1 year after the date of death, the value of the remainder interest as of the optional date would be $11,572.80 ($40,000 multiplied by 0.28932).

As an example of the valuation of a patent, suppose that the decedent owned a patent which on the date of his death had an unexpired term of 10 years and a value of $75,000 and that the patent was sold 6 months after the decedent's death, at which time, because of lapse of time and other causes its value was $60,000. The adjusted value thereof would be obtained by dividing $60,000 by 0.95 (ratio of the remaining life of the patent at the optional date to the remaining life of the patent at the date of death). The quotient, $63,157.89, is the optional value.

PAR. 3. Section 81.17, as amended by Treasury Decision 5834 [C. B. 1951–1, 72, 77], approved March 8, 1951 [26 CFR 81.17], is further amended as follows:

(A) By changing the third sentence of the fifth paragraph of (*c*) (1) thereof to read as follows:

See section 81.10(*i*) or section 81.10(*j*), whichever is applicable.

(B) By striking out the second sentence of the sixth paragraph of (*c*) (1) thereof.

PAR. 4. Section 81.20 [26 CFR 81.20] is amended by changing the parenthetical expression which appears at the end of the next to the last paragraph thereof to read as follows:

(See section 81.10(*i*) or section 81.10(*j*), whichever is applicable.)

PAR. 5. Section 81.44, as amended by Treasury Decision 5351 [26 CFR 81.44], is further amended by striking out the fourth paragraph and inserting in lieu thereof the following:

If a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the beneficial interest in favor of the former only insofar as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. The present value of deferred payments to be made for a charitable purpose is to be determined in accordance with the

rules stated in section 81.10(*i*) or section 81.10(*j*), whichever is applicable. Thus, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay the principal to a charitable corporation, the present value of the remainder is deductible. To determine the present value of such remainder use the appropriate factor from column 3 of Table I or II of section 81.10 (*i*), or of Table A or B of section 81.10 (*j*), whichever is applicable. If the interest involved is such that its value is to be determined by a special computation (see section 81.10(*i*) (5) or section 81.10(*j*)), a request for a specific factor accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and by copies of the relevant instruments may be submitted to the Commissioner who in his discretion may supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present worth made, in accordance with the principles set forth in the applicable paragraph of section 81.10, by one skilled in actuarial computations.

PAR. 6. Section 81.47c(*d*), added by Treasury Decision 5699 [26 CFR 81.47c(*d*)], is amended to read as follows:

(*d*) *Remainder interest.*—Where the income from property is made payable to another individual for life, or for a term of years, with remainder absolutely to the surviving spouse or to her estate, the marital deduction is based upon the present value of the remainder. The present value of the remainder is to be determined in accordance with the rules stated in section 81.10(*i*) or section 81.10(*j*), whichever is applicable. For example, if, in a case to which section 81.10(*i*) applies, the surviving spouse is to receive $50,000 upon the death of a person aged 31 years, the present value of the remainder is $14,466. If the remainder is such that its value is to be determined by a special computation (see section 81.10(*i*) (5) or section 81.10(*j*)), a request for a specific factor accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and by copies of the relevant instruments may be submitted to the Commissioner who in his discretion may supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present worth made, in accordance with the principles set forth in the applicable paragraph of section 81.10, by one skilled in actuarial computations.

(This Treasury Decision is issued under the authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 27, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 3, 1952, 8:49 a. m.)

SECTION 811(a).—GROSS ESTATE: DECEDENT'S INTEREST

SECTION 81.13, REGULATIONS 105: Property of decedent at time of death. 1952–10–13818
(Also Section 811(c), Section 81.17; Section 811(d), Section 81.20; Section 811(f), Section 81.24.) G. C. M. 27242

INTERNAL REVENUE CODE

Where an employee has the right to designate the beneficiary of a death benefit under a profit-sharing and retirement plan, the employee, at the time of his death, is in possession of such rights

as constitute property within the meaning of section 811(a) of the Internal Revenue Code, provided that prior to the employee's death the employer has not withdrawn the right of the employee to designate a beneficiary, and has not eliminated all death benefits. Thus, the amount payable under the plan to the designated beneficiary is includible in the deceased employee's gross estate under section 811 (a), (c), (d), and (f) of the Code.

G. C. M. 17817 (C. B. 1937–1, 281) modified.

An opinion is requested with respect to the inclusion in the gross estate of an employee of a death benefit payable under a profit-sharing and retirement plan under which plan the employer is the sole contributor and the employee has the right to designate the beneficiary.

Under the provisions of the profit-sharing and retirement plan in the instant case, all contributions to the plan are made by the company. Each year the company transfers 15 percent of its net income to the trustee of the plan and the trustee allocates the contribution to the accounts of the eligible employees for that year on the basis of compensation and length of service of such employees. Income of the trust property and any amounts forfeited by employees by reason of discharge or termination of employment are also allocated on the same basis. Upon the death of a participating employee prior to retirement, the participating interest of such employee is paid to the beneficiary or beneficiaries designated by him or, in the event that no beneficiary was designated by the employee, to his executors or administrators. The company reserves the right to terminate or amend the plan. Upon termination, all contributions cease and the trustee is required to pay, as promptly as possible, over to the participating employees, or their beneficiaries, their participating interests. No amendment to the plan is effective (*a*) which attempts to divert the assets held by the trustee to purposes other than for the exclusive benefit of the participating employees and their beneficiaries, or (*b*) which, without his consent, affects the right of any employee whose participating interest has already become payable to him. The employer has a right to amend the plan to eliminate the provision for the payment of a death benefit to employees dying prior to the receipt of any benefits under the plan so long as the amendment does not destroy the right of an employee or his designee to receive a death benefit which had already become payable.

In *Edward J. Dimock* v. *Corwin* (19 Fed. Supp. 56, affirmed on another issue, 99 Fed. (2d) 799), the decedent, who died on June 11, 1930, was at the time of his death an employee of the Standard Oil Co. of New York. Under a pension and death benefit plan of the employer-company, the employee was entitled to designate a beneficiary who was to receive a death benefit under the plan in the event of the employee's death. The company expressly reserved the right to terminate or modify the plan at any time. However, it was expressly provided that death benefits would be paid in accordance with the plan in effect at the time of any employee's death. The Commissioner, in that case, contended that the amount of the death benefit was includible in the decedent's gross estate under section 302(a) of the Revenue Act of 1926 (which was identical with the present provisions of section 811(a) of the Internal Revenue Code) as property of the decedent. The court decided that the death benefit did not constitute property of the decedent under such section. Under the plan, no death benefit was payable if the designated beneficiary pre-

deceased the employee. However, the employee was granted the right to change, at any time, the beneficiary of the death benefit. The court also determined that the act of designating the decedent's widow as the recipient of the death benefit did not constitute a transfer of property so as to bring the death benefit into the estate under section 302 (c) or (d) of the Revenue Act of 1926. The court reasoned that in view of the fact that the employer expressly reserved the right to terminate or modify the plan at any time, the employee could not be said to have a right to the death benefit which would be the equivalent of property. It should be noted in connection with the Dimock case that the court cited G. C. M. 17817 (C. B. 1937–1, 281) in support of its conclusions.

In G. C. M. 17817, *supra*, this office expressed the opinion that the death benefit paid by an employer to a designated beneficiary of an employee is not includible in the employee's gross estate under section 302(a) of the Revenue Act of 1926 as property of the decedent or under section 302(g) of that Act as life insurance. The plan under consideration in G. C. M. 17817 provides for the payment of prescribed death benefits upon the death of employees who at the date of death, or at the beginning of their last illness, had been in the employ of the company for 1 year or more. An employee has the right to designate the beneficiary to whom the death benefit shall be paid. The company reserved the right to terminate or modify the plan at any time but guaranteed the payment of a death benefit in accordance with the plan in effect at the date of an employee's death. This office took the position that in view of the fact that the employer-company had reserved the right to modify the plan, the employee had no contractual right to the death benefit which could be treated as property subject to valuation.

The facts in the instant case are analogous to those considered in G. C. M. 17817 and the Dimock case. For instance, in each case it is possible prior to the death of a participating employee for the employer to destroy the right of an employee's designee to receive the death benefit provided under the plan. However, upon reconsideration, this office is now of the opinion that the mere possibility that an employer may withdraw, prior to the death of an employee, the right of the employee's designee to receive a death benefit does not indicate an absence of a property interest of the decedent in the right to designate a beneficiary of the death benefit.

In both G. C. M. 17817 and the Dimock case, it was held that the presence of the possibility that the employer would withdraw the right to a death benefit rendered the interest of the employee an "expectancy" rather than "property." The term "expectancy" usually connotes the interest of an expectant heir or distributee in the property of a person prior to the latter's death. Thus, in the case of an expectant distributee, the receipt of property of another is contingent upon the death of the present owner and the ultimate testamentary disposition of his property.

On the other hand, in the instant case, as in G. C. M. 17817 and in the Dimock case, the right to designate the beneficiary of a death benefit may be annulled by the positive act of the source of the benefit, the employer, of withdrawing the right to designate the recipient of the death benefit, or by amending the plan to eliminate any death

benefits, and this contingency is terminated by the death of the holder of the right to designate, the employee. This is not similar to an "expectancy."

Accordingly, it is the opinion of this office that where an employee has the right to designate the beneficiary of a death benefit under a profit-sharing and retirement plan, the employee, at the time of his death, is in possession of such rights as constitute property within the meaning of section 811(a) of the Internal Revenue Code, provided that prior to the employee's death the employer has not withdrawn the right of the employee to designate a beneficiary, and has not eliminated all death benefits. Thus, the amount payable under the plan to the designated beneficiary is includible in the deceased employee's gross estate under section 811 (a), (c), (d), and (f) of the Code.

In view of the foregoing, G. C. M. 17817, *supra*, to the extent inconsistent with the above-stated opinion, is hereby modified, and since the decision in the Dimock case as to this issue was largely based upon the reasoning of G. C. M. 17817, it is recommended that as to this point the decision in the Dimock case should no longer be followed in the disposition of similar cases.

Pursuant to authority contained in section 3791(b) of the Code, the instant ruling will not be applied with respect to estates of decedents dying prior to July 1, 1952.

MASON B. LEMING,
Acting Chief Counsel, Bureau of Internal Revenue.

Approved April 4, 1952.

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

SECTION 811(c).—GROSS ESTATE: TRANSFERS IN CONTEMPLATION OF, OR TAKING EFFECT AT, DEATH

SECTION 81.17, REGULATIONS 105: Transfers intended to take effect at or after the decedent's death.

INTERNAL REVENUE CODE

Death benefits under a profit-sharing and retirement plan payable to a beneficiary designated by a deceased employee. (See G. C. M. 27242, page 160.)

SECTION 811(d).—GROSS ESTATE: REVOCABLE TRANSFERS

SECTION 81.20, REGULATIONS 105: Transfers with power to change the enjoyment.

INTERNAL REVENUE CODE

Death benefits under a profit-sharing and retirement plan payable to a beneficiary designated by a deceased employee. (See G. C. M. 27242, page 160.)

SECTION 811(f).—GROSS ESTATE: POWERS OF APPOINTMENT

SECTION 81.24, REGULATIONS 105: Property subject to power of appointment by decedent.

INTERNAL REVENUE CODE

Death benefits under a profit-sharing and retirement plan payable to a beneficiary designated by a deceased employee. (See G. C. M. 27242, page 160.)

SECTION 811(l).—GROSS ESTATE: CONTEMPLATION OF DEATH

SECTION 81.16, REGULATIONS 105: Transfers in contemplation of death. 1952–13–13851 T. D. 5904

(Also Sections 811 (c), (d), (g), and 812(b); Sections 81.21, 81.27, and 81.40, Regulations 105.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—ESTATE TAX UNDER CHAPTER 3 OF THE INTERNAL REVENUE CODE, AS AMENDED

Regulations 105 amended to conform to the estate tax provisions of the Revenue Act of 1950 (81st Cong., 2d sess.).

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On January 31, 1952, notice of proposed rule making, regarding the estate tax provisions of the Revenue Act of 1950, approved September 23, 1950, and regarding Public Law 749 (81st Cong. 2d sess.) [C. B. 1950–2, 247] was published in the Federal Register (17 F. R. 928). No objections to such rules having been received, the amendments set forth below, which are the amendments necessary to conform Regulations 105 [26 CFR, part 81] to the estate tax provisions of the Revenue Act of 1950, are hereby adopted. The amendments contained herein do not include the proposed rules contained in paragraphs 8 and 9 of the appendix to the notice of proposed rule making relating to section 863(c) of the Internal Revenue Code, as added by Public Law 749 (81st Cong.), providing an exemption for certain works of art. Inasmuch as section 863(c) was further amended by section 605 of the Revenue Act of 1951, approved October 20, 1951, it is considered that the rules regarding Public Law 749 should be incorporated in a Treasury Decision to be issued to conform the regulations to section 605.

PARAGRAPH 1. There is inserted immediately after section 8 of Public Law 378, Eighty-first Congress, first session [C. B. 1949–2, 275] (inserted by Treasury Decision 5834 [C. B. 1951–1, 72], approved March 8, 1951) and preceding section 302(c) of the Revenue Act of 1926 (as originally enacted), which precedes section 81.15 [26 CFR 81.15], the following:

SEC. 501. TRANSFERS IN CONTEMPLATION OF DEATH [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) TRANSFERS, ETC., IN CONTEMPLATION OF DEATH.—Section 811 (relating to gross estate) is hereby amended by striking out "(l)" at the beginning of subsection (l) and inserting in lieu thereof "(m)", and by inserting after subsection (k) the following new subsection:

"(l) CONTEMPLATION OF DEATH.—If the decedent within a period of three years ending with the date of his death (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) transferred an interest in property, relinquished a power, or exercised or released a power of appointment, such transfer, relinquishment, exercise, or release shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of subsections (c), (d), and (f); but no such transfer, relinquishment, exercise, or release made prior to such three-year period shall be deemed or held to have been made in contemplation of death."

(b) AMENDMENTS OF SECTION 811 (c) and (d).—

(1) Section 811(c)(1)(A) (relating to transfers in contemplation of death) is hereby amended to read as follows:

"(A) in contemplation of his death; or".

(2) Section 811(d) (relating to revocable transfers) is hereby amended by striking out paragraph (4) thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable only with respect to estates of decedents dying after the date of the enactment of this Act.

PAR. 2. Section 81.16, as amended by Treasury Decision 5834 [26 CFR 81.16] is further amended as follows:

(A) By striking ".—" immediately after the heading of such section and inserting in lieu thereof "—(*a*) *In general.*".

(B) By striking from such section the third and fourth paragraphs thereof and inserting in lieu thereof the following:

(*b*) *Estates of decedents dying after September 23, 1950.*—In the case of a decedent dying after September 23, 1950, any transfer without an adequate and full consideration in money or money's worth made by such decedent within a period of 3 years ending with the date of his death is, unless shown to the contrary, deemed to have been made in contemplation of death. However, no transfer by such a decedent if made prior to such 3-year period is considered to have been made in contemplation of death.

If the executor contends that the value of property transferred by the decedent within a period of 3 years ending with the date of his death should not be included in the gross estate because he considers that such transfer was not made in contemplation of death, he should file sworn statements with the return, in duplicate, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive in making the transfer and his mental and physical condition at that time, and one copy of the death certificate. However, unless requested by the Commissioner, such data need not be submitted with respect to any transfer of less than $1,000 in value.

(*c*) *Estates of decedents dying on or before September 23, 1950.*—In the case of a decedent dying on or before September 23, 1950, any transfer without an adequate and full consideration in money or money's worth, made by the decedent within a period of 2 years ending with the date of his death, of a material part of his property in the nature of a final disposition or distribution thereof, is, unless shown to the contrary, deemed to have been made in contemplation of death.

If the executor contends that the value of a transfer of $5,000 or more made by the decedent should not be included in the gross estate because he considers that such transfer was not made in contemplation of death, he should file sworn statements with the return, in duplicate, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive in making the transfer and his mental and physical condition at that time, and one copy of the death certificate.

(C) By inserting as a heading to the last paragraph of such section (which paragraph begins: "Section 8 of Public Law 378") the following:

(d) Relinquishments of life estates and other interests in income.

PAR. 3. SECTION 81.21, as amended by Treasury Decision 5834 [26 CFR 81.21] is further amended as follows:

(A) By adding after "If" in the sentence beginning "If the relinquishment be not admitted" the following: "the decedent died on or before September 23, 1950, and if"

(B) By adding immediately after the sentence amended by (A) the following:

If the decedent died after September 23, 1950, the relinquishment, if made within a period of 3 years ending with the date of his death, is, unless shown to the contrary, deemed to have been made in contemplation of death. However, no relinquishment by a decedent made prior to such 3-year period is considered to have been made in contemplation of death.

PAR. 4. There is inserted immediately preceding section 81.25 [26 CFR 81.25] the following:

SEC. 503. REVERSIONARY INTERESTS IN CASE OF LIFE INSURANCE [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

(a) AMENDMENT OF SECTION 404(c) OF REVENUE ACT OF 1942.—Effective with respect to estates of decedents dying after October 21, 1942, section 404(c) of the Revenue Act of 1942 is hereby amended by adding at the end thereof the following: "For the purposes of the preceding sentence, the term 'incident of ownership' includes a reversionary interest only if (1) at some time after January 10, 1941, the value of such reversionary interest exceeded 5 per centum of the value of the policy, and (2) the reversionary interest arose by the express terms of the policy or other instrument and not by operation of law. As used in this subsection, the term 'reversionary interest' includes a possibility that the policy, or the proceeds of the policy, (A) may return to the decedent or his estate, or (B) may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate."

(b) NO INTEREST ON REFUNDS.—No interest shall be allowed or paid on any overpayment resulting from the application of subsection (a) with respect to any payment made prior to the date of the enactment of this Act.

PAR. 5. Section 81.27, as amended by Treasury Decision 5699 [C. B. 1949–1, 181], approved May 13, 1949 [26 CFR 81.27], is further amended by striking therefrom the last sentence of the sixth paragraph of (*a*) (which sentence ends "incident of ownership.") and inserting in lieu thereof the following:

For the purpose of the preceding sentence, a reversionary interest constitutes an incident of ownership if (1) at some time after January 10, 1941, the reversionary interest exceeded 5 percent of the value of the policy, and (2) the reversionary interest arose by the express terms of the policy or other instrument and not by operation of law. The term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate and a possibility that such policy, or the proceeds of such policy, may be subject to a power of disposition by him. The determination of whether the decedent has retained a reversionary interest arising by the express terms

of the policy or other instrument and the determination of whether the value of such interest exceeds 5 percent of the value of the policy shall be made in accordance with the principles of section 81.17(c), as added by Treasury Decision 5834, approved March 8, 1951.

PAR. 6. There is inserted immediately preceding section 81.29 [26 CFR 81.29] the following:

SEC. 502. REPEAL OF DEDUCTION FOR SUPPORT OF DEPENDENTS [REVENUE ACT OF 1950, APPROVED SEPTEMBER 23, 1950].

Effective with respect to estates of decedents dying after the date of the enactment of this Act, section 812(b) (relating to deductions for expenses, etc.) is hereby amended—

(a) by inserting the word "and" at the end of paragraph (3) thereof;

(b) by striking out of paragraph (4) thereof the following: "and";

(c) by striking out paragraph (5) thereof; and

(d) by striking out "(3), (4), and (5) exceed" and inserting in lieu thereof "(3), and (4) exceed".

PAR. 7. Section 81.40 [26 CFR 81.40] is amended by changing that part of the first sentence thereof which precedes the colon to read as follows:

The support of dependents of the decedent during the settlement of the estate is deductible only in the case of estates of decedents dying on or before September 23, 1950, and only pursuant to the following rules

(This Treasury Decision is issued pursuant to the authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 27, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 2, 1952, 8:51 a. m.)

GIFT TAX

SECTION 1005.—GIFTS MADE IN PROPERTY

SECTION 86.19, REGULATIONS 108: Valuation of property. (Also Section 1000, Section 86.2; Section 1003, Section 86.11; Section 1004, Sections 86.13 and 86.16a, Regulations 108.)

1952-13-13852
T. D. 5902

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 86.—GIFT TAX UNDER CHAPTER 4 OF THE INTERNAL REVENUE CODE, AS AMENDED

Sections 86.2(*a*), 86.11, 86.13, 86.16a(*c*), and 86.19 of Regulations 108 amended.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On January 3, 1952, notice of proposed rule making with respect to the valuation of certain classes of property for purposes of the gift

tax was published in the Federal Register (17 F. R. 84). After consideration of all relevant matter presented by interested persons regarding the rules proposed, the amendments to Regulations 108 [26 CFR, part 86] set forth below are hereby adopted.

PARAGRAPH 1. Section 86.2(*a*), as amended by Treasury Decision 5698 [C. B. 1949–1, 226], approved May 13, 1949 [26 CFR 86.2(a)], is further amended by striking from the example numbered (7) the words "such property valued as provided in section 86.19(*g*)." and inserting in lieu thereof the following:

the value of such property less the value of his retained interest therein, valued in accordance with the provisions of section 86.19(*f*) or section 86.19(*g*), whichever is applicable.

PAR. 2. Section 86.11 [26 CFR 86.11] is amended by changing the last sentence thereof to read as follows:

For the valuation of future interests, see section 86.19(*f*) or 86.19(*g*), whichever is applicable.

PAR. 3. Section 86.13 [26 CFR 86.13] is amended by changing the last sentence of the last paragraph thereof to read as follows:

To determine the value of such remainder as of the date of gift, the value of the property transferred should be multiplied by the appropriate factor from column 3 of Table I or Table II of section 86.19 (or from Table A or Table B, if applicable).

PAR. 4. Section 86.16a(*c*), added by Treasury Decision 5698 [26 CFR 86.16a(c)], is amended to read as follows:

(*c*) *Remainder interests.*—Where the income from property is made payable to the donor or another individual for life, or for a term of years, with remainder absolutely to the donor's spouse or to her estate, the marital deduction is equal to one-half the present value of the remainder. It should be noted, however, that where such remainder is distributable to the estate of the donor's spouse (or to her executors or administrators) in the event of her death prior to the termination of a trust or of a precedent interest, the marital deduction is allowable only if under such circumstances the remainder interest would be includible in her gross estate under section 811(a). The present value of the remainder (that is, its value as of the date of gift) is to be determined in accordance with the rules stated in section 86.19(*f*) (or section 86.19(*g*), if applicable). For example, in a case to which section 86.19(*f*) is applicable, if the donor's spouse is to receive $50,000 upon the death of a person aged 31 years, the present value of the remainder is $14,466. (See example in section 86.19(*f*)(4)). If the remainder is such that its value is to be determined by a special computation (see section 86.19(*f*)(5)), a request for a specific factor accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and by copies of the relevant instruments may be submitted to the Commissioner who in his discretion may supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present worth made, in acordance with the principles set forth in section 86.19(*f*) (or section 86.19(*g*), if applicable), by one skilled in actuarial computations.

PAR. 5. Section 86.19 [26 CFR 86.19] is amended as follows:

(A) By changing paragraph (*f*) thereof to read as follows:

(*f*) *Annuities, life estates, remainders, and reversions; gifts made after December 31, 1951.*—(1) *In general.*—Annuities purchased from life insurance companies, or other companies regularly engaged in issuing annuity contracts, and life insurance policies are to be valued as explained in paragraph (*i*) of this section. Except with respect to the afore-mentioned annuity contracts and insurance policies, the values of annuities, life estates, remainders, and reversions are to be computed by the methods hereinafter prescribed in this para-

graph. Where the donor transfers property in trust or otherwise and retains an interest therein, the value of the gift is the value of the property transferred less the value of the donor's retained interest. Where the donor assigns or relinquishes an annuity, life estate, remainder, or reversion which he holds by virtue of a transfer previously made by himself or another, the value of the gift is the value of the interest transferred. In either case the present worth of the interest to be valued is to be computed with the use of Table I or Table II of this paragraph if it is dependent upon the continuation of, or termination of the life of one person or upon a term-certain. If such interest is dependent upon more than one life or there is a term-certain concurrent with one or more lives, see subparagraph (5) of this paragraph. For the purpose of the computation the age of a person is to be taken as the age of that person at his nearest birthday.

(2) *Annuities.*—(i) *Payable annually at end of year.*—If the annuity is payable annually at the end of each year during the life of an individual, the amount payable annually should be multiplied by the figure in column 2 of Table I opposite the number of years in column 1 nearest the age of the individual whose life measures the duration of the annuity, or if payable for a definite number of years the amount payable annually should be multiplied by the figure in column 2 of Table II opposite the number of years in column 1.

Example (1). The donor assigns an annuity of $10,000 a year payable annually during his life immediately after an annual payment has been made. The age of the donor on the date of assignment is 40 years and 8 months. By reference to Table I, it is found that the figure in column 2 opposite 41 years, the number nearest to the donor's age, is 17.6853. The value of the gift is, therefore, $176,853 ($10,000 multiplied by 17.6853).

Example (2). The donor was entitled to receive an annuity of $10,000 a year payable at the end of annual periods throughout a term of 20 years; the donor, when 15 years have elapsed, makes a gift thereof to his son. By reference to Table II, it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is 4.5151. The present worth of the annuity is, therefore, $45,151 ($10,000 multiplied by 4.5151).

(ii) *Payable at end of semiannual, quarterly, monthly, or weekly periods.*—If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the value should be determined by multiplying the aggregate amount to be paid within a year by the figure in column 2 of Table I opposite the number of years in column 1 nearest the actual age of the person whose life measures the annuity, or the figure in column 2 of Table II opposite the number of years the annuity is payable, as the case may be, and then multiplying the product by 1.0171 for weekly payments, by 1.0159 for monthly payments, by 1.0130 for quarterly payments, or by 1.0087 for semiannual payments.

Example. If, in example (1) given above under subdivision (i) the annuity is payable semiannually, the aggregate annual amount, $10,000, should be multiplied by the factor 17.6853, and the product mutiplied by 1.0087. The value of the gift is, therefore, $178,391.62 ($10,000×17.6853×1.0087).

(iii) *Payable at beginning of annual, semiannual, quarterly, monthly, or weekly periods.*—(A) If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the sum of the first payment plus the present worth of a similar annuity, the first payment of which is not to be made until the end of the first period.

Example. The donee is made the beneficiary for life of an annuity of $50 a month from the income of a trust, subject to the right reserved by the donor to cause the annuity to be paid for his own benefit or for the benefit of another. On the day a payment is due, the donor relinquishes his reserved power. The donee is then 50 years of age. The value of the gift is $50 plus the product of $50×12×14.8486 (see Table I) ×1.0159, or $9,100.82.

(B) If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown in Table II multiplied by 1.0177 for weekly payments, by 1.0189 for monthly payments, by 1.0218 for quarterly payments, by 1.0262 for semiannual payments, or by 1.0350 for annual payments.

Example. The donee is the beneficiary of an annuity of $50 a month subject to a reserved right in the donor to cause the annuity or the cash value thereof to be paid for his own benefit or the benefit of another. On the day a payment

is due, the donor relinquishes the power. There are 300 payments to be made covering a period of 25 years, including the payment due. The value of the gift is the product of $50 × 12 × 16.4815 (factor for 25 years, Table II) × 1.0189, or $10,075.80.

(3) *Life estates and terms for years.*—If the interest to be valued consists of the right of a person for his life, or for the life of another person, or for a term of years, either to receive the income of certain property or to use nonincome-producing property, the value of the interest is the value of the property less the present worth of the remainder, computed as shown below under subparagraph (4) of this paragraph.

Example. The donor, who is entitled to receive the income from property worth $50,000 during his life, makes a gift of such interest. The donor is 31 years old on the date of gift. The value of the gift is $50,000 less $14,466 (computed as shown in the example under subparagraph (4) of this paragraph), or $35,534.

(4) *Remainders or reversionary interests.*—If the interest to be valued is a remainder or reversionary interest subject to a life estate, the value of the interest should be obtained by multiplying the value of the property at the date of the gift by the figure in column 3 of Table I opposite the number of years nearest the age of the life tenant. In case the remainder or reversion is to take effect at the end of a term of years, Table II should be used.

Example. The donor transfers by gift property worth $50,000 which he is entitled to receive upon the death of his brother, to whom the income for life has been bequeathed. The brother at the date of gift is 31 years of age. By reference to Table I, it is found that the figure in column 3 opposite 31 years is 0.28932. The value of the gift is, therefore, $14,466 ($50,000 × 0.28932).

(5) *Actuarial calculations by Bureau.*—If the interest to be valued is dependent upon the continuation of, or termination of more than one life, or there is a term-certain concurrent with one or more lives, or if the retained interest of the donor is conditioned upon survivorship, a special factor is necessary. Such factor is to be computed upon the basis of the Makehamized mortality table appearing as Table 38 of the United States Life Tables and Actuarial Tables 1939–1941, published by the United States Department of Commerce, Bureau of the Census, and interest at the rate of 3½ percent a year, compounded annually. Many such factors may be found in, or readily computed with the use of the tables contained in a pamphlet entitled "Actuarial Values for Estate and Gift Tax," which may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington 25, D. C.; or a case requiring a special factor (provided the gift is completed and not merely proposed or hypothetical) may be stated to the Commissioner who will furnish such factor. The request must be accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the interest, and by copies of the relevant instruments.

(B) By amending paragraph (*g*) thereof to read as follows:

(*g*) *Annuities, life estates, remainders, and reversions; gifts made prior to January 1, 1952.*—In the case of gifts made prior to January 1, 1952, the general principles and methods prescribed in paragraph (*f*) of this section (with one exception set forth in the next paragraph) are to be followed but the present worth of the interest to be valued is to be computed with the use of Table A or Table B (which appear at the end of this section) and if neither table is applicable the computation is to be made upon the basis of the Actuaries' or Combined Experience Table of Mortality, as extended, and interest at the rate of 4 percent a year, compounded annually. In the computation of the value of annuities the factors 1.01820 for monthly payments, 1.01488 for quarterly payments, and 1.00990 for semiannual payments are to be substituted for the factors appearing in (*f*) (2) (ii) of this section; and the factors 1.02154 for monthly payments, 1.02488 for quarterly payments, 1.02990 for semiannual payments, and 1.04 for annual payments are to be substituted for the factors appearing in (*f*) (2) (iii) of this section.

The present worth of a life estate or term for years in specific property is to be obtained by multiplying the appropriate factor from column 2 of Table A or Table B by .04 and multiplying the product by the value of the property. A provision for the payment of income in semiannual, quarterly, or monthly installments does not affect the value of the life interest.

TABLE I

Table, single life, 3½ percent, showing the present worth of an annuity, or a life interest, and of a remainder interest

1 Age	2 Annuity	3 Remainder	1 Age	2 Annuity	3 Remainder
0	23. 9685	0. 16110	53	13. 8221	0. 51623
1	24. 9035	. 12838	54	13. 4734	. 52843
2	24. 8920	. 12878	55	13. 1218	. 54074
3	24. 8246	. 13114	56	12. 7679	. 55312
4	24. 7378	. 13418	57	12. 4120	. 56558
5	24. 6392	. 13763	58	12. 0546	. 57809
6	24. 5326	. 14136	59	11. 6960	. 59064
7	24. 4188	. 14534	60	11. 3369	. 60321
8	24. 2982	. 14956	61	10. 9776	. 61578
9	24. 1713	. 15400	62	10. 6186	. 62835
10	24. 0387	. 15865	63	10. 2604	. 64089
11	23. 9008	. 16347	64	9. 9036	. 65337
12	23. 7600	. 16840	65	9. 5486	. 66580
13	23. 6161	. 17344	66	9. 1960	. 67814
14	23. 4693	. 17857	67	8. 8464	. 69038
15	23. 3194	. 18382	68	8. 5001	. 70250
16	23. 1665	. 18917	69	8. 1578	. 71448
17	23. 0103	. 19464	70	7. 8200	. 72630
18	22. 8511	. 20021	71	7. 4871	. 73795
19	22. 6870	. 20596	72	7. 1597	. 74941
20	22. 5179	. 21187	73	6. 8382	. 76066
21	22. 3438	. 21797	74	6. 5231	. 77169
22	22. 1646	. 22424	75	6. 2148	. 78248
23	21. 9801	. 23070	76	5. 9137	. 79302
24	21. 7902	. 23734	77	5. 6201	. 80330
25	21. 5950	. 24418	78	5. 3345	. 81329
26	21. 3942	. 25120	79	5. 0572	. 82300
27	21. 1878	. 25843	80	4. 7884	. 83241
28	20. 9759	. 26584	81	4. 5283	. 84151
29	20. 7581	. 27347	82	4. 2771	. 85030
30	20. 5345	. 28129	83	4. 0351	. 85877
31	20. 3052	. 28932	84	3. 8023	. 86692
32	20. 0699	. 29755	85	3. 5789	. 87474
33	19. 8288	. 30599	86	3. 3648	. 88223
34	19. 5816	. 31464	87	3. 1601	. 88940
35	19. 3285	. 32350	88	2. 9648	. 89623
36	19. 0695	. 33257	89	2. 7788	. 9Q274
37	18. 8044	. 34185	90	2. 6019	. 90893
38	18. 5334	. 35133	91	2. 4342	. 91480
39	18. 2566	. 36102	92	2. 2754	. 92036
40	17. 9738	. 37092	93	2. 1254	. 92561
41	17. 6853	. 38101	94	1. 9839	. 93056
42	17. 3911	. 39131	95	1. 8507	. 93523
43	17. 0913	. 40180	96	1. 7256	. 93960
44	16. 7860	. 41249	97	1. 6082	. 94371
45	16. 4754	. 42336	98	1. 4982	. 94756
46	16. 1596	. 43441	99	1. 3949	. 95118
47	15. 8388	. 44564	100	1. 2973	. 95459
48	15. 5133	. 45703	101	1. 2033	. 95788
49	15. 1831	. 46859	102	1. 1078	. 96123
50	14. 8486	. 48030	103	. 9973	. 96509
51	14. 5101	. 49215	104	. 8318	. 97089
52	14. 1678	. 50413	105	. 4831	. 98309

TABLE II

Table showing the present worth at 3½ percent of an annuity for a term-certain, and of a remainder interest postponed for a term-certain

1 Number of years	2 Annuity	3 Remainder	1 Number of years	2 Annuity	3 Remainder
1	0. 9662	0. 966184	16	12. 0941	0. 576706
2	1. 8997	. 933511	17	12. 6513	. 557204
3	2. 8016	. 901943	18	13. 1897	. 538361
4	3. 6731	. 871442	19	13. 7098	. 520156
5	4. 5151	. 841973	20	14. 2124	. 502566
6	5. 3286	. 813501	21	14. 6980	. 485571
7	6. 1145	. 785991	22	15. 1671	. 469151
8	6. 8740	. 759412	23	15. 6204	. 453286
9	7. 6077	. 733731	24	16. 0584	. 437957
10	8. 3166	. 708919	25	16. 4815	. 423147
11	9. 0016	. 684946	26	16. 8904	. 408838
12	9. 6633	. 661783	27	17. 2854	. 395012
13	10. 3027	. 639404	28	17. 6670	. 381654
14	10. 9205	. 617782	29	18. 0358	. 368748
15	11. 5174	. 596891	30	18. 3920	. 356278

(C) By striking from paragraph (*h*) thereof the last sentence of the first paragraph and the second paragraph and inserting in lieu thereof the following:

The value of each of such interests is to be computed upon the basis prescribed in paragraph (*f*) or (*g*) of this section, whichever is applicable.

A case of this character (provided the gift is completed and not merely proposed or hypothetical) may be submitted to the Commissioner, who will advise the donor of the applicable factor.

(This Treasury Decision is issued under the authority contained in sections 1029 and 3791 of the Internal Revenue Code (53 Stat. 157, 467; 26 U. S. C. 1029, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 27, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 2, 1952, 8:51 a. m.)

EMPLOYMENT TAX RULINGS

INTERNAL REVENUE CODE

CHAPTER 9, SUBCHAPTER A.—FEDERAL INSURANCE CONTRIBUTIONS ACT

SECTION 1426: Definitions. 1952–13–13853
REGULATIONS 106, SECTION 402.201: General definitions and use of terms. T. D. 5905
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.201 et al; and Subchapter B (Railroad Retirement Tax Act), Section 1536; Regulations 114, Section 411.604 et al.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PARTS 402, 403, AND 411

Regulations 106, 107, and 114 amended to conform to certain provisions of the Social Security Act Amendments of 1950.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On February 28, 1952, notice of proposed rule making, regarding amendments to certain employment tax regulations, made necessary by certain provisions of the Social Security Act Amendments of 1950 (Public Law 734, 81st Cong.; 64 Stat. 477 [C. B. 1950–2, 217]), approved August 28, 1950, was published in the Federal Register (17 F. R. 1764). No objection to the rules proposed having been received, the amendments set forth below are hereby adopted. The amendments are made in order to conform Regulations 106 [26 CFR, part 402], relating to the employees' tax and the employers' tax under the Federal Insurance Contributions Act (subchapter A, chapter 9, Internal Revenue Code), to sections 203(b), 206(b)(2), and 209 (d) and (e) of such Social Security Act Amendments of 1950 (64 Stat. 527, 538, 547, 548); Regulations 107 [26 CFR, part 403], relating to the excise tax on employers under the Federal Unemployment Tax Act (subchapter C, chapter 9, Internal Revenue Code), to sections 207(b)(1) and 209 (a), (b), (d), and (e) of such Social Security Act Amendments of 1950 (64 Stat. 540, 545, 546, 547, 548); and Regulations 114 [26 CFR, part 411], relating to the employers' tax, employees' tax, and employee representatives' tax under the Railroad Retirement Tax Act (subchapter B, chapter 9, Internal Revenue Code), to section

209(d) of such Social Security Act Amendments of 1950 (64 Stat. 547). Such regulations are amended as follows:

REGULATIONS 106 [26 CFR, PART 402]

PARAGRAPH 1. Section 402.201 [26 CFR 402.201] is amended by inserting after paragraph (q), added by Treasury Decision 5592, [C. B. 1947-2, 165], approved November 20, 1947 [26 CFR 402.201 (q)], the following new paragraph:

(r) *Social Security Act Amendments of 1950* means the Act approved August 28, 1950 (Public Law 734, 81st Cong.; 64 Stat. 477).

PAR. 2. Immediately preceding section 402.306 [26 CFR 402.306], the following is inserted:

SECTION 206(b)(2) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

Section 1403(a) of the Internal Revenue Code is amended by striking out the first sentence and inserting in lieu thereof the following: "Every employer shall furnish to each of his employees a written statement or statements, in a form suitable for retention by the employee, showing the wages paid by him to the employee before January 1, 1951. (For corresponding provisions with respect to wages paid after December 31, 1950, see section 1633.)"

PAR. 3. Immediately preceding section 402.704 [26 CFR 402.704], the following is inserted:

SECTION 209(e) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

If a corporation (hereinafter referred to as a predecessor) incorporated under the laws of one State is succeeded after 1945 and before 1951 by another corporation (hereinafter referred to as a successor) incorporated under the laws of another State, and if immediately upon the succession the business of the successor is identical with that of the predecessor and, except for qualifying shares, the proportionate interest of each shareholder in the successor is identical with his proportionate interest in the predecessor, and if in connection with the succession the predecessor is dissolved or merged into the successor, and if the predecessor and the successor are employers under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act in the calendar year in which the succession takes place, then—

(1) the predecessor and successor corporations, for purposes only of the application of the $3,000 limitation in the definition of wages under such Acts, shall be considered as one employer for such calendar year, and

(2) the successor shall, subject to the applicable statutes of limitations, be entitled to a credit or refund, without interest, of any tax under section 1410 of the Federal Insurance Contributions Act or section 1600 of the Federal Unemployment Tax Act (together with any interest or penalty thereon) paid with respect to remuneration paid by the successor during such calendar year which would not have been subject to tax under such Acts if the remuneration had been paid by the predecessor.

PAR. 4. Immediately preceding section 402.705 [26 CFR 402.705], the following is inserted:

SECTION 203(b) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

So much of section 1401(d)(2) of the Internal Revenue Code as precedes the second sentence thereof is amended to read as follows:

"(2) WAGES RECEIVED DURING 1947, 1948, 1949, AND 1950.—If by reason of an employee receiving wages from more than one employer

during the calendar year 1947, 1948, 1949, or 1950, the wages received by him during such year exceed $3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400 and deducted from the employee's wages (whether or not paid to the collector), which exceeds the tax with respect to the first $3,000 of such wages received."

PAR. 5. Immediately after the provisions of law under the caption "SECTION 6 OF THE ACT OF AUGUST 27, 1949 (PUBLIC LAW 271, 81st CONGRESS)", added by Treasury Decision 5794 [C. B. 1950–2, 82], approved July 6, 1950, as set forth after section 402.804 [26 CFR 402.804], the following is inserted:

SECTION 209(d) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

(1) Section 1631 of the Internal Revenue Code is amended to read as follows:

"SEC. 1631. FAILURE OF EMPLOYER TO FILE RETURN.

"In case of a failure to make and file any return required under this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not to willful neglect, the addition to the tax or taxes required to be shown on such return shall not be less than $5."

(2) The amendment made by paragraph (1) shall be applicable only with respect to returns filed after December 31, 1950.

REGULATIONS 107 [26 CFR, PART 403]

PAR. 6. Immediately preceding the caption "SECTION 3797 (a) AND (b) OF THE INTERNAL REVENUE CODE" as set forth preceding section 403.201 [26 CFR 403.201], the following is inserted:

SECTION 209 (a) AND (b) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

(a) (1) Section 1607(b) of the Internal Revenue Code is amended to read as follows:

"(b) WAGES.—The term 'wages' means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

"(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $3,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $3,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

"(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide

for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

"(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

"(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

"(5) Any payment made to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5), and (6);

"(6) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400, or (B) of any payment required from an employee under a State unemployment compensation law;

"(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

"(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

"(9) Dismissal payments which the employer is not legally required to make."

(2) The amendment made by paragraph (1) shall be applicable only with respect to remuneration paid after 1950. In the case of remuneration paid prior to 1951, the determination under section 1607(b)(1) of the Internal Revenue Code (prior to its amendment by this Act) of whether or not such remuneration constituted wages shall be made as if paragraph (1) of this subsection had not been enacted and without inferences drawn from the fact that the amendment made by paragraph (1) is not made applicable to periods prior to 1951.

(3) Effective with respect to remuneration paid after December 31, 1951, section 1607(b) of the Internal Revenue Code is amended by changing the semicolon at the end of paragraph (8) to a period and by striking out paragraph (9) thereof.

(b) (1) Section 1607(c)(3) of the Internal Revenue Code is amended to read as follows:

"(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (A) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (B) such individual was regularly employed (as determined under clause (A)) by such employer in the performance of such service during the preceding calendar quarter;"

(2) Section 1607(c)(10)(A)(i) of the Internal Revenue Code is amended by striking out "does not exceed $45" and inserting in lieu thereof "is less than $50".

(3) Section 1607(c)(10)(E) of the Internal Revenue Code is amended by striking out "in any calendar quarter" and by striking out ", and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition)".

(4) The amendments made by paragraphs (1), (2), and (3) shall be applicable only with respect to service performed after 1950.

PAR. 7. Section 403.201 [26 CFR 403.201] is amended by inserting after paragraph (n), added by Treasury Decision 5566 [C. B. 1947–2, 148], approved June 23, 1947 [26 CFR 403.201(n)], the following new paragraph:

(o) *Social Security Act Amendments of 1950* means the Act approved August 28, 1950 (Public Law 734, 81st Cong.; 64 Stat. 477).

PAR. 8. Section 403.202, as amended by Treasury Decision 5566 [26 CFR 403.202], is further amended by striking out the parenthetical sentence at the end of the third paragraph and inserting in lieu thereof the following: "(See sections 403.227, 403.228, and 403.228a, relating to wages.)"

PAR. 9. Section 403.203(a), as amended by Treasury Decision 5665 [C. B. 1948–2, 135], approved November 1, 1948 [26 CFR 403.203(a)], is further amended as follows:

(A) By striking out in the first sentence "and as further amended" and inserting in lieu thereof "and as amended".

(B) By striking out the period at the end of the first sentence and inserting in lieu thereof a comma and the following: "and as further amended, effective January 1, 1951, by section 209(b) of the Social Security Act Amendments of 1950."

(C) By striking out in the second sentence "(except sections 403.227 and 403.228 [26 CFR 403.227 and 403.228], relating to wages)" and inserting in lieu thereof "(except sections 403.227, 403.228, and 403.228a, relating to wages)".

PAR. 10. Section 403.204 [26 CFR 403.204] is amended by striking out the seventh paragraph and inserting in lieu thereof the following paragraph:

All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other superior employees are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

PAR. 11. Section 403.206, as amended by Treasury Decision 5665 [26 CFR 403.206], is further amended as follows:

(A) By striking out in the first sentence "and as further amended" and inserting in lieu thereof "and as amended".

(B) By striking out the period at the end of the first sentence and inserting in lieu thereof a comma and the following: "and as further amended, effective January 1, 1951, by section 209(b) of the Social Security Act Amendments of 1950."

PAR. 12. Immediately preceding section 403.210 [26 CFR 403.210], the following is inserted:

SECTION 209 (b)(1) AND (4) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

(1) Section 1607(c)(3) of the Internal Revenue Code is amended to read as follows:

"(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (A) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (B) such individual was regularly employed (as determined under clause (A)) by such employer in the performance of such service during the preceding calendar quarter;".

(4) The amendments made by paragraphs (1) * * * shall be applicable only with respect to service performed after 1950.

PAR. 13. Section 403.210 [26 CFR 403.210] is amended as follows:

(A) By revising the heading thereof to read as follows:

SEC. 403.210. SERVICES NOT IN THE COURSE OF EMPLOYER'S TRADE OR BUSINESS.—(a) *Casual labor performed prior to January 1, 1951.*

(B) By inserting immediately after the heading of paragraph (a) of section 403.210 as so amended the following new sentence:

Casual labor not in the course of the employer's trade or business performed prior to January 1, 1951, is excepted.

(C) By inserting at the end of paragraph (a) of section 403.210 as so amended the following:

(b) *Services performed after December 31, 1950.*—Services not in the course of the employer's trade or business performed after December 31, 1950, by an employee for an employer in a calendar quarter are excepted unless—

(1) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is $50 or more; and

(2) Such employee is regularly employed in the calendar quarter by such employer to perform such services.

Unless the tests set forth in both (1) and (2), above, are met the services are excepted from employment.

The term "services not in the course of the employer's trade or business" include services that do not promote or advance the trade or business of the employer. Services performed for a corporation do not come within the exception.

The test relating to cash remuneration of $50 or more is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. However, for purposes of determining whether the test is met, it is also required that the remuneration be paid, although it is immaterial when the remuneration is paid. Furthermore, in determining whether $50 or more has been paid for services not in the course of the employer's trade or business, only cash remuneration for such services shall be taken into account. The term "cash remuneration" includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met.

For the purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if:

(i) such individual performs services not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarter; or

(ii) such individual was regularly employed (as determined under subdivision (i)) by such employer in the performance of services not in the course of the employer's trade or business during the preceding calendar quarter (including the last calendar quarter of 1950).

In determining whether an employee has performed services not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day—

(*a*) any day or portion thereof on which the employee actually performs such services; and

(*b*) any day or portion thereof on which the employee does not perform services of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such services, such as a day on which the employee is sick or on vacation.

An employee who on a particular day reports for work and, at the direction of his employer, holds himself in readiness to perform services not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such services on that day. For the purposes of this exception, a day is a period of 24 hours commencing at midnight and ending at midnight.

For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see section 403.228a(g).

PAR. 14. Immediately preceding the caption "SECTION 101 OF THE INTERNAL REVENUE CODE" as set forth preceding section 403.217 [26 CFR 403.217], the following is inserted:

SECTION 209(b) (2) AND (4) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

(2) Section 1607(c)(10)(A)(i) of the Internal Revenue Code is amended by striking out "does not exceed $45" and inserting in lieu thereof "is less than $50".

(4) The amendments made by paragraphs * * * (2) * * * shall be applicable only with respect to service performed after 1950.

PAR. 15. Under the caption "SECTION 101 OF THE INTERNAL REVENUE CODE" as set forth preceding section 403.217 [26 CFR 403.217], the provision of law "(1) Labor * * * organizations;" is stricken out, and there is inserted in lieu thereof "(1) Labor, agricultural, or horticultural organizations;".

PAR. 16. Immediately preceding section 403.217 [26 CFR 403.217], the following is inserted:

SECTION 301 (b) AND (c) [OF PART I, TITLE III] OF THE REVENUE ACT OF 1950 (PUBLIC LAW 814, 81st CONG., APPROVED SEPTEMBER 23, 1950)

(b) FEEDER ORGANIZATIONS.—Section 101 [Internal Revenue Code] is hereby amended by adding at the end thereof the following paragraph:

"An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt under any paragraph of this section on the ground that all of its profits are payable to one or more organizations exempt under this section from taxation. For the purposes of this paragraph the term 'trade or business' shall not include the rental by an organization of its real property (including personal property leased with the real property)."

(c) TECHNICAL AMENDMENTS.—

(1) Section 101 is hereby amended (A) by striking out "The following organizations shall be exempt" and inserting in lieu thereof "Except as provided in supplement U, the following organizations shall be exempt", and (B) by adding at the end of such section (following the paragraph added by subsection (b) of this section) the following paragraph:

"Notwithstanding supplement U, an organization described in this section (other than in the preceding paragraph) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes."

* * * * * * *

SECTION 303 OF THE REVENUE ACT OF 1950 (PUBLIC LAW 814, 81st CONG., APPROVED SEPTEMBER 23, 1950)

EFFECTIVE DATE OF PART I

The amendments made by this part [part I, title III, Revenue Act of 1950] shall be applicable only with respect to taxable years beginning after December 31, 1950. The determination as to whether an organization is exempt under section 101 of the Internal Revenue Code from taxation for any taxable year beginning before January 1, 1951, shall be made as if section 301(b) of this Act had not been enacted and without inferences drawn from the fact that the amendment made by such section is not expressly made applicable with respect to taxable years beginning before January 1, 1951.

SECTION 11(b) OF THE SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950 (PUBLIC LAW 831, 81st CONG., ENACTED SEPTEMBER 23, 1950)

No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board [Subversive Activities Control Board] requiring such organization to register under section 7.

SECTION 313 (a), (b), AND (j) OF THE REVENUE ACT OF 1951 (PUBLIC LAW 183, 82d CONG., APPROVED OCTOBER 20, 1951)

(a) MUTUAL SAVINGS BANKS.—Section 101(2) (relating to exemption from tax of mutual savings banks) is hereby repealed.

(b) BUILDING AND LOAN ASSOCIATIONS AND COOPERATIVE BANKS.—Section 101(4) (relating to exemption from tax of building and loan associations and cooperative banks) is hereby amended to read as follows:

"(4) Credit unions without capital stock organized and operated for mutual purposes and without profit; and corporations or associations without capital stock organized prior to September 1, 1951, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—

"(A) domestic building and loan associations,

"(B) cooperative banks without capital stock organized and operated for mutual purposes and without profit, or

"(C) mutual savings banks not having capital stock represented by shares;".

(j) EFFECTIVE DATE.—The amendments made by this section shall be applicable only with respect to taxable years beginning after December 31, 1951.

SECTION 314 (a), (b), AND (d) OF THE REVENUE ACT OF 1951 (PUBLIC LAW 183, 82d CONG., APPROVED OCTOBER 20, 1951)

(a) AMENDMENT OF SECTION 101(12).—Section 101(12) is hereby amended as follows:

(1) By inserting after "(12)" the following: "(A)".

(2) By inserting afer such paragraph the following:

"(B) * * *."

(b) TECHNICAL AMENDMENTS.—

(1) Section 101 is hereby amended by striking out "Except as provided in supplement U" and inserting in lieu thereof the following: "Except as provided in paragraph (12)(B) and in supplement U."

(2) The last sentence of section 101 is hereby amended by striking out "Notwithstanding supplement U" and inserting in lieu thereof "Notwithstanding paragraph (12)(B) and supplement U".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) of this section shall be applicable only with respect to taxable years beginning after December 31, 1951. * * *

PAR. 17. Section 403.217(b) [26 CFR 403.217] is amended to read as follows:

(b) *Remuneration not in excess of specified amount for calendar quarter.*—(1) *Remuneration not in excess of $45 for calendar quarter before 1951.*—Services performed by an employee in a calendar quarter before 1951 in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code are excepted, if the remuneration for the services does not exceed $45. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

(2) *Remuneration less than $50 for calendar quarter after 1950.*—Services performed by an employee in a calendar quarter after 1950 in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code are excepted, if the remuneration for the services is less than $50. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example (1). X is a local lodge of a fraternal organization and is exempt from income tax under section 101(3) of the Internal Revenue Code. X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1951 (that is, January 1, 1951, through March 31, 1951, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter is less than $50, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see section 403.205). Even though it is subsequently determined that X is an employer, A's remuneration of $30 for services performed during the first calendar quarter of such year is not subject to tax. B's services, however, are not excepted during such quarter since the remuneration therefor is not less than $50. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of $180 for services performed during the first calendar quarter is included in computing the tax.

Example (2). The facts are the same as in example (1), above, except that on April 1, 1951, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1951, through June 30, 1951, both dates inclusive), A earns $60. Since A's remuneration for services during such quarter is not less than $50, such services are not excepted. A, therefore, is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, A's remuneration of $60 for services performed during the second calendar quarter is included in computing the tax.

Example (3). The facts are the same as in example (1), above, except that A earns $120 for services performed during the year 1951, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter is less than $50. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year is not less than $50, the

services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if the X organization is determined to be an employer, that portion of the $120 attributable to services performed in such quarter is included in computing the tax.

PAR. 18. The provisions of law under the caption "SECTION 101(1) OF THE INTERNAL REVENUE CODE", together with the caption and heading, as set forth immediately preceding section 403.218 [26 CFR 403.218], are stricken out.

PAR. 19. Immediately preceding section 403.221 [26 CFR 403.221], the following is inserted:

SECTION 209(b) (3) AND (4) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

(3) Section 1607(c)(10)(E) of the Internal Revenue Code is amended by striking out "in any calendar quarter" and by striking out ", and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition)".

(4) The amendments made by paragraphs * * * (3) shall be applicable only with respect to service performed after 1950.

PAR. 20. Section 403.221 [26 CFR 403.221] is amended to read as follows:

SEC. 403.221. STUDENTS EMPLOYED BY SCHOOLS, COLLEGES, OR UNIVERSITIES NOT EXEMPT FROM INCOME TAX.—(a) *In general.*—This section deals with the exception of services performed by a student in the employ of a school, college, or university not exempt from income tax under section 101 of the Internal Revenue Code. Paragraph (b) of this section applies only with respect to services performed before January 1, 1951. Paragraph (c) of this section applies only with respect to services performed on or after January 1, 1951.

The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense. (For provisions relating to services performed by a student in the employ of an organization exempt from income tax, see section 403.217(d).)

(b) *Services performed prior to January 1, 1951.*—Services performed in a calendar quarter before 1951 by a student in the employ of a school, college, or university not exempt from income tax under section 101 of the Internal Revenue Code are excepted, if:

(1) The services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university; and

(2) The remuneration for such services performed in such calendar quarter does not exceed $45, exclusive of room, board, and tuition furnished by the school, college, or university.

A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31.

For purposes of this paragraph (b), the type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed, the amount of remuneration for services performed by the employee in the calendar quarter, and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

(c) *Services performed after 1950.*—Services performed after December 31, 1950, by a student in the employ of a school, college, or university not exempt from income tax under section 101 of the Internal Revenue Code are excepted, if the student is enrolled and is regularly attending classes at such school, college, or university.

For purposes of this paragraph (c), the type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

PAR. 21. Immediately preceding section 403.227 [26 CFR 403.227], the following is inserted:

SECTION 209(a) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

(1) Section 1607(b) of the Internal Revenue Code is amended to read as follows:

"(b) WAGES.—The term 'wages' means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

"(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $3,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $3,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

"(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

"(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

"(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

"(5) Any payment made to (or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5) and (6);

"(6) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400, or (B) of any payment required from an employee under a State unemployment compensation law;

"(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

"(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

"(9) Dismissal payments which the employer is not legally required to make."

(2) The amendment made by paragraph (1) shall be applicable only with respect to remuneration paid after 1950. In the case of remuneration paid prior to 1951, the determination under section 1607(b)(1) of the Internal Revenue Code (prior to its amendment by this Act) of whether or not such remuneration constituted wages shall be made as if paragraph (1) of this subsection had not been enacted and without inferences drawn from the fact that the amendment made by paragraph (1) is not made applicable to periods prior to 1951.

(3) Effective with respect to remuneration paid after December 31, 1951, section 1607(b) of the Internal Revenue Code is amended by changing the semicolon at the end of paragraph (8) to a period and by striking out paragraph (9) thereof.

PAR. 22. Section 403.227(a), as amended by Treasury Decision 5805 [C. B. 1950-2, 112], approved August 30, 1950 [26 CFR 403.227(a)], is further amended as follows:

(A) By striking out in the first sentence "and as further amended" and inserting in lieu thereof "and as amended".

(B) By striking out the period at the end of the first sentence and inserting in lieu thereof a comma and the following: "and as further amended, effective January 1, 1951, by section 209(a) of the Social Security Act Amendments of 1950."

(C) By striking out the second sentence and inserting in lieu thereof the following:

This section of the regulations applies with respect only to remuneration paid on or after January 1, 1940, for employment performed after December 31, 1938. Section 403.228 (relating to exclusions from wages) applies with respect only to remuneration paid on or after January 1, 1940, and prior to January 1, 1951, for employment performed after December 31, 1938. Section 403.228a (relating to exclusions from wages) applies with respect only to remuneration paid on or after January 1, 1951, for employment performed after December 31, 1938.

(D) By striking out in the second paragraph "(see section 403.228 of these regulations)" and inserting in lieu thereof "(see sections 403.228 and 403.228a of the regulations in this part)".

(E) By striking out in the first sentence of the fifth paragraph the words "The medium" and inserting in lieu thereof the following:

Except in the case of remuneration paid for services not in the course of the employer's trade or business (see section 403.228a(g) of the regulations in this part), the medium.

PAR. 23. Section 403.228, as amended by Treasury Decision 5566 [26 CFR 403.228], is further amended as follows:

(A) By striking out the section heading and inserting in lieu thereof the following: "SEC. 403.228. EXCLUSIONS FROM WAGES WITH RESPECT TO REMUNERATION PAID PRIOR TO JANUARY 1, 1951—".

(B) By adding at the end of both the fifth paragraph of section 403.228(a)(2) and the sixth paragraph of section 403.228(a)(3) the following sentence:

(In connection with the application of the $3,000 limitation, see also section 209(e) of the Social Security Act Amendments of 1950, set forth preceding section 403.602 of the regulations in this part, relating to certain circumstances under which a predecessor employer and his successor are treated as one employer.)

(C) By adding at the end of such section the following:

(f) *Applicability of section.*—The provisions of this section do not apply with respect to remuneration paid after December 31, 1950.

SEC. 403.228a. EXCLUSIONS FROM WAGES WITH RESPECT TO REMUNERATION PAID AFTER DECEMBER 31, 1950.—(a) *$3,000 limitation.*—(1) *In general.*—The term "wages" does not include that part of the remuneration paid within any calendar year beginning after December 31, 1950, by an employer to an employee which exceeds the first $3,000 of remuneration (exclusive of remuneration excepted from wages in accordance with paragraphs (b) through (j) of this section) paid within such calendar year by such employer to such employee for employment performed for him at any time after December 31, 1938.

The $3,000 limitation applies only if the remuneration paid during any one calendar year by an employer to the same employee for employment performed after 1938 exceeds $3,000. The limitation in such case relates to the amount of remuneration paid during any one calendar year for employment after 1938 and not to the amount of remuneration for employment performed in any one calendar year.

Example (1). Employer B, in 1951, pays employee A $2,500 on account of $3,000 due him for employment performed in 1951. In 1952 employer B pays employee A the balance of $500 due him for employment performed in the prior year (1951), and thereafter in 1952 also pays A $3,000 for employment performed in 1952. The $2,500 paid in 1951 is subject to tax in 1951. The balance of $500 paid in 1952 for employment during 1951 is subject to tax in 1952, as is also the first $2,500 paid of the $3,000 for employment during 1952 (this $500 for 1951 employment added to the first $2,500 paid for 1952 employment constitutes the maximum wages which could be paid in 1952 by B to A). The final $500 paid by B to A in 1952 is not included as wages and is not subject to the tax.

If during a calendar year an employee is paid remuneration by more than one employer, the limitation of wages to the first $3,000 of remuneration paid applies, not to the aggregate remuneration paid by all employers with respect to employment performed after 1938, but instead to the remuneration paid during such calendar year by *each* employer with respect to employment performed after 1938. In such case the first $3,000 paid during the calendar year by each employer constitutes wages and is subject to the tax. (In connection with the application of the $3,000 limitation, see also subparagraph (2) below, relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor.)

Example (2). During 1951 employer D pays to employee C a salary of $600 a month for employment performed for D during the first 7 months of 1951, or total remuneration of $4,200. At the end of the 5th month C has been paid $3,000 by employer D, and only that part of his total remuneration from D constitutes wages subject to the tax. The $600 paid to employee C by employer D in the 6th month, and the like amount paid in the 7th month, are not included as wages and are not subject to the tax. At the end of the 7th month C leaves the employ of D and enters the employ of E. Employer E pays to C remuneration of $600 a month in each of the remaining 5 months of 1951, or total remuneration of $3,000. The entire $3,000 paid by E to employee C constitutes wages and is subject to the tax. Thus, the first $3,000 paid by employer D and the entire $3,000 paid by employer E constitute wages.

Example (3). During the calendar year 1951 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation, each such corporation being an employer for such year. During such year F is paid a salary of $3,000 by each corporation. Each $3,000 paid to F by each of the corporations, X, Y, and Z (whether or not such corporations are related), constitutes wages and is subject to the tax.

(2) *Wages paid by predecessor attributed to successor.*—If an employer (hereinafter referred to as a successor) during any calendar year beginning after December 31, 1950, acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used

in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of the application of the $3,000 limitation set forth in subparagraph (1) above, any remuneration (exclusive of remuneration excepted from wages in accordance with paragraphs (b) through (j) of this section) with respect to employment paid (or considered under this provision as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor. Wages paid by a predecessor shall not be considered as having been paid by the successor unless both the predecessor and the successor are employers as defined in section 1607(a) of the Act for the calendar year in which the acquisition occurs (see section 403.205 of the regulations in this part, relating to who are employers).

The wages paid, or considered as having been paid, by a predecessor to an employee shall, for purposes of the $3,000 limitation, be treated as having been paid to such employee by a successor, if:

(i) the successor during a calendar year acquired substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of the predecessor;

(ii) such employee was employed in the trade or business of the predecessor immediately prior to the acquisition and is employed by the successor in his trade or business immediately after the acquisition; and

(iii) such wages were paid during the calendar year in which the acquisition occurred and prior to such acquisition.

The method of acquisition of the property is immaterial. The acquisition may occur as a consequence of a corporate merger or consolidation, the incorporation of a business by a sole proprietor or a partnership, the continuance of the business without interruption by a new partnership resulting from the death or retirement of a former partner or the admission of a new partner, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

Substantially all the property used in a separate unit of a trade or business may consist of substantially all the property used in the performance of an essential operation of the trade or business, or it may consist of substantially all the property used in a relatively self-sustaining entity which forms a part of the trade or business.

Example (1). The M Corporation which is engaged in the manufacture of automobiles, including the manufacture of automobile engines, discontinues the manufacture of the engines and transfers all the property used in such manufacturing operation to the N Company. The N Company is considered to have acquired a separate unit of the trade or business of the M Corporation, namely, its engine manufacturing unit.

Example (2). The R Corporation which is engaged in the operation of a chain of grocery stores transfers one of such stores to the S Company. The S Company is considered to have acquired a separate unit of the trade or business of the R Corporation.

A successor may receive credit for wages paid to an employee by a predecessor only if immediately prior to the acquisition the employee was employed by the predecessor in his trade or business which was acquired by the successor and if immediately after the acquisition such employee is employed by the successor in his trade or business (whether or not in the same trade or business in which the acquired property is used). If the acquisition involves only a separate unit of a trade or business of the predecessor, the employee need not have been employed by the predecessor in that unit provided he was employed in the trade or business of which the acquired unit was a part.

The application of the foregoing provisions may be illustrated by the following example:

Example (3). The Y Corporation in 1951 acquires all the property of the X Manufacturing Company and immediately after the acquisition employs in its trade or business employee A, who, immediately prior to the acquisition, was employed by the X Company. Both the Y Corporation and the X Company are employers, as defined in the Act, for the calendar year 1951. The X Company has in 1951 (the calendar year in which the acquisition occurs) and prior to the acquisition paid $2,000 of wages to A. The Y Corporation in 1951 pays to A remuneration with respect to employment of $2,000. Only $1,000 of such

remuneration is considered to be wages. For the purposes of the $3,000 limitation, the Y Corporation is credited with the $2,000 paid to A by the X Company. If, in the same calendar year, the property is acquired from the Y Corporation by the Z Company, an employer for such year, and A immediately after the acquisition is employed by the Z Company in its trade or business, no part of the remuneration paid to A by the Z Company in the year of the acquisition will be considered to be wages. The Z Company will be credited with the remuneration paid to A by the Y Corporation and also with the wages paid to A by the X Company (considered for purposes of the application of the $3,000 limitation as having also been paid by the Y Corporation).

(b) *Employers' plans providing for payments on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.*—The term "wages" does not include the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

(1) an employee's retirement,

(2) sickness or accident disability of an employee or any of his dependents,

(3) medical or hospitalization expenses in connection with sickness or accident disability of an employee or any of his dependents, or

(4) death of an employee or any of his dependents.

The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items. Payments for any one or more of such items under a plan or system established by an employer solely for the dependents of his employees are not within this exclusion from wages.

Dependents of an employee include the employee's husband or wife, children, and any other members of the employee's immediate family.

It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

(c) *Retirement payments.*—The term "wages" does not include any payment made by an employer to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of the employee's retirement. Thus, payments made to an employee on account of his retirement are excluded from wages under this exception even though not made under a plan or system.

(d) *Payments on account of sickness or accident disability, or medical or hospitalization expenses.*—The term "wages" does not include any payment made by an employer to, or on behalf of, an employee on account of the employee's sickness or accident disability or the medical or hospitalization expenses in connection with the employee's sickness or accident disability, if such payment is made after the expiration of six calendar months following the last calendar month in which such employee worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer-employee relationship during that period is immaterial.

(e) *Payments from or to certain tax-exempt trusts or under or to certain annuity plans.*—The term "wages" does not include—

(1) any payment made by an employer, on behalf of an employee or his beneficiary, into a trust or annuity plan, if at the time of such payment the trust is exempt from tax under section 165(a) of the Internal Revenue Code or the annuity plan meets the requirements of section 165(a) (3), (4), (5), and (6) of the Internal Revenue Code; or

(2) any payment made to, or on behalf of, an employee or his beneficiary from a trust or under an annuity plan, if at the time of such payment the trust is exempt from tax under section 165(a) of the Code or the annuity plan meets the requirements of section 165(a) (3), (4), (5), and (6) of the Code.

A payment made to an employee of a trust exempt from tax under section 165(a) of the Code for services rendered as an employee of such trust and not as a beneficiary of the trust is not within this exclusion from wages.

(f) *Payment by an employer of employees' tax or employees' contributions under a State law.*—The term "wages" does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (1) the employee tax imposed by section 1400 of the Federal Insurance Contributions Act, or (2) any payment required from an employee under a State unemployment compensation law.

(g) *Payments other than in cash for services not in the course of employer's trade or business.*—The term "wages" does not include remuneration paid in any medium other than cash for services not in the course of the employer's trade or business. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, or other goods or commodities, for services of the prescribed character does not constitute wages. Remuneration paid in any medium other than cash for other types of services does not come within this exclusion from wages. For provisions relating to the circumstances under which services not in the course of the employer's trade or business do not constitute employment, see section 403.210.

(h) *Payments to stand-by employees.*—The term "wages" does not include any payment (other than vacation or sick pay) made by an employer to an employee after the calendar month in which the employee attains age 65, if:

(1) such employee does no work (other than being subject to call for the performance of work) for such employer in the period for which such payment is made; and

(2) the employer-employee relationship exists between the employer and employee throughout the period for which such payment is made.

Vacation or sick pay is not within this exclusion from wages. If the employee does any work for the employer in the period for which the payment is made, no remuneration paid by such employer to such employee with respect to such period is within this exclusion from wages. For example, if employee A is employed by the X Company on a stand-by basis and, after he has attained the age of 65, is paid $200 by the X Company for being subject to call during the month of January 1951 and an additional $25 for work performed for the X Company on one day during that month, then none of the $225 is excluded from wages under this exception.

(i) *Dismissal payments.*—Any payment made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, is excluded from "wages", provided the employer is not legally bound by contract, statute, or otherwise, to make such payment. This exclusion does not apply with respect to remuneration paid after December 31, 1951.

(j) *Miscellaneous.*—In addition to the exclusions specified in paragraphs (a) through (i) of this section, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 1607(c) of the Act;

(2) Remuneration for services which are deemed not to be employment under section 1607(d) of the Act; and

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

(k) *Applicability of section.*—The provisions of this section apply only with respect to remuneration paid after December 31, 1950.

PAR. 24. Section 403.302 [26 CFR 403.302] is amended by striking out in the parenthetical cross-reference "sections 403.227 and 403.228" and by inserting in lieu thereof "sections 403.227, 403.228, and 403.228a".

PAR. 25. Immediately preceding section 403.501 [26 CFR 403.501], the following is inserted:

SECTION 207(b)(1) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

Section 3312 of the Internal Revenue Code is amended by inserting immediately after the words "gift taxes" (which words immediately precede subsection (a) thereof) a comma and the following: "and except as otherwise provided in section 1635 with respect to employment taxes under subchapters A and D of chapter 9".

PAR. 26. Section 403.505 [26 CFR 403.505] is amended by striking out the last sentence of the first paragraph and inserting in lieu thereof the following sentence:

If filed within the prescribed time the statement so made will relieve the employer from liability for the addition to tax imposed for the delinquent filing of the return (see sections 403.605(a) and 403.605a, relating to the addition to tax), provided that, without unnecessary delay, such tentative return is supplemented by a return made on the proper form.

PAR. 27. Section 403.506 [26 CFR 403.506] is amended by striking out in the fifth sentence "section 403.605(a)" and inserting in lieu thereof "sections 403.605(a) and 403.605a".

PAR. 28. Section 403.508 [26 CFR 403.508] is amended by striking out in the last sentence "and 403.605 of these regulations" and inserting in lieu thereof "403.605, and 403.605a of the regulations in this part".

PAR. 29. Section 403.511(a)(2) [26 CFR 403.511(a)(2)] is amended by striking out "(see sections 403.227 and 403.228)" and inserting in lieu thereof "(see sections 403.227, 403.228, and 403.228a)".

PAR. 30. Immediately preceding section 403.602 [26 CFR 403.602], the following is inserted:

SECTION 209(e) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

If a corporation (hereinafter referred to as a predecessor) incorporated under the laws of one State is succeeded after 1945 and before 1951 by another corporation (hereinafter referred to as a successor) incorporated under the laws of another State, and if immediately upon the succession the business of the successor is identical with that of the predecessor and, except for qualifying shares, the proportionate interest of each shareholder in the successor is identical with his proportionate interest in the predecessor, and if in connection with the succession the predecessor is dissolved or merged into the successor, and if the predecessor and the successor are employers under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act in the calendar year in which the succession takes place, then—

(1) the predecessor and successor corporations, for purposes only of the application of the $3,000 limitation in the definition of wages under such Acts, shall be considered as one employer for such calendar year, and

(2) the successor shall, subject to the applicable statutes of limitations, be entitled to a credit or refund, without interest, of any tax under section 1410 of the Federal Insurance Contributions Act or section 1600 of the Federal Unemployment Tax Act (together with any interest or penalty thereon) paid with respect to remuneration paid by the successor during such calendar year which would not have been subject to tax under such Acts if the remuneration had been paid by the predecessor.

PAR. 31. Section 403.603, as amended by Treasury Decision 5794, approved July 6, 1950 [26 CFR 403.603], is further amended by striking out "provided by section 1631" and inserting in lieu thereof "imposed in certain cases for the delinquent payment of the tax (see section 403.605a, relating to the minimum addition to the tax)".

PAR. 32. Section 403.605(a), as amended by Treasury Decision 5794 [26 CFR 403.605(a)], is further amended by striking out in the second sentence "provided by section 1631" and inserting in lieu thereof "imposed for the delinquent filing of the return (see section 403.605a, relating to the minimum addition to the tax)".

PAR. 33. Immediately after the provisions of law under the caption "SECTION 6 OF THE ACT OF AUGUST 27, 1949 (PUBLIC LAW 271, 81st

CONGRESS)", added by Treasury Decision 5794, as set forth after section 403.605 [26 CFR 403.605], the following is inserted:

SECTION 209(d) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950

(1) Section 1631 of the Internal Revenue Code is amended to read as follows:

"SEC. 1631. FAILURE OF EMPLOYER TO FILE RETURN.

"In case of a failure to make and file any return required under this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not to willful neglect, the addition to the tax or taxes required to be shown on such return shall not be less than $5."

(2) The amendment made by paragraph (1) shall be applicable only with respect to returns filed after December 31, 1950.

SEC. 403.605a. MINIMUM ADDITION TO THE TAX.—(a) *Returns filed prior to January 1, 1951.*—In the case of returns required to be filed or tax which becomes due on or after August 27, 1949, if a person fails to make and file a return required by the regulations in this part, or pay the tax, within the prescribed time, unless it is shown that the failure is due to reasonable cause and not to willful neglect, the addition to the tax shall not be less than $5. (See sections 403.506 and 403.507, relating to the time for filing returns, and sections 403.508 and 403.509, relating to the time for payment of tax.) This provision is to be applied in accordance with the following rules:

(1) In the case of failure to make and file a return within the prescribed time, the addition to the tax shall be computed as provided by section 3612(d)(1) of the Internal Revenue Code (see section 403.605(a) of the regulations in this part) and if less than $5 shall be increased to $5.

(2) In the case of failure to pay the tax when due, the addition to the tax shall be computed as provided by section 1605(b) of the Act (see section 403.603 of the regulations in this part) and if less than $5 shall be increased to $5.

(3) In the case of concurrent failure to make and file the return and to pay the tax within the prescribed time, the ad valorem penalty provided by section 3612(d)(1) of the Internal Revenue Code and the interest provided by section 1605(b) of the Act shall be aggregated and if less than $5 shall be increased to $5.

The provisions of this paragraph (a) apply only with respect to returns filed before January 1, 1951, and to the tax required to be shown on such returns.

(b) *Returns filed after December 31, 1950.*—If a person fails to make and file a return required by the regulations in this part within the prescribed time, unless it is shown that the failure is due to reasonable cause and not to willful neglect, the addition to the tax required to be shown on such return shall not be less than $5. (See sections 403.506 and 403.507, relating to the time for filing returns.) The addition to the tax shall be computed as provided by section 3612(d)(1) of the Internal Revenue Code (see section 403.605(a) of the regulations in this part) and if less than $5 shall be increased to $5. The provisions of this paragraph (b) apply only with respect to returns filed after December 31, 1950.

REGULATIONS 114 [26 CFR, PART 411]

PAR. 34. Section 411.604 [26 CFR 411.604] is amended by striking out the last sentence of the first paragraph and inserting in lieu thereof the following sentence:

If filed within the prescribed time the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return (see sections 411.905(a) and 411.905a, relating to the addition to tax), provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form.

PAR. 35. Section 411.605 [26 CFR 411.605] is amended by striking out in the seventh sentence "section 411.905(a)" and inserting in lieu thereof "sections 411.905(a) and 411.905a."

PAR. 36. Section 411.606 [26 CFR 411.606] is amended by striking out in the last sentence "and 411.905" and inserting in lieu thereof "411.905, and 411.905a."

PAR. 37. Section 411.903, as amended by Treasury Decision 5794, approved July 6, 1950 [26 CFR 411.903], is further amended by striking out "provided by section 1631" and inserting in lieu thereof "imposed in certain cases for the delinquent payment of the tax (see section 411.905a, relating to the minimum addition to the tax)."

PAR. 38. Section 411.905(a), as amended by Treasury Decision 5794 [26 CFR 411.905(a)], is further amended by striking out in the second sentence "provided by section 1631" and inserting in lieu thereof "imposed for the delinquent filing of the return (see section 411.905a, relating to the minimum addition to the tax)."

PAR. 39. Immediately after the provisions of law under the caption "SECTION 6 OF THE ACT OF AUGUST 27, 1949 (PUBLIC LAW 271, 81st CONGRESS)", added by Treasury Decision 5794, as set forth after section 411.905 [26 CFR 411.905], the following is inserted:

SECTION 209(d) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950 (PUBLIC LAW 734, 81st CONGRESS)

(1) Section 1631 of the Internal Revenue Code is amended to read as follows:

"SEC. 1631. FAILURE OF EMPLOYER TO FILE RETURN.

"In case of a failure to make and file any return required under this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not to willful neglect, the addition to the tax or taxes required to be shown on such return shall not be less than $5."

(2) The amendment made by paragraph (1) shall be applicable only with respect to returns filed after December 31, 1950.

SEC. 411.905a. MINIMUM ADDITION TO THE TAX—(a) *Returns filed prior to January 1, 1951.*—In the case of returns required to be filed or tax which becomes due on or after August 27, 1949, if a person fails to make and file a return required by the regulations in this part, or pay the tax, within the prescribed time, unless it is shown that the failure is due to reasonable cause and not to willful neglect, the addition to the tax shall not be less than $5. (See section 411.605, relating to the time for filing returns; and section 411.606, relating to the time for payment of tax.) This provision is to be applied in accordance with the following rules:

(1) In the case of failure to make and file a return within the prescribed time, the addition to the tax shall be computed as provided by section 3612(d)(1) of the Internal Revenue Code (see section 411.905(a) of the regulations in this part) and if less than $5 shall be increased to $5.

(2) In the case of failure to pay the tax when due, the addition to the tax shall be computed as provided by section 1530(c) of the Act (see section 411.903 of the regulations in this part) and if less than $5 shall be increased to $5.

(3) In the case of concurrent failure to make and file the return and to pay the tax within the prescribed time, the ad valorem penalty provided by section 3612(d)(1) of the Internal Revenue Code and the interest provided by section 1530(c) of the Act shall be aggregated and if less than $5 shall be increased to $5.

The provisions of this paragraph (a) apply only with respect to returns filed before January 1, 1951, and to the tax required to be shown on such returns.

(b) *Returns filed after December 31, 1950.*—If a person fails to make and file a return required by the regulations in this part within the prescribed time, unless it is shown that the failure is due to reasonable cause and not to willful neglect, the addition to the tax or taxes required to be shown on such return shall not be less than $5. (See section 411.605, relating to the time for filing returns.) The addition to the tax shall be computed as provided by section 3612(d)(1) of the Internal Revenue Code (see section 411.905(a) of the regulations in this part) and if less than $5 shall be increased to $5. The provisions

of this paragraph (b) apply only with respect to returns filed after December 31, 1950.

(This Treasury Decision is issued under the authority contained in sections 1429, 1535, 1609, and 3791 of the Internal Revenue Code (53 Stat. 178, 183, 188, 467; 26 U. S. C. 1429, 1535, 1609, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 27, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 3, 1952, 8:49 a. m.)

SECTION 1426: Definitions.
REGULATIONS 128, SECTION 408.204: Who are employees.

Status, after 1950, of agent-drivers and commission drivers. (See Mim. 6787, below.)

SECTION 1426: Definitions. 1952-10-13819
REGULATIONS 128, SECTION 408.226: Wages. Mim. 6787
(Also Regulations 128, Section 408.204.)

Procedure for computing "wages" of agent-drivers and commission-drivers for purposes of the Federal Insurance Contributions Act (subchapter A, chapter 9, Internal Revenue Code), as amended by the Social Security Act Amendments of 1950. Mimeograph 6601 (C. B. 1951-1, 103) supplemented.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE.
Washington 25, D. C., April 1, 1952.

Collectors of Internal Revenue and Others Concerned:

1. The Bureau has received a substantial number of inquiries relating to the computation of wages in the cases of agent-drivers and commission-drivers who are employees under the statutory definition of "employee" contained in section 1426(d)(3)(A) of the Federal Insurance Contributions Act, as amended by the Social Security Act Amendments of 1950. The purpose of this mimeograph is to state the Bureau's position in the matter which, in effect, supplements Mimeograph 6601 (C. B. 1951-1, 103).

2. In the majority of the cases in this occupational group considered by the Bureau, it has been found that the agent-drivers and commission-drivers who meet the test provided in section 1426(d)(3)(A) of the Federal Insurance Contributions Act, as amended, are individuals who operate their own trucks and whose compensation is the difference between the price they charge the customers and the price they pay their principals for the products or services. In many of such cases the employers have stated that they are unable to determine the "wages" of their driver-employees for the reason that the drivers are subject to numerous expenses, such as the costs of the maintenance and operation of their trucks, license fees, credit losses, etc., and the employers have no information with respect to such expenses.

3. Where an agent-driver or commission-driver performs services for his principal under circumstances which meet the statutory test provided in section 1426(d)(3)(A) of the Federal Insurance Contributions Act, as amended, he is an "employee" for purposes of the taxes imposed by such Act. It is the position of the Bureau that if such individual submits a statement to his principal showing his gross receipts, the ordinary and necessary expenses (other than transportation expenses) incurred by him in distributing the particular products or services, and the fair rental value of the truck used in performing the services (where he owns or rents such truck), then the difference between such gross receipts and such expenses and fair rental value should be considered as the agent-driver's or commission-driver's "wages" for purposes of the taxes imposed under the Federal Insurance Contributions Act, as amended. If such statement is not furnished by the individual, the difference between the suggested selling price to the customers for the products or services and the price he pays his principal constitutes his "wages" for purposes of such Act. In either case appropriate arrangements should be made by the employer with the employee for the collection of the employee's tax.

4. This method of computing "wages" is limited to the occupational group falling within the contemplation of section 1426(d)(3)(A) of the Federal Insurance Contributions Act, as amended.

5. Correspondence relating to this mimeograph should refer to the number thereof and to the symbols EmT:RR.

JOHN B. DUNLAP,
Commissioner.

SECTION 1430: Other laws applicable. 1952-3-13758
REGULATIONS 128, SECTION 408.606: Place and time for filing returns. Mim. 6737

Inspection of employer's quarterly Federal tax returns, Form 941, by State unemployment compensation commissions.
Supplementing Mimeograph 6310 (C. B. 1948-2, 149.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 19, 1951.

Collectors of Internal Revenue and Others Concerned:

1. The employer's quarterly Federal tax return, Form 941, combines the reporting of taxes under the Federal Insurance Contributions Act and income tax withheld under section 1622 of the Internal Revenue Code. The tax portion of such returns shall be made available for inspection by officials of State unemployment compensation commissions in the same manner and to the same extent as returns on Form SS-1a. The authorization and instructions of Mimeograph 6310 (C. B. 1948-2, 149), are hereby extended and made applicable to the quarterly returns on Form 941.

2. Correspondence in regard to the contents of this mimeograph should refer to its number, and to the symbols EmT:RR.

JOHN B. DUNLAP,
Commissioner.

Approved December 18, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

CHAPTER 9, SUBCHAPTER B.—RAILROAD RETIREMENT TAX ACT

SECTIONS 1530 AND 1536.
REGULATIONS 114, SECTIONS 411.604, 411.605, 411.606, 411.903, AND 411.905.

Regulations 114 amended to conform to certain provisions of the Social Security Act Amendments of 1950. (See T. D. 5905, page 173.)

CHAPTER 9, SUBCHAPTER C.—FEDERAL UNEMPLOYMENT TAX ACT

SECTIONS 1600, 1605, 1607, 1608, AND 1610.
REGULATIONS 107, SECTIONS 403.201, 403.202, 403.203, 403.204, 403.206, 403.210, 403.217, 403.221, 403.227, 403.228, 403.302, 403.506, 403.508, 403,511, 403.603, AND 403.605(a).

Regulations 107 amended to conform to certain provisions of the Social Security Act Amendments of 1950. (See T. D. 5905, page 173.)

SECTION 1601: Credits against tax. 1952-7-13794
REGULATIONS 107, SECTION 403.401: Credit against tax for contributions paid. T. D. 5888
(Also Section 1601; Regulations 107, Section 403.403.)

TITLE 26—INTERNAL REVENUE—CHAPTER I, SUBCHAPTER D, PART 403.—EXCISE TAX ON EMPLOYERS UNDER THE FEDERAL UNEMPLOYMENT TAX ACT

Regulations 107 amended with respect to proof of credit in connection with contributions under a State unemployment compensation law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

Regulations 107 [26 CFR, part 403], relating to the excise tax on employers under the Federal Unemployment Tax Act (subchapter C, chapter 9, Internal Revenue Code), are hereby amended as follows:

PARAGRAPH 1. Section 403.401(f) [26 CFR 403.401(f)] is amended by striking out "Commissioner under oath" and inserting in lieu thereof "collector (or, if the return was filed prior to January 1, 1952, the Commissioner)".

PAR. 2. Section 403.403(a), as amended by Treasury Decision 5383 [C. B. 1944, 560], approved June 28, 1944 [26 CFR 403.403(a)], is further amended as follows:

(A) By striking out in the first sentence the word "Commissioner" and inserting in lieu thereof "collector (or, if the return was filed prior to January 1, 1952, the Commissioner)".

(B) By inserting in the last sentence after the word "Commissioner" the words "or the collector".

PAR. 3. Section 403.403(b) [26 CFR 403.403(b)] is amended as follows:

(A) By striking out in the first sentence the word "Commissioner" and inserting in lieu thereof "collector (or, if the return was filed prior to January 1, 1952, the Commissioner)".

(B) By inserting in the last sentence after the word "Commissioner" the words "or the collector".

PAR. 4. Section 403.403(c) [26 CFR 403.403(c)] is amended as follows:

(A) By striking out the heading and inserting in lieu thereof the following: "(c) *Additional credit under section 1601(b) of the Act.*— (1) *Returns filed prior to January 1, 1952.*"

(B) By inserting in the first sentence immediately after the words "the tax for any calendar year" the words "with respect to which a return was filed prior to January 1, 1952,".

(C) By striking out the subparagraph designations "(1)" and "(2)" and inserting in lieu thereof "(i)" and "(ii)", respectively.

(D) By adding at the end of such section the following:

(2) *Returns filed after December 31, 1951.*—Additional credit under section 1601(b) of the Act shall not be allowed against the tax for any calendar year with respect to which a return is filed after December 31, 1951, unless there is submitted:

(i) To the Commissioner a certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing the highest rate of contributions applied under the State law in such calendar year to any person having individuals in his employ; and

(ii) To the collector a certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing for the taxpayer:

(A) The total remuneration with respect to which contributions were required to be paid by the taxpayer under the State law with respect to such calendar year; and

(B) The rate of contributions applied to the taxpayer under the State law with respect to such calendar year.

If under the law of such State different rates of contributions were applied to the taxpayer during particular periods of such calendar year, the certificate shall set forth the information called for in (A) and (B) with respect to each such period.

(iii) Such other or additional proof as the Commissioner or the collector may deem necessary to establish the right to the additional credit provided for under section 1601(b) of the Act.

Because this Treasury Decision merely makes certain technical amendments made necessary by reason of the delegation of certain functions to collectors of internal revenue, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued under the authority contained in sections 1609 and 3791 of the Internal Revenue Code (53 Stat. 188, 467; 26 U. S. C. 1609, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved March 11, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 13, 1952, 8:49 a. m.)

SECTION 1601: Credits against tax.
REGULATIONS 107, SECTION 403.403: Proof of credit.

Change in procedure for submitting information for allowance of additional credit. (See T. D. 5888, page 194.)

CHAPTER 9, SUBCHAPTER D.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

SECTION 1621: Definitions. 1952–9–13812
REGULATIONS 116, SECTION 405.102: Exclusions from wages. T. D. 5891
(Also Section 1622; Regulations 116, Sections 405.205 and 405.206.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 405.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Regulations 116 amended to conform to sections 201, 202, 204, 305, and 310 of the Revenue Act of 1951.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 116 [26 CFR, part 405] to sections 201, 202, 204, 305, and 310 of the Revenue Act of 1951, approved October 20, 1951, such regulations are hereby amended as follows:

PARAGRAPH 1. There is inserted immediately preceding the caption "SEC. 209(c) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1950 * * *", as inserted by Treasury Decision 5828 [C. B. 1951-1, 111], approved January 22, 1951, as set forth preceding section 405.101 [26 CFR 405.101], the following:

> SEC. 305. COMPENSATION OF CERTAIN MEMBERS OF THE ARMED FORCES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].
>
> * * * * * * *
>
> (c) WITHHOLDING ON WAGES.—Section 1621(a)(1) (relating to definition of the term "wages") is hereby amended to read as follows:
>
> "(1) for active service as a member of the armed forces of the United States performed prior to January 1, 1954, in a month for which such member is entitled to the benefits of section 22(b)(13), or".
>
> (d) EFFECTIVE DATES.—* * * The amendment made by subsection (c) shall be applicable with respect to wages paid after the tenth day following the date of the enactment of this Act.

PAR. 2. Section 405.102(b), as amended by Treasury Decision 5828 [26 CFR 405.102(b)], is further amended as follows:

(A) By inserting immediately after "November 1, 1950," in the second sentence "and before October 31, 1951,", so that the sentence will read as follows:

Remuneration paid on or after November 1, 1950, and before October 31, 1951, for active service, as a member of the Armed Forces of the United States, performed in a month during any part of which such member served in a combat zone (as determined under section 22(b)(13)) is excepted from the definition of the term "wages" and is, therefore, not subject to withholding.

(B) By inserting immediately after such second sentence the following:

Remuneration paid on or after October 31, 1951, for active service, as a member of the Armed Forces of the United States, performed prior to January 1, 1954, in a month during any part of which such member served in such a combat zone or is hospitalized at any place as a result of wounds, disease, or injury incurred while serving in such a combat zone, is also excepted from the definition of the term "wages" and is, therefore, not subject to withholding. The exception with respect to hospitalization is applicable, however, only if during all of such month there are combatant activities in some combat zone (as determined under section 22(b)(13)).

PAR. 3. There is inserted immediately preceding section 405.201 [26 CFR 405.201] the following:

SEC. 201. PERCENTAGE METHOD OF WITHHOLDING [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Section 1622(a) (relating to percentage method of withholding on wages) is hereby amended by inserting before the period at the end thereof the following: ", except that in the case of wages paid on or after November 1, 1951, and before January 1, 1954, the tax shall be equal to 20 per centum of such excess in lieu of 18 per centum".

SEC. 202. WAGE BRACKET WITHHOLDING [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

So much of section 1622(c)(1) as precedes the tables in such section is hereby amended to read as follows:

"(1) (A) Wages paid after October 31, 1951, and before January 1, 1954.—At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee after October 31, 1951, and before January 1, 1954, a tax determined in accordance with the following tables, which shall be in lieu of the tax required to be deducted and withheld under subsection (a):

"If the payroll period with respect to an employee is weekly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$13	20% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$13	$14	$2.70	.10	0	0	0	0	0	0	0	0	0
$14	$15	2.90	.30	0	0	0	0	0	0	0	0	0
$15	$16	3.10	.50	0	0	0	0	0	0	0	0	0
$16	$17	3.30	.70	0	0	0	0	0	0	0	0	0
$17	$18	3.50	.90	0	0	0	0	0	0	0	0	0
$18	$19	3.70	1.10	0	0	0	0	0	0	0	0	0
$19	$20	3.90	1.30	0	0	0	0	0	0	0	0	0
$20	$21	4.10	1.50	0	0	0	0	0	0	0	0	0
$21	$22	4.30	1.70	0	0	0	0	0	0	0	0	0
$22	$23	4.50	1.90	0	0	0	0	0	0	0	0	0
$23	$24	4.70	2.10	0	0	0	0	0	0	0	0	0
$24	$25	4.90	2.30	0	0	0	0	0	0	0	0	0
$25	$26	5.10	2.50	0	0	0	0	0	0	0	0	0
$26	$27	5.30	2.70	.20	0	0	0	0	0	0	0	0

"If the payroll period with respect to an employee is weekly—Continued

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$27	$28	$5.50	$2.90	$0.40	$0	$0	$0	$0	$0	$0	$0	$0
$28	$29	5.70	3.10	.60	0	0	0	0	0	0	0	0
$29	$30	5.90	3.30	.80	0	0	0	0	0	0	0	0
$30	$31	6.10	3.50	1.00	0	0	0	0	0	0	0	0
$31	$32	6.30	3.70	1.20	0	0	0	0	0	0	0	0
$32	$33	6.50	3.90	1.40	0	0	0	0	0	0	0	0
$33	$34	6.70	4.10	1.60	0	0	0	0	0	0	0	0
$34	$35	6.90	4.30	1.80	0	0	0	0	0	0	0	0
$35	$36	7.10	4.50	2.00	0	0	0	0	0	0	0	0
$36	$37	7.30	4.70	2.20	0	0	0	0	0	0	0	0
$37	$38	7.50	4.90	2.40	0	0	0	0	0	0	0	0
$38	$39	7.70	5.10	2.60	0	0	0	0	0	0	0	0
$39	$40	7.90	5.30	2.80	.20	0	0	0	0	0	0	0
$40	$41	8.10	5.50	3.00	.40	0	0	0	0	0	0	0
$41	$42	8.30	5.70	3.20	.60	0	0	0	0	0	0	0
$42	$43	8.50	5.90	3.40	.80	0	0	0	0	0	0	0
$43	$44	8.70	6.10	3.60	1.00	0	0	0	0	0	0	0
$44	$45	8.90	6.30	3.80	1.20	0	0	0	0	0	0	0
$45	$46	9.10	6.50	4.00	1.40	0	0	0	0	0	0	0
$46	$47	9.30	6.70	4.20	1.60	0	0	0	0	0	0	0
$47	$48	9.50	6.90	4.40	1.80	0	0	0	0	0	0	0
$48	$49	9.70	7.10	4.60	2.00	0	0	0	0	0	0	0
$49	$50	9.90	7.30	4.80	2.20	0	0	0	0	0	0	0
$50	$51	10.10	7.50	5.00	2.40	0	0	0	0	0	0	0
$51	$52	10.30	7.70	5.20	2.60	0	0	0	0	0	0	0
$52	$53	10.50	7.90	5.40	2.80	.20	0	0	0	0	0	0
$53	$54	10.70	8.10	5.60	3.00	.40	0	0	0	0	0	0
$54	$55	10.90	8.30	5.80	3.20	.60	0	0	0	0	0	0
$55	$56	11.10	8.50	6.00	3.40	.80	0	0	0	0	0	0
$56	$57	11.30	8.70	6.20	3.60	1.00	0	0	0	0	0	0
$57	$58	11.50	8.90	6.40	3.80	1.20	0	0	0	0	0	0
$58	$59	11.70	9.10	6.60	4.00	1.40	0	0	0	0	0	0
$59	$60	11.90	9.30	6.80	4.20	1.60	0	0	0	0	0	0
$60	$62	12.20	9.60	7.10	4.50	1.90	0	0	0	0	0	0
$62	$64	12.60	10.00	7.50	4.90	2.30	0	0	0	0	0	0
$64	$66	13.00	10.40	7.90	5.30	2.70	.20	0	0	0	0	0
$66	$68	13.40	10.80	8.30	5.70	3.10	.60	0	0	0	0	0
$68	$70	13.80	11.20	8.70	6.10	3.50	1.00	0	0	0	0	0
$70	$72	14.20	11.60	9.10	6.50	3.90	1.40	0	0	0	0	0
$72	$74	14.60	12.00	9.50	6.90	4.30	1.80	0	0	0	0	0
$74	$76	15.00	12.40	9.90	7.30	4.70	2.20	0	0	0	0	0
$76	$78	15.40	12.80	10.30	7.70	5.10	2.60	0	0	0	0	0
$78	$80	15.80	13.20	10.70	8.10	5.50	3.00	.40	0	0	0	0
$80	$82	16.20	13.60	11.10	8.50	5.90	3.40	.80	0	0	0	0
$82	$84	16.60	14.00	11.50	8.90	6.30	3.80	1.20	0	0	0	0
$84	$86	17.00	14.40	11.90	9.30	6.70	4.20	1.60	0	0	0	0
$86	$88	17.40	14.80	12.30	9.70	7.10	4.60	2.00	0	0	0	0
$88	$90	17.80	15.20	12.70	10.10	7.50	5.00	2.40	0	0	0	0
$90	$92	18.20	15.60	13.10	10.50	7.90	5.40	2.80	.30	0	0	0
$92	$94	18.60	16.00	13.50	10.90	8.30	5.80	3.20	.70	0	0	0
$94	$96	19.00	16.40	13.90	11.30	8.70	6.20	3.60	1.10	0	0	0
$96	$98	19.40	16.80	14.30	11.70	9.10	6.60	4.00	1.50	0	0	0
$98	$100	19.80	17.20	14.70	12.10	9.50	7.00	4.40	1.90	0	0	0
$100	$105	20.50	17.90	15.40	12.80	10.20	7.70	5.10	2.60	0	0	0
$105	$110	21.50	18.90	16.40	13.80	11.20	8.70	6.10	3.60	1.00	0	0
$110	$115	22.50	19.90	17.40	14.80	12.20	9.70	7.10	4.60	2.00	0	0
$115	$120	23.50	20.90	18.40	15.80	13.20	10.70	8.10	5.60	3.00	.40	0
$120	$125	24.50	21.90	19.40	16.80	14.20	11.70	9.10	6.60	4.00	1.40	0
$125	$130	25.50	22.90	20.40	17.80	15.20	12.70	10.10	7.60	5.00	2.40	0
$130	$135	26.50	23.90	21.40	18.80	16.20	13.70	11.10	8.60	6.00	3.40	.90
$135	$140	27.50	24.90	22.40	19.80	17.20	14.70	12.10	9.60	7.00	4.40	1.90
$140	$145	28.50	25.90	23.40	20.80	18.20	15.70	13.10	10.60	8.00	5.40	2.90
$145	$150	29.50	26.90	24.40	21.80	19.20	16.70	14.10	11.60	9.00	6.40	3.90
$150	$160	31.00	28.40	25.90	23.30	20.70	18.20	15.60	13.10	10.50	7.90	5.40
$160	$170	33.00	30.40	27.90	25.30	22.70	20.20	17.60	15.10	12.50	9.90	7.40
$170	$180	35.00	32.40	29.90	27.30	24.70	22.20	19.60	17.10	14.50	11.90	9.40
$180	$190	37.00	34.40	31.90	29.30	26.70	24.20	21.60	19.10	16.50	13.90	11.40
$190	$200	39.00	36.40	33.90	31.30	28.70	26.20	23.60	21.10	18.50	15.90	13.40
$200 and over		20 percent of the excess over $200 plus—										
		40.00	37.40	34.90	32.30	29.70	27.20	24.60	22.10	19.50	16.90	14.40

"If the payroll period with respect to an employee is biweekly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$26	20% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$26	$28	$5.40	.30	0	0	0	0	0	0	0	0	0
$28	$30	5.80	.70	0	0	0	0	0	0	0	0	0
$30	$32	6.20	1.10	0	0	0	0	0	0	0	0	0
$32	$34	6.60	1.50	0	0	0	0	0	0	0	0	0
$34	$36	7.00	1.90	0	0	0	0	0	0	0	0	0
$36	$38	7.40	2.30	0	0	0	0	0	0	0	0	0
$38	$40	7.80	2.70	0	0	0	0	0	0	0	0	0
$40	$42	8.20	3.10	0	0	0	0	0	0	0	0	0
$42	$44	8.60	3.50	0	0	0	0	0	0	0	0	0
$44	$46	9.00	3.90	0	0	0	0	0	0	0	0	0
$46	$48	9.40	4.30	0	0	0	0	0	0	0	0	0
$48	$50	9.80	4.70	0	0	0	0	0	0	0	0	0
$50	$52	10.20	5.10	0	0	0	0	0	0	0	0	0
$52	$54	10.60	5.50	.30	0	0	0	0	0	0	0	0
$54	$56	11.00	5.90	.70	0	0	0	0	0	0	0	0
$56	$58	11.40	6.30	1.10	0	0	0	0	0	0	0	0
$58	$60	11.80	6.70	1.50	0	0	0	0	0	0	0	0
$60	$62	12.20	7.10	1.90	0	0	0	0	0	0	0	0
$62	$64	12.60	7.50	2.30	0	0	0	0	0	0	0	0
$64	$66	13.00	7.90	2.70	0	0	0	0	0	0	0	0
$66	$68	13.40	8.30	3.10	0	0	0	0	0	0	0	0
$68	$70	13.80	8.70	3.50	0	0	0	0	0	0	0	0
$70	$72	14.20	9.10	3.90	0	0	0	0	0	0	0	0
$72	$74	14.60	9.50	4.30	0	0	0	0	0	0	0	0
$74	$76	15.00	9.90	4.70	0	0	0	0	0	0	0	0
$76	$78	15.40	10.30	5.10	0	0	0	0	0	0	0	0
$78	$80	15.80	10.70	5.50	.40	0	0	0	0	0	0	0
$80	$82	16.20	11.10	5.90	.80	0	0	0	0	0	0	0
$82	$84	16.60	11.50	6.30	1.20	0	0	0	0	0	0	0
$84	$86	17.00	11.90	6.70	1.60	0	0	0	0	0	0	0
$86	$88	17.40	12.30	7.10	2.00	0	0	0	0	0	0	0
$88	$90	17.80	12.70	7.50	2.40	0	0	0	0	0	0	0
$90	$92	18.20	13.10	7.90	2.80	0	0	0	0	0	0	0
$92	$94	18.60	13.50	8.30	3.20	0	0	0	0	0	0	0
$94	$96	19.00	13.90	8.70	3.60	0	0	0	0	0	0	0
$96	$98	19.40	14.30	9.10	4.00	0	0	0	0	0	0	0
$98	$100	19.80	14.70	9.50	4.40	0	0	0	0	0	0	0
$100	$102	20.20	15.10	9.90	4.80	0	0	0	0	0	0	0
$102	$104	20.60	15.50	10.30	5.20	.10	0	0	0	0	0	0
$104	$106	21.00	15.90	10.70	5.60	.50	0	0	0	0	0	0
$106	$108	21.40	16.30	11.10	6.00	.90	0	0	0	0	0	0
$108	$110	21.80	16.70	11.50	6.40	1.30	0	0	0	0	0	0
$110	$112	22.20	17.10	11.90	6.80	1.70	0	0	0	0	0	0
$112	$114	22.60	17.50	12.30	7.20	2.10	0	0	0	0	0	0
$114	$116	23.00	17.90	12.70	7.60	2.50	0	0	0	0	0	0
$116	$118	23.40	18.30	13.10	8.00	2.90	0	0	0	0	0	0
$118	$120	23.80	18.70	13.50	8.40	3.30	0	0	0	0	0	0
$120	$124	24.40	19.30	14.10	9.00	3.90	0	0	0	0	0	0
$124	$128	25.20	20.10	14.90	9.80	4.70	0	0	0	0	0	0
$128	$132	26.00	20.90	15.70	10.60	5.50	.40	0	0	0	0	0
$132	$136	26.80	21.70	16.50	11.40	6.30	1.20	0	0	0	0	0
$136	$140	27.60	22.50	17.30	12.20	7.10	2.00	0	0	0	0	0
$140	$144	28.40	23.30	18.10	13.00	7.90	2.80	0	0	0	0	0
$144	$148	29.20	24.10	18.90	13.80	8.70	3.60	0	0	0	0	0
$148	$152	30.00	24.90	19.70	14.60	9.50	4.40	0	0	0	0	0
$152	$156	30.80	25.70	20.50	15.40	10.30	5.20	0	0	0	0	0
$156	$160	31.60	26.50	21.30	16.20	11.10	6.00	.80	0	0	0	0
$160	$164	32.40	27.30	22.10	17.00	11.90	6.80	1.60	0	0	0	0
$164	$168	33.20	28.10	22.90	17.80	12.70	7.60	2.40	0	0	0	0
$168	$172	34.00	28.90	23.70	18.60	13.50	8.40	3.20	0	0	0	0
$172	$176	34.80	29.70	24.50	19.40	14.30	9.20	4.00	0	0	0	0
$176	$180	35.60	30.50	25.30	20.20	15.10	10.00	4.80	0	0	0	0
$180	$184	36.40	31.30	26.10	21.00	15.90	10.80	5.60	.50	0	0	0
$184	$188	37.20	32.10	26.90	21.80	16.70	11.60	6.40	1.30	0	0	0
$188	$192	38.00	32.90	27.70	22.60	17.50	12.40	7.20	2.10	0	0	0
$192	$196	38.80	33.70	28.50	23.40	18.30	13.20	8.00	2.90	0	0	0
$196	$200	39.60	34.50	29.30	24.20	19.10	14.00	8.80	3.70	0	0	0
$200	$210	41.00	35.90	30.70	25.60	20.50	15.40	10.20	5.10	0	0	0
$210	$220	43.00	37.90	32.70	27.60	22.50	17.40	12.20	7.10	2.00	0	0
$220	$230	45.00	39.90	34.70	29.60	24.50	19.40	14.20	9.10	4.00	0	0
$230	$240	47.00	41.90	36.70	31.60	26.50	21.40	16.20	11.10	6.00	.80	0
$240	$250	49.00	43.90	38.70	33.60	28.50	23.40	18.20	13.10	8.00	2.80	0
$250	$260	51.00	45.90	40.70	35.60	30.50	25.40	20.20	15.10	10.00	4.80	0
$260	$270	53.00	47.90	42.70	37.60	32.50	27.40	22.20	17.10	12.00	6.80	1.70
$270	$280	55.00	49.90	44.70	39.60	34.50	29.40	24.20	19.10	14.00	8.80	3.70
$280	$290	57.00	51.90	46.70	41.60	36.50	31.40	26.20	21.10	16.00	10.80	5.70

"If the payroll period with respect to an employee is biweekly—Continued

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$290	$300	$59.00	53.90	$48.70	$43.60	$38.50	$33.40	$28.20	$23.10	$18.00	$12.80	$7.70
$300	$320	62.00	56.90	51.70	46.60	41.50	36.40	31.20	26.10	21.00	15.80	10.70
$320	$340	66.00	60.90	55.70	50.60	45.50	40.40	35.20	30.10	25.00	19.80	14.70
$340	$360	70.00	64.90	59.70	54.60	49.50	44.40	39.20	34.10	29.00	23.80	18.70
$360	$380	74.00	68.90	63.70	58.60	53.50	48.40	43.20	38.10	33.00	27.80	22.70
$380	$400	78.00	72.90	67.70	62.60	57.50	52.40	47.20	42.10	37.00	31.80	26.70
$400 and over		20 percent of the excess over $400 plus—										
		80.00	74.90	69.70	64.60	59.50	54.40	49.20	44.10	39.00	33.80	28.70

"If the payroll period with respect to an employee is semimonthly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$28	20% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$28	$30	$5.80	.20	0	0	0	0	0	0	0	0	0
$30	$32	6.20	.60	0	0	0	0	0	0	0	0	0
$32	$34	6.60	1.00	0	0	0	0	0	0	0	0	0
$34	$36	7.00	1.40	0	0	0	0	0	0	0	0	0
$36	$38	7.40	1.80	0	0	0	0	0	0	0	0	0
$38	$40	7.80	2.20	0	0	0	0	0	0	0	0	0
$40	$42	8.20	2.60	0	0	0	0	0	0	0	0	0
$42	$44	8.60	3.00	0	0	0	0	0	0	0	0	0
$44	$46	9.00	3.40	0	0	0	0	0	0	0	0	0
$46	$48	9.40	3.80	0	0	0	0	0	0	0	0	0
$48	$50	9.80	4.20	0	0	0	0	0	0	0	0	0
$50	$52	10.20	4.60	0	0	0	0	0	0	0	0	0
$52	$54	10.60	5.00	0	0	0	0	0	0	0	0	0
$54	$56	11.00	5.40	0	0	0	0	0	0	0	0	0
$56	$58	11.40	5.80	.30	0	0	0	0	0	0	0	0
$58	$60	11.80	6.20	.70	0	0	0	0	0	0	0	0
$60	$62	12.20	6.60	1.10	0	0	0	0	0	0	0	0
$62	$64	12.60	7.00	1.50	0	0	0	0	0	0	0	0
$64	$66	13.00	7.40	1.90	0	0	0	0	0	0	0	0
$66	$68	13.40	7.80	2.30	0	0	0	0	0	0	0	0
$68	$70	13.80	8.20	2.70	0	0	0	0	0	0	0	0
$70	$72	14.20	8.60	3.10	0	0	0	0	0	0	0	0
$72	$74	14.60	9.00	3.50	0	0	0	0	0	0	0	0
$74	$76	15.00	9.40	3.90	0	0	0	0	0	0	0	0
$76	$78	15.40	9.80	4.30	0	0	0	0	0	0	0	0
$78	$80	15.80	10.20	4.70	0	0	0	0	0	0	0	0
$80	$82	16.20	10.60	5.10	0	0	0	0	0	0	0	0
$82	$84	16.60	11.00	5.50	0	0	0	0	0	0	0	0
$84	$86	17.00	11.40	5.90	.30	0	0	0	0	0	0	0
$86	$88	17.40	11.80	6.30	.70	0	0	0	0	0	0	0
$88	$90	17.80	12.20	6.70	1.10	0	0	0	0	0	0	0
$90	$92	18.20	12.60	7.10	1.50	0	0	0	0	0	0	0
$92	$94	18.60	13.00	7.50	1.90	0	0	0	0	0	0	0
$94	$96	19.00	13.40	7.90	2.30	0	0	0	0	0	0	0
$96	$98	19.40	13.80	8.30	2.70	0	0	0	0	0	0	0
$98	$100	19.80	14.20	8.70	3.10	0	0	0	0	0	0	0
$100	$102	20.20	14.60	9.10	3.50	0	0	0	0	0	0	0
$102	$104	20.60	15.00	9.50	3.90	0	0	0	0	0	0	0
$104	$106	21.00	15.40	9.90	4.30	0	0	0	0	0	0	0
$106	$108	21.40	15.80	10.30	4.70	0	0	0	0	0	0	0
$108	$110	21.80	16.20	10.70	5.10	0	0	0	0	0	0	0
$110	$112	22.20	16.60	11.10	5.50	0	0	0	0	0	0	0
$112	$114	22.60	17.00	11.50	5.90	.40	0	0	0	0	0	0
$114	$116	23.00	17.40	11.90	6.30	.80	0	0	0	0	0	0
$116	$118	23.40	17.80	12.30	6.70	1.20	0	0	0	0	0	0
$118	$120	23.80	18.20	12.70	7.10	1.60	0	0	0	0	0	0
$120	$124	24.40	18.80	13.30	7.70	2.20	0	0	0	0	0	0
$124	$128	25.20	19.60	14.10	8.50	3.00	0	0	0	0	0	0

"If the payroll period with respect to an employee is semimonthly—Continued

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$128	$132	$26.00	$20.40	$14.90	$9.30	$3.80	$0	$0	$0	$0	$0	$0
$132	$136	26.80	21.20	15.70	10.10	4.60	0	0	0	0	0	0
$136	$140	27.60	22.00	16.50	10.90	5.40	0	0	0	0	0	0
$140	$144	28.40	22.80	17.30	11.70	6.20	.60	0	0	0	0	0
$144	$148	29.20	23.60	18.10	12.50	7.00	1.40	0	0	0	0	0
$148	$152	30.00	24.40	18.90	13.30	7.80	2.20	0	0	0	0	0
$152	$156	30.80	25.20	19.70	14.10	8.60	3.00	0	0	0	0	0
$156	$160	31.60	26.00	20.50	14.90	9.40	3.80	0	0	0	0	0
$160	$164	32.40	26.80	21.30	15.70	10.20	4.60	0	0	0	0	0
$164	$168	33.20	27.60	22.10	16.50	11.00	5.40	0	0	0	0	0
$168	$172	34.00	28.40	22.90	17.30	11.80	6.20	.70	0	0	0	0
$172	$176	34.80	29.20	23.70	18.10	12.60	7.00	1.50	0	0	0	0
$176	$180	35.60	30.00	24.50	18.90	13.40	7.80	2.30	0	0	0	0
$180	$184	36.40	30.80	25.30	19.70	14.20	8.60	3.10	0	0	0	0
$184	$188	37.20	31.60	26.10	20.50	15.00	9.40	3.90	0	0	0	0
$188	$192	38.00	32.40	26.90	21.30	15.80	10.20	4.70	0	0	0	0
$192	$196	38.80	33.20	27.70	22.10	16.60	11.00	5.50	0	0	0	0
$196	$200	39.60	34.00	28.50	22.90	17.40	11.80	6.30	.70	0	0	0
$200	$210	41.00	35.40	29.90	24.30	18.80	13.20	7.70	2.10	0	0	0
$210	$220	43.00	37.40	31.90	26.30	20.80	15.20	9.70	4.10	0	0	0
$220	$230	45.00	39.40	33.90	28.30	22.80	17.20	11.70	6.10	.60	0	0
$230	$240	47.00	41.40	35.90	30.30	24.80	19.20	13.70	8.10	2.60	0	0
$240	$250	49.00	43.40	37.90	32.30	26.80	21.20	15.70	10.10	4.60	0	0
$250	$260	51.00	45.40	39.90	34.30	28.80	23.20	17.70	12.10	6.60	1.00	0
$260	$270	53.00	47.40	41.90	36.30	30.80	25.20	19.70	14.10	8.60	3.00	0
$270	$280	55.00	49.40	43.90	38.30	32.80	27.20	21.70	16.10	10.60	5.00	0
$280	$290	57.00	51.40	45.90	40.30	34.80	29.20	23.70	18.10	12.60	7.00	1.40
$290	$300	59.00	53.40	47.90	42.30	36.80	31.20	25.70	20.10	14.60	9.00	3.40
$300	$320	62.00	56.40	50.90	45.30	39.80	34.20	28.70	23.10	17.60	12.00	6.40
$320	$340	66.00	60.40	54.90	49.30	43.80	38.20	32.70	27.10	21.60	16.00	10.40
$340	$360	70.00	64.40	58.90	53.30	47.80	42.20	36.70	31.10	25.60	20.00	14.40
$360	$380	74.00	68.40	62.90	57.30	51.80	46.20	40.70	35.10	29.60	24.00	18.40
$380	$400	78.00	72.40	66.90	61.30	55.80	50.20	44.70	39.10	33.60	28.00	22.40
$400	$420	82.00	76.40	70.90	65.30	59.80	54.20	48.70	43.10	37.60	32.00	26.40
$420	$440	86.00	80.40	74.90	69.30	63.80	58.20	52.70	47.10	41.60	36.00	30.40
$440	$460	90.00	84.40	78.90	73.30	67.80	62.20	56.70	51.10	45.60	40.00	34.40
$460	$480	94.00	88.40	82.90	77.30	71.80	66.20	60.70	55.10	49.60	44.00	38.40
$480	$500	98.00	92.40	86.90	81.30	75.80	70.20	64.70	59.10	53.60	48.00	42.40
$500 and over		20 percent of the excess over $500 plus—										
		100.00	94.40	88.90	83.30	77.80	72.20	66.70	61.10	55.60	50.00	44.40

"If the payroll period with respect to an employee is monthly

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$56	20% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$56	$60	$11.60	.50	0	0	0	0	0	0	0	0	0
$60	$64	12.40	1.30	0	0	0	0	0	0	0	0	0
$64	$68	13.20	2.10	0	0	0	0	0	0	0	0	0
$68	$72	14.00	2.90	0	0	0	0	0	0	0	0	0
$72	$76	14.80	3.70	0	0	0	0	0	0	0	0	0
$76	$80	15.60	4.50	0	0	0	0	0	0	0	0	0
$80	$84	16.40	5.30	0	0	0	0	0	0	0	0	0
$84	$88	17.20	6.10	0	0	0	0	0	0	0	0	0
$88	$92	18.00	6.90	0	0	0	0	0	0	0	0	0
$92	$96	18.80	7.70	0	0	0	0	0	0	0	0	0
$96	$100	19.60	8.50	0	0	0	0	0	0	0	0	0
$100	$104	20.40	9.30	0	0	0	0	0	0	0	0	0
$104	$108	21.20	10.10	0	0	0	0	0	0	0	0	0
$108	$112	22.00	10.90	0	0	0	0	0	0	0	0	0
$112	$116	22.80	11.70	.60	0	0	0	0	0	0	0	0
$116	$120	23.60	12.50	1.40	0	0	0	0	0	0	0	0

"If the payroll period with respect to an employee is monthly—Continued

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$120	$124	$24.40	$13.30	$2.20	$0	$0	$0	$0	$0	$0	$0	$0
$124	$128	25.20	14.10	3.00	0	0	0	0	0	0	0	0
$128	$132	26.00	14.90	3.80	0	0	0	0	0	0	0	0
$132	$136	26.80	15.70	4.60	0	0	0	0	0	0	0	0
$136	$140	27.60	16.50	5.40	0	0	0	0	0	0	0	0
$140	$144	28.40	17.30	6.20	0	0	0	0	0	0	0	0
$144	$148	29.20	18.10	7.00	0	0	0	0	0	0	0	0
$148	$152	30.00	18.90	7.80	0	0	0	0	0	0	0	0
$152	$156	30.80	19.70	8.60	0	0	0	0	0	0	0	0
$156	$160	31.60	20.50	9.40	0	0	0	0	0	0	0	0
$160	$164	32.40	21.30	10.20	0	0	0	0	0	0	0	0
$164	$168	33.20	22.10	11.00	0	0	0	0	0	0	0	0
$168	$172	34.00	22.90	11.80	.70	0	0	0	0	0	0	0
$172	$176	34.80	23.70	12.60	1.50	0	0	0	0	0	0	0
$176	$180	35.60	24.50	13.40	2.30	0	0	0	0	0	0	0
$180	$184	36.40	25.30	14.20	3.10	0	0	0	0	0	0	0
$184	$188	37.20	26.10	15.00	3.90	0	0	0	0	0	0	0
$188	$192	38.00	26.90	15.80	4.70	0	0	0	0	0	0	0
$192	$196	38.80	27.70	16.60	5.50	0	0	0	0	0	0	0
$196	$200	39.60	28.50	17.40	6.30	0	0	0	0	0	0	0
$200	$204	40.40	29.30	18.20	7.10	0	0	0	0	0	0	0
$204	$208	41.20	30.10	19.00	7.90	0	0	0	0	0	0	0
$208	$212	42.00	30.90	19.80	8.70	0	0	0	0	0	0	0
$212	$216	42.80	31.70	20.60	9.50	0	0	0	0	0	0	0
$216	$220	43.60	32.50	21.40	10.30	0	0	0	0	0	0	0
$220	$224	44.40	33.30	22.20	11.10	0	0	0	0	0	0	0
$224	$228	45.20	34.10	23.00	11.90	.80	0	0	0	0	0	0
$228	$232	46.00	34.90	23.80	12.70	1.60	0	0	0	0	0	0
$232	$236	46.80	35.70	24.60	13.50	2.40	0	0	0	0	0	0
$236	$240	47.60	36.50	25.40	14.30	3.20	0	0	0	0	0	0
$240	$248	48.80	37.70	26.60	15.50	4.40	0	0	0	0	0	0
$248	$256	50.40	39.30	28.20	17.10	6.00	0	0	0	0	0	0
$256	$264	52.00	40.90	29.80	18.70	7.60	0	0	0	0	0	0
$264	$272	53.60	42.50	31.40	20.30	9.20	0	0	0	0	0	0
$272	$280	55.20	44.10	33.00	21.90	10.80	0	0	0	0	0	0
$280	$288	56.80	45.70	34.60	23.50	12.40	1.20	0	0	0	0	0
$288	$296	58.40	47.30	36.20	25.10	14.00	2.80	0	0	0	0	0
$296	$304	60.00	48.90	37.80	26.70	15.60	4.40	0	0	0	0	0
$304	$312	61.60	50.50	39.40	28.30	17.20	6.00	0	0	0	0	0
$312	$320	63.20	52.10	41.00	29.90	18.80	7.60	0	0	0	0	0
$320	$328	64.80	53.70	42.60	31.50	20.40	9.20	0	0	0	0	0
$328	$336	66.40	55.30	44.20	33.10	22.00	10.80	0	0	0	0	0
$336	$344	68.00	56.90	45.80	34.70	23.60	12.40	1.30	0	0	0	0
$344	$352	69.60	58.50	47.40	36.30	25.20	14.00	2.90	0	0	0	0
$352	$360	71.20	60.10	49.00	37.90	26.80	15.60	4.50	0	0	0	0
$360	$368	72.80	61.70	50.60	39.50	28.40	17.20	6.10	0	0	0	0
$368	$376	74.40	63.30	52.20	41.10	30.00	18.80	7.70	0	0	0	0
$376	$384	76.00	64.90	53.80	42.70	31.60	20.40	9.30	0	0	0	0
$384	$392	77.60	66.50	55.40	44.30	33.20	22.00	10.90	0	0	0	0
$392	$400	79.20	68.10	57.00	45.90	34.80	23.60	12.50	1.40	0	0	0
$400	$420	82.00	70.90	59.80	48.70	37.60	26.40	15.30	4.20	0	0	0
$420	$440	86.00	74.90	63.80	52.70	41.60	30.40	19.30	8.20	0	0	0
$440	$460	90.00	78.90	67.80	56.70	45.60	34.40	23.30	12.20	1.10	0	0
$460	$480	94.00	82.90	71.80	60.70	49.60	38.40	27.30	16.20	5.10	0	0
$480	$500	98.00	86.90	75.80	64.70	53.60	42.40	31.30	20.20	9.10	0	0
$500	$520	102.00	90.90	79.80	68.70	57.60	46.40	35.30	24.20	13.10	2.00	0
$520	$540	106.00	94.90	83.80	72.70	61.60	50.40	39.30	28.20	17.10	6.00	0
$540	$560	110.00	98.90	87.80	76.70	65.60	54.40	43.30	32.20	21.10	10.00	0
$560	$580	114.00	102.90	91.80	80.70	69.60	58.40	47.30	36.20	25.10	14.00	2.90
$580	$600	118.00	106.90	95.80	84.70	73.60	62.40	51.30	40.20	29.10	18.00	6.90
$600	$640	124.00	112.90	101.80	90.70	79.60	68.40	57.30	46.20	35.10	24.00	12.90
$640	$680	132.00	120.90	109.80	98.70	87.60	76.40	65.30	54.20	43.10	32.00	20.90
$680	$720	140.00	128.90	117.80	106.70	95.60	84.40	73.30	62.20	51.10	40.00	28.99
$720	$760	148.00	136.90	125.80	114.70	103.60	92.40	81.30	70.20	59.10	48.00	36.90
$760	$800	156.00	144.90	133.80	122.70	111.60	100.40	89.30	78.20	67.10	56.00	44.90
$800	$840	164.00	152.90	141.80	130.70	119.00	108.40	97.30	86.20	75.10	64.00	52.90
$840	$880	172.00	160.90	149.80	138.70	127.60	116.40	105.30	94.20	83.10	72.00	60.90
$880	$920	180.00	168.90	157.80	146.70	135.60	124.40	113.30	102.20	91.10	80.00	68.90
$920	$960	188.00	176.90	165.80	154.70	143.60	132.40	121.30	110.20	99.10	88.00	76.90
$960	$1,000	196.00	184.90	173.80	162.70	151.60	140.40	129.30	118.20	107.10	96.00	84.90
$1,000 and over		20 percent of the excess over $1,000 plus—										
		200.00	188.90	177.80	166.70	155.60	144.40	133.30	122.20	111.10	100.00	88.90

"If the payroll period with respect to an employee is a daily payroll period or a miscellaneous payroll period

And the wages divided by the number of days in such period are—		And the number of withholding exemptions claimed is—										
At least—	But less than—	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
$0	$2.00	20% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2.00	$2.25	$0.40	.05	0	0	0	0	0	0	0	0	0
$2.25	$2.50	.45	.10	0	0	0	0	0	0	0	0	0
$2.50	$2.75	.50	.15	0	0	0	0	0	0	0	0	0
$2.75	$3.00	.55	.20	0	0	0	0	0	0	0	0	0
$3.00	$3.25	.60	.25	0	0	0	0	0	0	0	0	0
$3.25	$3.50	.65	.30	0	0	0	0	0	0	0	0	0
$3.50	$3.75	.70	.35	0	0	0	0	0	0	0	0	0
$3.75	$4.00	.75	.40	.05	0	0	0	0	0	0	0	0
$4.00	$4.25	.80	.45	.10	0	0	0	0	0	0	0	0
$4.25	$4.50	.85	.50	.15	0	0	0	0	0	0	0	0
$4.50	$4.75	.90	.55	.20	0	0	0	0	0	0	0	0
$4.75	$5.00	.95	.60	.25	0	0	0	0	0	0	0	0
$5.00	$5.25	1.00	.65	.30	0	0	0	0	0	0	0	0
$5.25	$5.50	1.05	.70	.35	0	0	0	0	0	0	0	0
$5.50	$5.75	1.10	.75	.40	.05	0	0	0	0	0	0	0
$5.75	$6.00	1.15	.80	.45	.10	0	0	0	0	0	0	0
$6.00	$6.25	1.20	.85	.50	.15	0	0	0	0	0	0	0
$6.25	$6.50	1.25	.90	.55	.20	0	0	0	0	0	0	0
$6.50	$6.75	1.30	.95	.60	.25	0	0	0	0	0	0	0
$6.75	$7.00	1.35	1.00	.65	.30	0	0	0	0	0	0	0
$7.00	$7.25	1.40	1.05	.70	.35	0	0	0	0	0	0	0
$7.25	$7.50	1.45	1.10	.75	.40	0	0	0	0	0	0	0
$7.50	$7.75	1.50	1.15	.80	.45	.05	0	0	0	0	0	0
$7.75	$8.00	1.55	1.20	.85	.50	.10	0	0	0	0	0	0
$8.00	$8.25	1.60	1.25	.90	.55	.15	0	0	0	0	0	0
$8.25	$8.50	1.65	1.30	.95	.60	.20	0	0	0	0	0	0
$8.50	$8.75	1.70	1.35	1.00	.65	.25	0	0	0	0	0	0
$8.75	$9.00	1.75	1.40	1.05	.70	.30	0	0	0	0	0	0
$9.00	$9.25	1.80	1.45	1.10	.75	.35	0	0	0	0	0	0
$9.25	$9.50	1.85	1.50	1.15	.80	.40	.05	0	0	0	0	0
$9.50	$9.75	1.90	1.55	1.20	.85	.45	.10	0	0	0	0	0
$9.75	$10.00	1.95	1.60	1.25	.90	.50	.15	0	0	0	0	0
$10.00	$10.50	2.05	1.70	1.30	.95	.60	.20	0	0	0	0	0
$10.50	$11.00	2.15	1.80	1.40	1.05	.70	.30	0	0	0	0	0
$11.00	$11.50	2.25	1.90	1.50	1.15	.80	.40	.05	0	0	0	0
$11.50	$12.00	2.35	2.00	1.60	1.25	.90	.50	.15	0	0	0	0
$12.00	$12.50	2.45	2.10	1.70	1.35	1.00	.60	.25	0	0	0	0
$12.50	$13.00	2.55	2.20	1.80	1.45	1.10	.70	.35	0	0	0	0
$13.00	$13.50	2.65	2.30	1.90	1.55	1.20	.80	.45	.10	0	0	0
$13.50	$14.00	2.75	2.40	2.00	1.65	1.30	.90	.55	.20	0	0	0
$14.00	$14.50	2.85	2.50	2.10	1.75	1.40	1.00	.65	.30	0	0	0
$14.50	$15.00	2.95	2.60	2.20	1.85	1.50	1.10	.75	.40	.05	0	0
$15.00	$15.50	3.05	2.70	2.30	1.95	1.60	1.20	.85	.50	.15	0	0
$15.50	$16.00	3.15	2.80	2.40	2.05	1.70	1.30	.95	.60	.25	0	0
$16.00	$16.50	3.25	2.90	2.50	2.15	1.80	1.40	1.05	.70	.35	0	0
$16.50	$17.00	3.35	3.00	2.60	2.25	1.90	1.50	1.15	.80	.45	.05	0
$17.00	$17.50	3.45	3.10	2.70	2.35	2.00	1.60	1.25	.90	.55	.15	0
$17.50	$18.00	3.55	3.20	2.80	2.45	2.10	1.70	1.35	1.00	.65	.25	0
$18.00	$18.50	3.65	3.30	2.90	2.55	2.20	1.80	1.45	1.10	.75	.35	0
$18.50	$19.00	3.75	3.40	3.00	2.65	2.30	1.90	1.55	1.20	.85	.45	.10
$19.00	$19.50	3.85	3.50	3.10	2.75	2.40	2.00	1.65	1.30	.95	.55	.20
$19.50	$20.00	3.95	3.60	3.20	2.85	2.50	2.10	1.75	1.40	1.05	.65	.30
$20.00	$21.00	4.10	3.75	3.35	3.00	2.65	2.25	1.90	1.55	1.20	.80	.45
$21.00	$22.00	4.30	3.95	3.55	3.20	2.85	2.45	2.10	1.75	1.40	1.00	.65
$22.00	$23.00	4.50	4.15	3.75	3.40	3.05	2.65	2.30	1.95	1.60	1.20	.85
$23.00	$24.00	4.70	4.35	3.95	3.60	3.25	2.85	2.50	2.15	1.80	1.40	1.05
$24.00	$25.00	4.90	4.55	4.15	3.80	3.45	3.05	2.70	2.35	2.00	1.60	1.25
$25.00	$26.00	5.10	4.75	4.35	4.00	3.65	3.25	2.90	2.55	2.20	1.80	1.45
$26.00	$27.00	5.30	4.95	4.55	4.20	3.85	3.45	3.10	2.75	2.40	2.00	1.65
$27.00	$28.00	5.50	5.15	4.75	4.40	4.05	3.65	3.30	2.95	2.60	2.20	1.85
$28.00	$29.00	5.70	5.35	4.95	4.60	4.25	3.85	3.50	3.15	2.80	2.40	2.05
$29.00	$30.00	5.90	5.55	5.15	4.80	4.45	4.05	3.70	3.35	3.00	2.60	2.25
$30 and over		20 percent of the excess over $30 plus—										
		6.00	5.65	5.25	4.90	4.55	4.15	3.80	3.45	3.10	2.70	2.35

"(B) Wages paid after December 31, 1953.—At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee after December 31, 1953, a tax determined in accordance with the following tables, which shall be in lieu of the tax required to be deducted and withheld under subsection (a) :".

PAR. 4. There is inserted immediately preceding section 405.205 [26 CFR 405.205] the following:

SEC. 310. GROSS INCOME OF DEPENDENT OF TAXPAYER [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) INCREASE IN AMOUNT OF GROSS INCOME PERMITTED.—Section 25(b)(1)(D) (relating to exemptions for dependents of taxpayer) is hereby amended by striking out "$500" and inserting in lieu thereof "$600".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be applicable only with respect to taxable years beginning after December 31, 1950.

PAR. 5. Section 405.205, as amended by Treasury Decision 5685 [C. B. 1949–1, 146], approved January 7, 1949 [26 CFR 405.205], is further amended by striking from the paragraph designated (*c*) "$500" and inserting in lieu thereof "$600 (for taxable years beginning before January 1, 1951, $500)", so that such paragraph will read as follows:

(*c*) For the employee to be entitled on any day of the calendar year to a withholding exemption for an individual as a dependent, such individual must on such day be reasonably expected to receive less than $600 (for taxable years beginning before January 1, 1951, $500) of gross income for such calendar year * * *.

PAR. 6. Section 405.206, as amended by Treasury Decision 5685 [26 CFR 405.206], is further amended as follows:

(A) By striking from the paragraph designated (*c*) in the fourth undesignated paragraph "$500" and inserting in lieu thereof "$600 (for taxable years beginning before January 1, 1951, $500)", so that such paragraph will read as follows:

(*c*) The employee finds that an individual claimed as a dependent on a withholding exemption certificate will receive $600 (for taxable years beginning before January 1, 1951, $500) or more of gross income of his or her own during the current calendar year.

(B) By striking from the seventh undesignated paragraph "$500" and inserting in lieu thereof "$600 (for taxable years beginning before January 1, 1951, $500)", so that such paragraph will read as follows:

Thus, for example, a decrease in the number of withholding exemptions to which an employee is entitled at the beginning of the next taxable year under chapter 1 of the Internal Revenue Code results * * * when a dependent of the employee begins to receive income late in the year so that it is reasonable to expect that the dependent will have a gross income of $600 (for taxable years beginning before January 1, 1951, $500) or more for the ensuing year.

Because the amendments made by this Treasury Decision merely conform Regulations 116 to amendments of the Internal Revenue Code and because those amendments are already effective with respect to the withholding of tax at source on wages, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure

Act approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(This Treasury Decision is issued under the authority contained in sections 1429 and 3791 (53 Stat. 178, 467; 26 U. S. C. 1429, 3791).)

JUSTIN F. WINKLE,
Acting Commissioner of Internal Revenue.

Approved April 4, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 10, 1952, 8:45 a. m.)

SECTION 1622: Income tax collected at source.
REGULATIONS 116, SECTION 405.205: Right to claim withholding exemptions.

Increase in gross income of dependents, Regulations 116 amended. (See T. D. 5891, page 196.)

SECTION 1622: Income tax collected at source.
REGULATIONS 116, SECTION 405.206: Withholding exemption certificates.

Increase in gross income of dependents, Regulations 116 amended. (See T. D. 5891, page 196.)

SECTION 1622: Income tax collected at source. 1952–7–13795
REGULATIONS 116, SECTION 405.213: Additional withholding. T. D. 5887

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 405.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Regulations 116 amended to conform to section 203 of the Revenue Act of 1951.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

On January 3, 1952, notice of proposed rule making amending Regulations 116, relating to collection of income tax at source on wages [26 CFR, part 405], to conform to section 203 of the Revenue Act of 1951, approved October 20, 1951, was published in the Federal Register (17 F. R. 86). After consideration of all relevant matter presented by interested persons regarding the proposed amendments, Regulations 116 are hereby amended by inserting immediately after section 405.212 [26 CFR 405.212] the following:

SEC. 203. ADDITIONAL WITHHOLDING OF TAX ON WAGES UPON AGREEMENT BY EMPLOYER AND EMPLOYEE [TITLE II, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Section 1622 (relating to income tax collected at source on wages) is hereby amended by adding at the end thereof the following new subsection:

"(k) ADDITIONAL WITHHOLDING.—The Secretary is authorized by regulations to provide, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree (in such form as the Secretary may by regulations prescribe) to such additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this subchapter."

SEC. 204. EFFECTIVE DATE [TITLE II, REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by this title shall be applicable only with respect to wages paid on or after November 1, 1951.

SEC. 405.213. ADDITIONAL WITHHOLDING.—In addition to the tax required to be deducted and withheld in accordance with the provisions of section 1622, the employer and employee may agree, with respect to wages paid on or after November 1, 1951, that an additional amount shall be withheld from the employee's wages. The agreement shall be in writing and shall be in such form as the employer may prescribe. The agreement shall be effective for such period as the employer and employee mutually agree upon; however, unless the agreement provides for an earlier termination, either the employer or the employee, by furnishing a written notice to the other, may terminate the agreement effective with respect to the first payment of wages made on or after the first "status determination date" (January 1 and July 1 of each year) which occurs at least 30 days after the date on which such notice is furnished.

The amount deducted and withheld pursuant to an agreement between the employer and employee shall be considered as tax required to be deducted and withheld under section 1622. All provisions of law and regulations applicable with respect to the tax required to be deducted and withheld under section 1622 shall be applicable with respect to any amount deducted and withheld pursuant to the agreement.

The amount deducted and withheld pursuant to an agreement between the employer and employee, together with the tax required to be deducted and withheld under section 1622, shall be reported on Form W-2 and on Form 941 as Federal income tax withheld from wages.

(This Treasury Decision is issued under the authority contained in section 1622(k) of the Internal Revenue Code as added by section 203 of the Revenue Act of 1951, approved October 20, 1951.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved March 7, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 7, 1952, 11:24 a. m.)

EXCISE TAX RULINGS

INTERNAL REVENUE CODE

STAMP TAXES

COIN-OPERATED GAMING DEVICES

REGULATIONS 59, SECTIONS 323.20, ETC. 1952–2–13750
T. D. 5876

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 323.—SPECIAL TAXES WITH RESPECT TO COIN-OPERATED AMUSEMENT AND GAMING DEVICES, BOWLING ALLEYS, BILLIARD TABLES, AND POOL TABLES

Increase in rate of tax on coin-operated gaming devices

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 59 [26 CFR, part 323], relating to special taxes with respect to coin-operated amusement and gaming devices, bowling alleys, billiard tables, and pool tables to the Revenue Act of 1951 (Public Law 183, 82d Cong., 1st sess.), approved October 20, 1951, such regulations are hereby amended as follows:

PARAGRAPH 1. Immediately preceding section 323.20 [26 CFR 323.20], there is inserted the following:

SEC. 463. TAX ON COIN-OPERATED GAMING DEVICES [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Section 3267(a) (tax on coin-operated gaming devices) is hereby amended by striking out "$150" wherever appearing therein and inserting in lieu thereof "$250".

SEC. 464. EFFECTIVE DATE OF PART VI [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

The amendments made by sections * * * 463 shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of this Act. In the case of the year beginning July 1, 1951, where the trade or business on which the tax is imposed was commenced prior to the first day of the month specified in the preceding sentence, the increase in tax resulting from such amendments shall be reckoned proportionately from the first day of such month to and including the thirtieth day of June following and shall be due on, and payable on or before, the last day of the month specified in the preceding sentence.

PAR. 2. Section 323.20, as amended by Treasury Decision 5827 [C. B. 1951-1, 142], approved January 16, 1951 [26 CFR 323.20], is further amended by striking out so much of such section as precedes paragraph (*b*) and inserting in lieu thereof the following:

SEC. 323.20. EFFECTIVE DATES OF TAX.—The effective dates of the rates of tax with respect to coin-operated amusement and gaming devices imposed by section 3267, added to the Internal Revenue Code by section 555 of the Revenue Act of 1941, including changes made in such rates by section 617 of the Revenue Act of 1942, section 603 of the Revenue Act of 1950, and section 463 of the Revenue Act of 1951, are as follows:

(*a*) Except as indicated by (*c*) below, the rates of tax applicable with respect to gaming devices operated by means of the insertion of a coin, token, or similar object are:

(1) October 1, 1941, through June 30, 1943, $50 per annum;
(2) July 1, 1943, through October 31, 1950, $100 per annum;
(3) November 1, 1950, through October 31, 1951, $150 per annum;
(4) On and after November 1, 1951, $250 per annum.

PAR. 3. Section 323.22, as amended by Treasury Decision 5827 [26 CFR 323.22], is further amended—

(A) By striking out so much of the paragraph designated (*d*) as precedes "in the case of" and inserting in lieu thereof the following:

(*d*) Effective October 1, 1941, through June 30, 1943, $50, effective July 1, 1943, through October 31, 1950, $100, effective November 1, 1950, through October 31, 1951, $150, and effective on and after November 1, 1951, $250, per year.

(B) By adding after the fourth paragraph beginning with "Those persons who prior to November 1, 1950," the following:

Those persons who prior to November 1, 1951, paid or incurred the special tax liability at the rate of $150 per year for gaming devices and continued to maintain for use such devices on November 1, 1951, are liable for additional tax for the period November 1, 1951, through June 30, 1952, at the increased rate of $100 per annum. The additional tax liability for the 8-month period from November 1, 1951, through June 30, 1952, shall be computed on the basis of eight-twelfths of $100, or $66.67, for each device.

PAR. 4. Section 323.40 [26 CFR 323.40] is amended as follows:

(A) By striking out in the last sentence of the first paragraph the following: ", subscribed, and attested".

(B) By striking out the last sentence of the fourth paragraph.

Because this Treasury Decision makes technical amendments to the regulations, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved December 28, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register January 2, 1952, 8:53 a. m.)

SECTIONS 3285 AND 3290.—WAGERING TAXES

REGULATIONS 132, SECTION 325.21: Scope of tax. 1952-6-13784
M. T. 43

Application of wagering taxes, imposed by sections 3285 and 3290 of the Internal Revenue Code, where merchants give tickets or chances to customers in connection with the sale of merchandise, and the successful holders of tickets or chances are awarded prizes in the form of merchandise.

Advice is requested concerning the application of wagering taxes, imposed by sections 3285 and 3290 of the Internal Revenue Code, where merchants, in order to encourage patronage, give tickets or chances to customers in connection with the sale of merchandise, and the successful holders of tickets or chances are awarded prizes in the form of merchandise.

Section 3285 of the Code, which imposes on wagers an excise tax equal to 10 percent of the amount thereof, defines the term "wager" as including any wager placed in a lottery conducted for profit.

Section 3290 of the Code provides that a special tax of $50 per year shall be paid by each person who is liable for the 10 percent excise tax under section 3285 of the Code and by every person who is engaged in receiving wagers for or on behalf of any person liable for the excise tax.

The liability of a merchant for such wagering taxes would depend in each individual case upon the manner in which the merchandising plan is operated.

Where it is reasonable to infer from the circumstances surrounding the operation of the plan that a customer does not pay more for merchandise in order to obtain such tickets or chances than he would otherwise pay for the merchandise alone, then no wager subject to the excise tax would appear to have been placed. Conversely, if a customer does pay more for merchandise in order to obtain a chance on a prize than he would otherwise pay for the merchandise alone, such excess amount would appear to constitute a consideration for the chance and a "wager" subject to the excise tax. Among the circumstances that should be considered are the value of the chance in relation to the price paid for the merchandise, the relative price of the merchandise as compared with the price charged by comparable stores which do not award prizes in connection with sales of merchandise, the present price of the merchandise as compared with the price charged by the same store before adoption of such plan, and the emphasis that the merchant places on the chance in selling his merchandise. Whether chances are distributed with sales of all merchandise generally, whether they are offered only with sales of a particular kind of merchandise not ordinarily carried in the store, and similar factors should also be considered in resolving this question.

It is to be noted that each person liable for the 10 percent excise tax imposed by section 3285 of the Code is also liable for the special tax of $50 per year imposed by section 3290 of the Code. Moreover, liability for the special tax is incurred by every person engaged in receiving wagers for or on behalf of the person so liable for the excise tax.

REGULATIONS 132, SECTION 325.21(f): Scope of tax. 1952-13-13860
Mim. 6814

Application of wagering taxes to the operation of suit clubs and other merchandise clubs.

U. S. TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., May 22, 1952.

Collectors of Internal Revenue, Field Officers in Charge, and Others Concerned:

1. The purpose of this mimeograph is to set forth the position of the Bureau concerning the application of the wagering taxes, imposed by sections 3285 and 3290 of the Internal Revenue Code, with respect to the operation of suit clubs and other merchandise clubs conducted on a similar basis.

2. Generally, suit clubs and similar merchandise clubs are operated by merchants in the following manner:

> One hundred persons pay $1 a week for a maximum period of 30 weeks. After the second payment has been made, one person's name is drawn each week from the members' list. The first winner receives $30 worth of merchandise for the $2 paid and is not required to make any further payments. The second winner receives $30 worth of merchandise for his $3, and so on until the 30 weeks expire. However, each member in the club receives the full $30 in trade, credit, or payment on account. Should any member drop out before the expiration of the 30-week period, he receives in trade, credit, or on account the amount he has paid into the club.

3. Section 3285 of the Internal Revenue Code, which imposes on wagers an excise tax equal to 10 percent of the amount thereof, defines the term "wager" as including any wager placed in a lottery conducted for profit. Section 325.21(f) of Regulations 132 provides, in general, that a lottery conducted for profit includes any scheme or method for the distribution of prizes among persons who have paid or promised a consideration for a chance to win such prizes.

4. The Bureau holds that a suit club or any other merchandise club operated in this manner constitutes a lottery conducted for profit for the purposes of wagering taxes. Accordingly, all sums placed with, or advanced to, merchants in the operation of these clubs are held to be wagers subject to such taxes. Thus, each such merchant is liable for the 10 percent excise tax imposed by section 3285 of the Code. In addition, each such merchant, and each agent, clerk, or other employee engaged in receiving such wagers for or on behalf of the merchant, is liable for the $50 occupational tax imposed by section 3290 of the Code.

5. Under the authority of section 3791(b) of the Internal Revenue Code, and in view of all the circumstances, the ruling set forth herein will not be applied to the operation of suit clubs or similar merchandise clubs prior to July 1, 1952, except that no wagering taxes paid with respect to such operation will be refunded. In applying this ruling in the case of the occupational tax under section 3290 of the Code, a suit or merchandise club will be considered to be in

operation after June 30, 1952, if any winner is selected or announced, or if any payment in connection therewith is made into the club, after such date; and the excise tax imposed by section 3285 of the Code will apply to amounts, if any, so paid into a suit or merchandise club after such date.

6. Inquiries regarding this mimeograph should refer to its number and to the symbols ExT : M.

JOHN B. DUNLAP,
Commissioner.

ADMISSIONS TAX

SECTIONS 1700(a) AND 1650, AS AMENDED.—TAX ON ADMISSIONS

REGULATIONS 43 (1941), SECTION 101.3: Meaning of the term "place." 1952-1-13739 Ct. D. 1740

ADMISSIONS TAX—INTERNAL REVENUE CODE—DECISION OF COURT

ADMISSION TO A "PLACE"—AMUSEMENT PARK—RIDES AND AMUSEMENT DEVICES.

Taxpayers are subject to admissions tax on charges made for riding on certain devices in an amusement park. All the rides in question were located in fixed, definite, stationary spots or places in the park. Each and all, except the miniature gasoline autos and the pony rides, are component parts of definite, stationary structures constituting places within the meaning of section 1700(a) of the Internal Revenue Code, and amounts paid by persons who took complete rides thereon represent amounts paid for admission to a place.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Arthur E. Fritz and Anna E. Fritz, doing business as Kiddieland, plaintiffs-appellees, v. *John T. Jarecki, Collector of Internal Revenue for the First District of Illinois, defendant-appellant*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

Before FINNEGAN, LINDLEY, and SWAIM, Circuit Judges.

[June 6, 1951]

OPINION

FINNEGAN, Circuit Judge. Suit was brought by the appellees, Arthur and Anna E. Fritz to recover penalties assessed against them by the Collector of Internal Revenue for the first Illinois District because of their failure to collect admission taxes under section 1700(a) of the Internal Revenue Code, for the period extending from April 1948 up to and through November 1948.

The case was tried in the district court without a jury. The facts, in the main, were stipulated though one of the appellees gave some testimony. Judgment was entered against the collector for $9,515.20, with interest. He prosecutes this appeal to reverse that judgment.

Appellant claims that the findings of fact are not in exact accord with the stipulation between the parties. We have examined and compared the findings and the stipulation and find no substantial material difference.

Appellees owned and operated a "recreational area" on the outskirts of the city of Chicago. It was an open tract of land comprising about 14 acres. Various paths, lanes and roadways, refreshment stands, booths, platforms, canopies, tunnels, bridges, tracks and other structures, either fully or partially enclosed, had been erected on the grounds. Rides and amusement devices of different sorts, including miniature gasoline automobiles, miniature steam trains, and tracks on which to operate them, a merry-go-round or carrousel, a ferris wheel 40 feet in diameter, a miniature roto-whip, miniature automobiles, a small gasoline train running on tracks, together with living ponies, were available. All were designed for the pleasure of the attendant public, especially the juvenile portion thereof.

The various devices and rides were operated and controlled by employees employed for that purpose. The merry-go-round or carrousel was typical. It consisted of a circular platform approximately 14 feet in diameter, containing various effigies or reproductions of animals and other objects upon which persons might seat themselves. The platform, elevated about 9 inches above ground, rotated about a central fixed axis, the motive power being furnished by a ten (10) horsepower motor. When the device was about to be placed in motion, an attendant would walk about the platform of the ride and collect

tickets from the riders. Tickets would be taken from all persons riding on the platform, except for children in arms. The platform of the ride was surrounded for approximately three-fourths (¾) of its circumference by a wooden fence located approximately six (6) feet from the outside circumference of the platform. This fence was maintained by the plaintiffs in order to prevent accidents which might result from persons inadvertently walking into the merry-go-round or attempting to jump on the same when in motion. Save and except for the time when the merry-go-round was in motion, all members of the general public were free to enter within the enclosure made by such fence, and upon and around the platform and upon and in all devices mounted thereon without presenting a ticket.

The same privileges of free entry were accorded on all the other rides. Only those who took the ride were obliged to pay.

Portions of the applicable statute and Treasury regulations adopted thereunder, as in force at the times material, are as follows:

Section 1700 of the Internal Revenue Code, 26 U. S. C. A. provides: "There shall be levied, assessed, collected, and paid * * * a tax of 1 cent for each 10 cents or part thereof of the amount paid for admission to any place, including admission by season ticket or subscription," and that the tax imposed "shall be paid by the person paying for such admission."

Section 1715 provides: "Every person receiving any payments for admissions * * * subject to the tax imposed by section 1700 * * * shall collect the amount thereof from the person making such payments," and that the amounts so collected "shall be paid to the collector * * *."

Section 101.2 of Treasury Regulations 43 provides: "The tax is imposed on the 'amount paid for *admission* to any place,' and applies to the amount which *must* be paid in order to gain admission to a place * * *. The term 'admission' means the right or privilege to enter into a place," and section 101.3 of Regulations 43 provides: "The tax under section 1700(a) of the Code is on the amount paid for admission to any place. 'Place' is a word of very broad meaning, and it is not defined or otherwise limited by the Code. But the basic idea it conveys is that of a definite enclosure or location. The phrase 'to any place' therefore, does not narrow the meaning of the word 'admission,' except to the extent that it implies that the admission is to a definite enclosure or location."

Section 1650 of the Internal Revenue Code (26 U. S. C. A. 1946 ed. as amended by section 302(a) of the Revenue Act of 1943–c, 63, 58 stat. 21) imposes a war tax rate effective as of April 1, 1944, of 1 cent for each 5 cents or major fraction thereof of the amount paid for admission to any place within the meaning of section 1700(a) of the Code, as amended, which tax is payable by the person paying for the admission. Children under 12 years of age are exempt from the imposition of the tax where the admission charge is less than 10 cents.

Section 1718(c) imposes as a penalty a sum equal to the amount of the admission tax upon the failure of the person or persons controlling the admission to collect the tax.

The collector concedes that rides on the miniature gasoline automobiles and on the ponies were not within the terms of the statute and regulations, but says that, under the facts of this case the charges collected by appellees for other rides come within the purview of the Code as "admissions" to a place.

During each calendar year, appellees operated their park each day during a season beginning about April first and continuing to the middle of November, operation during other periods being impracticable because of weather conditions. During each season prior to April 1, 1948 (and also on April 23, 30, and May 1, 1948) appellees charged an admission tax as imposed by section 1700(a). On January 22, 1948, by letter, appellees requested a ruling from the Internal Revenue Department, Washington, D. C., on the taxability of their type of business, especially the pony rides. The Deputy Commissioner of Internal Revenue replied "that the admission tax was payable on the amusement devices, but that if pony rides * * were conducted within the enclosure, and if a charge is made only for those parties who ride the ponies * * and other persons are admitted to the enclosures free of charge, the charge is not for admission to a place and is not subject to the tax."

On February 28, 1948, appellees again wrote to the Deputy Commissioner, enclosing pictures of their devices as exhibits, and claimed all of their amusement rides were operated in the same manner as the pony rides, again requesting a ruling as to whether the other amusement devices were subject to an admission tax.

The Deputy Commissioner replied "that no tax should be levied, assessed, collected or paid in connection with tickets sold for use on the pony ride or the miniature gasoline automobile ride, but that a tax on admissions attached to each of the various other amusement devices operated * * * since the charges represent amounts paid for an admission to a place within the meaning of the Code."

Appellees collected no admission tax from their patrons from April 1 to November 30, 1948 (except on three days—April 23, April 30, and May 1, 1948, on which dates admission taxes were charged and remitted to the collector.)

Thereafter appellees paid, under protest, $9,576.68 as admission tax and penalties for the period here involved, and on January 31, 1949, filed a claim for refund, stating that Kiddieland (1) "charges no admission to any place" and (2) that none of the rides operated by them were "places" within the meaning of section 1700(a), and (3) that the amounts paid by patrons were paid for rides and not for "admission to any place." This claim was rejected and this suit, to recover the penalties paid, followed.

Appellees urge, in support of their judgment, (1) that their charges were for rides on the various amusement devices and not for admission to a place, and (2) that patrons were not charged for the right and privilege of entering and seating themselves in or on the various devices, while the appellant contends that appellees' charges were made for the right and privilege of entering and seating themselves in or on the various amusement devices and enjoying the purpose for which they were operated, hence were charges for admission to a place within the meaning of section 1700(a), as amended, and are subject to the tax at the rate imposed in section 1650 of the Code.

As we view it, the sole question for determination is: whether section 1700(a), as amended, is applicable to the charges made, to anyone riding on the six rides in question, under the facts here presented.

The trial court concluded:

"Under the facts in this case, the charges assessed by the plaintiffs were not charges for admission to a place within the meaning of section 1700(a) of the Internal Revenue Code, but were charges for the privilege of riding upon the devices furnished by plaintiffs."

Where the ultimate finding is a conclusion of law or a determination of a mixed question of law and fact, we may substitute our judgment for that of the trial court. *Exmoor Country Club* v. *United States*, 119 Fed. (2d) 961–963. Also in *Orvis* v. *Higgins*, 180 Fed. (2d) 537–539, the court said:

"Where a trial judge sits without a jury * * * where the evidence is partly oral and the balance is written or deals with undisputed facts, * * * we may ignore the trial judge's finding and substitute our own."

Appellees contend that under the facts of this case the charges were not for admission to a place within the meaning of section 1700(a), but were charges for the privilege of riding upon the devices furnished by them as the district court found.

Few, if any, admissions taxable under section 1700(a) are not accompanied by a use of the property or equipment to which the admittees' license extends. *Wilmette Park District* v. *Campbell*, 338 U. S. 411–418. The public was admitted to a place (the open park) without charge. The rides in question were situated in definite locations or places in the park. The public was admitted without charge to all such places for inspection, for the purpose of placing children on the rides or seeing them safely from the rides, and for the purpose of taking pictures, while such rides or places were not in motion. But those who wanted to use the amusement devices or equipment, for the purpose for which they were constructed, that is, to remain thereon while the rides were in motion, and to enjoy a complete ride, an admission charge was required and collected by appellees.

We conclude that all rides in question were located in fixed, definite, stationary spots or places in the park, that each and all, except the miniature gasoline autos and the pony rides, are component parts of definite, stationary structures constituting places within the meaning of section 1700(a), and that amounts paid by persons who took a complete ride thereon represent amounts paid for admission to a place and that the tax on admissions attached thereto. *United States* v. *Koller*, 287 Fed. 418; *Twin Falls Natatorium* v. *United States*, 22 Fed. (2d) 308; *Exmoor Country Club* v. *United States*, 119 Fed. (2d) 961.

The judgment is reversed with directions to dismiss the complaint.

MANUFACTURERS' EXCISE TAXES

SECTION 3403(c), AS AMENDED.—AUTOMOBILES, ETC., PARTS OR ACCESSORIES

REGULATIONS 46 (1940), SECTION 316.55. 1952-4-13764
S. T. 941

Taxability of lifting jacks as parts or accessories under the provisions of section 3403(c) of the Internal Revenue Code.

Advice is requested as to the taxability of lifting jacks as parts or accessories for automobiles, etc., within the meaning of section 3403(c) of the Internal Revenue Code.

Section 3403(c) of the Code, as amended, provides:

Parts or accessories (other than tires and inner tubes and other than radio and television receiving sets) for any of the articles enumerated in subsection (a) or (b), 8 per centum, except that on and after April 1, 1954, the rate shall be 5 per centum. For the purposes of this subsection and subsections (a) and (b), spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a) or (b), shall be considered parts or accessories for such articles, whether or not primarily adapted for such use. This subsection shall not apply to chassis or bodies for automobile trucks or other automobiles. * * *

The applicable Regulations 46, section 316.55 provides in part:

DEFINITION OF PARTS OR ACCESSORIES.—The term "parts or accessories" for an automobile truck or other automobile chassis or body, taxable tractor, or motorcycle, includes (*a*) any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article, (*b*) any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, and (*c*) any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use. * * *.

The term "parts and accessories" shall be understood to embrace all such articles as have reached such a stage of manufacture that they are commonly or commercially known as parts and accessories whether or not fitting operations are required in connection with installation. The term shall not be understood to embrace raw materials used in the manufacture of such articles.

Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, automobile truck or other automobile chassis, taxable tractors, or motorcycles, are considered parts of or accessories for such articles whether or not primarily designed or adapted for such use.

In the case of *Walker Manufacturing Co.* v. *United States*, (65 Ct. Cls. 394 (1928), certiorari denied, 278 U. S. 617; T. D. 4188, C. B. VII–2, 342) the court considered the application of section 900 of the Revenue Act of 1918 and section 900 of the Revenue Act of 1921 which provided for a tax on:

(1) Automobile trucks and automobile wagons (including tires, inner tubes, parts and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum.

(2) Other automobiles and motorcycles (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum.

(3) Tires, inner tubes, parts, or accessories, for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum. (See 40 Stat. 1057, 1122 and 42 Stat. 227, 291.)

Article 16 of Regulations 47, promulgated under the above-mentioned revenue acts, defined an accessory as an article primarily

adapted for use in connection with a taxable motor vehicle. Articles having a general commercial use not peculiarly adapted for use in connection with motor vehicles were excluded from the definition, citing as an example a tool sold in hardware stores for general use. The court found that the "almost universal use" for the jacks in question was demonstrated by the fact that such jacks constitute part of the automobile equipment of a vast majority of automobile owners. The tax was held to apply.

In *Universal Battery Co.* v. *United States* (281 U. S. 580; Ct. D. 220, C. B. IX–2, 422) and related cases, the Supreme Court considered the same statutory provisions in determining the taxability of storage batteries, gascolators, gears and housings, and bumper parts. There the claim was chiefly that the articles were sold for general use rather than for motor vehicle use. The Court expressly approved the construction of the terms "parts and accessories" which the Bureau had adopted as comprehending articles having some relation to taxable motor vehicles and held that the tax was applicable.

In considering the proper rules to be used in determining taxability of articles as accessories it is to be noted that the Code section 3403(c) now lists several items which are taxable as accessories if they are suitable for use in connection with one of the enumerated vehicles. The definition contained in Regulations 46, section 316.55, *supra*, bases the determination in some cases on primary use and in other circumstances on design for use in connection with one of the enumerated vehicles.

A review of this question establishes that there are a number of factors to be considered in arriving at a decision as to the taxability of jacks, and each case must be determined on its own facts. It has been concluded, however, that a jack which has no peculiar characteristics limiting its use to motor vehicles but which is held out by the manufacturer as especially designed for such use is taxable under section 3403(c) when sold by the manufacturer. In addition jacks which (1) are sold and chiefly used in connection with a taxable motor vehicle or (2) are almost universally sold and used in motor vehicle trade channels are presumed to be taxable under section 3403(c) when sold by the manufacturer. The fact that a jack is mechanical rather than hydraulic does not, standing alone, establish taxability.

The Bureau has for a considerable period of time held that hydraulic axle jacks and scissors jacks are not subject to the tax imposed by section 3403(c) of the Code. Because of this long and uniform holding of the Bureau and the consequent reliance of manufacturers on these rulings, it has been concluded that, under the authority contained in section 3791(b) of the Code, the ruling set forth herein, insofar as it is applicable to the afore-mentioned jacks, will not be applied retroactively with respect to sales of such jacks prior to February 18, 1952, the date of this Bulletin, except that any tax which has been paid on the sale of such jacks will not be refunded, unless in a particular case it is established to the satisfaction of the Commissioner, as required by section 3443(d) of the Code, that the manufacturer, by reason of relying on an existing ruling that the sale of such a jack was not taxable, did not include in his price any part of the manufacturers' excise tax which he may have subsequently paid on the sale.

FIREARMS, SHELLS, AND CARTRIDGES

REGULATIONS 46, SECTIONS 316.80, 316.81, AND 316.204. 1952–5–13773
T. D. 5880

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 316.—EXCISE TAXES ON SALES BY THE MANUFACTURER

Firearms, shells, and cartridges purchased with funds appropriated for the military departments.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 46 [26 CFR, part 316], relating to manufacturers' excise taxes under chapter 29, subchapter A of the Internal Revenue Code, to section 706 of the Second Supplemental Appropriation Act, 1951 (Public Law 911, 81st Cong., 2d sess.), approved January 6, 1951, such regulations are hereby amended as follows:

PARAGRAPH 1. Immediately preceding section 316.80 [26 CFR 316.80], there is inserted the following:

SEC. 706. SECOND SUPPLEMENTAL APPROPRIATION ACT, 1951 (PUBLIC LAW 911, 81st CONG., 2d SESS.), APPROVED JANUARY 6, 1951.

None of the firearms, * * * shells, and cartridges purchased with funds appropriated for the military departments by this or any other Act shall be subject to any tax imposed on the sale or transfer of such articles.

PAR. 2. Section 316.81, as amended by Treasury Decision 5348 [C. B. 1944, 613], approved March 15, 1944 [26 CFR 316.81], is further amended as follows:

(A) By striking out "SEC. 316.81. EXEMPT SALES." and inserting in lieu thereof "SEC. 316.81. EXEMPT SALES.—(*a*) *For use of United States, State, Territory, or possession of United States.*"

(B) By striking out the second paragraph and inserting in lieu thereof the following:

By virtue of the amendment made by section 307(a)(3) of the Revenue Act of 1943 of section 3407, and the application of section 307(b)(2) to such amendment, the exemption with respect to sales of firearms, shells, and cartridges by the manufacturer for the use of the United States terminated on June 30, 1947. Accordingly, sales of such articles by the manufacturer thereof on and after July 1, 1947, to the United States for its own use are subject to tax, unless the sale is made pursuant to a contract entered into prior to July 1, 1947, or to any agreement or change order supplemental to such contract bearing the same Government contract number. (For sales to the military departments of the United States, see paragraph (*b*) below.)

(C) By adding at the end thereof the following:

(*b*) *Purchases for the military departments of the United States.*—By virtue of the provisions of section 706 of the Second Supplemental Appropriation Act, 1951 (Public Law 911, 81st Cong., 2d sess.), no tax attaches to the sale of firearms, shells, and cartridges paid for after January 5, 1951, with funds appropriated for the military departments of the United States by such Act or any other Act. For the purposes of this exemption the term "military departments" includes

only the Department of the Army, Department of the Navy, and the Department of the Air Force. Included in the Navy are naval aviation and Marine Corps, and the Coast Guard when operating as a service in the Navy pursuant to the provisions of section 3 of title 14 of the United States Code. Any manufacturer claiming exemption under this paragraph must be prepared to produce evidence which will establish the right to exemption. Generally, clearly identified orders or contracts of a military department when signed by an authorized officer of such department will be accepted in support of the exemption. However, in the absence of such orders or contracts, a statement signed by an authorized officer of a military department that the firearms, shells, or cartridges sold were purchased with funds appropriated for the military departments will be acceptable.

PAR. 3. Immediately preceding section 316.204 [26 CFR 316.204], there is inserted the following:

SEC. 706. SECOND SUPPLEMENTAL APPROPRIATION ACT, 1951 (PUBLIC LAW 911, 81st CONG., 2d SESS.), APPROVED JANUARY 6, 1951.

None of the firearms, * * * shells, and cartridges purchased with funds appropriated for the military departments by this or any other Act shall be subject to any tax imposed on the sale or transfer of such articles.

PAR. 4. Section 316.204, as amended by Treasury Decision 5854 [C. B. 1951–2, 205], approved September 13, 1951 [26 CFR 316.204], is further amended by adding at the end thereof the following new paragraph:

In any case where the manufacturer, producer, or importer of firearms, shells, and cartridges has paid tax on the sale of such articles to the military departments and payment of the purchase price was made after January 5, 1951, with funds appropriated for the military departments, a credit or refund may be allowed in the amount of such tax upon compliance with the provisions of the third paragraph of this section if the manufacturer, producer, or importer has in his possession the evidence required to support tax-free sales to the military departments as prescribed in section 316.81(b).

Because section 706 of the Second Supplemental Appropriation Act, 1951, became effective on January 6, 1951, the date of the enactment of such law, it is found that it is impracticable and unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in section 706 of the Second Supplemental Appropriation Act, 1951 (Public Law 911, 81st Cong., 2d sess.) and section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved February 11, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register February 13, 1952, 8:53 a. m.)

PISTOLS AND REVOLVERS

REGULATIONS 47, ARTICLES 1, 9, AND 15. 1952–5–13774
T. D. 5879

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 302.—EXCISE TAXES ON SALE OF PISTOLS AND REVOLVERS

Pistols and revolvers purchased with funds appropriated for the military departments.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 47 [26 CFR, part 302], relating to the tax on sales of pistols and revolvers by the manufacturer, to section 706 of the Second Supplemental Appropriation Act, 1951 (Public Law 911, 81st Cong., 2d sess.), approved January 6, 1951, such regulations, but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939-1 (part 1), 396], approved February 11, 1939 [26 CFR, Cum. Supp., p. 5876], are hereby amended as follows:

PARAGRAPH 1. Immediately preceding article 1 [26 CFR 302.1], there is inserted the following:

SEC. 706. SECOND SUPPLEMENTAL APPROPRIATION ACT, 1951 (PUBLIC LAW 911, 81st CONG., 2d SESS.), APPROVED JANUARY 6, 1951.

None of the * * * pistols, revolvers, * * * purchased with funds appropriated for the military departments by this or any other Act shall be subject to any tax imposed on the sale or transfer of such articles.

PAR. 2. Article 9, as amended by Treasury Decision 5346 [C. B. 1944, 625], approved March 14, 1944 [26 CFR 302.9], is further amended as follows:

(A) By striking out "ART. 9. EXEMPT SALES." and inserting in lieu thereof "ART. 9. EXEMPT SALES.—(*a*) *For use of United States, State, Territory, or possession of United States.*"

(B) By striking out the second paragraph and inserting in lieu thereof the following:

By virtue of the amendment made by section 307(a)(2) of the Revenue Act of 1943 of section 2700(b)(1), and the application of section 307(b)(2) to such amendment, the exemption with respect to sales of pistols and revolvers by the manufacturer for the use of the United States terminated on June 30, 1947. Accordingly, sales of such articles by the manufacturer thereof on and after July 1, 1947, to the United States for its own use are subject to tax, unless the sale is made pursuant to a contract entered into prior to July 1, 1947, or to any agreement or change order supplemental to such contract bearing the same Government contract number. (For sales to the military departments of the United States, see paragraph (*b*) below.)

(C) By adding at the end thereof the following:

(*b*) *Purchases for the military departments of the United States.*—By virtue of the provisions of section 706 of the Second Supplemental Appropriation Act, 1951 (Public Law 911, 81st Cong., 2d sess.), no tax attaches to the sale of pistols and revolvers paid for after January 5, 1951, with funds appropriated for the military departments of the United States by such Act or any other Act. For the purposes of this exemption the term "military departments" includes only the

Department of the Army, Department of the Navy, and the Department of the Air Force. Included in the Navy are naval aviation and Marine Corps, and the Coast Guard when operating as a service in the Navy pursuant to the provisions of section 3 of title 14 of the United States Code. Any manufacturer claiming exemption under this paragraph must be prepared to produce evidence which will establish the right to exemption. Generally, clearly identified orders or contracts of a military department when signed by an authorized officer of such department will be accepted in support of the exemption. However, in the absence of such orders or contracts, a statement signed by an authorized officer of a military department that the pistols and revolvers sold were purchased with funds appropriated for the military departments will be acceptable.

PAR. 3. Immediately preceding article 15 [26 CFR 302.15], there is inserted the following:

SEC. 706. SECOND SUPPLEMENTAL APPROPRIATION ACT, 1951 (PUBLIC LAW 911, 81st CONG., 2d SESS.), APPROVED JANUARY 6, 1951.

None of the * * * pistols, revolvers, * * * purchased with funds appropriated for the military departments by this or any other Act shall be subject to any tax imposed on the sale or transfer of such articles.

PAR. 4. Article 15, as amended by Treasury Decision 5676 [C. B. 1948–2, 190], approved November 23, 1948 [26 CFR 302.15], is further amended by adding at the end thereof the following new paragraph:

In any case where the manufacturer, producer, or importer of pistols and revolvers has paid tax on the sale of such articles to the military departments and payment of the purchase price was made after January 5, 1951, with funds appropriated for the military departments, a credit or refund may be allowed in the amount of such tax upon compliance with the preceding provisions of this article if the manufacturer, producer, or importer has in his possession the evidence required to support tax-free sales to the military departments as prescribed in article 9(b) [section 302.9(b)].

Because section 706 of the Second Supplemental Appropriation Act, 1951, became effective on January 6, 1951, the date of the enactment of such law, it is found that it is impracticable and unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in section 706 of the Second Supplemental Appropriation Act, 1951 (Public Law 911, 81st Cong., 2d sess.) and section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved February 5, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register February 7, 1952, 8:51 a.m.)

SECTION 3408(a).—TAX ON MECHANICAL PENCILS, ETC.

1952–5–13776
S. T. 943

Application of manufacturers' excise tax where an article taxable under section 3408(a) of the Internal Revenue Code and a nontaxable article are sold by the manufacturer as a unit.

Advice is requested concerning the application of the manufacturers' excise tax where mechanical pencils, fountain pens, or ball point pens, which are taxable under section 3408(a) of the Internal Revenue Code, and nontaxable articles, such as a spring-loaded reel or a notebook, are sold by the manufacturer as a unit.

Section 3408(a) of the Code imposes on mechanical pencils, fountain pens, and ball point pens when sold by the manufacturer, producer, or importer a tax equal to 15 percent of the price for which they are sold.

It is held that, where an article taxable under section 3408(a) of the Code and a nontaxable article are sold by the manufacturer as a unit, the tax attaches to that portion of the manufacturer's sale price of the unit which is properly allocable to the taxable article. Normally, the taxable portion of such unit may be determined by applying to the manufacturer's sale price of the unit, the ratio which the separate manufacturer's sale price of the taxable article bears to the sum of the sale prices of both the taxable and nontaxable articles, if such articles are sold separately by the manufacturer. Where the articles (or either one of them) are not sold separately by the manufacturer and do not have established sale prices, the taxable portion is to be determined from a comparison of the actual costs of the articles to the manufacturer. Thus, if the cost of the taxable article represents four-fifths of the total cost of the complete unit, the tax attaches to four-fifths of the price charged by the manufacturer for such unit.

TAXES ON GASOLINE, LUBRICATING OIL, AND MATCHES

REGULATIONS 44, SECTIONS 314.30, 314.35, AND 314.66.

1952–5–13772
T. D. 5883

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 314.—TAXES ON GASOLINE, LUBRICATING OIL, AND MATCHES

Increased rate of tax on gasoline and floor stocks tax on gasoline

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 44 (1944 edition) [26 CFR, part 314], relating to taxes on gasoline, lubricating oil, and matches under chapter 29 of the Internal Revenue Code, to section 489 of the Revenue Act of 1951 (Public Law 183, 82d Cong., 1st sess.), approved October 20, 1951, such regulations are hereby amended as follows:

PARAGRAPH 1. Immediately preceding section 314.30 [26 CFR 314.30], there is inserted the following:

SEC. 489. TAX ON GASOLINE [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) INCREASE IN RATE.—Section 3412(a) is hereby amended by striking out "1½ cents" and inserting in lieu thereof "2 cents" and by adding at the end thereof the following new sentence: "On and after April 1, 1954, the tax imposed by this section shall be 1½ cents a gallon in lieu of 2 cents a gallon."

* * * * * * *

SEC. 490. EFFECTIVE DATE OF PART VIII [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

Except as otherwise expressly provided in this part, the amendments made by this part shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this Act.

PAR. 2. Section 314.35 [26 CFR 314.35] is amended to read as follows:

SEC. 314.35. RATE OF TAX.—The tax is payable by the importer or producer thereof, or by any producer of gasoline, at the rate of 1½ cents a gallon prior to November 1, 1951, at the rate of 2 cents a gallon for the period November 1, 1951, to March 31, 1954, inclusive, and at the rate of 1½ cents a gallon on and after April 1, 1954.

PAR. 3. Section 314.66 is renumbered as section 314.75.

PAR. 4. There is inserted immediately after the text of section 3658 of the Internal Revenue Code the following new subpart H.

SUBPART H—FLOOR STOCKS TAX ON GASOLINE

SEC. 489. TAX ON GASOLINE [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

* * * * * * *

(b) FLOOR STOCKS TAX AND REFUND.—Section 3412 is hereby amended by adding at the end thereof the following new subsections:

"(f) 1951 FLOOR STOCKS TAX.—On gasoline subject to tax under this section which, on the effective date of section 489(a) of the Revenue Act of 1951, is held and intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax at the rate of ½ cent per gallon. The tax shall not apply to gasoline in retail stocks held at the place where intended to be sold at retail, nor to gasoline held for sale by a producer or importer of gasoline. The provisions of section 3443 shall be applicable to the floor stocks tax imposed by this subsection so as to entitle, subject to all the provisions of such section, (1) any manufacturer or producer to a refund or credit of such tax under subsection (a)(1) of such section, and (2) any person paying such floor stocks tax to a refund or credit thereof where gasoline is by such person or any other person used or resold for any of the purposes specified in subparagraphs (A) (i), (ii), and (iii) of subsection (a)(3) of such section."

* * * * * * *

SEC. 314.70. RATE AND SCOPE OF FLOOR STOCKS TAX.—The floor stocks tax at the rate of ½ cent per gallon is imposed on gasoline as described in section 314.30. In general this includes (*a*) all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline), benzol, benzene, or naphtha, regardless of their classifications or uses; and (*b*) any other liquid of a kind prepared, advertised, offered for sale or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes. The term "gasoline" does not, however, include kerosene, gas oil, or fuel oil.

The floor stocks tax is on gasoline which is held and intended for sale at the first moment of November 1, 1951, by any person other than a producer or importer of gasoline or a person holding gasoline in retail stocks at the place where intended to be sold at retail. The floor stocks tax is on gasoline which is held and intended for sale and not on the sale of gasoline.

Gasoline is regarded as held by the owner thereof at the first moment of November 1, 1951, although at that time the gasoline is in transit to the owner. Where title does not pass to the consignee until delivery, the consignor of the gasoline in transit at the first moment of November 1, 1951, is regarded as the owner at that time.

The floor stocks tax does not apply to gasoline held on November 1, 1951, in retail establishments where such gasoline is to be sold or disposed of exclusively at retail direct to consumers. The term "held at the place where intended to be sold at retail" means gasoline held in those tanks from which it is delivered direct through gasoline pumps to the ultimate consumer and does not include gasoline held in bulk storage tanks for replenishment of the supply in the tanks serving the retail gasoline pumps even though such gasoline may be held in storage tanks or in tank cars on premises occupied by a retail establishment. The floor stocks tax likewise does not apply to gasoline held for sale on November 1, 1951, by a producer or importer of gasoline, or to gasoline held by any person for use rather than for sale.

SEC. 314.71. INVENTORY.—Every person liable to pay floor stocks tax on gasoline shall prepare an inventory of such gasoline subject to the floor stocks tax held at the first moment of November 1, 1951. Persons holding gasoline at more than one location shall prepare a separate inventory *in duplicate* for each such location. One copy of the separate inventory shall be retained at such location and one copy shall be forwarded to and kept at the taxpayer's principal place of business. Each inventory shall show the name of the taxpayer, the location of the particular premises for which the inventory is made, and the name and address of the principal office from which the floor stocks return will be filed. Separate inventories forwarded to the taxpayer's principal place of business shall be consolidated into a single inventory for the purpose of computing the tax and making the return. The inventories shall not be filed with the return but shall be retained by the taxpayer at his principal place of business.

SEC. 314.72. CREDIT OR REFUND OF FLOOR STOCKS TAX.—The provisions of section 3443 are applicable to floor stocks tax imposed by section 489(b) of the Revenue Act of 1951 so as to entitle any manufacturer or producer to a refund or credit of floor stocks tax paid on gasoline purchased by him and used by him as material in the manufacture or production of, or as a component part of, an article with respect to which tax has been paid or which has been sold free of tax by virtue of section 3442, relating to tax-free sales. Any person who pays a floor stocks tax on gasoline may obtain a refund or credit of the tax paid in cases where the gasoline is used or resold by him or by any other person for any of the purposes specified in section 3443(a)(3)(A) (i), (ii), and (iii) of the Code, relating to sales to States, etc., sales for use as fuel supplies on certain vessels, etc., and sales for nonmotor fuel use. (See section 314.64.)

SEC. 314.73. RETURNS.—Form 887, Revised 1951, is prescribed as the form on which persons liable to floor stocks tax on gasoline shall make return and pay tax. The return shall be prepared in duplicate; the original shall be filed on or before December 31, 1951, with the collector for the district in which is located the taxpayer's principal place of business and the duplicate shall be retained at the taxpayer's principal place of business.

SEC. 314.74. RECORDS.—Records showing payment of floor stocks tax on gasoline together with the consolidated and separate inventories and other relevant papers and material must be kept by the taxpayer for a period of 4 years from the date the tax is due.

Because the amendments of section 3412 of the Internal Revenue Code by section 489 of the Revenue Act of 1951 increased the rate of tax and provided a floor stocks tax on gasoline, both effective on November 1, 1951, and this Treasury Decision reflects such amendments, it is hereby found that it is impracticable and unnecessary to issue

this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date of limitation of section 4(c) of said Act.

(This Treasury Decision is issued pursuant to the authority contained in sections 3450 and 3791 of the Internal Revenue Code (53 Stat. 419, 467; 26 U. S. C. 3450, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved February 12, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register February 15, 1952, 8:50 a. m.)

RETAILERS' EXCISE TAXES

SECTION 2400.—TAX ON JEWELRY, ETC.

REGULATIONS 51 (1941), SECTIONS 320.31, 320.32, AND 320.33. 1952-5-13775 S. T. 942

Application of retailers' excise tax imposed by section 2400 of the Internal Revenue Code to buttons, including those made of or ornamented with *imitations* of precious metals, pearls, or precious or semiprecious stones, when sold separately as such or when sold as part of wearing apparel.

The Bureau has reconsidered its position concerning the application of the retailers' excise tax imposed by section 2400 of the Internal Revenue Code to buttons made of or ornamented with *imitations* of precious metals, pearls, or precious or semiprecious stones and now holds that such articles, whether sold separately as such or sold as part of wearing apparel, and whether detachable or designed to be permanently attached to clothing, are in the nature of dress findings and are not subject to retailers' excise tax.

To avoid any misunderstanding, it should be noted that this ruling applies to buttons only, and is not intended to make any change in the taxable status of costume jewelry. Articles constituting costume jewelry, including, among other things, studs, pins, clips, links, and lapel ornaments, remain subject to the tax imposed by section 2400 of the Code, regardless of the material of which made, and notwithstanding that the article may include buttons which if sold separately would not be taxable. Moreover, buttons made of or ornamented with precious metals, pearls, or precious or semiprecious stones are not considered to be "dress findings" and are therefore subject to the tax.

When taxable articles are attached to a dress or other garment sold at retail, the tax applies to that portion of the retail price of the complete garment which is fairly and reasonably allocable to the taxable articles. Such allocation may be made by ascribing to the taxable articles a value equivalent to the price at which they are normally sold at retail when sold separately. In the event the taxable articles are not normally sold separately at retail, the allocation may be made on the basis of the ratio that the cost of the taxable articles to the garment manufacturer bears to his cost of the complete garment, which ratio should be ascertained from the manufacturer. Such ratio should then be applied to the retail price of the complete garment in determining the portion subject to tax.

The rules stated herein may be applied to sales made before or after January 1, 1952, except that any tax paid with respect to sales made prior to January 1, 1952, will not be refunded.

MISCELLANEOUS RULINGS

1952-9-13813

REORGANIZATION PLAN No. 1 OF 1952

[House of Representatives, Eighty-second Congress, Second Session, Document No. 327]

[January 14, 1952]

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING REORGANIZATION PLAN NO. 1 OF 1952, PROVIDING FOR REORGANIZATIONS IN THE BUREAU OF INTERNAL REVENUE OF THE DEPARTMENT OF THE TREASURY, PREPARED IN ACCORDANCE WITH THE REORGANIZATION ACT OF 1949

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1952, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Bureau of Internal Revenue of the Department of the Treasury.

A comprehensive reorganization of that Bureau is necessary both to increase the efficiency of its operations and to provide better machinery for assuring honest and impartial administration of the internal revenue laws. The reorganization plan transmitted with this message is essential to accomplish the basic changes in the structure of the Bureau of Internal Revenue which are necessary for the kind of comprehensive reorganization that is now required.

By bringing additional personnel in the Bureau of Internal Revenue under the merit system, Reorganization Plan No. 1 likewise removes what the Commission on Organization of the Executive Branch of the Government described as "one of the chief handicaps to effective organization of the Department * * *."

It is my determination to maintain the highest standards of integrity and efficiency in the Federal service. While those standards have been observed faithfully by all but a relatively few public servants, the betrayal of their trust by those few demands the strongest corrective action.

The most vigorous efforts are being and will continue to be made to expose and punish every Government employee who misuses his official position. But we must do even more than this. We must correct every defect in organization that contributes to inefficient management and thus affords the opportunity for improper conduct.

The thorough reorganization of the Bureau of Internal Revenue which I propose will be of great help in accomplishing all of these ends. It is an integral part of a program to prevent improper conduct in public service, to protect the Government from insidious influence peddlers and favor seekers, to expose and punish wrongdoers, and to improve the management and efficiency of the executive branch.

I am confident that the Congress and the public are as deeply and earnestly concerned as I am that the public business be conducted entirely upon a basis of fairness, integrity, and efficiency. I therefore hope that the Congress will give speedy approval to Reorganization Plan No. 1, in order that we may move ahead rapidly in achieving the reorganization of the Bureau of Internal Revenue.

The task of collecting the internal revenue has expanded enormously within the past decade. This expansion has been occasioned by the necessary additional taxation brought on by World War II and essential postwar programs. In fiscal year 1940, tax collections made by the Bureau of Internal Revenue were slightly over 5⅓ billions of dollars; in 1951, they totaled almost 50½ billions. In 1940, 19 million tax returns were filed; in 1951, 82 million. In 1940, there were 22,000 employees working for the Bureau; in 1951, there were 57,000.

Throughout this tremendous growth, the structure of the revenue-collecting organization has remained substantially unchanged. The present field structure of the Bureau of Internal Revenue is comprised of more than 200 field offices which report directly to Washington. Those 200 offices carry out their functions through more than 2,000 suboffices and posts of duty throughout the country. The Washington office now provides operating supervision, guidance, and control over the principal field offices through 10 separate divisions, thus further adding to the complexities of administration.

Since the end of World War II, many procedural improvements have been made in the Bureau's operations. The use of automatic machines has been greatly increased. The handling of cases has been simplified. One major advance is represented by the recently completed arrangements to expedite criminal prosecutions in tax-fraud cases. In these cases, field representatives of the Bureau of Internal Revenue will make recommendations for criminal prosecutions directly to the Department of Justice. These procedural changes have increased the Bureau's efficiency and have made it possible for the Bureau to carry its enormously increased workload. However, improvements in procedure cannot meet the need for organizational changes.

Part of the authority necessary to make a comprehensive reorganization was provided in Reorganization Plan No. 26 of 1950, which was one of several uniform plans giving department heads fuller authority over internal organizations throughout their departments. The studies of the Secretary of the Treasury have culminated since that time in a plan for extensive reorganization and modernization of the Bureau. However, his existing authority is not broad enough to permit him to effectuate all of the basic features of the plan he has developed.

The principal barrier to effective organization and administration of the Bureau of Internal Revenue which plan No. 1 removes is the archaic statutory office of collector of internal revenue. Since the collectors are not appointed and cannot be removed by the Commissioner of Internal Revenue or the Secretary of the Treasury and since the collectors must accommodate themselves to local political situations, they are not fully responsive to the control of their superiors in the Treasury Department. Residence requirements prevent moving

a collector from one collection district to another, either to promote impartiality and fairness or to advance collectors to more important positions. Uncertainties of tenure add to the difficulty of attracting to such offices persons who are well versed in the intricacies of the revenue laws and possessed of broad-gaged administrative ability.

It is appropriate and desirable that major political offices in the executive branch of the Government be filled by persons who are appointed by the President by and with the advice and consent of the Senate. On the other hand, the technical nature of much of the Government's work today makes it equally appropriate and desirable that positions of other types be in the professional career service. The administration of our internal-revenue laws at the local level calls for positions in the latter category.

Instead of the present organization built around the offices of politically appointed collectors of internal revenue, plan No. 1 will make it possible for the Secretary of the Treasury to establish not to exceed 25 district offices. Each of these offices will be headed by a district commissioner who will be responsible to the Commissioner of Internal Revenue and will have full responsibility for administering all internal-revenue activities within a designated area. In addition, all essential collection, enforcement, and appellate functions can be provided for in each local area and under one roof so far as is practicable. It is not proposed to discontinue any essential facilities which now exist in any local areas. Rather, the facilities will be extended and the service to taxpayers improved. These new arrangements should make it possible for the individual taxpayer to conduct his business with the Bureau much more conveniently and expeditiously.

In addition to making possible greatly improved service to the taxpayer, the establishment of the district offices will provide opportunity in the field service of the Bureau of Internal Revenue for the development of high-caliber administrators with experience in all phases of revenue administration. These offices will be the backbone of a modern, streamlined pattern of organization and operations with clear and direct channels of responsibility and supervision from the lowest field office to the Commissioner, and through him to the Secretary of the Treasury. The creation of this new framework of district offices is a necessary step in carrying out the over-all reorganization of the Bureau.

Plan No. 1 also makes it possible to provide a new framework of supervisory offices in the headquarters of the Bureau of Internal Revenue. Under plan No. 1, the offices of Deputy Commissioner, Special Deputy Commissioner, and Assistant Commissioner are abolished. Three Assistant Commissioners, all in the classified civil service, are authorized, and will be available, to perform such functions as may be assigned to them. The intention of the Secretary of the Treasury under the comprehensive reorganization is to utilize one Assistant Commissioner to assist the Commissioner of Internal Revenue in supervising the operations of the district offices, another Assistant Commissioner to aid in the preparation of technical rulings and decisions, and the third Assistant Commissioner to supervise for the Commissioner the inspection activities of the Bureau.

Two additional advantages will be obtained when the reorganization around this new framework is completed.

First, the strong inspection service which the Secretary is establishing will keep the work of the Bureau under close and continuous observation. Working under the direct control of the Commissioner of Internal Revenue, it will be responsible for promptly detecting and investigating any irregularities.

Second, the new pattern of organization will strengthen and clarify lines of responsibility throughout the Bureau, thus simplifying and making more effective and uniform the management control of the organization. This is essential in any effort to provide our principal revenue collection agency the best possible administration.

In order to eliminate Presidential appointment and senatorial confirmation with respect to the Assistant General Counsel for the Bureau of Internal Revenue, and in order to provide a method of appointment comparable to that obtaining in the case of other assistant general counsel of the Department of the Treasury, plan No. 1 abolishes that office and provides in lieu thereof a new office of Assistant General Counsel with appointment under the classified civil service.

The success of the reorganization of the Bureau of Internal Revenue will to a considerable extent depend upon the ability to attract the best qualified persons to the key positions throughout the Bureau. In order to do so, it is necessary to make provision for more adequate salaries for such key positions. Plan No. 1 establishes in the Bureau of Internal Revenue a maximum of 70 offices with titles determined by the Secretary of the Treasury. Those offices are in addition to the offices with specific titles also provided for in plan No. 1 and to any positions established under other authority vested in the Department of the Treasury. The compensation of these officials will be fixed under the Classification Act of 1949, as amended, but without regard to the numerical limitations on positions set forth in section 505 of that act. This provision will enable the Chairman of the Civil Service Commission, or the President, as the case may be, to fix rates of pay for those offices in excess of the rates established in the Classification Act of 1949 for grade GS–15 whenever the standards of the classification laws so permit.

All organizational changes under plan No. 1 will be put into effect as soon as it is possible to do so without disrupting the continued collection of revenue. Plan No. 1 will in any event be effective in its entirety no later than December 1, 1952.

The taking effect of the reorganizations provided for in Reorganization Plan No. 1 of 1952 will make possible many benefits in improved organization and operations which may be expected to produce substantial savings in future years. Those savings should not be expected to be reflected in an immediate reduction in expenditure by the Bureau of Internal Revenue but in an improved service to the public and a more efficient collection of revenue.

It should be emphasized that abolition by plan No. 1 of the offices of collectors and others will in no way prejudice any right or potential right of any taxpayer. The abolition of offices by plan No. 1 will not abolish any rights, privileges, powers, duties, immunities, liabilities, obligations, or other attributes of those offices except as they relate to matters of appointment, tenure, and compensation inconsistent with plan No. 1. Under the Reorganization Act of 1949, all of these

attributes of office will attach to the office to which the functions of the abolished office are delegated by the Secretary of the Treasury.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1952 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

I have found and hereby declare that it is necessary to include in the accompanying Reorganization Plan No. 1, by reason of reorganizations made thereby, provisions for the appointment and compensation of the officers specified therein. The rates of compensation fixed for these officers are not in excess of those which I have found to prevail in respect of comparable officers in the executive branch.

I cannot emphasize too strongly the importance which should be attached to the reorganization plan that I am now transmitting to the Congress. The fair and efficient administration of the Federal internal-revenue laws is of vital concern to every citizen. All of us have a right to insist that the Bureau of Internal Revenue be provided with the finest organization that can be devised. All of us are entitled to have that organization manned by personnel who get their jobs and keep them solely because of their own integrity and competence. This reorganization plan will be a major step in achieving those objectives.

HARRY S. TRUMAN.

THE WHITE HOUSE,
January 14, 1952.

REORGANIZATION PLAN NO. 1 OF 1952

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, January 14, 1952, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.

BUREAU OF INTERNAL REVENUE

SECTION 1. *Abolition of existing offices.*—There are abolished the offices of Assistant Commissioner, Special Deputy Commissioner, Deputy Commissioner, Assistant General Counsel for the Bureau of Internal Revenue, Collector, and Deputy Collector, provided for in sections 3905, 3910, 3915, 3931, 3941, and 3990, respectively, of the Internal Revenue Code. The provisions of the foregoing sentence shall become effective with respect to each office abolished thereby at such time as the Secretary of the Treasury shall specify, but in no event later than December 1, 1952. The Secretary of the Treasury shall make such provisions as he shall deem necessary respecting the winding up of the affairs of any officer whose office is abolished by the provisions of this section.

SEC. 2. *Establishment of new offices.*—(a) New offices are hereby established in the Bureau of Internal Revenue as follows: (1) three offices each of which shall have the title of "Assistant Commissioner of Internal Revenue"; (2) so many offices, not in excess of twenty-five existing at any one time, as the Secretary of the Treasury shall from time to time determine, each of which shall have the title of "district commissioner of internal revenue"; and (3) so many other

offices, not in excess of seventy existing at any one time, and with such title or titles, as the Secretary of the Treasury shall from time to time determine.

(b) There is hereby established in the Department of the Treasury a new and additional office which shall have the title "Assistant General Counsel".

SEC. 3. *Appointment and compensation.*—Each Assistant Commissioner and district commissioner, the Assistant General Counsel, and each other officer provided for in section 2 of this reorganization plan shall be appointed by the Secretary of the Treasury under the classified civil service and shall receive compensation which shall be fixed from time to time pursuant to the classification laws, as now or hereafter amended, except that the compensation may be fixed without regard to the numerical limitations on positions set forth in section 505 of the Classification Act of 1949, as amended (5 U. S. C. 1105).

SEC. 4. *Transfer of functions.*—There are transferred to the Secretary of the Treasury the functions, if any, that have been vested by statute in officers, agencies, or employees of the Bureau of Internal Revenue of the Department of the Treasury since the effective date of Reorganization Plan Numbered 26 of 1950 (15 F. R. 4935).

SECTION 3657.—PAYMENT BY UNITED STATES NOTES AND CERTIFICATES OF INDEBTEDNESS

1952–1–13740
T. D. 5874

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 471.—ACCEPTANCE OF TREASURY NOTES IN PAYMENT OF INCOME, ESTATE, AND GIFT TAXES

Regulations governing the acceptance of Treasury notes of Tax Series A–1943, B–1943, A–1944, B–1944, A–1945, Treasury notes of Tax Series C, and Treasury savings notes, Series A, Series C, and Series D, in payment of income (including excess profits), estate, and gift taxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

SECTION 471.1. ACCEPTANCE OF TREASURY NOTES OF TAX SERIES A–1943, B–1943, A–1944, B–1944, A–1945, TREASURY NOTES OF TAX SERIES C, AND TREASURY SAVINGS NOTES, SERIES A, SERIES C, AND SERIES D, IN PAYMENT OF INCOME (INCLUDING EXCESS PROFITS), ESTATE, AND GIFT TAXES.—Notes of the United States designated as Treasury notes of Tax Series A–1943, B–1943, A–1944, B–1944, A–1945, Treasury notes of Tax Series C, and Treasury savings notes, Series A, Series C, and Series D, may be accepted in payment of income taxes (current and back personal and corporation taxes, and excess profits taxes) and estate and gift taxes (current and back), at par and interest accrued, except in the case of Treasury savings notes, Series A, to the month, inclusive, in which presented (but no accrual beyond the maturity date). In the case of Treasury savings notes,

Series A, interest will be accrued to the day when the taxes are due, if such day falls on the 15th day of a calendar month, whether the notes are received on or before that day; if the taxes are due on any other day of the month than the 15th, accrued interest will be credited to the accrual date next preceding the day when the taxes are due. Collectors of internal revenue are authorized and directed to accept such notes, except in the case of Treasury savings notes, Series A, during and after the second calendar month after the month of purchase (as shown by the issuing agent's dating stamp on each note). In the case of Treasury savings notes, Series A, collectors of internal revenue are authorized and directed to accept the notes at any time after 2 months from the issue date. For example, a note of Tax Series A–1945 purchased in September 1942 may be accepted in November 1942 but such a note purchased in October 1942 may not be accepted until December 1942. A note of Treasury savings notes, Series A, dated January 15, 1952, may be presented for credit against taxes due March 15, 1952, but a note dated February 15, 1952, may not be accepted for credit against taxes due prior to April 15, 1952.

Such notes may be accepted only in payment of income (including excess profits), estate, and gift taxes (current and back) due from the original purchaser thereof or his estate. Such notes shall be in the name of the taxpayer (individual, corporation, or other entity) and may be presented for taxpayment by only the taxpayer, his agent, or his estate. There is no limit upon the amount of such notes which may be accepted in payment of income (including excess profits), estate, or gift taxes.

Such notes, inscribed in the name of a taxpayer, may be accepted in payment of income tax withheld at the source by such taxpayer, and such notes inscribed in the name of a taxpayer may be accepted in payment of transferee liability assessed against such taxpayer for income (including excess profits), estate, or gift taxes.

Collectors of internal revenue shall not in any case allow credit to a taxpayer on account of such notes, or accept such notes, for an amount greater than their principal amount plus accrued interest, nor shall such notes be accepted in an amount (including accrued interest) greater than the unpaid liability of the taxpayer. Such notes shall be forwarded to the collector of internal revenue with whom the tax return is filed, at the risk and expense of the taxpayer, and, for the taxpayer's protection, should be forwarded by registered mail, if not presented in person.

SEC. 471. 2. PROCEDURE WITH RESPECT TO TREASURY NOTES OF TAX SERIES A–1943, B–1943, A–1944, B–1944, A–1945, TREASURY NOTES OF TAX SERIES C, AND TREASURY SAVINGS NOTES, SERIES A, SERIES C, AND SERIES D.—Deposits of Treasury notes of Tax Series A–1943, B–1943, A–1944, B–1944, A–1945, Treasury notes of Tax Series C, and Treasury savings notes, Series A, Series C, and Series D, received in payment of taxes shall be made by the collector of internal revenue in a Federal reserve bank or a branch Federal reserve bank. Prior to deposit the collector of internal revenue will certify on the reverse side of the notes that they were received in payment of income (including excess profits), estate, or gift tax, as the case may be, and will show in the endorsement stamp the date of deposit.

SEC. 471.3. PRIOR TREASURY DECISION SUPERSEDED.—Treasury Decision 5686 [C. B. 1949–1, 159], approved January 31, 1949 [26 CFR, 1950 Supp., part 471] is hereby superseded.

Because this Treasury Decision merely revises existing regulations governing the acceptance of Treasury notes and Treasury savings notes in payment of income (including excess profits), estate, and gift taxes so as to make such regulations applicable also to Treasury savings notes, Series A, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued under the authority of sections 3657 and 3791 of the Internal Revenue Code (53 Stat. 447, 467; 26 U. S. C. 3657, 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved December 11, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 13, 1951, 8:50 a. m.)

DISCLOSURE OF OFFICIAL INFORMATION

1952–1–13741
Mim. 6727

Disclosure of official information

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 7, 1951.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, and Others Concerned:

1. Title 26, Code of Federal Regulations, Part 600 (originally published over the signature of the Acting Secretary of the Treasury as F. R. Doc. 46–15357 appearing at page 177A–22, part II, section 1 of the issue of the Federal Register of September 11, 1946), and article 80 of Regulations 12, as amended, relate to the disclosure of official information of the Bureau of Internal Revenue. In the future this mimeograph, or the regulations quoted herein, should be cited rather than Department Circular 591 (C. B. 1938–2, 495) with respect to the disclosure of such information. Title 26, Code of Federal Regulations, reads in part as follows:

SUBCHAPTER F—RECORDS AND PROCEDURE

PART 600—RECORDS

SECTION 600.1. CLASSIFICATION.—Matters of official record in the Bureau of Internal Revenue include:

(a) Documents submitted by members of the public pursuant to the internal revenue laws or regulations, such as tax returns, information returns, statements required by statute or regulation, claims for credit, refund, or abatement, offers in compromise, bonds, applications for registration, and waivers of statutes of limitation.

(b) Final opinions and orders under the internal revenue laws and regulations in tax matters, such as assessment lists, certificates of overassessment, and statutory deficiency letters, and documents evidencing determinations of such matters as claims for abatement, credit, or refund, offers in compromise, applications for excess profits tax relief, registration applications, closing agreements, and distraints and seizures. (R. S. 161; 5 U. S. C. 22) [11 F. R. 177A-22, 14261; redesignated at 13 F. R. 7710]

SEC. 600.2. PUBLICATION AND PUBLIC INSPECTION.—(a) *General.*—Sections 55, 2556, 2557, 2595, 3275, and 4047 of the Internal Revenue Code contain broad prohibitive and penal provisions against the disclosure of certain information described therein obtained by the Bureau of Internal Revenue from members of the public in the performance of its functions. The above provisions necessitate severe limitations by the Bureau of Internal Revenue upon publication and public inspection of its official records, including final opinions or orders in particular cases. The extent to which public disclosure may be made of matters of official record to persons properly and directly concerned is set forth in this section.

(1) *Inspection of tax returns.*—The inspection of returns is governed by the provisions of the internal revenue laws and rules promulgated by the President or by the Secretary of the Treasury pursuant to such provisions. See Treasury Decision 4873, approved by the President November 12, 1938, as amended; Treasury Decision 4878, approved by the Secretary January 4, 1939; Treasury Decision 4929, approved by the President August 28, 1939, as amended; Treasury Decision 5138, approved by the President April 20, 1942 (subpart A of part 458 of this chapter); Treasury Decision 4945, approved by the Secretary September 20, 1939 (subpart B of part 458 of this chapter).

(2) *Public lists of persons making income tax returns.*—Lists of persons making income tax returns in each year are available to public inspection in the offices of collectors of internal revenue. See section 55(e) of the Code.

(3) *Public lists of persons paying occupational taxes.*—Lists of persons paying occupational taxes under chapter 27 of the Code are available for public inspection in the offices of collectors of internal revenue pursuant to the provisions and limitations of section 3275 of the Code. See Regulations 20 cited in sec. 601.66(c) and regulations cited in sec. 601.93 of this chapter.

(4) *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 collectors of internal revenue and copies are furnished on application. See Treasury Decision 5428, 10 F. R. 622.

(5) *State liquor cases.*—If the interests of the United States will not be jeopardized thereby, and if information will not be divulged contrary to section 4047(a)(1), Internal Revenue Code, district supervisors of the Alcohol Tax Unit may upon receipt of subpoenas 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 in which the State is a party, produce records and testify as to facts coming to their knowledge in their official capacities.

(6) *Public lists of employers making returns under the Federal Unemployment Tax Act.*—Lists of employers of eight or more making annual returns on Form 940 under the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Code) are available for public inspection in the offices of collectors of internal revenue. See sections 55(e) and 1604(c) of the Code.

(7) *Information returns of certain tax-exempt organizations and certain trusts.*—Information returns filed pursuant to section 153 of the Code by certain tax-exempt organizations (Form 990-A) and by trusts claiming charitable or other deductions under section 162(a) (Form 1041-A) are available for public inspection in the offices of collectors of internal revenue in which they are filed. See Regulations 111, section 29.153-3 [26 CFR 29.153-3].

(b) *Final opinions and orders.*—In conformity with the policy of the provisions of law referred to in paragraph (a) of this section, final opinions and orders in the adjudication of cases arising under the internal revenue laws are, with limited exceptions, treated by the Bureau as confidential and are not published nor made available for public inspection. The exceptions are:

(1) *Excess profits tax relief; publication of allowances.*—Pursuant to the provisions of section 722(g) of the Code, there is published from time to time in the Federal Register the information specified in such section relative to excess profits tax relief allowed particular taxpayers.

(2) *Publication of decisions.*—Rulings and decisions on matters arising under the internal revenue laws which because they announce a ruling or decision

upon a novel question or upon a question in regard to which there exists no previously published ruling or decision, or for other reasons, are of such importance to be of general interest, or which revoke, amend or affect in any manner a published ruling or decision are, after rephrasing to eliminate any confidential information relating to a particular case, including identity of persons, regularly published in the Internal Revenue Bulletin. No unpublished ruling or decision will be cited or relied upon by any officer or employee of the Bureau of Internal Revenue as a precedent in the disposition of other cases.

(c) *Rules.*—All rules relating to the functions of the Bureau of Internal Revenue other than those dealing solely with internal management will, to the extent consistent with the limitations contained in the provisions of law referred to in paragraph (a) of this section, be made available to public inspection. As to rules generally and their publication, see sec. 601.13 of this chapter.

(d) *Requests.*—Requests for information in connection with matters of official record in which the procedure for inspection is not set out in rules referred to in subparagraphs above should be submitted to the Commissioner of Internal Revenue, Washington 25, D. C. The request should clearly state the information desired and must set forth the interest of the applicant in the subject matter and purpose for which the information is desired. If the applicant is an agent or attorney acting for another he will attach to the application evidence of his authority to act for his principal. If such evidence is satisfactory such agent or attorney will be given access to any record to which his principal would be given access. The determination as to whether the information requested is available for disclosure in any particular case will be made by the Commissioner of Internal Revenue or such other officer authorized under the provisions of law referred to in paragraph (a) of this section.

Whenever it is determined that a matter of official record is available for disclosure in a particular case, a copy of said official record will be furnished the party requesting the same or the officer passing upon the request may in his discretion allow a personal inspection of the official record in question at the place where the document is normally kept. A reasonable fee may in the discretion of the determining officer be charged for furnishing copies of official records. (R. S. 161; 5 U. S. C. 22) [11 F. R. 177A-22, 14261, as amended at 12 F. R. 3220, 13 F. R. 4122, redesignated at 13 F. R. 7710]

2. Article 80 of Regulations 12, as amended by Treasury Decision 4640, C. B. XV-1, 495 (1936), and Treasury Decision 5428, C. B. 1945, 462 (which article may be cited where only the furnishing of testimony is involved), reads as follows:

ART. 80. CONTENTS NOT TO BE DISCLOSED WITHOUT PERMISSION.—All records in the offices or in charge of officers of internal revenue, responsible or subordinate, are in their custody and control for governmental purposes only. They have no control and no discretion with regard to the use of them for any other purpose: *Provided*, That Record 21, "Record of seizure and sale of real estate," maintained in offices of collectors of internal revenue, shall be open for public inspection in such offices, and a certified or uncertified copy of any such record covering particular property will be furnished by the collector upon application to him and payment of a fee of $1.

Except as otherwise provided in the preceding paragraph internal revenue officers are hereby prohibited from giving out any records, or any copies thereof, to private persons or to local officers, or to produce such records or copies thereof in a State court, whether in answer to subpoena duces tecum or otherwise, or to testify to facts coming to their knowledge in their official capacities without express authority from the Commissioner * * *.

Whenever subpoenas shall have been served upon them they will, unless otherwise expressly directed, appear in court in answer thereto and respectfully decline to produce the records or give the testimony called for, on the ground of being prohibited therefrom by the regulations of the Treasury Department. Officers disobeying these instructions will be dismissed from the service and may incur criminal liability. See section 3167, Revised Statutes [now codified as 18 U. S. C. sec. 1905 and 26 U. S. C. secs. 55(f) and 4047(a)] * * *.

Among the cases which article 80 states may be cited in support of the instructions contained therein is *Boske* v. *Comingore*, 177 U. S. 459.

JOHN B. DUNLAP,
Commissioner.

COLLECTORS, DEPUTY COLLECTORS, ETC.

1952-12-13837
T. D. 5900

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 476.—REFERENCES TO CERTAIN OFFICERS IN REGULATIONS, RETURNS, ETC., CONFORMED TO NOMENCLATURE PROVIDED BY TREASURY DEPARTMENT ORDERS

Collectors, deputy collectors, etc.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In rules and regulations applicable to the Bureau of Internal Revenue and in returns, notices, mimeographs, instructions, circulars, or any other forms or publications of whatever nature prescribed, furnished, or used in or by the Bureau of Internal Revenue,

(*a*) reference to a collector of internal revenue shall be deemed to refer to a director of internal revenue,

(*b*) reference to a deputy collector shall be deemed to refer to an internal revenue agent, and

(*c*) reference to a district supervisor shall be deemed to refer to an Assistant District Commissioner, Alcohol and Tobacco Tax, insofar as these references pertain to a collector, deputy collector, or district supervisor in a territory embraced within the jurisdiction of any office of a district commissioner established from time to time pursuant to Reorganization Plan No. 1 of 1952 [page 227, this Bulletin] (17 F. R. 2243.)

Because the sole purpose of this Treasury Decision is to conform the documents specified herein to Treasury Department orders to be issued pursuant to Reorganization Plan No. 1 of 1952 (17 F. R. 2243), upon the effective dates of such orders, it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitations of section 4(c) of said Act.

This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

(This Treasury Decision is issued under authority of section 3791, Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791) and Reorganization Plan No. 1 of 1952 (17 F. R. 2243).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 13, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 14, 1952, 9:57 a. m.)

COLLECTORS, DEPUTY COLLECTORS, DISTRICT SUPERVISORS

1952-12-13838
T. D. 5901

TITLE 27—INTERNAL REVENUE.—CHAPTER I, REFERENCES TO CERTAIN OFFICERS IN REGULATIONS, RETURNS, ETC., CONFORMED TO NOMENCLATURE PROVIDED BY TREASURY DEPARTMENT ORDERS

Collectors, deputy collectors, district supervisors

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Officers and Employees of the Internal Revenue Service and Others Concerned:

In rules and regulations applicable to the Bureau of Internal Revenue and in returns, notices, mimeographs, instructions, circulars, or any other forms or publications of whatever nature prescribed, furnished, or used in or by the Bureau of Internal Revenue, to which Treasury Decision 5900 [page 237, this Bulletin], approved May 13, 1952, is not applicable,

(*a*) reference to a collector of internal revenue shall be deemed to refer to a director of internal revenue,

(*b*) reference to a deputy collector shall be deemed to refer to an internal revenue agent, and

(*c*) reference to a district supervisor shall be deemed to refer to an Assistant District Commissioner, Alcohol and Tobacco Tax,

insofar as these references pertain to a collector, deputy collector, or district supervisor in a territory embraced within the jurisdiction of any office of a district commissioner established from time to time pursuant to Reorganization Plan No. 1 of 1952 [page 227, this Bulletin] (17 F. R. 2243.)

Because the sole purpose of this Treasury Decision is to conform the documents specified herein to Treasury Department orders to be issued pursuant to Reorganization Plan No. 1 of 1952 (17 F. R. 2243), upon the effective dates of such orders, it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitations of section 4(c) of said Act.

This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

(This Treasury Decision is issued under authority of section 3791, Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791) and Reorganization Plan No. 1 of 1952 (17 F. R. 2243).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved May 15, 1952.

E. H. FOLEY,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register May 19, 1952, 8:55 a. m.)

INDUSTRIAL ALCOHOL

INTERNAL REVENUE CODE

REGULATIONS 3, SECTIONS 182.98, ETC. 1952–6–13783
T. D. 5884

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 182.—INDUSTRIAL ALCOHOL

Transfers by pipeline of specially denatured alcohol to premises of bonded dealers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To District Supervisors and Others Concerned:

1. Regulations 3, "Industrial Alcohol" (26 CFR, part 182), approved March 6, 1942, are hereby amended as follows:

EQUIPMENT

DENATURING PLANTS

SEC. 182.98. PIPELINES.—Pipelines for the conveyance of alcohol to and from alcohol storage tanks, from such tanks to weighing or mixing tanks, and from mixing tanks to denatured alcohol storage tanks, if provided, and pipelines for the conveyance of liquid denaturants and denatured alcohol, shall be of a fixed and permanent character, constructed, secured, and exposed to view throughout their entire lengths, in conformity with the provisions of section 182.82. Pipelines for the conveyance of specially denatured alcohol to contiguous premises operated by the proprietor of the denaturing plant, pursuant to withdrawal permit, Form 1477 or Form 1485, and pipelines for the transfer of completely denatured alcohol to contiguous premises operated by the proprietor of the denaturing plant, shall be securely constructed and connected, and so arranged as to be exposed to view throughout their entire lengths: *Provided*, That such pipelines shall be equipped with a valve within the denaturing plant, in order that the same may be locked with a Government lock, when denatured alcohol is not being removed.

* * * * * * *

(53 Stat. 318, 358, 364, 373 as amended, 375; 26 U. S. C. 2829, 3105, 3124, 3170, 3176.)

SPECIALLY DENATURED ALCOHOL BONDED DEALERS' PREMISES

SEC. 182.102. TANKS.—If the proprietor desires to receive specially denatured alcohol in tank cars, tank trucks, or by pipeline from a denaturing plant on contiguous premises operated by him, he must provide suitable storage tanks for the storage of the specially denatured alcohol so received by him. Each such tank must be constructed in the manner prescribed in section 182.99, and all openings affording access to the contents shall be equipped for locking. Each such tank must have plainly and legibly painted thereon the words "Specially denatured alcohol storage tank," followed by its serial number and capacity in wine gallons, and be equipped with a suitable measuring device, whereby the actual contents will be correctly indicated. (53 Stat. 318, 358, 364, 373 as amended, 375; 26 U. S. C. 2829, 3105, 3124, 3170, 3176.)

OPERATION OF INDUSTRIAL ALCOHOL DENATURING PLANTS

APPROVED CONTAINERS

* * * * * * *

SEC. 182.730. PIPELINES.—(*a*) *Specially denatured alcohol.*—Pipelines constructed in conformity with the provisions of section 182.98 will be considered as approved containers only for the purpose of transferring specially denatured

alcohol from the denaturing plant to contiguous bonded dealer premises or manufacturing premises operated by the proprietor of the denaturing plant and covered by basic permit, Form 1476 or Form 1481, as the case may be. Specially denatured alcohol may not be thus transferred until receipt of appropriate withdrawal permit, Form 1477 or Form 1485. Specially denatured alcohol thus transferred shall be weighed or measured by volume in a tank equipped with suitable scales or a measuring device on the denaturing plant premises. The specially denatured alcohol will be weighed or measured and removed from the denaturing plant premises under the immediate supervision of the storekeeper-gauger. The valve in the pipeline shall be closed and locked with a Government lock at all times when it is not in use.

(*b*) *Completely denatured alcohol.*—Completely denatured alcohol may be similarly transferred by pipeline, constructed in conformity with section 182.98, to contiguous premises operated by the proprietor of the denaturing plant in the same manner as specially denatured alcohol, in accordance with the provisions of paragraph (*a*) of this section, with the exception that a withdrawal permit is not required. Completely denatured alcohol may also be removed by pipeline for storage in tanks or other approved containers marked "Completely denatured alcohol—Storage" on adjacent premises owned or controlled by the proprietor of the denaturing plant, but when packaged it will be subject to the provisions of this part, the same as when packaged on denaturing plant premises, except that the registry number of the denaturing plant will not be marked on the packages. (53 Stat. 307, 355, 358, 359, 360, 364, 373 as amended, 375; 26 U. S. C. 2808, 3070. 3105, 3108, 3109, 3114, 3124, 3170, 3176.)

WITHDRAWAL OF SPECIALLY DENATURED ALCOHOL

SEC. 182.754. GENERAL.—Specially denatured alcohol may be procured under appropriate permit by manufacturers using specially denatured alcohol, dealers in specially denatured alcohol, and the United States or any governmental agency thereof. Prospective permittees or manufacturers may procure samples of specially denatured alcohol, as provided in section 182.826. Specially denatured alcohol must be removed from denaturing plants in approved containers, including tank cars and tank trucks provided the consignee's premises are equipped with suitable storage tanks. Specially denatured alcohol may also be removed by pipeline to contiguous bonded dealer premises or manufacturing premises operated by the proprietor of the denaturing plant and covered by basic permit, Form 1476 or Form 1481, in accordance with the provisions of section 182.730(a), if the receiving premises are equipped with suitable storage tanks. The exact contents of each package must be determined and the package marked in accordance with the regulations in this part. Specially denatured alcohol removed from denaturing plants (other than by pipeline) must be transported in accordance with section 182.677. The denaturer shall present the permit, Form 1477, 1485, 1486, or 1512, authorizing shipment, to the storekeeper-gauger prior to withdrawal. Withdrawal of specially denatured alcohol by bonded dealers and users will be made in accordance with section 182.754(*b*) or 182.754(*c*), as the case may be. Withdrawals of specially denatured alcohol by the United States or governmental agency will be made in accordance with sections 182.754d and 182.785. (53 Stat. 355, 358, 359, 360, 364, 373 as amended, 375; 26 U. S. C. 3070, 3105, 3108, 3109, 3114, 3124, 3170, 3176.)

RECEIPT OF SPECIALLY DENATURED ALCOHOL

OPERATIONS BY DEALERS IN SPECIALLY DENATURED ALCOHOL

* * * * * * *

SEC. 182.811. RAILROAD TANK CARS, TANK TRUCKS, OR PIPELINES.—If the bonded dealer receives specially denatured alcohol in railroad tank cars, railroad siding facilities for the receipt of such tank cars must be provided at the bonded dealer's premises. Specially denatured alcohol received in tank cars, tank trucks, or by pipeline must be immediately deposited in storage tanks constructed in conformity with the provisions of section 182.102. When so deposited, the formula of the specially denatured alcohol shall be plainly marked on the storage tank. Form 1473 will be disposed of in accordance with section 182.811a. (53 Stat. 355, 358, 364, 373 as amended, 375; 26 U. S. C. 3070, 3105, 3124, 3170, 3176.)

OPERATIONS BY USERS OF SPECIALLY DENATURED ALCOHOL

RECEIPT OF DENATURED ALCOHOL

* * * * * * *

SEC. 182.835. RAILROAD TANK CARS, TANK TRUCKS, OR PIPELINES.—If the permittee receives specially denatured alcohol in railroad tank cars, railroad siding facilities for the receipt of such tank cars must be provided at the permittee's premises. Specially denatured alcohol received in tank cars, tank trucks, or by pipeline must be immediately deposited in storage tanks constructed in conformity with the provisions of section 182.99. When so deposited the formula of the specially denatured alcohol shall be plainly marked on the storage tank. Form 1473 will be disposed of in accordance with section 182.835a. (53 Stat. 355, 358, 364, 373 as amended, 375; 26 U. S. C. 3070, 3105, 3124, 3170, 3176.)

2. The purpose of the amendments is to authorize pipeline removals of specially denatured alcohol from a denaturing plant to contiguous bonded dealer's premises operated by the denaturer, consistent with existing authority to make such transfers by pipeline to contiguous manufacturing premises operated by the denaturer.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

4. This Treasury Decision shall be effective immediately upon the date of its publication in the Federal Register. (This Treasury Decision is issued under the authority contained in 53 Stat. 307, 318, 355, 358, 359, 360, 364, 373 as amended, 376; 26 U. S. C. 2808, 2829, 3070, 3105, 3108, 3109, 3114, 3124, 3170, 3176.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved February 21, 1952.

E. H. FOLEY,
Acting Secretary of the Treasury.

(Published in the Federal Register February 28, 1952)

DISTILLED SPIRITS

INTERNAL REVENUE CODE

REGULATIONS 7, 10, 15, AND 20.

1952–10–13820
T. D. 5895

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PARTS 178, 185, 190, AND 194

(Regulations 7, 10, 15, and 20)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To District Supervisors and Others Concerned:

1. In order to conform Regulations 7, "Production, Fortification, Tax Payment, Etc., of Wines" (26 CFR, part 178; 10 F. R. 12307), Regulations 10, "Warehousing of Distilled Spirits" (26 CFR, part 185; 15 F. R. 5233), Regulations 15, "Rectification of Spirits and Wines" (26 CFR, part 190; 15 F. R. 4790), and Regulations 20, "Wholesale and Retail Dealers in Liquors" (26 CFR, part 194; 5 F. R. 2170), to the provisions of the Revenue Act of 1951 (Public Law 183, 82d Cong.), which increased the excise taxes on distilled spirits, wines, liqueurs and cordials, and the special (occupational) taxes on wholesale liquor dealers, wholesale dealers in fermented malt liquor and retail liquor dealers, such regulations are hereby amended.

2. Sections 178.238, 178.239, and 178.241 of Regulations 7 are amended to read as follows:

ARTICLE XXXV—TAX PAYMENT OF WINES

* * * * * *

SEC. 178.238. TAX ON STILL WINES.—The following are the rates of tax on still wines, artificial or imitation wines or compounds sold as still wines, and vermouth or other aperitif wine produced in a bonded winery, the percent of alcohol to be reckoned by volume:

(*a*) 17 cents per wine gallon when containing not more than 14 percent of absolute alcohol;

(*b*) 67 cents per wine gallon when containing more than 14 percent and not exceeding 21 percent of absolute alcohol;

(*c*) $2.25 per wine gallon when containing more than 21 percent and not exceeding 24 percent of absolute alcohol;

(*d*) When containing more than 24 percent of absolute alcohol, such products shall be classed as distilled spirits and shall be taxed accordingly.

(53 Stat. 347 as amended, 375, 477; 26 U. S. C. 3030, 3176, 3901.)

SEC. 178.239. TAX ON CHAMPAGNE, SPARKLING WINE, AND ARTIFICIALLY CARBONATED WINE.—The following are the rates of tax on champagne, sparkling wine, and artificially carbonated wine:

(*a*) On each bottle or other container of champagne or sparkling wine, 17 cents on each one-half pint or fraction thereof;

(*b*) On each bottle or other container of artificially carbonated wine, 12 cents on each one-half pint or fraction thereof;

(*c*) Any of the foregoing articles containing more than 24 percent of absolute alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.

(53 Stat. 347 as amended, 375, 477; 26 U. S. C. 3030, 3176, 3901.)

SEC. 178.241. COMPUTING TAX ON CHAMPAGNE, SPARKLING WINE, AND ARTIFICIALLY CARBONATED WINE.—The tax on champagne, sparkling wine, and artificially carbonated wine must be computed on each bottle, and not on the aggregate contents of the case. Thus, the tax on a one-fifth gallon bottle of champagne or sparkling wine amounts to 68 cents, and on a case of 12 such bottles the tax amounts to $8.16. (53 Stat. 347 as amended, 375, 477; 26 U. S. C. 3030, 3176, 3901.)

3. Section 185.606 of Regulations 10 is amended to read as follows:

SUBPART BB—TAX-PAID WITHDRAWALS IN PACKAGES

* * * * * * *

SEC. 185.606. ISSUANCE OF RECTIFIED SPIRITS STAMPS.—Where the Form 179 covers blended brandies tax-paid at the rate imposed by section 2800(a)(5), I. R. C., in addition to the tax imposed by section 2800(a)(1), I. R. C., the collector shall issue a class B rectified spirits stamp, with proper coupons attached, for each package and shall enter the serial number of the stamps in the proper column of Form 1520. (53 Stat. 298 as amended, 300 as amended, 375; 26 U. S. C. 2800, 2801, 3176.)

4. Sections 190.478, 190.547, 190.548, 190.550, and 190.552 of Regulations 15 are amended to read as follows:

SUBPART Y—RECTIFICATION

* * * * * * *

BLENDING OF WINES

* * * * * * *

SEC. 190.478. ADDITIONAL WINE TAX.—Where the taxable grade of wine is increased by blending, additional gallonage wine tax must be paid on the resultant product representing the difference between the tax originally paid on the wine and the tax due on the blended product, as provided in subpart AA of this part. For example, if 100 gallons of wine containing 20 percent alcohol, on which wine tax in the amount of $67 has been paid, are blended with 100 gallons of wine containing 12 percent alcohol, on which wine tax in the sum of $17 has been paid, making a total wine tax paid on the two wines of $84, and the resultant product contains 16 percent alcohol, the wine tax on which would amount to $134, additional wine tax of $50 must be paid on the blended product, regardless of whether or not the 50-cent rectifying tax is incurred by the blending. (53 Stat. 347 as amended, 525; 26 U. S. C. 3030, 3190.)

SUBPART AA—COMMODITY TAXES ON RECTIFIED SPIRITS AND PRODUCTS

* * * * * * *

SEC. 190.547. VERMOUTH.—Vermouth made at a rectifying plant, which is subject to the rectification tax of 30 cents per proof gallon imposed by section 2800(a)(5), I. R. C., is in addition thereto subject to the tax imposed upon vermouth by section 3030(a)(1), I. R. C., which tax is as follows:

(*a*) On vermouth containing not more than 14 per centum of absolute alcohol, 17 cents per wine gallon, the per centum of alcohol to be reckoned by volume and not by weight;

(*b*) On vermouth containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 67 cents per wine gallon;

(*c*) On vermouth containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol $2.25 per wine gallon;

(*d*) All vermouth containing more than 24 per centum of absolute alcohol by volume (except vermouth containing tax-paid sweet wine, citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, pawpaw wine, papaya wine, pineapple wine, cantaloup wine, or apple wine, fortified, respectively, with grape brandy, citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune

brandy, plum brandy, pear brandy, pawpaw brandy, papaya brandy, pineapple brandy, cantaloup brandy, or apple brandy) shall be classed as distilled spirits and shall be taxed accordingly.

(53 Stat. 298 as amended, 300 as amended, 347 as amended, 375; 26 U. S. C. 2800, 2801, 3030, 3176.)

SEC. 190.548. LIQUEURS, CORDIALS, ETC., TAXABLE UNDER SECTION 3030(a)(2), I. R. C.—Section 3030(a)(2), I. R. C., imposes a tax on certain products of rectification, as follows: On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine, citrus-fruit wine, peach wine, cherry wine, berry wine, apricot wine, prune wine, plum wine, pear wine, pawpaw wine, papaya wine, pineapple wine, cantaloup wine, or apple wine, fortified, respectively, with grape brandy, citrus-fruit brandy, peach brandy, cherry brandy, berry brandy, apricot brandy, prune brandy, plum brandy, pear brandy, pawpaw brandy, papaya brandy, pineapple brandy, cantaloup brandy, or apple brandy, 12 cents on each one-half pint or fraction thereof. Liqueurs, cordials, and similar compounds on which a tax is imposed and paid under section 3030(a)(2), I. R. C., are exempt from the 30-cent rectification tax. By "liqueurs, cordials, or similar compounds" is meant those products that contain not less than 2½ percent by weight of sweetening material and possess the taste, aroma, and characteristics generally attributed to liqueurs and cordials. (53 Stat. 300 as amended, 347 as amended, 375; 26 U. S. C. 2801, 3030, 3176.)

SEC. 190.550. CARBONATED AND SPARKLING WINES.—The carbonating of tax-paid wines, either by secondary fermentation of the wine within the bottle or container or by charging the wine artificially with carbon dioxide, must be done at a rectifying plant. The carbonated wine is subject to the rectification tax of 30 cents per proof gallon, and, in addition thereto, the tax imposed by section 3030(a)(2), I. R. C., upon sparkling wine, or artificially carbonated wine, as the case may be, must be paid. This tax is as follows:

(*a*) On each bottle or other container of champagne or sparkling wine, 17 cents on each one-half pint or fraction thereof;

(*b*) On each bottle or other container of artificially carbonated wine, 12 cents on each one-half pint or fraction thereof;

(*c*) Any of the foregoing articles containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.

(53 Stat. 300 as amended, 347 as amended, 375; 26 U. S. C. 2801, 3030, 3176.)

SEC. 190.552. BLENDED WINES.—Any blending of tax-paid wines by rectifiers, except the blending of domestic tax-paid wines for the sole purpose of perfecting such wines according to recognized commercial standards, subjects the resultant product to the 30-cent rectification tax. Where the taxable class of wine is increased by blending wines with each other, additional wine tax due on the blended wines must be paid, regardless of whether or not the 30-cent rectification tax is incurred by such blending. This additional wine tax represents the difference between the wine tax due on the blended wine under its new classification and the tax previously paid on the wines used for such blending. Section 3030(a)(1), I. R. C., imposes a tax upon all still wines, and all artificial or imitation wines or compounds sold as still wine, at the following rates:

(*a*) On wines containing not more than 14 per centum of absolute alcohol, 17 cents per wine gallon, the per centum of alcohol to be reckoned by volume and not by weight;

(*b*) On wines containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 67 cents per wine gallon;

(*c*) On wines containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol, $2.25 per wine gallon;

(*d*) All such wines containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.

(53 Stat. 300 as amended, 347 as amended, 375; 26 U. S. C. 2801, 3030, 3176.)

5. Sections 194.37, 194.48(*a*), and 194.49 of Regulations 20 are amended to read as follows:

ARTICLE IX—PAYMENT OF SPECIAL TAX

SEC. 194.37. SPECIAL TAX RATES.—Special taxes are imposed upon liquor dealers at the following annual (fiscal year) rates:

Retail dealers in liquors	$50.00
Wholesale dealers in liquors	200.00
Retail dealers in fermented malt liquors	22.00
Wholesale dealers in fermented malt liquors	100.00

(53 Stat. 375, 388 as amended, 467; 26 U. S. C. 3176, 3250, 3791.)

ARTICLE X—SPECIAL TAX STAMPS

* * * * * * *

SEC. 194.48. STAMPS FOR DEALERS IN WINES ONLY, OR WINES AND MALT LIQUORS ONLY.—(*a*) Retail and wholesale dealers in liquors who sell or offer for sale wines only, or wines and malt liquors only, may obtain stamps as retail or wholesale dealers in liquors, as the case may be, under the following designations upon application and payment of special tax at the annual (fiscal year) rates indicated:

Retail dealer in wines	$50.00
Retail dealer in wines and malt liquors	50.00
Wholesale dealer in wines	200.00
Wholesale dealer in wines and malt liquors	200.00

* * * * * * *

(53 Stat. 375, 391, 467; 26 U. S. C. 3176, 3254, 3791.)

SEC. 194.49. STAMPS FOR DRUG STORES AND PHARMACIES SELLING THROUGH LICENSED PHARMACISTS.—Proprietors of drug stores and pharmacies making sales of distilled spirits through duly licensed pharmacists, may procure stamps designated "Medicinal Spirits Stamp Tax" upon application and payment of special tax at the $50 annual rate. The holders of such stamps are subject to all provisions of internal revenue laws relating to retail liquor dealers. Collectors shall, in the absence of specific demand or application for such stamps, issue the regular retail liquor dealer special tax stamp. (53 Stat. 375, 388 as amended, 467; 26 U. S. C. 3176, 3250, 3791.)

6. Since the excise and special tax provisions of the Revenue Act of 1951 were effective on November 1, 1951, these regulations, pursuant to section 3791, Internal Revenue Code, are being made retroactively effective to that date. It is therefore found impracticable to comply with the notice, public rule making, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.).

7. This Treasury Decision shall be effective on November 1, 1951.

(This Treasury Decision is issued under the authority contained in 53 Stat. 298 as amended, 300 as amended, 347 as amended, 375, 388 as amended, 391, 467, 477; 26 U. S. C. 2800, 2801, 3030, 3176, 3250, 3254, 3791, 3901.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved April 21, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 23, 1952, 8:47 a. m.)

REGULATIONS 20, SECTION 194.26: Sales by agencies and instrumentalities of the United States. 1952-13-13854 T. D. 5910

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 194.—WHOLESALE AND RETAIL DEALERS IN LIQUORS

Amending Regulations 20

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To District Supervisors and Others Concerned:

1. Section 604 of the Revenue Act of 1950 (Public Law 814, 81st Cong.) provides as follows:

SEC. 604. FEDERAL AGENCIES OR INSTRUMENTALITIES.

Subchapter B of chapter 27 (relating to occupational taxes) is hereby amended by adding at the end thereof the following new section:

"SEC. 3283. FEDERAL AGENCIES OR INSTRUMENTALITIES.

"Any tax imposed by this chapter shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax."

2. Pursuant to the foregoing provision of law section 194.26 of Regulations 20, "Wholesale and Retail Dealers in Liquors" (26 CFR, part 194; 5 F. R. 2170), as amended, is amended to read as follows:

SPECIAL TAXES

* * * * * * *

SEC. 194.26. SALES BY AGENCIES AND INSTRUMENTALITIES OF THE UNITED STATES.—Section 3283 of the Internal Revenue Code, effective September 23, 1950, provides that any tax imposed by chapter 27 of the Internal Revenue Code shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax. Accordingly, any agency or instrumentality of the United States, including post exchanges, ship's stores, ship's service stores, and commissaries established and conducted under the regulations of the Department of Defense, engaging in the business of selling, or offering for sale, alcoholic liquors, must pay special tax for the carrying on of such business on and after September 23, 1950. Any canteen, club, mess, or similar organization operated under regulations of the Department of Defense, whether or not located on the premises of the Department of Defense, selling, or offering for sale, liquors, is liable to special tax for any period during which the organization carries on the business. (53 Stat. 391, 467, 64 Stat. 964; 26 U. S. C. 3254, 3791, 3283.)

3. Since the provisions of section 604 of the Revenue Act of 1950 were effective on September 23, 1950, this amendment to regulations, pursuant to section 3791, Internal Revenue Code, is being made retroactively effective to that date. It is, therefore, found impracticable to comply with the notice, public rule making, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.).

4. This Treasury Decision shall be effective on September 23, 1950.

(This Treasury Decision is issued under the authority contained in 53 Stat. 391, 467, 64 Stat. 964; 26 U. S. C. 3254, 3791, 3283.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved June 3, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 6, 1952, 8:55 a. m.)

REGULATIONS 21, SECTIONS 191.40, ETC. 1952–10–13821
T. D. 5896

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 191.—IMPORTATION OF DISTILLED SPIRITS, WINES, AND FERMENTED MALT LIQUORS

(Regulations 21)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To District Supervisors and Others Concerned:

1. In order to conform Regulations 21, "Importation of Distilled Spirits, Wines, and Fermented Malt Liquors" (26 CFR, part 191; 16 F. R. 8530), to the provisions of the Revenue Act of 1951 (Public Law 183, 82d Cong.), which increased, among others, the excise tax on distilled spirits, wines, liqueurs, and cordials, sections 191.40, 191.41, 191.42, 191.43, 191.44, 191.45, and 191.46 of such regulations are amended to read as follows:

SUBPART D—TAX ON IMPORTED DISTILLED SPIRITS, WINES, FERMENTED LIQUORS, AND IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS

DISTILLED SPIRITS AND PERFUMES

SEC. 191.40. DISTILLED SPIRITS.—Distilled spirits in customs bonded warehouse or imported into the United States are subject to an internal revenue tax, when withdrawn, at the rate of $10.50 per proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon. (53 Stat. 298 as amended, 373 as amended, 375, 467; 26 U. S. C. 2800, 3170, 3176, 3791.)

SEC. 191.41. PERFUMES CONTAINING DISTILLED SPIRITS.—Imported perfumes containing distilled spirits are subject to an internal revenue tax, when withdrawn, at the rate of $10.50 per wine gallon and a proportionate tax at a like rate on all fractional parts of such wine gallon. (53 Stat. 298 as amended, 373 as amended, 375, 467; 26 U. S. C. 2800, 3170, 3176, 3791.)

WINES

SEC. 191.42. STILL WINES.—All still wines, including vermouth or other aperitif wine, and all artificial or imitation wines or compounds sold as still wine, in customs bonded warehouse or imported into the United States are subject to an internal revenue tax, when withdrawn from customs custody, as follows:

(*a*) On wines containing not more than 14 per centum of absolute alcohol, 17 cents per wine gallon, the per centum of alcohol under this section to be reckoned by volume and not by weight;

(*b*) On wines containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 67 cents per wine gallon;

(*c*) On wines containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol, $2.25 per wine gallon;

(*d*) All such wines containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.

(53 Stat. 298 as amended, 347 as amended, 373 as amended, 375, 467; 26 U. S. C. 2800, 3030, 3170, 3176, 3791.)

SEC. 191.43. SPARKLING WINES.—All sparkling wines and artificially carbonated wines in customs bonded warehouse or imported into the United States are subject to an internal revenue tax, when withdrawn from customs custody, as follows:

(*a*) On each bottle or other container of champagne or sparkling wine, 17 cents on each one-half pint or fraction thereof;

(*b*) On each bottle or other container of artificially carbonated wine, 12 cents on each one-half pint or fraction thereof.

(53 Stat. 347 as amended, 373 as amended, 375, 467; 26 U. S. C. 3030, 3170, 3176, 3791.)

SEC. 191.44. WINES CONTAINING OVER 24 PER CENTUM OF ALCOHOL.—Champagne and other sparkling wines, still wines, artificially carbonated wines, and vermouth or other aperitif wine, if containing over 24 per centum of alcohol by volume, in customs bonded warehouse or imported into the United States are subject to an internal revenue tax, when withdrawn, at the rate of $10.50 per proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon. (53 Stat. 298 as amended, 347 as amended, 373 as amended, 375, 467; 26 U. S. C. 2800, 3030, 3170, 3176, 3791.)

LIQUEURS, CORDIALS, AND OTHER COMPOUNDS AND PREPARATIONS

SEC. 191.45. LIQUEURS, CORDIALS, AND SIMILAR COMPOUNDS.—Liqueurs, cordials, and similar compounds, containing distilled spirits, in customs bonded warehouse or imported into the United States are subject to an internal revenue tax, when withdrawn, at the rate of $10.50 per proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon. Fortified or unfortified wines, containing not over 24 per centum of alcohol by volume, to which sweetening or flavoring materials, but no distilled spirits, have been added are not classified as liqueurs, cordials, or similar compounds, but are considered to be flavored wines only and are subject to internal revenue tax at the rates applicable to wines. (53 Stat. 298 as amended, 347 as amended, 373 as amended, 375, 467; 26 U. S. C. 2800, 3030, 3170, 3176, 3791.)

SEC. 191.46. OTHER COMPOUNDS AND PREPARATIONS.—Compounds and preparations, other than those specified in section 191.45, containing distilled spirits, which are fit for beverage purposes, in customs bonded warehouse or imported into the United States are subject to internal revenue tax at the rate of $10.50 per proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon. Compounds and preparations, containing fortified or unfortified wine, but no distilled spirits, which are fit for beverage purposes and which are sold as wine, are subject to internal revenue tax at the rates applicable to wines. (53 Stat. 298 as amended, 347 as amended, 375, 467; 26 U. S. C. 2800, 3030, 3176, 3791.)

2. Since the excise tax provisions of the Revenue Act of 1951 were effective on November 1, 1951, these regulations, pursuant to section 3791, Internal Revenue Code, are being made retroactively effective to that date. It is, therefore, found impracticable to comply with the notice, public rule making, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.).

3. This Treasury Decision shall be effective on November 1, 1951.

(This Treasury Decision is issued under the authority contained in 53 Stat. 298 as amended, 347 as amended, 375, 467; 26 U. S. C. 2800, 3030, 3176, 3791.)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.
FRANK DOW,
Commissioner of Customs.

Approved April 21, 1952.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 23, 1952, 8:47 a. m.)

TOBACCO, SNUFF, CIGARS, CIGARETTES, ETC.

INTERNAL REVENUE CODE

REGULATIONS 8 (1934), ARTICLES 29, ETC. 1952-1-13742
T. D. 5872

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 140.—TAXES ON TOBACCO, SNUFF, CIGARS, CIGARETTES, CIGARETTE PAPERS AND TUBES, AND PURCHASE AND SALE OF LEAF TOBACCO

Decrease in rate of tax on tobacco and snuff and increase in rate of tax on cigarettes weighing not more than 3 pounds per thousand.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 8 [26 CFR, part 140], relating to the taxes on tobacco, snuff, cigars, cigarettes, cigarette papers and tubes, and purchase and sale of leaf tobacco, to sections 421 and 423 of the Revenue Act of 1951 (Public Law 183, 82d Cong., 1st sess.), approved October 20, 1951, such regulations, but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 [26 CFR, Cum. Supp., p. 5876], are amended, effective November 1, 1951, as follows:

PARAGRAPH 1. Article 29 [26 CFR 140.29] is amended by inserting after "18 cents per pound" the following: "prior to November 1, 1951, and 10 cents per pound on and after November 1, 1951,".

PAR. 2. There is inserted immediately preceding article 43 [26 CFR 140.43], the following:

SEC. 2000. RATE OF TAX [INTERNAL REVENUE CODE].

(a) TOBACCO AND SNUFF.—Upon all tobacco and snuff manufactured in or imported into the United States, and sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid the following taxes:

(1) SNUFF.—On snuff, manufactured of tobacco or any substitute for tobacco, ground, dry, damp, pickled, scented, or otherwise, of all descriptions, when prepared for use, a tax of 18 cents per pound.

(2) TOBACCO.—On all chewing and smoking tobacco, fine-cut, cavendish, plug or twist, cut or granulated, of every description; on tobacco twisted by hand or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of 18 cents per pound.

The tax imposed by this subsection shall be in addition to any import duties imposed upon imported tobacco and snuff.

(b) SNUFF FLOUR.—Snuff flour, when sold, or removed for use or consumption, shall be taxed as snuff.

* * * * * * *

SEC. 423. REDUCTION OF TAX ON TOBACCO AND SNUFF [REVENUE ACT OF 1951, APPROVED OCTOBER 20, 1951].

(a) REDUCTION IN RATE.—Section 2000(a) (relating to tax on tobacco and snuff) is hereby amended by striking out "18 cents per pound", wherever it appears therein, and inserting in lieu thereof "10 cents per pound".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of this Act.

PAR. 3. Article 43 [26 CFR 140.43] is amended to read as follows:

ART. 43 [26 CFR 140.43] RATE OF TAX ON TOBACCO AND SNUFF.—On and after November 1, 1951, a tax of 10 cents per pound is imposed on all manufactured tobacco, snuff manufactured of tobacco or any substitute therefor, and on snuff flour, when sold or removed for consumption or sale. The tax attaches at the time of manufacture of such articles and must be paid by the manufacturer by purchasing and affixing the proper stamps to the packages of such articles before removal from the factory.

PAR. 4. There is inserted immediately preceding article 72 [26 CFR 140.72], the following:

SEC. 421. TAX ON CIGARETTES [REVENUE ACT OF 1951. APPROVED OCTOBER 20, 1951].

(a) INCREASE IN RATE.—Section 2000(c)(2) (tax on cigarettes) is hereby amended by striking out "$3.50 per thousand" and inserting in lieu thereof "$4 per thousand * * *."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this Act.

PAR. 5. Article 72, as amended by Treasury Decision 5209, approved January 8, 1943 [26 CFR 140.72], is further amended as follows:

(A) The sentence preceding the table in paragraph (a) is amended to read as follows:

The rates of tax on all cigars and on cigarettes weighing more than 3 pounds per thousand imposed by section 2000(c) (1) and (2) of the Internal Revenue Code, as amended by section 605 (a) and (b) of the Revenue Act of 1942, effective November 1, 1942, and the rate of tax on cigarettes weighing NOT more than 3 pounds per thousand imposed by section 2000(c)(2) of the Code, as amended by section 421 of the Revenue Act of 1951, effective November 1, 1951, are as follows:

(B) The table following the first sentence in paragraph (a) is amended by striking out "$3.50" wherever it appears therein as the rate of tax on cigarettes, and inserting in lieu thereof "$4.00".

Because the changes in the rates of tax set forth in this Treasury Decision become effective on November 1, 1951, it is hereby found impracticable to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(This Treasury Decision is issued under the authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

JOHN B. DUNLAP,
Commissioner of Internal Revenue.

Approved December 7, 1951.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 12, 1951; 8:52 a. m.)

TOBACCO AND SNUFF[a]

1952–2–13753
Tob. 321

Tobacco and snuff manufactured in and removed from domestic factories during the month of November 1951, compared with the same month of 1950

	Manufactured		Removed			
			Tax-paid		Tax-free	
	November 1951	November 1950	November 1951	November 1950	November 1951	November 1950
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,775,873	3,285,855	3,603,231	3,196,587	53,549	99,132
Twist	476,234	447,317	437,171	337,589	38,935	56,240
Fine-cut chewing	244,223	232,020	235,087	231,301		
Scrap chewing	3,356,636	2,918,784	3,110,424	2,865,893	5,548	3,230
Smoking	9,242,676	8,894,176	9,039,697	8,763,471	210,377	213,719
Snuff	3,528,369	3,285,143	3,571,370	3,289,198	6,879	1,260
Total	20,624,011	19,063,295	19,996,980	18,684,039	315,288	373,581

1952–1–13766
Tob. 324

Tobacco and snuff manufactured in and removed from domestic factories during the month of December 1951, compared with the same month of 1950

	Manufactured		Removed			
			Tax-paid		Tax-free	
	December 1951	December 1950	December 1951	December 1950	December 1951	December 1950
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	2,554,315	2,652,798	2,629,879	2,499,624	124,675	140,053
Twist	305,902	341,687	269,118	269,777	51,352	93,925
Fine-cut chewing	216,485	219,200	211,329	218,812		
Scrap chewing	2,662,756	2,688,788	2,658,289	2,755,650	20,553	15,265
Smoking	6,017,578	5,625,543	5,956,282	5,487,396	288,317	303,016
Snuff	3,201,409	2,998,062	3,177,625	3,044,170	2,205	2,593
Total	14,958,445	14,526,078	14,902,522	14,275,429	487,102	554,852

[a] All figures are subject to revision until incorporated in the total for the calendar year to be published in the Commissioner's annual report.

1952–7–13796
Tob. 327

Tobacco and snuff manufactured in and removed from domestic factories during the month of January 1952, compared with the same month of 1951

	Manufactured		Removed			
			Tax-paid		Tax-free	
	January 1952	January 1951	January 1952	January 1951	January 1952	January 1951
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,416,949	3,464,438	3,578,276	3,534,753	61,513	116,513
Twist	420,772	441,408	391,493	399,086	70,757	60,520
Fine-cut chewing	246,170	237,347	247,516	240,197		
Scrap chewing	3,431,795	3,447,976	3,424,124	3,459,021	77,142	13,105
Smoking	8,618,915	8,510,062	7,849,552	8,284,336	580,178	200,113
Snuff	3,749,231	3,708,387	3,760,593	3,717,279	3,510	2,306
Total	19,883,832	19,809,618	19,241,554	19,634,672	793,100	392,562

1952–8–13805
Tob. 330

Tobacco and snuff manufactured in and removed from domestic factories during the month of February 1952, compared with the same month of 1951

	Manufactured		Removed			
			Tax-paid		Tax-free	
	February 1952	February 1951	February 1952	February 1951	February 1952	February 1951
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,366,962	3,344,447	3,063,896	3,053,536	198,186	80,400
Twist	405,110	367,449	335,844	310,333	1,750	36,534
Fine-cut chewing	217,950	227,321	220,610	222,133		
Scrap chewing	3,263,377	3,129,399	3,019,029	3,039,901	22,996	13,010
Smoking	7,826,468	7,788,698	7,511,541	7,462,290	298,834	233,895
Snuff	3,472,935	3,292,869	3,452,601	3,250,484	3,740	1,170
Total	18,552,802	18,150,183	17,603,521	17,338,677	525,506	365,009

1952-10-13825
Tob. 333

Tobacco and snuff manufactured in and removed from domestic factories during the month of March 1952, compared with the same month of 1951

	Manufactured		Removed			
			Tax-paid		Tax-free	
	March 1952	March 1951	March 1952	March 1951	March 1952	March 1951
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,035,521	3,345,551	2,716,571	3,222,698	135,322	217,812
Twist	363,008	422,992	297,057	345,118	59,624	56,630
Fine-cut chewing	219,279	230,710	215,852	233,584		
Scrap chewing	3,087,051	3,329,041	3,016,187	3,178,526	9,517	31,979
Smoking	7,729,249	8,784,148	7,397,706	8,324,435	387,797	527,727
Snuff	3,477,654	3,564,523	3,413,716	3,506,497	2,868	2,835
Total	17,911,762	19,676,965	17,057,089	18,810,858	595,128	836,983

1952-13-13855
Tob. 336

Tobacco and snuff manufactured in and removed from domestic factories during the month of April 1952, compared with the same month of 1951

	Manufactured		Removed			
			Tax-paid		Tax-free	
	1952	1951	1952	1951	1952	1951
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,180,434	3,045,611	3,148,321	2,928,444	35,815	85,306
Twist	371,551	379,331	319,450	314,992	129,549	45,282
Fine-cut chewing	210,537	212,173	218,350	214,572		
Scrap chewing	3,135,586	3,036,674	3,054,534	2,934,825	51,819	21,941
Smoking	7,852,337	8,732,338	7,691,903	8,106,075	181,156	518,036
Snuff	3,297,658	3,299,414	3,316,644	3,236,837	3,408	2,385
Total	18,048,103	18,705,541	17,749,202	17,735,745	401,747	672,950

CIGARETTES AND SMALL CIGARS[a]

1952–1–13743
Tob. 320

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of November 1951, compared with the same month of 1950

	Small cigarettes		Large cigarettes		Small cigars	
	1951	1950	1951	1950	1951	1950
Manufactured	38,017,487,880	32,728,862,373	55,300	43,100	5,624,390	6,412,830
Removed tax-paid	33,993,650,738	29,825,258,705	55,700	67,500	5,896,220	6,599,910
Removed tax-free	3,707,965,156	2,836,517,513	600	----------	12,000	36,000

1952–4–13765
Tob. 323

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of December 1951, compared with the same month of 1950

	Small cigarettes		Large cigarettes		Small cigars	
	1951	1950	1951	1950	1951	1950
Manufactured	26,896,140,832	27,219,775,739	79,500	52,600	4,057,720	5,080,820
Removed tax-paid	23,847,166,130	25,000,314,486	79,400	54,500	4,313,830	5,415,500
Removed tax-free	3,508,475,969	2,618,666,608	--------	300	9,000	9,000

1952–6–13786
Tob. 326

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of January 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	37,597,746,400	36,301,971,073	173,830	87,000	5,449,220	7,064,390
Removed tax-paid	33,132,990,352	33,474,407,170	173,930	87,480	5,604,200	6,490,080
Removed tax-free	4,141,282,970	2,344,070,826	300	600	36,000	----------

[a] All figures are subject to revision until incorporated in the total for the calendar year to be published in the Commissioner's annual report.

1952–8–13804
Tob. 329

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of February 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	32, 246, 591, 989	31, 841, 066, 595	49, 040	44, 900	5, 570, 260	6, 294, 420
Removed tax-paid	29, 307, 692, 281	28, 857, 361, 007	40, 610	39, 700	5, 707, 500	4, 819, 620
Removed tax-free	2, 974, 310, 125	3, 003, 068, 348	5, 300	5, 000	30, 000	----------

1952–10–13824
Tob. 332

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of March 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	33, 027, 716, 005	33, 562, 293, 615	170, 210	92, 550	5, 616, 720	5, 757, 700
Removed tax-paid	29, 878, 028, 135	30, 160, 474, 516	166, 810	91, 350	4, 842, 760	5, 052, 400
Removed tax-free	3, 106, 605, 419	3, 599, 997, 141	5, 600	300	96, 000	12, 000

1952–12–13841
Tob. 335

Cigarettes and small cigars manufactured in and removed from domestic factories during the month of April 1952, compared with the same month of 1951

	Small cigarettes		Large cigarettes		Small cigars	
	1952	1951	1952	1951	1952	1951
Manufactured	34, 694, 060, 547	32, 955, 112, 201	184, 740	64, 500	5, 481, 000	4, 640, 690
Removed tax-paid	31, 774, 425, 364	29, 523, 969, 995	181, 540	65, 300	5, 970, 620	4, 092, 710
Removed tax-free	2, 888, 232, 360	3, 158, 525, 879	300	300	----------	54, 000

LARGE CIGARS [a]

1952–2–13754
Tob. 322

Large cigars manufactured in and removed from domestic factories during the month of November 1951, compared with the same month of 1950

	November 1951	November 1950
Manufactured	514,451,482	514,107,528
Removed:		
Tax-paid—		
Class A	1,747,695	1,854,510
Class B	20,715,750	14,288,475
Class C	194,932,062	190,861,665
Class D	67,299,978	56,490,068
Class E	241,721,739	231,240,276
Class F	25,956,604	13,794,909
Class G	9,818,970	21,283,010
Total tax-paid	562,192,798	529,812,913
Tax-free	9,531,700	3,958,627

1952–5–13777
Tob. 325

Large cigars manufactured in and removed from domestic factories during the month of December 1951, compared with the same month of 1950

	December 1951	December 1950
Manufactured	364,568,362	358,549,381
Removed:		
Tax-paid—		
Class A	1,473,275	1,531,269
Class B	15,144,930	13,095,463
Class C	142,072,957	128,100,667
Class D	44,128,743	41,799,364
Class E	164,109,972	174,895,151
Class F	9,373,967	1,030,783
Class G	5,499,906	5,230,196
Total tax-paid	381,803,750	365,682,893
Tax-free	9,465,816	6,417,600

[a] All figures are subject to revision until incorporated in the total for the calendar year to be published in the Commissioner's annual report.

1952–8–13803
Tob. 328

Large cigars manufactured in and removed from domestic factories during the month of January 1952, compared with the same month of 1951

	January 1952	January 1951
Manufactured	496,663,157	484,377,089
Removed:		
Tax-paid—		
Class A	1,988,965	1,318,472
Class B	18,117,250	15,672,904
Class C	177,946,077	174,932,361
Class D	47,429,129	43,546,950
Class E	188,709,482	188,081,945
Class F	11,611,808	11,377,813
Class G	4,141,499	3,928,401
Total tax-paid	449,944,210	441,858,846
Tax-free	10,204,495	5,858,650

1952–10–13822
Tob. 331

Large cigars manufactured in and removed from domestic factories during the month of February 1952, compared with the same month of 1951

	February 1952	February 1951
Manufactured	478,574,679	471,290,161
Removed:		
Tax-paid—		
Class A	2,223,900	1,436,838
Class B	16,058,050	12,242,940
Class C	171,969,366	162,074,593
Class D	46,146,609	44,107,439
Class E	189,292,015	182,384,515
Class F	8,754,696	8,338,679
Class G	5,002,516	5,682,493
Total tax-paid	439,447,152	416,267,497
Tax-free	9,028,386	6,512,705

1952–12–13839
Tob. 334

Large cigars manufactured in and removed from domestic factories during the month of March 1952, compared with the same month of 1951

	1952	1951
Manufactured	489,860,669	492,092,537
Removed:		
Tax-paid—		
Class A	1,894,505	1,475,725
Class B	17,971,050	11,445,118
Class C	168,244,543	167,624,078
Class D	47,609,030	45,346,212
Class E	186,544,096	177,198,060
Class F	10,589,392	8,606,746
Class G	5,764,755	5,723,539
Total tax-paid	438,617,371	407,419,478
Tax-free	10,489,797	7,154,599

LEGISLATION

1952-12-13840

S. 1365. PUBLIC LAW 342, EIGHTY-SECOND CONGRESS
[CHAPTER 289, SECOND SESSION]

An Act To assist Federal prisoners in their rehabilitation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 315 of title 18 of the United States Code is amended by adding the following new section:

§ 4284. Advances for rehabilitation.

(a) The Attorney General, under such regulations as he prescribes, acting for himself or through such officers and employees as he designates, may use so much of the trust funds designated as "Commissary Funds, Federal Prisons" (31 U. S. C. 725s(22)), as may be surplus to other needs of the trust, to provide advances to prisoners at the time of their release, as an aid to their rehabilitation.

(b) An advance made hereunder shall in no instance exceed $150 except with the specific approval of the Attorney General, and shall in every case be secured by the personal note of the prisoner conditioned to make repayment monthly when employed, or otherwise possessed of funds, with interest at a rate not to exceed 6 per centum per annum and subject to an agreement on the part of the prisoner that the funds so advanced shall be expended only for the purposes designated in the loan agreement. Repayments of principal and interest shall be credited to the trust fund from which the advance was made. Any unpaid principal or interest on said note shall be considered as a debt due the United States.

SEC. 2. The Attorney General may accept gifts or bequests of money for credit to the "Commissary Funds, Federal Prisons", which gifts or bequests, for the purpose of Federal income, State, and gift taxes, shall be deemed to be gifts or bequests to or for the use of the United States.

SEC. 3. The analysis of chapter 315 of title 18, United States Code, immediately preceding section 4281, is amended by adding the following new item:

4284. Advances for rehabilitation.

Approved May 15, 1952.

1952-13-13856

H. R. 5998. PUBLIC LAW 352, EIGHTY-SECOND CONGRESS
[CHAPTER 319, SECOND SESSION]

An Act To amend the excise tax on photographic apparatus

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the second sentence of section 3406(a)(4) of the Internal Revenue Code as

amended by section 486(a) of the Revenue Act of 1951 is further amended by adding after the comma following the words "to X-ray film" the following: "to unperforated microfilm,".

(b) The provisions of subsection (a) shall be effective as of November 1, 1951.

Approved May 21, 1952.

1952–13–13857

H. R. 7189. PUBLIC LAW 353, EIGHTY-SECOND CONGRESS
[CHAPTER 320, SECOND SESSION]

An Act To amend the provisions of the Internal Revenue Code which relate to machine guns and short-barreled firearms, so as to impose a tax on the making of sawed-off shotguns and to extend such provisions to Alaska and Hawaii, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

IMPOSITION OF TAX ON THE MAKING OF CERTAIN FIREARMS

SECTION 1. Subchapter B of chapter 25 of the Internal Revenue Code is hereby amended by adding at the end thereof the following new section:

SEC. 2734. TAX ON MAKING FIREARMS.

(a) RATE.—There shall be levied, collected, and paid upon the making in the United States of any firearm (whether by manufacture, putting together, alteration, any combination thereof, or otherwise) a tax at that rate provided in section 2720(a) which would apply to any transfer of the firearm so made.

(b) EXCEPTIONS.—The tax imposed by subsection (a) shall not apply to the making of a firearm—

(1) by any person who is engaged within the United States in the business of manufacturing firearms;

(2) from another firearm with respect to which a tax has been paid, prior to such making, under either section 2720(a) or under subsection (a) of this section; or

(3) for the use of (A) the United States Government, any State, Territory, or possession of the United States, any political subdivision thereof, or the District of Columbia, or (B) any peace officer or any Federal officer designated by regulations of the Secretary.

Any person who makes a firearm in respect of which the tax imposed by subsection (a) does not apply by reason of the preceding sentence shall make such report in respect thereof as the Secretary may by regulations prescribe.

(c) BY WHOM PAID; WHEN PAID.—The tax imposed by subsection (a) shall be paid by the person making the firearm. Such tax shall be paid in advance of the making of the firearm.

(d) HOW PAID.—Payment of the tax imposed by subsection (a) shall be represented by appropriate stamps to be provided by the Secretary.

(e) DECLARATION.—It shall be unlawful for any person subject to the tax imposed by subsection (a) to make a firearm unless, prior to such making, he has declared in writing his intention to make a firearm, has affixed the stamp described in subsection (d) to the original of such declaration, and has filed such original and a copy thereof. The declaration required by the preceding sentence shall be filed at such place, and shall be in such form and contain such information, as the Secretary may by regulations prescribe. The original of the declaration, with the stamp affixed, shall be returned to the person making the declaration. If the person making the declaration is an individual, there shall be included as part of the declaration the fingerprints and a photograph of such individual.

EXTENSION OF FIREARMS TAXES TO ALASKA AND HAWAII

SEC. 2. (a) Section 2720(a) of the Internal Revenue Code is hereby amended by striking out "continental United States" and inserting in lieu thereof "United States".

(b) Section 2733(c) of the Internal Revenue Code (defining the term "continental United States") is hereby repealed.

(c) Paragraphs (d), (e), and (f) of section 2733 of the Internal Revenue Code are hereby amended by striking out "continental United States" in each such paragraph and inserting in lieu thereof "United States".

TECHNICAL AMENDMENTS

SEC. 3. (a) Section 2723(c) of the Internal Revenue Code is hereby amended to read as follows:

(c) DOCUMENTS TO ACCOMPANY TRANSFERS.—No person shall transfer a firearm unless such person, in addition to complying with subsection (b), transfers therewith (in compliance with such regulations as may be prescribed under this subchapter for proof of payment of all taxes on such firearm)—

(1) for each prior transfer of such firearm which was subject to the tax imposed by section 2720(a), the stamp-affixed order provided in this section, and

(2) for any making of such firearm which was subject to the tax imposed by section 2734(a), the stamp-affixed declaration provided in section 2734.

(b) Section 2726(a) of the Internal Revenue Code is hereby amended to read as follows:

(a) POSSESSING FIREARMS UNLAWFULLY TRANSFERRED OR MADE.—It shall be unlawful for any person to receive or possess any firearm which has at any time been transferred in violation of section 2720, 2721(b), 2722, 2723, 2727, or 2731 of this subchapter, or which has at any time been made in violation of section 2734 of this subchapter.

(c) Section 2730(a) of the Internal Revenue Code is hereby amended by striking out "transferred" and inserting in lieu thereof "transferred or made".

(d) Section 2731 of the Internal Revenue Code is hereby amended by striking out "section 2720(a)" and inserting in lieu thereof "sections 2720(a) and 2734(a)".

(e) Section 3261(b) of the Internal Revenue Code is hereby amended by striking out the proviso and by adding at the end of such section 3261(b) the following new sentence: "No person shall be required to register under this subsection with respect to a firearm which such person acquired by transfer or importation or which such person made, if provisions of subchapter B of chapter 25 applied to such transfer, importation, or making, as the case may be, and if the provisions which applied thereto were complied with."

(f) Section 3261(c) of the Internal Revenue Code is hereby repealed.

(g) Section 3263(b) of the Internal Revenue Code is hereby amended by inserting "or a stamp-affixed declaration as provided in section 2734" after "section 2723".

EFFECTIVE DATE

SEC. 4. (a) The effective date of the amendments made by this Act shall be the first day of the fourth month following the month in which this Act is enacted.

(b) Notwithstanding subsection (a), registration under section 3261 of the Internal Revenue Code which is required by reason of the amendments made by this Act shall commence on the first day of the second month following the month in which this Act is enacted.

(c) Nothing in subchapter B of chapter 25 of the Internal Revenue Code or of part VIII of subchapter A of chapter 27 of the Internal Revenue Code, as amended by this Act, shall impose any liability (whether criminal or otherwise) in respect of any act or failure to act occurring before the effective date specified in subsection (a), unless such liability would have existed in respect of such act or failure to act under the provisions of such subchapter B and part VIII as they existed on the day prior to the effective date specified in subsection (a).

(d) In the case of any person who is liable for a tax under any provision of section 3260(a) of the Internal Revenue Code solely by reason of the amendments made by this Act and who (prior to the effective date of these amendments) commenced the activity which makes him subject to tax under such provision, such tax shall be reckoned proportionately from the beginning of the effective date of these amendments to and including the 30th day of June following; and such tax shall be due on, and payable on or before, the last day of the fourth month after the month in which this Act is enacted.

Approved May 21, 1952.

1952–13–13858

H. R. 5282. PUBLIC LAW 355, EIGHTY-SECOND CONGRESS
[CHAPTER 322, SECOND SESSION]

An Act To amend section 2800(a)(5) of the Internal Revenue Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2800(a)(5) of the Internal Revenue Code is amended by deleting the period at the end thereof and adding the following: "or to vodka produced from pure spirits in the manner authorized at registered distilleries."

SEC. 2. The amendment made by this Act shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of this Act.

Approved May 22, 1952.

1952–13–13859

H. R. 7230. PUBLIC LAW 361, EIGHTY-SECOND CONGRESS
[CHAPTER 329, SECOND SESSION]

An Act To amend the Internal Revenue Code, so as to make nontaxable certain stock transfers made by insurance companies to secure the performance of obligations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1802(b) of the Internal Revenue Code is hereby amended by inserting after the third proviso thereof a colon and the following new

proviso: "*Provided further*, That the tax shall not be imposed upon any delivery or transfer to a trustee or public officer, made pursuant to Federal or State law to secure the performance of an obligation, or upon a redelivery or retransfer of such shares or certificates to the transferor, if such delivery, transfer, redelivery, or retransfer is accompanied by a certificate setting forth the facts".

(b) Section 3481(a) of the Internal Revenue Code is hereby amended by inserting after the third proviso thereof the following new proviso: ": *Provided further*, That the tax shall not be imposed upon any delivery or transfer to a trustee or public officer, made pursuant to Federal or State law to secure the performance of an obligation, or upon a redelivery or retransfer of such instruments to the transferor, if such delivery, transfer, redelivery, or retransfer is accompanied by a certificate setting forth the facts".

(c) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the day following the date of the enactment of this Act.

Approved May 23, 1952.

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